IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 6010/2022

In the matter between

DUMISANI VUYISILE TSOBO	**APPLICANT**
and	
MAGISTRATE SEBE	**FIRST RESPONDENT**
MINISTER OF JUSTICE	**SECOND RESPONDENT**
BRIDGITTA MATSELISO TSOBO	**THIRD RESPONDENT**

Neutral citation: *Tsobo v Magistrate Sebe and Others* (6010/2022) [2026] ZAFSHC 336 (8 June 2026)

Coram: NAIDOO J

Heard: 13 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 8 June 2026.

Summary: Application to compel magistrate to furnish reasons in terms of Magistrates Court Rule 51 – opposed – reasons furnished after application to compel

served – costs in dispute – applicant acknowledged misjoinder of second defendant – costs order against first defendant impermissible – applicant to pay costs of application.

ORDER

1 The application is moot, as the first respondent has complied with the notice in term of Magistrate's Court Rule 51;

2 The application against the second respondent is dismissed, as the second defendant was mis-joined to these proceedings;

3 The applicant shall pay the costs of the application.

JUDGMENT

Naidoo J

[1] This is an application, in terms of Magistrates Court Rule 51, to compel the first respondent to furnish written reasons for a judgment he handed down on 5 August 2019. This was a judgment in respect of an application to vary an interim maintenance order made by the High Court in terms of Uniform Rule 43. The first respondent summarily dismissed the application, without providing reasons. This application was launched on 30 November 2022, after numerous attempts, which the applicant alleges it made, to obtain the written reasons from the first respondent. The first respondent filed his reasons in terms of rule 51 on 28 November 2023, rendering the application moot. However, the parties have not been able to agree on the issue of costs, and seek the court's intervention in this regard. The rule 51 application was opposed by the first and second respondents, although the second respondent, the Minister of Justice, did not file an answering affidavit. The third respondent, who is the former spouse of the applicant, also did not oppose or participate in these proceedings, presumably because she was cited only because of any interest she may have in this matter and because no relief was sought against her.

[2] The applicant sought, in essence, an order as follows:

a. The first respondent be ordered to provide, within 15 days of the date of this order, written reasons for the judgment given on 5 August 2019 as requested in the

applicant's notice in terms of Magistrates Court Rule 51(1) dated 8 August 2019;

b. The second respondent be ordered to pay the costs of this application.

[3] The applicant's case is that after the first respondent handed down his judgment on 5 August 2019, the applicant filed a notice in terms of rule 51(1) on 8 August 2019, requesting reasons for that judgment. No response was received and the applicant's attorneys wrote a letter dated 1 September 2019, but served on 13 September 2019, addressed to the first respondent. By April 2020, when there was still no response by the first respondent to the rule 51(1) notice, the applicant brought another application to vary the rule 43 order. Before the latter-mentioned application could be heard in the Magistrate's Court, the divorce action pending in the High Court was finalized by the granting of a decree of divorce on 6 October 2020, which order incorporated the deed of settlement entered into between the parties. The deed of settlement recorded that the maintenance in respect of the minor child shall be in accordance with the High Court's order in terms of rule 43, pending the finalization of the application for variation in the Magistrate's Court

[4] The applicant continued to pursue the issue of the variation of the rule 43 order, which was dismissed in the Magistrate's Court. He then brought the application in the High Court and that application was also dismissed. After obtaining an opinion from counsel, he allegedly realized that the only option for him was to pursue an appeal against the first respondent's order. To this end, he once more approached the Magistrate's Court by addressing a letter to the Chief Magistrate on 27 May 2022. The letter bears the stamp of the clerk of the civil court and is dated 6 June 2022. The letter explained the purpose thereof and requested the intervention of the Chief Magistrate. The applicant alleges that this letter was delivered by hand to the Clerk of the Magistrate's Court, and that he did not receive any response thereto.

[5] The first respondent's version is that he did not receive the rule 51 notice. Had he received it, he would have furnished his reasons at that time. When the letters were allegedly served on the magistrate's court, they were not brought to his attention. He first gained knowledge about this application around January 2023, when the sheriff attempted to serve the application on him, after the date for the hearing of the matter had already passed. He refused to accept service and heard nothing further from that date until later that year, around or about October/November 2023, when the sheriff returned

with the same application. He thereafter proceeded to furnish his reasons for his order. The first respondent also opposed the application and deposed to the answering affidavit. He raised as a point *in limine*, the misjoinder of the second respondent, on the basis the first respondent enjoys judicial independence and the second respondent does not have authority over the first respondent in the latter's performance of his duties. The second respondent cannot, therefore, be held vicariously liable for the actions of the first respondent. The first respondent also gave a detailed exposition of the incorrectness of the approach adopted by the applicant and what would have been the correct approach. I do not propose to traverse those allegations, as the details are not relevant for present purposes. I will mention it, if necessary, later.

[6] By the time the matter was argued in court, the applicant accepted that the second defendant could not be held vicariously liable for the first defendant's actions. His focus shifted to the first defendant, even though it was pertinently raised in the answering affidavit and the respondents' heads of argument that not only does the second defendant not have jurisdiction over the first defendant in the performance of his duties, but that the first defendant enjoys delictual immunity in respect of actions performed negligently in the course of his duties as a judicial officer, unless his actions were *male fides*, malicious or fraudulent. This principle has been established in a long line of cases for over 50 years.[1] The applicant has not shown that the first respondent acted in such a manner. The stance taken by the applicant at the hearing of this matter is that the first respondent enjoyed immunity up to the time that he furnished his reasons for his order. Beyond that, he did not enjoy immunity. Therefore, his action in opposing the application indicates that he went 'on a frolic of his own'. This, in my view, is fallacious reasoning, and is not supported by any legal principle, statute or the like. The applicant failed to refer this Court to any such authority. The attorney representing the first and second respondents, made contact with those representing the applicant after the first respondent filed his reasons, to point out that the relief sought is moot and to enquire if the applicant still intended to pursue the costs issue. The applicant answered in the affirmative.

