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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A124/2023

(1) REPORTABLE: No

(2) OF INTEREST TO OTHERS JUDGES: No

(3) REVISED: No

(4) DATE: 25 August 2025

(5) SINGATURE: _____

In the matter between:

Cedric de la Harpe

Applicant

And

Regional Magistrate, S F Ntlali

First Respondent

(Court 9 Pta Central)

National Director of Public Prosecutions

Second Respondent

Acting Chief Master Theresa Bezuidenhout

Third Respondent

Assistant Master Johanna Mokhonoana Shogole

Fourth Respondent

State Attorney J (Kobus) Meier

Fifth Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 25 August 2025.

JUDGMENT

Collis J (Kooverjie J concurring)

INTRODUCTION:

1] This is an application for review by the Applicant, Mr de la Harpe, a private prosecutor. The applicant initiated prosecution against the third and fourth respondents in their personal capacities, this after a nolle prosequi certificate was issued.

2] The prosecution ensued in the Regional Court Pretoria and was conducted before the first respondent who ultimately acquitted the third and Fourth Respondents on 30 March 2023.

3] The present application for review was launched by applicant against all the respondents following the acquittal of the Third and Fourth Respondents.

4] The acquittal ensued after the respondents successfully raised a plea in terms of section 106 of the Criminal Procedure Act, Act 51 of 1977.

THE PARTIES

5] The applicant, Mr De La Harpe, throughout the criminal proceedings indicated that he acted in his personal capacity and not as a member of Grace Enterprises CC, a deregistered company of whom he and his wife were members.

6] The National Prosecuting Authority is cited herein as the second respondent responsible in law to prosecute persons for criminal offences. As already mentioned, the prosecution issued a nolle prosequi certificate in the criminal proceedings, declining to prosecute the Third and Fourth Respondents.

7] In this review application the third respondent is cited in her capacity as Acting Chief Master.

8] The fourth respondent is likewise cited in this review application in her official capacity despite that she was prosecuted in her personal capacity. She was also found not guilty.

9] Mr. J. Meier, cited as the fifth respondent herein, is the attorney of record for the third and fourth respondents. He represented the respondents during their criminal matter as well as in the present review. Currently he is employed as a Senior Assistant State Attorney at the Office of the State Attorney Pretoria.

THE PLEADINGS

10] As per the issued Notice of Motion the relief sought by the applicant was formulated as follows:

“NOTICE OF MOTION TO REVIEW edited and amended in terms of r 53(4)

TAKE NOTICE that Cedric de la Harpe, (hereinafter called the applicant) intends to make an application to this Court in terms of rule 53, to review the 30 March 2023 ruling in Pretoria Central-

Regional Court No.9, by Respondent 1, and for an order (a) to set aside the March 30 2023 ruling by the presiding officer, in which the presiding officer finds that I, Cedric de la Harpe, as Private Prosecutor, do not have substantial and unique interest in the Perjury Cass, and that I show no damage suffered, as required in term of Section 7 1(a) or Section 7 (b), and as such, I do not have title to Privately Prosecute, notwithstanding the Certificate *Nolle Prosequi*, issued by the NPS on 16 April, 2021, and (b) to reinstitute all charges against Respondents 3 and 4, as responded to in my Affidavit dated November 10. 2022, Item 5, page 5-6, as shown in annexure 06 A39/1 & A39/2 (c) and set a trial date for Case 869/09/2019 to resume against accused one and two, (Respondent's 4 & 3) (d) to take note of any failure by accused one and two, (Respondent's 4 & 3), to rebut those averments introduced through the 'unethical presentation' in the Heads of Argument, and give the Applicant/other Judicial/Investigative direction to follow, (here set forth the form of order prayed) and that the accompanying "Supporting Affidavit" and "Supplement to the "Support Affidavit of Cedric de la Harpe, will be used in support thereof.

TAKE FURTHER NOTICE, as Applicant, I call upon the Respondents to show cause why such decision should not be

reviewed and set aside, and that the Court of Review should not consider all the prayers submitted, and in terms of rule 53 (5)(a) should you intend to oppose this amended Notice of Motion, deliver within fifteen days of service of this amended Notice of Motion to Review, serve notice to the Applicant that you intend so to oppose, and in such notice appoint an address within eight kilometres of the office of the registrar at which you will accept notice and service of all process in such proceedings, and in terms of rule 53(5)(b), within thirty days of receipt of this amended Notice of Motion to Review, deliver any affidavits you may desire in answer to the allegations made by the applicant, to the Applicant.

In terms of rule 53(6) the applicant shall have rights and obligations in regard to replying affidavits set out in rule 6.

TAKE FURTHER NOTICE that the applicant has appointed Mr Ezekiel Nkosi, Shop 10, Bothlong Plaza West (POSTNET) 2[...] F[...] B[...] Street, Pretoria Central, as the address referred to in rule 6(5)(b) at which he will accept notice and service of all process in these proceedings.”

