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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 41282/14

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

___ 19 DECEMBER 2025

In the matter between:

ADV MZUKISI MGXASHE

APPLICANT

V

N[...]: K[...] OBO N[...] E S[...]

1ST RESPONDENT

**THE MASTER OF THE HIGH COURT
ROAD ACCIDENT FUND**

**2ND RESPONDENT
3RD RESPONDENT**

JUDGMENT

MAHOMED J

INTRODUCTION

The applicant in this matter seeks to declare an order granted by Lamont J on 6 September 2021, a nullity. The applicant is an advocate practising in the jurisdiction of this Court. On 17 September 2015 he was appointed curator ad litem to a minor child, E[...] N[...], in a personal injury claim against the third respondent. On 6 September 2021, in an opposed application for his removal as curator, Lamont J

granted ordered he be removed and he was ordered to pay the costs of the application.

BACKGROUND

- [1] According to the applicant prior to his appointment as curator ad litem the third respondent (“the Raf”) made an interim payment of R800 000 to the applicant’s instructing attorney Ngento, however Ngento failed to disclose this to him nor the mother of the minor child of this payment.
- [2] Judge Moshidi was appointed as case manager in the matter of N[...] and N[...] both claimants against the third respondent (“the Fund”). Moshidi J held case management meetings in the matters during 2018. On 14 November 2018 Moshidi J had regard to the applicant’s notice of termination of the attorney’s mandate, in terms of Rule 16(2) (a) of the Superior Courts Act 10 of 2013. The attorney was removed, according to the applicant Moshidi J ordered the attorney to leave the management meeting as he was no longer the attorney for the plaintiff, having accepted his removal by the applicant.
- [3] On 26 August 2019, the applicant was informed that Lamont J was to replace Moshidi J as case manager. Lamont J ordered the applicant to file answering papers to an application brought by Ngento for the applicant’s removal as curator. On 6 September 2019 Lamont J having heard submissions ordered the applicant’s removal with costs. Thereafter the applicant was refused leave to appeal and Ngento attorneys sought to execute the cost order.
- [4] Lamont J found that the applicant had unilaterally removed the attorney, when he ought to have obtained leave of the court, the applicant was found

to have caused long delays in the progress of the matter and found he was not acting in the interest of the plaintiff.

[5] According to the applicant Lamont J simply substituted Moshidi J as case manager and Moshidi J acceptance of the removal of Ngento must stand. The applicant further argued that Lamont J presided, as a case manager and was not sitting as a court of appeal or review and submitted the order is a nullity, as the court lacked jurisdiction to disregard the judgment by Moshidi J of 2 June 2017 and 14 November 2018.

[6] The respondent in casu argued that there is no nullity of an order and referred to the decisions in Van Dyk and Tasima *infra*. Furthermore, it was argued the issues before the two judges were different in that Moshidi J issued directives and Lamont J heard and considered submissions regarding the removal of a curator. The respondent argued that the applicant ought to have applied for a rescission of the judgment and that a declaratory order is not suited.

[7] In *Fredrich Ernest Van Dyk and Another v Teresa May Rhodes*¹ the full court stated:

“ the ordinary principles of rescission or appeal will always apply to court orders wrongly granted, no matter what error led to their issuance.” The applicant attacks the authority of the court to grant the order. He argues that the judge was substituted to case manage a matter he was involved in, the judge did not act in any other capacity but as a substitute and therefore had no authority to ignore an order of his predecessor. In my view nothing precluded Lamont J from exercising his discretion to manage the case to ensure finality and to

¹ A2024-076119, delivered 24 February 2025

order his removal. The purpose of case management was to do all that is necessary toward finalisation of matters. The judge as case manager has a discretion and must apply same according to the exigencies of the matter before him.

[8] In the Van Dyk case supra, the appellants argued that the court a quo ought not to have made a settlement agreement an order of court, in that no summons was issued regarding the settlement reached, there was no lis between the parties. To my mind the issue that the applicant raises before me appears to fall into the same category of error as the one considered by the Full Court, above.

[9] The Constitutional Court in *Department of Transport and Others v Tasima Pty Ltd and The City of Ekurhuleni v Rohlandt*² confirmed that the doctrine of nullity no longer applies to court orders. The court identified that s165(5) of the Constitution, 1996 provides that “*an order or decision issued by a court binds all persons to whom and all organs of state to which it applies.*” In Van Dyk supra, Wilson J stated that the court order derives validity from the Constitution itself *rather than from any specific antecedent power to make it. The Constitution provides that it is enough that there was a court, and that the court issued an order. Once it is established, any order so issued is valid and binding until set aside, even if grossly wrong.*” (italics added).

[10] I am of the view that the application must fail, on the evidence before me the requirements as set out in *Tasima* are met, there was a court and it issued an order. In *Travelex Limited v Maloney*³ the SCA held that a court order

² 2017(2) SA 622 CC para 180 -182 and 190 to 197

³ 2016 JDR 1776 SCA

granted without jurisdiction should be rescinded rather than ignored, but that the “*usual requirements for a rescission application*,” do not apply.

[11] This court is bound by the decisions of the superior courts, and it is noted that the applicant is not without a remedy, although he will have to fully support an application for condonation, the order having been granted a long while ago.

[12] As is the practise, cost must follow the successful litigant.

I make the following order:

1. The application is dismissed with costs to be taxed on scale B.

S MAHOMED J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 10 September 2025

Date of Judgment: 19 December 2025

Appearance:

For the Applicant :

Self-represented

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For the Respondent:

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