

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: HCAA36/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: Naude-Odendaal J

DATE: 10/11/2025

In the matter between:

MAKHADO LOCAL MUNICIPALITY

APPELLANT

and

PAUL MAKHAVHU

1st RESPONDENT

PAULINE MAKHAVHU

2nd RESPONDENT

JUDGMENT

NAUDE-ODENDAAL J:

[1] This is an appeal with leave from the court *a quo* on limited grounds against orders 5 and 6 only, of the judgment delivered on 18 September 2024. The orders read as follows:-

"5. The First Respondent is ordered to review the consolidation of the Applicants' accounts and provide a clear explanation of the process followed, particularly with regard to the unmetered property, within 30 days of this order.

6. The Applicants are granted leave to approach this court on the same papers, duly supplemented, should any disputes arise from the implementation of this order."

[2] The grounds of appeal in essence is based on the fact that the orders in 5 and 6 were not prayed for and were *meru moto* granted by the court a quo.

[3] The Respondents brought an urgent application in terms whereof the following relief was sought:-

"1. That the Applicants non-compliance with the Uniform Rules and Directives of the above Honourable Court be forthwith condoned and the matter be heard on an urgent basis in terms of Uniform Rules 6(12)(a) of the Uniform Rules of Court.

2. That the Applicants non-compliance with Section 35 of the General Law Amendment Act 62 of 1955 be forthwith condoned.

3. That the Applicants' non-compliance with Section 3 and 4 of the Institution of Legal Proceedings Against Organs of State Act 40 of 2002, as amended [be condoned].

4. That this matter be heard ex parte.

5. That the First Respondent be ordered to reconnect and/or cause to be reconnected, electricity to the immovable property of the Applicants situated at Number 1[...] B[...] Street, Louis Trichardt, under Makhado Local Municipality, Limpopo Province, Under Account Number 0[...], within 24 hours of receipt of this Order.

6. That the First Respondent be ordered to furnish and/or cause to be furnished the Applicants' attorneys of record with a breakdown and/or explanation of the amount of R154 577.27 contained in Tax Invoice/Statement of Account, Under Account Number 0[...], Tax Invoice Number 0000703948202407, dated 1 July 2024, of the immovable property of the Applicants situated at Number 1[...] B[...] Street, Louis Trichardt, under

Makhado Local Municipality, Limpopo Province, within ten (10) [days] of receipt of this Order.

7. *That the First Respondent be interdicted from disconnecting and/or causing to be disconnected, disrupting and/or caused to be disrupted, the provision of electricity to the immovable property of the Applicants situated at Number 1[...] B[...] Street, Louis Trichardt, under Makhado Local Municipality, Limpopo Province, Under Account Number 0[...], pending compliance with order number 6 above.*

8. *That the First Respondent be interdicted from disconnecting and/or causing to be disconnected, disrupting and/or caused to be disrupted, the provision of electricity to the immovable property of the Applicants situated at Number 1[...] B[...] Street, Louis Trichardt, under Makhado Local Municipality, Limpopo Province, Under Account Number 0[...], without first giving the Applicants the required notice of not less than seven (7) days, demanding payment and affording the Applicants a reasonable period to pay and/or cause to be paid, the amount due and payable as per the tax invoice/statement of the particular month.*

9. *Further and/[or] alternative relief that the Honourable Court may deem suitable under the circumstances.*

10. *Costs of suit on the party and party scale to be determined by the Honourable Court.*

11. *That orders number 6, 7 and 8 be granted on interim basis and that a Rule Nisi be issued, calling upon the Respondents to come and show cause why the above interim orders should not be made final orders, returnable on the ____ day of ____ 2024."*

[2] The court *a quo* issued a *rule nisi* order on the 19th of July 2024, that mirrors the Notice of Motion except for prayer 4 of the Notice of Motion. The *rule nisi* was granted before the Appellant filed and served its answering affidavit.

[3] The Appellant subsequently opposed the application and filed its answering affidavit. After hearing the arguments from the respective parties' legal representatives, the court *a quo* granted a final order on 18 September 2024. It is prayers/orders 5 and 6 of this final order that are the subject of this appeal.