11] In support of the relief sought in terms of the Notice of Motion, the applicant had placed reliance upon his Supporting Affidavit and the Supplementary Supporting Affidavit so filed.

12] Although both the second to fifth respondents had filed notices to oppose the present review proceedings, it was only the Third to Fifth respondents who proceeded to file an Opposing Affidavit to this application.

13] As the opposing respondents had raised several *points in limine*, this court deemed it necessary to deal upfront with the preliminary *points in limine* as we held the view that they are dispositive of this review in its entirety.

14] This approach so adopted by the court was also conveyed to the parties at the commencement of the proceedings and the parties were accordingly directed to specifically address this court on the *points in limine* raised.

FIRST POINT IN LIMINE

The Founding Affidavit and Supplementary statement of the Applicant dated 25 April 2023 and 27 July 2023 are not under oath or proper affidavits and not properly commissioned as prescribed and do not comply with Rule 53(2) of the Uniform Rules of Court.

15] As per the Opposing Affidavit, the deponent alleges that the founding affidavit together with the supplementary affidavit mentioned above do not satisfy the requirements set out in the Regulations Governing the Administering of an Oath or Affirmation ¹ ("the Regulations") promulgated in terms of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

16] Furthermore, in terms of Regulation 2(1), read with 2(2), before a commissioner of oaths administers the oath to any person, he/she shall ask the deponent: (a) whether he/she knows and understands the contents of the declaration; (b) whether he/she has any objection to taking the prescribed oath; and (c) whether he/she considers the prescribed oath to be binding on his/her conscience.

17] If the deponent answers these questions in the affirmative, the commissioner of oaths must record such answers and thereby administer the oath. Once the deponents' answers are then recorded; in terms of Regulation 3(1) the deponent is then to sign the declaration in the presence of the commissioner of oaths.²

18] On behalf of the respondents it was contended that *ex facie* the

¹ Promulgated in Government Gazette 3619, Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, Government Notice R1428 of 11 July 1980 and Government Notice R774 of 23 April 1983.

² Absa Bank v Botha NO 2013 (5) SA 563.

Founding Affidavit read together with the Supplementary Supporting Affidavit, prima facie, it appears that no oath was administered by the alleged commissioner of oaths who only signed the two affidavits and appended his stamp.

19] On this basis it was therefore argued that absent any reference to either the relevant regulations or by recording the answers so supplied by the deponent, the commissioner of oaths in merely applying a stamp did not comply with the abovementioned Regulations.

20] In addition, a further argument advanced was that in the absence of a proper affidavit having been filed in support of the review application, there had been further non-compliance with the provisions of rule 53(2) of the Uniform Rules of Court, as the notice of motion is not supported by an affidavit as required by the rule.

21] In answer to this point so raised the applicant alleges that the first *point in limine* had merely been raised by the opposing respondents as a technicality in order to cast a fraudulent perception on him. Further that it had merely been raised so as to cast an aspersion on him that the affidavit was not signed by him in the presence of the commissioner of oaths and this without any supporting evidence to prove such allegation. On this basis the applicant had argued that this *point in limine* should be

dismissed by this Court.³

22] Now albeit that a court enjoys a discretion to accept or reject an affidavit which does not comply with the Regulations, it is now settled that such Regulations are merely directory rather than peremptory.

23] It does however remain a question of fact in each individual case as to whether there has been substantial compliance with the Regulations.

24] The submission that at the very least there had been substantial compliance with the applicable Regulations governing the attestation or commissioning of affidavits was not a submission which had been made by the applicant before us.

25] In his Replying Affidavit, the applicant argued that the complaint raised was a mere red herring, and as such he failed to deal with the basis of the complaint.

26] *Ex facie* both affidavits it is clear that the commissioner of oaths failed to ask the questions pertinently dealt with in the Regulations and also failed to record the answers to the questions referred to in the Regulations.

³ Replying Affidavit para 5 Caselines 012-7.

27] In addition to the absence of such a recordal of answers, the commissioner of oaths also failed to expressly make reference to the relevant regulations which would at least have given this Court an indication that the commissioning or attestation had taken place in accordance with the applicable Regulations.

28] Premised on this omission, this Court is not persuaded that the commissioning was in compliance with the Regulations and as such it renders the "affidavits" mere statements.

29] The additional argument raised in this regard is that there had also been non-compliance with Rule 53(2) in that the notice of motion is not accompanied by an affidavit setting out the grounds and the facts and the circumstances upon which the applicant relies to have the decision set aside or corrected. Here too, given this court's view already expressed in paragraph 28 *supra*, it must follow that there also had been non-compliance with rule 53(2).

30] For the above reasons the first *point in limine* has merit and accordingly it is upheld with costs.

SECOND POINT IN LIMINE

No record of proceedings before court and unauthorised filing of a supplementary statement in terms of Rule 53(4).

