REPUBLIC OF SOUTH AFRICA

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

Case No: 20/33468

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED : YES

DATE: 13 November 2020

In the matter between:

KEFILWE FAITH MABOTE **APPLICANT**

and

FUNDUDZI MEDIA PROPRIETARY LIMITED
T/A SUNDAY WORLD **RESPONDENT**

Whether a media defendant should be ordered in urgent court proceedings to publish an apology, considered – more appropriate to approach the Press Council which has jurisdiction to do so, as urgent determination of complaints is built into the Press Council's prescribed timeframes and competency of the Press Council to order a media defendant to publish an apology exists.

JUDGMENT

INGRID OPPERMAN J

Introduction

[1] This is an urgent application, which has its genesis in the publication by the respondent of comment about the applicant, Ms Mabote, in the gossip column of the respondent's Sunday World newspaper dated Sunday, 11 October 2020. The Sunday World is a tabloid newspaper. The publication occurred after the assets of Mr Edwin Sodi, applicant's 'romantic partner', had been seized by law enforcement agencies in connection with Mr Sodi's alleged wrongful conduct.

[2] The applicant launched this application on an urgent basis to have this court declare the comment published about her as false, defamatory and unlawful; to order the respondent to retract the comment from all its platforms; to order the respondent to issue a written apology to be published on the front page of its newspaper and related platforms; and to order the respondent to pay damages of R1 000 000 (One Million Rand) upon the claim for damages being determined in oral evidence.

[3] The applicant is on her version a public figure, a businesswoman and digital media influencer with approximately 1 million followers on Instagram who enjoys a prominent presence on social media. The respondent is a media house with a wide-reaching, national audience.

The common cause facts

[4] On 11 October 2020, the respondent published the following comments in the Sunday World Newspaper ('*Sunday World*') about the applicant who is referred to as a 'slay queen' and whose photograph appears nearby the following text in a gossip column called 'Shwashwi':

> 'Tough Times for Slay Queens, Dry Season for slay queens sets in and we know of strings of celebs who were also on Sodi's bedroom roll, not payroll hun".

[5] On either the 12th or 13th October 2020, the applicant received a call from her brand manager who informed her that the respondent had published the above comments about her. The respondent published the comments without either informing the applicant of the impending publication or requesting any comment from her.

[6] On 14 October 2020, the applicant's attorneys sent a letter to the respondent explaining that the published comments were false, unfounded and defamatory and demanded that the respondent retract the 'article' from the newspaper and other online platforms and issue an unconditional apology on the front page of the newspaper no later than Sunday, 18 October 2020.

[7] On 16 October 2020, the respondent's attorneys addressed a letter to the applicant's attorneys wherein they denied that the comments were defamatory as the term *'slay queen'*, according to them, is colloquially understood to mean

> 'an attractive, well maintained woman who appears to live a luxurious lifestyle which may be wholly or partially funded by a romantic partner'

and would therefore not lower the esteem of the applicant in the opinion of a reasonable reader.

[8] The respondent's letter furthermore stated that:

> 'Shwashwi is a gossip page which is known for publishing tongue-in-cheek commentary on celebrity and entertainment news. Shwashwi does not purport to publish factual news, nor would anything published in this section be understood to be factual news.'

[9] In addition to its refusal to issue an apology, retract the published comment and pay the applicant's demanded damages, the respondent invited the applicant to

lodge a complaint with the Press Council for adjudication as a means of seeking and obtaining the relief that the applicant sought.

[10] On 16 October 2020, the applicant lodged a complaint with the Press Council and received their response on 19 October 2020 stating that, because the applicant had expressed her intention to seek relief through court proceedings, the Press Council would defer acceptance of the complaint pending the finalisation of the contemplated legal proceedings.

[11] On Thursday, 22 October 2020, the applicant launched these proceedings.

The nature of the opposition

[12] The application is opposed, because it is contended by the respondent that (a) it is not urgent, as, amongst other reasons, the applicant has put up no evidence that she will be unable to obtain substantial redress in the ordinary course; (b) the words complained of were not defamatory; (c) if defamatory, they constituted protected comment; and (d) the applicant has an adequate alternative remedy, as she can seek the same apology and retraction through a Press Council complaint.