[4] The Appellant submits that the court *a quo* erred in granting orders that were neither sought in the notice of motion nor canvassed in the founding papers or at the hearing of the application.

[5] The Appellant further submitted that the court *a quo* erred by not realizing that order number 5 and 6 of its judgment were not sought, canvassed and the parties were not afforded an opportunity to address the possibility of the court making such orders. It was submitted that orders 5 and 6 were outside the pleadings and therefore the court had no authority or jurisdiction to decide issues not before the court.

[6] The Appellant submitted that the court *a quo*'s judgment is further silent on the basis of granting orders 5 and 6. The judgment did not explain why the orders were made and how did the court arrive at the conclusion of granting such orders outside the pleadings.

[7] The Respondents submitted that the orders in 5 and 6 were reasonable and necessary to bring the matter to finality. It was submitted that these two orders were relevant and has to stand as it is still within the scope of the review of the consolidation process required to be understood by the Respondents as to how the figures referred to were arrived at. In the alternative, it was submitted that should this court find that order 5 was not supposed to have been granted, this court is requested to consider order 5 in line with order 3 of the standing prayers. If this order is removed, this will leave issues not being fully canvassed and issues will be left hanging.

[8] The Respondents further submitted that based on the orders granted on 18 September 2024, the orders wherein leave to appeal was not granted is still standing and binding as they are. Even in the event that the Appellant may succeed in this appeal, that cannot take away the fact that the real and actual issues were dealt with, finalized and there is not appeal on those issues. It is submitted that there is therefore no practical effect of this appeal on the orders sought. The appeal has therefore become academic.

[9] The Respondents further submitted that the role of a judge is to ensure that justice is dispensed with, with a just and expeditious decision and in doing so, a Judge may make an order that the Judge believes to be reasonable in his/her discretion in order to achieve a just and fair outcome. It was submitted that the Judge in the court a quo did perform such duties and the orders were within the scope of the relief sought.

[10] The Constitutional Court in **Molusi v Voges N.O. 2016 (3) SA 370 (CC)** at **paras 27-28** held as follows:-

"[27] It is trite law that in application proceedings the notice of motion and affidavits define the issues between the parties and the affidavits embody evidence. As correctly stated by the Supreme Court of Appeal in Sunker:

'If an issue is not cognisable or derivable from these sources, there is little or no scope for reliance on it. It is a fundamental rule of fair civil proceedings that parties... should be apprised of the case which they are required to meet; one of the manifestations of the rule is that he who [asserts] ... must... formulate his case sufficiently clearly so as to indicate what he is relying on. '

[28]The purpose of pleadings is to define the issues for the other party and the Court. And it is for the Court to adjudicate upon the disputes and those disputes alone. Of course, there are instances where the court may, of its own accord (mero motu), raise a question of law that emerges fully from the evidence and is necessary for the decision of the case as long as its consideration on appeal involves no unfairness to the other party against whom it is directed. In Slabbert the Supreme Court of Appeal held:-

'A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.' (Footnotes omitted.)

[11] It is trite that an Applicant must stand or fall by his papers. Facts relevant to the relief sought must be set out simply, clearly and in chronological sequence in the affidavits which support the notice of motion.

[12] In the present matter, the court *a quo* clearly deviated from the relief sought by the Respondents in their notice of motion. The court *a quo* further failed to invite the parties to comment or address the court or make submissions before making such orders that were completely outside the case the Respondents pleaded in their founding affidavit.

[13] By making the orders, although the orders might have been practical under the circumstances and might have resulted in a more speedily finalization of the matter, impermissibly ventured and extended the relief beyond the Respondents case.