31] In relation to this point the opposing respondents' complaint is that to date no record of the decision sought to reviewed has been delivered at all despite their attorney requesting the record from the applicant. In response the applicant submitted that the record in the court a quo is not necessary and that the first respondent, being the Magistrate, allegedly did not file the record.⁴

32] The opposing respondents further complain that the applicant proceeded to file a supplementary affidavit without being authorised to do so.

33] In the Replying Affidavit, the applicant fails to expressly deal with the step he took to file a Supplementary affidavit without being authorised to do so.⁵ His affidavit is simply silent in this regard.

34] The provisions of Rule 53 of the Uniform Rules of Court read as follows.

"53. Reviews

⁴ Opposing Affidavit para 2.2.3 Caselines 011-12

⁵ Replying Affidavit Caselines 012-1

(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi- judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairperson of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected—

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and

(b) calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to dispatch, within 15 days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as the magistrate, presiding officer, chairperson or officer, as the case may be is by law required or desires to give or make, and to notify the applicant that such magistrate, presiding officer, chairperson or officer, as the case may be has done so.

(2) The notice of motion shall set out the decision or proceedings

sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.

(3) The registrar shall make available to the applicant the record despatched as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

(4) The applicant may within 10 days after the registrar has made the record available to the applicant, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the applicant's notice of motion and supplement the supporting affidavit.....

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications shall mutatis mutandis apply to the set down of review proceedings.”

35] In compliance with the aforesaid rule it was incumbent upon the Magistrate to dispatch the record to the registrar within 15 days of receipt of the notice of motion together with the reasons for such decision and only upon receipt of such record will the applicant be permitted to amend the notice of motion and or supplement the supporting affidavit. Upon receipt of the record, the applicant was required to make copies of the relevant portion of the record and to dispatch to each party such portion of the record and to dispatch to the registrar two copies of the record.

36] Herein, the complaint by the opposing respondents is that at the time when the first supplementary affidavit was filed by applicant, it was prior to the record having been dispatched and therefore not in compliance with rule 54(3) and that a substantial part of the record is still not available.

37] Given the applicant’s failure to expressly deal with this complaint in the Replying Affidavit, this Court is not being taken into his confidence and no reasons were furnished for the filing of a supplementary supporting affidavit before the record had been dispatched.

38] Procedurally, it was impermissible for the applicant to have taken this step and absent any explanation before this court, I must conclude that there is also merit in the second *point in limine* raised by the opposing respondents.

39] Consequently, the second *point in limine* is also upheld with costs.

40] An applicant in a review can only approach a Court on the grounds set out in terms of section 22 of the Superior Court Act, 2013. The section reads as follows:

“22. Grounds for review of proceedings of Magistrates’ Court

(1) The grounds upon which the proceedings of any Magistrates’ Court may be brought under review before a court of a Division are—

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings; and
- (d) the admission of inadmissible or incompetent evidence or the

rejection of admissible or competent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates' Courts.”.

41] In so far as the requirements set out in section 22 listed above, the opposing respondents argued that the applicant failed to make out a case to review the decision of first respondent on the basis that the first the respondent had a mistaken view of the law or fact ⁶ in concluding that the applicant did not have a substantial and unique interest in the perjury case and that the applicant did not have the title to privately prosecute notwithstanding a certificate *nolle prosequi* having been issued.

42] A gross irregularity in criminal proceedings in an inferior court means an irregular act or omission by the presiding judicial officer in respect of the proceedings of so gross a nature that it was calculated to prejudice the aggrieved litigant, on proof of which the court would set aside such proceedings, unless it was satisfied that the litigant had not suffered any prejudice.

43] Any ground of review listed in the issued Notice of Motion can only be supported by the accompany affidavit(s) filed in support of the application.

⁶ Absa Bank Ltd v De Villiers (146/09) 2009 ZASCA 140.

44] On behalf of the opposing respondents it was argued that there is no irregularity as envisaged in section 22 of the Superior Courts Act which is of the slightest relevance in these allegations.

45] This Court in making a determination as to whether any substance can be given to any ground listed in the Notice of Motion must have regard to the evidence filed in support of the application.

46] As this Court has already determined that mere statements had been filed in support of the relief claimed in the Notice of Motion and no affidavits as required by rule 53, there can be no proper adjudication of the merits of the review application filed before this court.

47] In light of the Court's findings above it is not necessary to adjudicate the remaining *points in limine* raised by the respondent.

ORDER

48] Consequently, I make the following order:

48.1 The first and second *points in limine* are upheld with costs.

48.2 The review application is dismissed with costs.

48.3 The costs of the application, is to be paid by the applicant on

scale B.

C COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

I agree

H KOOVERJIE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES:

Counsel on behalf of the Applicant: In persona

Instructing Attorney: In persona

Counsel on behalf of the 3rd, 4th and 5th Respondents: Adv. M Barnard

Instructing Attorney: Office of the State Attorney, Pretoria

Date of Hearing: 31 October 2024

Date of Judgement: 25 August 2025