Urgency

Rule 6(12)

[13] Rule 6(12) is the rule which defines the test for having a matter determined on the urgent roll as opposed to the ordinary roll and it provides in relevant part as follows:

> (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems meet.
>
> (b) **In every affidavit or petition** filed in support of any application under paragraph (a) of this subrule, **the applicant shall set forth explicitly** the circumstances which he avers render the matter urgent and **the reasons why he claims that he [she] could not be afforded substantial redress at a hearing in due course**. (emphasis provided)

The reason for urgency

[14] The reason for approaching the court on such an urgent basis is set out in the founding affidavit as follows:

> '27. My reputation, as detailed both above and hereunder, is an integral part of my ability to earn a living and to support my family.
> 28. The Statement is currently affecting my business dealings and livelihood as various brands have now placed my reputation in question, which is damaging my longstanding business relationships and could result in the cancellation and non-renewal of business agreements.
> 29. I have in my possession various Whatsapp messages and letters from brand managers confirming the above.
> 30. For the sake of keeping the content of the brands private, my counsel shall in chambers or when requested produce this evidence.'

[15] It was pointed out by counsel for the applicant during argument and as was stated by Matojane J in *Manuel v Economic Freedom Fighters and Others*[1]*:*

> 'Dignity is not only a value fundamental to the Constitution, but it is also a justiciable and enforceable right that must be respected and protected.'

Urgency to be substantiated in founding affidavit and admission of supplementary affidavit

[16] It is a jurisdictional requirement that the circumstances warranting urgency must be set out in the founding affidavit, and explicitly so. Moreover, '*an applicant who comes to court on an urgent basis for* ***final*** *relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for* ***interim*** *relief*'.[2] Loxton AJ further reasoned: '*Where* ***interim*** *relief is sought the respondent can always address the issues at its leisure at a later stage. Where final relief is*

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1 2019 (5) SA 210 (GJ)

2 *Tshwaedi v Greater Louis Trichardt Transitional Council* [2000] 4 BLLR 469 (LC), para 11.

sought that is not possible.' I agree. As the applicant sought final relief in this matter she set herself the higher bar as the standard of proof required to be cleared to succeed.

[17] Mr Winks, representing the respondent, argued that the applicant had claimed, in the vaguest of terms, that the matter is urgent and that she had adduced no evidence in her founding affidavit to support her claims – not a single letter or message from a single client, or any financial records to show that the publication by Sunday World has rendered her incapable of supporting her family. As I have quoted above, the applicant had offered to make some messages from brands available on a confidential basis.

[18] Recognising that this form of tender of evidence without actually producing it was not going to suffice the applicant produced a supplementary affidavit ('*the supplementary affidavit*') attaching emails and Whatsapp messages from 4 brands she does business with. She requested that the content be kept confidential and contended that if this '*could find themselves in the public domain, this could once again have catastrophic consequences and further put me in a bad light with other brands*'.

[19] The respondent accepted that the names of the brands could be treated with confidentiality, but objected to the applicant tendering the supplementary affidavit out of sequence and out of time as the applicant was, so the argument ran, attempting to remedy her failure to set out explicitly in her founding affidavit, the reason why her application was urgent as required by Rule 6(12).

[20] Mr Winks relied on the dicta of Mojapelo DJP in *Gold Fields Limited and others*[3] that an applicant is obliged to make its case in the founding affidavit and that a fourth or further set of affidavits will only be allowed in exceptional circumstances.

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[3] *Gold Fields Limited and Others v Motley Rice LCC; In re: Nkala and others v Harmony Gold Mining Company Limited and others* [2015] 2 All SA 686 (GJ) at [121] and [123]

He emphasised that the considerations for the receipt of a further affidavit listed in *Nick's Fishmonger Holdings (Pty) Ltd v Fish Diner In Bryanston CC*[4] and amplified in *White Rock v Khaka,*[5] had not been complied with.

