



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBERS: AR93/2024 & AR 94/2024

In the matter between:

MOORE & ASSOCIATES

APPELLANT

And

MBONENI MOFFAT NDWANDWE

FIRST RESPONDENT

PRECIOUS NC NGCOBO

SECOND RESPONDENT

NOMPHELO TUKCO

THIRD RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] No heads of argument were filed on behalf of First Respondent nor was there any appearance on his behalf.

[2] As the issues in the two appeals AR93/2024 and AR94/2024 are very similar and concerns the same parties it is convenient to deal with the two appeals together. The parties will be referred to as they are in these proceedings. Appellant was Second

Respondent in both matters in the court *a quo* and First Respondent, Applicant in both matters.

[3] In both appeals Appellant seeks condonation for the late delivery of the application for an appeal date and the subsequent late prosecution of the appeals.

[4] The orders in both cases were granted on the same day on 31 May 2023 by the learned magistrate in the court *a quo*.

[5] Requests for reasons in both matters in terms of Rule 51(1) were filed on 6 June 2023. To date the learned magistrate has not provided any reasons in either of the matters nor has she responded in any way to the said requests. The notices of appeal in both matters were filed on 31 October 2023. There were numerous requests in writing by Appellant for the said reasons but they were never replied to which necessitated that the appeals be proceeded with without such reasons or response from the learned magistrate. It is of concern that the learned magistrate ignored the requests for reasons and did not even acknowledge such requests.

[6] The reasons for requesting condonation in both matters have been fully explained and Appellant has made out a case for the relief claimed. In both appeal AR93/2024 and AR94/2024 condonation is granted to Appellant for the late delivery of the application for an appeal date and the late prosecution of the appeal.

[7] On 1 March 2023 First Respondent (Applicant in the court *a quo*) brought an *ex parte* application in both cases in the magistrate's court Nongoma on an urgent basis in respect of both claims under case number 54/2019 and case number 36/2018 that the writs of execution issued on 12 August 2022 be stayed and that Appellant and the Sheriff be restrained and interdicted from removing any asset of First Respondent in terms of the writs of execution dated 12 August 2022 Appellant to pay the costs on

an attorney and client scale in case number 54/2019 appeal AR93/2024 and case number 36/2018, appeal AR94/2024.

[8] In both cases First Respondent submitted in his founding affidavit that the cost orders which resulted in the writs of execution should not have been granted and therefore the writs should be stayed on an urgent basis. In the transcript of both matters there is a form completed in manuscript and signed by the magistrate which states:

“The court finds that the application is urgent and requires urgent attention. Application for the writ of execution to be stayed granted.”

[9] It appears that on 1 March 2023 the learned magistrate granted a *rule nisi* returnable on 11 April 2023 for the relief set out in the notice of motion and that Appellant pay the costs on an attorney and client scale.

[10] An opposing affidavit was filed and served by Appellant in each of the cases on 12 April 2023. There was then an application for a postponement on 24 April 2023 to 11 May 2023 and then a note that the *rule nisi* was confirmed on 31 May 2023.

[11] In appeal AR94/2024 (case number 36/2018) the court *a quo* granted an order on 31 May 2023 staying the writ of execution issued on 12 August 2022, interdicting the Sheriff and Appellant from removing any assets of First Respondent and ordered that Appellant pay the costs *de bonis propriis*. A similar order was granted on 31 May 2023 in Appeal AR93/2024 (case number 54/2019).

[12] The cost orders in both matters in terms of which the writs were issued were taxed and the warrants of execution against property issued on 12 August 2022. The taxation was not attended by First Respondent's attorney. The taxed bill of costs were emailed to First Respondent's attorneys on 25 May 2022.

[13] Notice of appeal in both matters were filed and served on all the parties. None of the Respondents opposed the appeal.

[14] Third Respondent cancelled her instruction to Appellant who accordingly at this stage is the only Appellant, Third Respondent no longer the Second Appellant as appears from the notice of appeal but the Third Respondent.

[15] A reading of the record and the proceedings in the court *a quo* indicate no inappropriate conduct by Appellant except performing her duties as an attorney. There was firstly no basis for granting a cost order against Appellant who acted on behalf of her client. What is even more difficult to understand is on what basis costs were granted against Appellant *de bonis propriis* in both the matters. It was not even an order in terms of the notice of motion.

[16] The warrants of execution have been stayed as per the orders referred to above. There is no indication until when it is to be stayed. It cannot be stayed indefinitely. It must be pending some further relief which is to be sought. The original order was also granted *ex parte*. There should have been notice to the Respondents. By not providing reasons for her orders it is impossible to determine why they were granted rendering them inappropriate.

The orders can accordingly not stand and the appeals must succeed. The following order is made.

1. The appeals succeed.
2. The orders by the court *a quo* dated 31 May 2023 in appeal AR93/2024 (case number 54/2019) and appeal AR94/2024 (case number 36/2018) are set aside.
3. First Respondent is ordered to pay the costs of the appeals.

A large black rectangular redaction box covering a signature.

P C BEZUIDENHOUT J.

I agree.

A black rectangular redaction box covering a signature, with a horizontal line drawn underneath it.

CHITHI J.

JUDGMENT RESERVED ON:

17 OCTOBER 2025

JUDGMENT HANDED DOWN ON:

24 OCTOBER 2025

COUNSEL FOR APPELLANT:

S MOORE

Instructed by:

Moore and Associates

Umhlanga

Tel: 010 446 0721

Email: storm@moore-law.co.za

Ref: S Moore/O10037

c/o: Viv Greene Attorneys

Tel: 033 342 2766

Email: tracy@vglaw.co.za

COUNSEL FOR RESPONDENTS:

NO APPEARANCE

Instructed by:

Sandile Khumalo Incorporated

Ulundi

Tel: 035 870 1882

Ref: WSZ/111/2017

Email: info@sandileattorneys.co.za

Precious Ngcobo

Ulundi

Email: precious.ngcobopnc@gmail.com