


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: 2026-081278

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	
29 May 2026	_____
DATE	SIGNATURE

In the matter between:

QUINN MAKHANDA

First Applicant

FABIAN MAKHANDA

Second Applicant

and

**THE MASTER OF THE HIGH COURT,
JOHANNESBURG**

First Respondent

**THE MASTER OF THE HIGH COURT,
PRETORIA**

Second Respondent

JUDGMENT

MODIBA, ADJP

[1] This matter concerns a request by the Applicants, acting in person, for consent in terms of section 47 of the Superior Courts Act 10 of 2013 to cite the Honourable Dlamini J in proceedings to be instituted in the Constitutional Court. The request arises from the Applicants' contention that there has been an undue delay in the

delivery of judgment in the High Court: case number 2026 – 081278. The Judge President referred the request for determination.

- [2] Section 47 provides that a judge may not be cited without the consent of the head of the court. The provision exists to safeguard judicial independence and to prevent judges from being unnecessarily drawn into litigation arising from the exercise of their judicial functions.¹
- [3] The Applicants instituted proceedings in this Division under case number 2026 – 081278. The matter was set down for hearing before Dlamini J in open court on 21 April 2026. The Applicants were duly notified of the hearing and its modalities. The Applicants indicated that legal representation would attend. However, neither they nor any representative appeared when the matter was called, nor during the week in which the matter stood enrolled. In addition, there was non-compliance with procedural requirements, including the absence of properly filed documents before the Court. The matter was accordingly removed from the roll for non-appearance and non-compliance.
- [4] Removal from the roll entails that the matter is not adjudicated on the merits and no judgment is reserved or pending. The Applicants contend that their matter was fully placed before the Court, that judgment was reserved, and that there has been an ongoing failure to deliver judgment in violation of section 34 of the Constitution. On that basis, they seek to cite Dlamini J in Constitutional Court proceedings to compel delivery of judgment.
- [5] Section 47 of the Superior Courts Act limits the citation of judicial officers absent consent. The provision reflects the broader constitutional principle that judicial independence must be protected from unwarranted interference.² Courts have repeatedly emphasised that judicial officers should not be cited in proceedings arising from their judicial functions unless a proper and compelling basis exists. The decision whether to grant consent is discretionary and must be exercised on a proper factual foundation and rational basis.

¹ *Freedom Under Law v Motata* [2021] ZAGPPHC 14 at para 26.

² *Van Rooyen and Others v The State* [2002] ZACC 8; 2002 (5) SA 246 (CC); 2002 (8) BCLR 810 (CC) paras 19–20.

- [6] The Applicants' case rests on the premise that their matter was heard and that judgment has been reserved. That premise is incorrect. The uncontested record establishes that the matter was removed from the roll for non-appearance and non-compliance. There was accordingly no hearing on the merits. It follows that there is no pending judgment and no delay attributable to the presiding Judge. A court determines only disputes properly before it. Judges are required to confine themselves to the issues before the court.³ It therefore follows that where proceedings are not properly constituted or pursued, no adjudicative obligation arises.
- [7] The Applicants' reliance on section 34 is therefore misplaced. The right of access to courts guarantees a fair hearing of disputes properly brought but does not arise in the absence of such a process. Nor does section 34 extend to compel the delivery of a judgment where no hearing has occurred and no decision has been reserved. The proposed citation of Dlamini J is thus unsupported by any factual or legal basis. The application is, in substance, misconceived. Courts possess an inherent power to prevent misuse of their processes, including attempts to pursue proceedings founded on incorrect factual premises.⁴ To permit the citation of a Judge in these circumstances would undermine judicial independence and expose judicial officers to unwarranted litigation.
- [8] The Applicants have failed to establish any factual or legal basis warranting the grant of consent in terms of section 47. The proposed citation of Dlamini J lacks merit and constitutes an impermissible attempt to draw a judicial officer into proceedings unjustifiably.
- [9] In the premises, the following order is made:

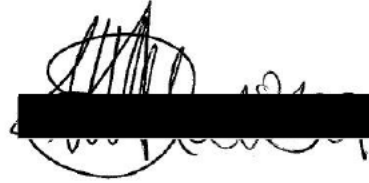
Order

1. The request for consent in terms of section 47 of the Superior Courts Act 10 of 2013 to cite the Honourable Dlamini J is refused.

³ *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) at para 15.

⁴ *Beinash v Wixley* [1997] ZASCA 32; 1997 (3) SA 721 (SCA) at 734E–G; see also *Hudson v Hudson* 1927 AD 259 at 267.

2. There is no order as to costs.



**LT MODIBA
ACTING DEPUTY JUDGE
PRESIDENT, GAUTENG DIVISION,
JOHANNESBURG**

APPEARANCES

For the Applicants:

For the Respondents:

Date of Hearing: Determined on the papers

Date of Judgment: 29 May 2026

This judgment was handed down by the Judge whose names appears thereon. It is circulated to the applicants by email on 29 May 2026. It is also uploaded onto Caselines.