[21] Mr Winks submitted that the applicant could have said that she had 4 Whatsapp messages or letters but chose to say '*various'*. Although speculative, he contended that it might have been as she wanted to intimidate the respondent into settling – she wanted the respondent to believe that she had a mountain of evidence. So too, he suggested, it was only produced once she felt where the shoe pinched i.e. she realised that it could not simply be tendered from the Bar and finally, he submitted that it might have been withheld to produce it when the respondent had the slimmest of chance to deal with it. He suggested that it could have been attached to the founding affidavit in redacted form or the applicant could have applied to have a hearing *in camera*. Although the respondent dealt with the supplementary affidavit, the only reason it was able to do so was because the court had directed that the matter be heard on Wednesday, 4 November 2020 and not Tuesday, 3 November 2020 as set down by the applicant. Further, the fact that the respondent managed to file an answer to it, did not mean that it was not prejudiced, all it meant was that it was able to minimize its prejudice.

[22] Although all these criticisms might have had merit if this matter had been brought in the ordinary course, the application was brought urgently and as Mr Morris representing the applicant argued, in hindsight it might well have been wiser to have attached redacted versions or to have applied for an *in camera* hearing but within the circumstances of this case, the facts do not support the inferences Mr Winks argues should be drawn ie that the Whatsapp messages and letters were withheld deliberately and in order to gain a tactical advantage. I will adjudicate this

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4 2009 (5) SA 629 (W) at 641G – 642D

5 2017 ZAGPHC 175 at paragraph [11]

matter with both the supplementary affidavit together with the response thereto ('*the answer to the supplementary affidavit*').

Grounds for urgency analysed

Inadequacy of evidence tendered

[23] None of the Whatsapp messages or emails reveal that the brands won't do business with the applicant, nor is there a promise that if the applicant can get the respondent to apologise for its published comment the brands will resume business as usual again with the applicant. In addition, the applicant fails to explain what proportion of her income is derived from the alleged clients or contracts mentioned in these 4 documents. It may very well be negligible. It may be her entire income. This essential fact is to enable the Court to determine the gravity of the situation arising from these messages but is not set out. The applicant also does not disclose what assets and savings she possesses to support her family in the event of an interruption of a portion of her income.

Income generating posts after publication of statement

[24] Crucially, the applicant's publications on her primary social media platform, Instagram, after publication of the Sunday World's column which occurred on 11 October 2020, contradicts applicant's assertion that, *but for* this court's intervention, she will be unable to support her family.

[25] The respondent attached 10 instances of publications to its answer to the supplementary affidavit containing promotional content. There was some debate as to whether they all constituted income generating posts. Mr Morris for the applicant accepted that those which expressly stated that they were '*paid partnerships'*, were income-generating posts. Of the 10, 4 posts fall squarely within this category. It is thus clear that the applicant continues to generate an income despite the publication of the comment by the respondent. Regrettably, she did not disclose this post-

publication income to the court nor did she explain what proportion of her income comes from which source.

Comment already within public domain

[26] The respondent argued that what the respondent had published about the applicant already formed the subject of widespread public comment on social media and other online publications. Seeking relief against the respondent alone would not erase all of that so there was little reason, and no advantage, to grant the relief which would, on this argument, make little or no difference to the applicant's reputation which would continue to be subject to the same comment, albeit on other platforms in the public domain.

[27] Prior to the respondent publishing the statement on 11 October 2020, the following publications occurred:

27.1. 6 October 2020 - Opera News published "*Tough times for slay queen Kefilwe Mabote as Hawks take her car*."

27.2. 6 October 2020 - ZAlebs published "*Kefilwe Mabote dragged after bae Edwin Sodi has his assets seized*."

27.3. 6 October 2020 - FakaZAnews published "*Kefilwe Mabote dragged for allegedly dating Edwin Sodi after his cars got seized*."

27.4. 7 October 2020- Surgezirc published "*Hawks seize Kefilwe Mabote's car after bae's arrest.*"

27.5. 7 October 2020 - News365 published "*Kefilwe Mabote under fire, multi-million cars and houses of her bae Edwin Sodi taken away*."

