REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO. 23853/2016

1) REPORTABLE: Yes/**No**
2) OF INTEREST TO OTHER JUDGES: Yes/**No**
3) REVISED: Yes/No
4 October 2019

In the matter between:-

MAKGWAHLELA, P.T. Applicant

and

THE SOUTH AFRICAN SOCIAL SECURITY AGENCY 1st Respondent

VISION DIRECT 155 (PTY) LIMITED t/a TRANSAFRICA 2nd Respondent

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JUDGMENT (leave to appeal)

Rome AJ:

1. The Applicant seeks leave to appeal against my judgment of 12 April

2019.

2. At the hearing of the leave application, Counsel for the Second Respondent and Counsel for the Applicant both provided further references, which they respectively contended, assisted their arguments and which had not been previously provided to this Court. I had then indicated that I wished to take the aforementioned documents into consideration before delivering judgment.

3. At the hearing of the leave application, Counsel for the Second Respondent referred to and submitted written argument regarding the history of the relevant regulations and in particular regulation 26A of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements and Conditions in respect of Eligibility for Social Assistance (*Government Gazette* 31356 of 22 August 2008 – Regulation 898), which regulations were promulgated by the Minister of Social Development pursuant to section 32 of the Social Assistance Act 13 of 2004.

4. The history is relevant for the following reason. The Applicant's case was that that the First Respondent, SASSA, had contravened regulation 26A. The Applicant argued that regulation 26A proscribed the First Respondent from making any deductions from his social grant unless it had (over and above any relevant policy document the Applicant may have signed) obtained the Applicant's personal instruction, specifically permitting or authorising such deductions.

5. On this aspect, the Second Respondent's counsel argued that at the

time when the events giving rise to the main application had occurred the Regulations did not require the Applicant personally to authorise the deductions in issue.

6. As the Second Respondent's counsel pointed out, the Regulations were amended by a revision that was promulgated on 16 May 2016. The revised Regulations clarified certain aspects of the original regulations, and then made it clear that a beneficiary must in person provide written permission to the First Respondent for a deduction to be authorised. This is provided for in (amended) Regulation 26A. Prior to the amendment, Regulation 26 did not contain the current (amended) provision requiring written prior permission for any deduction to a grant to be delivered personally by a beneficiary to the First Respondent.

7. In this matter it appears incontestable that the relevant funeral policy was dated prior to the abovementioned amendment and that the deductions commenced in May 2015, at a time when there had been no statutory or regulatory prohibition against the manner in which the deductions were effected.

8. The Second Respondent contended that the aforegoing was a further indication why the application was, from the outset, completely misconceived.

9. I agree. The Applicant's failure to take into account that the specific regulatory requirement he relied on was not in place when the deductions had first commenced, is reflective of an entirely misguided

approach to the matter and which I have referred to in the judgment herein.

10. That the Applicant's case was based entirely on the provisions of the amended Regulation 26A, was succinctly stated at paragraph 7 of the replying affidavit, where the Applicant stated:

> "*I disagree with the First Respondent's contention that "Trans Africa" (ie the Second Respondent) has a direct and substantial interest in the matter and I do not seek any Ruling on the validity of the alleged policy. The issue at hand is whether the First Respondent is permitted to deduct funds from my Social Grant without my express written instruction".*

11. This contention was then reiterated at paragraph 25.5 of the replying affidavit where the following is stated

> *"I do not seek an order to declare the alleged policy unlawful. The declaration sought lies in a pure legal interpretation of the duties and the responsibilities of the First Respondent*".

12. According to the Applicant, those legal duties and responsibilities originated from (amended) Regulation 26A. However, as noted above the amendment to Regulation 26 was not applicable when the deductions commenced.

13. I turn now to deal with the authority which the Applicant's Counsel handed up to the Court in support of her contention that at worst, the Applicant's attorneys were guilty of a degree of "muddled thinking" for which they should not have been subjected to the costs awarded.

14. That authority is the case of *Motlhaudi and Another v Rossouw* 2001 JDR 0385 (reported sub nom: *Motlhaudi and Another v Rossouw and Others* [2001] 4 All SA 334 (LCC)), a judgment of Meer J sitting in the

Land Claims Court. *Motlhaudi* in turns references the fairly well-known case of *Nkosi v The Caledonian Insurance Company* 1961 (4) SA 649 (N). In that case, James J (at 663C-H) stated that: "*in a proper case the Court will mark its disapproval of an attorney's improper or negligent conduct by ordering him to pay a portion of the costs of the opposite side. Whether the present is a proper case is a matter for my discretion, which must be judicially exercised".*

15. I have again considered the facts of the present matter. In particular I have had regard to the fact of the litigation becoming senseless after the Second Respondent tendered both the cancellation of the relevant policy and all amounts paid by the Applicant thereunder, the several written notices from the Second Respondent warning the Applicant's attorneys that if the litigation nonetheless proceeded it would seek costs *de bonis propriis* and given the manifestly financially constrained position of the Applicant himself. I remain of the view that the costs were in my discretion correctly awarded and am of the view that the Applicant has no reasonable prospects of success on this particular ground of the appeal

16. In respect of the remaining issues, having considered the arguments presented by Counsel and having considered the grounds of appeal and the issues that are raised therein, I am of the view that there are no reasonable prospects that another Court will come to a different conclusion than the one that this Court came to.

17. Having already imposed a punitive costs order, I am not inclined to

extend the ambit of that costs order to the dismissal of the application for leave to appeal. In order not to impose any costs burden on the Applicant (given his financial means) I make no order as to the costs occasioned by the dismissal of the application for leave to appeal.

18. Consequently, I make the following order

"The application for leave to appeal is dismissed."

G.B. ROME
(ACTING JUDGE SOUTH GAUTENG
LOCAL DIVISION)

Date argued: 28 August 2019

Date judgment: 4 October 2019

Appearances:

For the Applicant:

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Adv.

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