[14] In **Fischer v Ramahlele 2014 (4) SA 614 (SCA) at paras 13-15** the following was held:-

"[13] Turning then to the nature of civil litigation in our adversarial system it is for the parties, either in the pleadings or affidavits, which serve the function of both pleadings and evidence, to set out and define the nature of their dispute and it is for the court to adjudicate upon those issues. That is so even where the dispute involves an issue pertaining to the basic human rights guaranteed by our Constitution, for 'it is impermissible for a party to rely on a constitutional complaint that was not pleaded'. There are cases where the parties may expand those issues by the way in which they conduct the proceedings. There may also be instances where the court may mero motu raise a question of law that emerges fully from the evidence and is necessary for the decision of the case. That is subject to the proviso that no prejudice will be caused to any party by its being decided. Beyond that it is for the parties to identify the dispute and for the court to determine that dispute and that dispute alone.

[14] It is not for the court to raise new issues not traversed in the pleadings or affidavits, however interesting or important they may seem to it, and to insist that the parties deal with them. The parties may have their own reasons for

not raising those issues. A court may sometimes suggest a line of argument or an approach to a case that has not previously occurred to the parties. However, it is then for the parties to determine whether they wish to adopt the new point. They may choose not to do so because of its implications for the further conduct of the proceedings, such as an adjournment or the need to amend pleadings or call additional evidence. They may feel that their case is sufficiently strong as it stands to require no supplementation.

They may simply wish the issues already identified to be determined because they are relevant to future matters and the relationship between the parties. That is for them to decide and not the court. If they wish to stand by the issues they have formulated, the court may not raise new ones or compel them to deal with matters other than those they have formulated in the pleadings or affidavits.

[15] This last point is of great importance because it calls for judicial restraint. As already mentioned Gamble J 'required' the parties to argue as a preliminary issue what he described as two issues of legality. Although he added that the parties were amenable to these proposals, counsel who appeared in this Court and in the court below, confirmed that the judge's own description, that he 'required' the points to be argued, was accurate. They were not asked for their submissions on whether this was an appropriate approach to the matter or even, which was more pertinent, whether either question was in issue in the case. Nor were they asked whether their clients agreed to broaden the issues to encompass these points. The authority on which the judge relied in adopting this approach was not in point. That was a case where the court, on the application of one of the parties, held that he could dispense with the hearing of oral evidence, notwithstanding the case having been referred for the hearing of such evidence, because the questions raised on the papers could be determined without hearing such evidence and the evidence could not affect the resolution of those issues. It is a far cry from that for a court to raise issues that do not emerge from the papers and have not been canvassed in the affidavits and require that those be argued instead of hearing oral evidence and deciding the issues raised by the parties."

[Footnotes omitted]

[15] In the result, in this court's view, the court *a quo* erred by venturing into relief sought beyond the parties submissions and dispute before court. The court *a quo* had to determine the dispute before it and that dispute alone. It was not for the court *a quo* to raise new issues not traversed in the affidavits. Based on the foregoing, orders 5 and 6 fall outside the pleadings and consequently, the court had no power to *mero motu* grant such orders. The appeal therefore stands to succeed.

[16] The only issue remaining is the issue of costs. The general rule is that costs should follow success. There is no reason in the present appeal why the general rule should not be applicable. Both parties applied for costs should they be successful, with the only difference that the Appellant sought costs to be taxed on Scale B and the Respondents applied for costs to be taxed on Scale C. In the result the appeal should succeed with costs, which costs are to be taxed on Scale B.

[17] The following order is therefore made: -

1. The appeal is upheld with costs, which costs are to be taxed on party and party cost – Scale B.

M. NAUDE-ODENDAAL
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

I AGREE:

K. PILLAY
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

I AGREE:

J. STROH
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

HEARD ON: 1 AUGUST 2025

JUDGMENT DELIVERED ON: 10 NOVEMBER 2025

For the Appellant: Adv. U.B. Makuya
Instructed by: Dabishi, Nthambeleni Inc.
C/O Tshigomana UM Attorneys
Polokwane
makhadzi@umtinc.co.za

For the Respondents: Adv. Z.D. Malueleke
Instructed by: Maluleke T and Associates Attorneys Inc.
C/O Ledwaba M Attorneys Inc.
ledwab@ledwabamattorneys.com