27.6. 7 October 2020 - IOL published "*Mzansi defends Kefilwe Mabote as her rumoured bae has assets seized.*"

27.7. 8 October 2020 - Briefly published "*Mihlali Ndabase addresses rumours that she dated Kefilwe Mabote's man."*

27.8. 8 October 2020 - The Citizen published "*What you need to know about Kefilwe Mabote.*"

[28] By the time the respondent published its article, it was already in the public domain that applicant had been involved in a romantic relationship with Mr Edwin Sodi. No action has been taken by applicant against Opera News or any of the other publications. There seems to be merit in the argument that whether this Court grants the applicant the relief she seeks or not (apart from the one million rand which she does not seek be awarded to her by the urgent Court) her reputation will not undergo any material change for it is already what it is and the publications above listed have seen to that. Courts are not inclined to grant orders that will have only academic effect, and this must weigh in the overall decision.

The 'Streisand effect'

[29] The respondent stated expressly in its answering affidavit that the applicant is the author of most of her alleged misfortune; that she took a tiny column from page 18 of a weekly gossip column and broadcast it to over 1 million followers on Instagram where she announced to the world that she was seeking R1 million in damages from the respondent; that this was reported in The Citizen and IOL and by doing this, the applicant had placed the contents of the respondent's column so firmly into the public consciousness that any relief she now seeks from the respondent cannot reverse this – the so-called 'Streisand effect'. None of this was disputed in the replying affidavit. This sentiment is echoed by the content of applicant's very own annexure in her supplementary affidavit in which brand 1 says: *'Since this article, which* ***has been exacerbated by the recent post you made on Instagram…..***' (emphasis provided). Courts are not inclined to come to the aid of litigants who have caused themselves the harm of which they complain.

Press Council

[30] On 16 October 2020 the applicant lodged a complaint with the Press Council and her attorney concluded the complaint by saying: *'We would appreciate if the matter could be expedited so as to receive your recommendation and outcome* ***in order to file our pleadings in Court.'***

[31] Mr Winks very persuasively argued that one would have expected the applicant to implore the public advocate to consider the matter expeditiously as her livelihood was at stake, if that were indeed the case. Casting doubt on whether the publication of the comment truly put the applicant's livelihood at stake, Mr Winks pointed out that the applicant had failed to disclose the 'true' reason for wanting a decision urgently in the one forum where urgency was for the taking. She then approached the Court urgently for relief, which she could have obtained at the Press Council.

[32] On the 19th of October 2020, the acting public advocate responded, in relevant part, as follows to the applicant's attorney:

> 'Dear Ms Thulare
>
> Please see attached copies of the Press Council's Complaints Procedures and the Press Code. It is also available on the press Council's website at …….
>
> The Press Council's complaints mechanism is a voluntary independent mediation and arbitration process to deal cost-effectively and quickly with complaints from the public about journalistic ethics and conduct at publications that subscribe to The Press Code.
>
> In your letter dated 14 October to Sunday World you demand on behalf of your client an amount of R1 million, and, in your email of 16 October to our Case Officer, Ms Mndaweni, you asked that the matter "be expedited so as to receive your recommendation and outcome in order to file our pleadings in Court". It was suggested by Sunday World's lawyer that your client could lodge a complaint with the press Council for adjudication "to seek and obtain whatever relief may be suitable and due to your client".
>
> I must advise that **the sanctions of the Press Council's complaints mechanism entails the following**: the publication can be cautioned or

> reprimanded; **directed that a correction, retraction or explanation** and, where appropriate, **an apology** and/or the findings of the Ombud, the Adjudication Panel, or the Appeals Panel be published; and/or ordered that a complainant's reply to a published article.
>
> From your correspondence quoted above, it seems that your client also wishes to seek relief through court proceedings. The Press Council **does not require a complainant to waive his or her rights**, but, however, will defer acceptance of a complaint pending the finalisation of pending or contemplated legal proceedings.' (emphasis provided)

[33] The acting public advocate concluded that the applicant '*cannot use the outcome of the Press Council's complaints mechanism 'in order to file [y]our pleadings in Court*'.