[7] This is what prompted the respondents to oppose the application, firstly because the second defendant, was misjoined, and secondly because he ran the risk of having a costs order granted against him. The change in direction from what the applicant claimed

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[1] See for example *Minister of Justice and Constitutional Development and Another v Masia* [2021] ZAGPPHC 428; 2021(2) SACR 425 (GP); *Moeketsi v Minister van Justisie en 'n Ander* 1988 (4) SA 707 (T) at 713G.

in the notice of motion is, furthermore untenable. The applicant sought a costs order against the second defendant. When he realized that he had wrongly joined the second defendant, he impermissibly changed tack and sought costs against the first respondent. It was his intransigent and uncooperative behaviour that caused the application to become opposed, thus escalating costs unnecessarily. He ought to have been correctly advised by those representing him of the consequences of such an attitude. The court has a clear impression that the applicant simply wanted to prove a point and sanction the first defendant for what he believed to be irregular conduct.

[8] I say this because the language and the tone of the replying affidavit makes this amply clear. I pause to state that although it is not ideal for the applicant to have asked in his replying affidavit for condonation for the late filing thereof, I, nevertheless, decided to allow it, in the interests of justice, and for the expeditious finalization of this matter. The replying affidavit amounts to a personal attack upon the magistrate, without proper grounds, in my view. If this is the instruction of the applicant, I would have expected his legal representative, as an officer of this Court, to have been mindful of and reluctant to embark on that course of action. Whether the applicant or his legal representative believed that the first respondent received the rule 51 notice or not is irrelevant. The applicant failed to put forward any cogent evidence to show that the first respondent did in fact receive the notice or that it was brought to his attention before October/November 2023. The applicant attached two letters to the founding affidavit which were addressed to the first respondent and the chief magistrate, respectively. These were served on the clerk of court and there was no evidence that it reached the attention of either the first respondent or the chief magistrate. In reply, the applicant makes the allegation that there were numerous follow-up efforts which still did not evoke a response from the first respondent.

[9] He attached to his replying affidavit a copy of an email from his correspondent attorney, who merely advised the applicant and his attorney that her candidate attorney followed up with the clerk of the court, at least once a week, during October and November 2019. It is trite that if a deponent alleges certain actions on the part of another person, a confirmatory affidavit from that person ought to be filed, failing which no heed can be paid to such evidence of the other party. This is exactly the position in this matter. It raises questions about who the alleged candidate attorney is, who he/she spoke to at the clerk of court's office, and what the outcome of such discussions were. There is no

indication of whether there was any follow up after November 2019. The logical course of action would have been to approach the chief magistrate in person and request his/her intervention directly. This was clearly not done. What appears is that when all the other applications, which I mentioned earlier, failed, the applicant then decided to pursue the first respondent. Even at that stage, one would have expected the logical action of writing to the first respondent or the chief magistrate to furnish those reasons. This was not done. This court can, therefore, only rely on the version of the first respondent that he did not receive the notice before October/November 2023

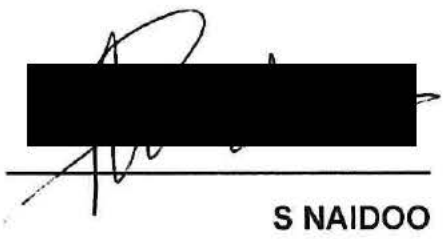
[10] The applicant complains that the respondents set the matter down for hearing. The respondents correctly assert that they are entitled to have the matter finalized, but the applicant did nothing to finalise the matter, prompting them to set it down. It is worrisome that those representing the applicant did not see the need to resolve the issue of costs, but would rather engage the court to do so, thus escalating the costs even further. In my view, the applicant ought to have started those discussions immediately upon receiving the first respondent's reasons in terms of Magistrate's Court Rule 51. In my view, those discussions became compulsory upon filing of the answering affidavit, because it was abundantly clear from that affidavit that the applicant was at a dead end in respect of the application. He however, stubbornly proceeded to file a replying affidavit, which was replete with unfounded allegations, and angry accusations against the first respondent. In my view, it is the applicant's behaviour that has escalated the costs, unnecessarily so. The respondents have asked for a *de bonis propriis* costs order against the applicant's legal representative. I would have had a mind to do that. However, I note that the attorney has not been given an opportunity to say why the court should not do so and set out the reasons for the matter proceeding the way it did. In those circumstances, the applicant must bear the costs.

[11] In the circumstances, the following order is made

1 The application is moot, as the first respondent has complied with the notice in term of Magistrate's Court Rule 51;

2 The application against the second respondent is dismissed, as the second defendant was mis-joined to these proceedings;

3 The applicant shall pay the costs of the application.



S NAIDOO

JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	K Motselebane
Instructed by:	Shapiro and Ledwaba Inc Pretoria c/o Webber's Attorneys Webbers Building 96 Charles Street Bloemfontein (Ref: M Koller/SHA25/0005)
For the Respondents:	Ms F Bester
Instructed by:	The State Attorney 11th Floor Fedsure Building 49 Charlotte maxeke Street Bloemfontein (Ref: 606/202200707/P11D(T))