[34] The applicant did not explain why she had abandoned the speedy remedies afforded by the Press Council, despite having lodged a complaint to it. A complaint to the Press Council's Ombud is required to be lodged no later than 20 working days after the date of publication[6], and is resolved in accordance with very speedy timeframes.[7]

[35] Mr Winks suggested that what the applicant ought to have done was to place more facts before the acting public advocate at the Press Council to persuade him to exercise his discretion in favour of the applicant to accept the complaint, facts such as wanting the exact same relief in Court as that which the Press Council had the jurisdiction to grant (other than the damages which she would pursue in the ordinary course in court and not on an urgent basis). She could also have requested the Ombud[8], within 7 working days of the Press Council declining to accept the complaint, to adjudicate the complaint.

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6 Clause 1.3 of the Press Council's Complaints Procedure.

7 Clauses 2, 3 and 4 of the Press Council's Complaints Procedure.

8 Clause 1.8 of the Press Council's Complaints Procedure.

Order of apology against a media defendant

[36] More perplexing is the fact that the applicant approached the urgent court, where she does have to make out a case for urgency, for relief not recognised by our law but available to her at the Press Council where she would not have had to have made out a case for urgency as urgent determination of complaints is built into the Press Council's prescribed timeframes.

[37] In *Le Roux v Dey*[9] the Constitutional Court unambiguously pronounced that our law did not recognise an apology as a remedy for defamation.

[38] In *The Citizen 1978 (Pty) Ltd and Others v McBride*[10], Justice Cameron cautioned as follows:

> 'It may well be that the remedies readily to hand when a court considers the relief to which a plaintiff is entitled in a defamation case should include a suitable apology. The importance of apology in securing redress and in salving feelings cannot be under-estimated. As pointed out in *Le Roux,* apology is an important aspect of restorative justice. In this case, it could well have been a fit part of the order to require the Citizen to publish an apology for its ill-fitting assertion that Mr McBride lacked contrition. However, Mr McBride's contention that an apology would be inappropriate weighs against ordering it. **In addition, the complexities the Citizen points to when a court orders a media defendant to apologise, and the law reform initiatives in other countries, will benefit from fuller consideration and debate on a future occasion. It would therefore not be appropriate to order an apology in this case, and the question of an apology where a media defendant has defamed another must await another day.'**

[39] Subsequently, apologies were ordered in *Manuel* (supra), *Hanekom v Zuma*[11] and *Gqubule-Mbeki and Another v Economic Freedom Fighters and Another*[12] but not against media defendants.

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9 2011 (3) SA 274 (CC)

10 2011 (8) BCLR 816 (CC) at paragraph [134}

11 [2019] ZAKZDHC 16 (6 September 2019)

12 [2020] ZAGPJHC 2 (24 January 2020)

[40] No court has, to the best of my knowledge, duly assisted by counsel for the parties in this matter and the research facilities available to High Court Judges in this Division, post the *Dey*[13] case, ever[14] ordered a media defendant in a defamation claim, to publish an apology. This is probably so for, amongst other reasons, those advanced by the learned authors de Milo and Steyn[15] being that it may well be found to *'unjustifiably limit the media's constitutional right to freedom of expression.'*[16]

[41] The Constitutional Court hinted at the need for a court to receive extensive, careful and constitutional arguments in respect of such relief being granted. This novelty was neither addressed in the founding affidavit nor in the heads of argument for the parties. Mr Winks raised this at the hearing and in argument.

[42] It may well be that the Press Council is the only remedy available to the applicant if she wants to compel a published apology against a media defendant such as the respondent.

[43] The application was served on 22 October 2020 and the respondent was required to file an answering affidavit by Tuesday 27 October 2020. This afforded the respondent two court days to prepare its answering affidavit. As Cachalia J said in *Digital Printers v Riso Africa (Pty) Ltd*[17]:

> 'The urgent court is not geared to dealing with a matter which is not only voluminous **but clearly includes complexity and even some novel points of law**.' (emphasis provided)

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13 supra

14 The applicant's legal representatives attempted, post the hearing, to provide authorities to the contrary but did not succeed. The minority judgment of Nugent JA in *Media 24 Ltd and Others v SA Taxi Securitisation (Pty) Ltd*, 2011 (5) SA 329 (SCA) does not support the applicant's position as he was not dealing directly with the question of whether a media defendant can be ordered to publish an apology for defamation, but rather whether a plaintiff which is a trading corporation (as opposed to a natural person) is in principle entitled to general damages when other remedies for defamation are available.

15 Milo & Steyn: A Practical Guide to Media Law (2013)

16 p48

17 Case number 17218/02 unreported delivered in Gauteng Local Division, Johannesburg.

Rules exist for the Court

[44] Finally, conscious that *'…..the Rules exist for the Court, rather than the Court for the Rules'*[18] I would not be inclined to enrol this matter as one of urgency for the following reasons: the applicant came to court contending that the statement '*casts aspersions on my character and integrity, insinuating that I am a prostitute on a bedroom roll'* . She contended that:

> 'Moreover, I am advised that the term by which the Respondent describes me, i.e. 'slay queen' is defined to be: "a young dumb woman who chases after wealthy men" or women who resort to sex work in order to make a living. **This term is a veiled insult** for women who one makes an assumption about based solely on their outward appearance and lifestyle. (emphasis provided)

[45] The undisputed evidence presented in this court was that the applicant was referred to by GK Dream Hair, a hair salon which the applicant represents as a brand ambassador, no fewer than in five publications on both Instagram and on Twitter during 2018, as a '*slay queen'*. This was done clearly in a positive and non-defamatory manner. The publication on Twitter on 27 November 2018 was endorsed '*liked*' by the applicant's own Twitter account. Further, on 16 October 2020 the applicant confirmed that she and Edwin Sodi had been in a romantic relationship for '*no more than a year*'. This was reported in an article by The Citizen – not affiliated or related to the respondent.

[46] During the replying argument, reliance on '*slay queen*' as constituting the defamatory matter was disavowed by the applicant. The complaint was directed at the use of the phrase '*bedroom roll*' exclusively.

[47] What is not at all clear for me from the papers is whether it is the applicant's association with Mr Edwin Sodi which is causing the brands to have put their

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[18] Safcor *Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission,*1982 (3) SA 582 (W) at 586 G

collaborations with the applicant on hold (if that is indeed so) or whether it is because of the publications by Sunday World. It is not for me to decide this issue as I won't be enrolling the matter as one of urgency however, what is clear is that the very recent reasoning of Tolmay J in *Mokate v UDM* is apposite:[19]

> 'I am of the view that in the light of the fact that the publication took place on 17 June 2020 [three weeks before the hearing], the statement has been in the public domain for a significant time and the harm that may have been done, has already occurred. **The proverbial horse has bolted.** Such harm that Dr Mokate may suffer, due to the statements, can be addressed in due course when the matter is heard and the issues between the parties are property ventilated. **She will be able to obtain redress at a hearing in due course, as all other litigants in defamation matters do.'** (emphasis provided)

[48] Rule 6(12) requires the applicant to present facts that tend to prove that any relief she might obtain in the ordinary course would not be 'substantial relief'. It is not good enough for her to allege that an interdict (i.e. apology and retraction) granted in the ordinary course would be of lesser value – she must show that it would be of insubstantial value (i.e. incapable of substantially vindicating her reputation)[20] when compared to one published more speedily. The applicant has not put up any averments to this effect and her case has thus failed to clear the bar for urgent adjudication by this Court, differently put, the applicant has not made out a case for urgent relief as required by rule 6(12).

Conclusion and Order

[49] In the result I find that this matter does not attain the legally prescribed standard for urgent determination and I accordingly make the following order, as is traditionally made in such circumstances, and which leaves the doors of justice open

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19 *Mokate v United Democratic Movement and Another* [2020] ZAGPPHC 377 (23 July 2020), para [7]

20 See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 (23 September 2011) at paras [6] – [9]

to the applicant to return to Court should she be so advised to seek her relief in the ordinary course as ordinary litigants do:

The matter is struck off the roll with costs.

STEGMANN

Judge of the High Court
Gauteng Local Division, Johannesburg

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 13 November 2020.

Counsel for the applicant: Adv B Morris and Adv S Kunene

Instructed by: Zwane Inc Attorneys

Counsel for the respondent: Adv B Winks

Instructed by: Willem de Klerk Attorneys

Date of hearing: 4 November 2020

Further submissions: 5, 6 & 7 November 2020

Date of Judgment: 13 November 2020