

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

CASE NUMBER: 11303/2020

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between: -

N A N

First applicant

N A N

Second applicant

(obo K K N)

and

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

First respondent

**THE REGIONAL COURT FOR THE REGIONAL DIVISION
OF GAUTENG**

Second respondent

ALISA AUDREY MPOFU

Third respondent

W N N

Fourth respondent

REASONS FOR ORDER

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 11 July 2023.

F. BEZUIDENHOUT AJ:

- [1] The First Applicant filed what purports to be an application in terms of Rule 42(1) in respect of an order that I granted by agreement between the parties on 3 May 2023. The first applicant, who acts in person, appears to regard the Rule 42 application as an application for leave to appeal. I have been requested to provide reasons. I do so now.
- [2] On the 2nd of May 2023, the first applicant enrolled an application on the unopposed motion roll where he *inter alia* sought an order reviewing and setting aside an interim care order granted by the Kliptown Magistrate's Court on the 15th of May 2020. The first applicant sought an order compelling the third respondent to file the record of the proceedings.
- [3] It is not clear how the application found its way to the unopposed motion roll as it was in fact opposed by the first to third respondents who filed an answering affidavit and condonation application for its late filing, as far back as the 24th of November 2022.
- [4] I highlight the salient paragraphs of the answering affidavit: -

"34. ... ***The first to third respondents and in particular the third respondent does not oppose the order sought for review of her decision in which she granted custody to the fourth respondent. The reason for non-opposition is that it has since been discovered that the order was made while there was already an order that the applicant obtained on 10 January 2020 in the High Court granting the applicant interim custody of the minor child. I emphasise that in the reasons and the record it is crystal clear that I was not***

favoured with the order of the 10 January 2013 when I made the order of 15 May 2020.

35. *The order of the 10 January 2020 did not form part of the papers when I considered in the application brought by the applicant in term of rule 58 in which the applicant sought among others an order for interim maintenance. **This means the applicant had two separate applications pending in two different Court for same orders. The applicant failed to place the order of the 10 January 2023 on the papers filed before me.***” (emphasis added)

- [5] In addition, the third respondent confirmed at paragraphs 36.1 and 36.3 that she had already furnished reasons for her order and filed the record of the proceedings on the 11th of November 2022.
- [6] On the 26th of April 2023, the respondents’ counsel filed a practice note with a request that the application stood down to the 3rd, 4th or 5th of May 2023 as counsel was elsewhere engaged. The indulgence was granted and my registrar informed counsel for the respondents that the matter would be called on the 3rd of May 2023.
- [7] On the 2nd of May 2023, the first applicant appeared in person. I informed him that counsel for the respondents had requested an indulgence and that the matter would be stood down to the 3rd of May 2023. The first applicant was amenable to standing down the matter as he indicated to the Court that he had obtained legal representation and that his attorney would be available to attend court on the 3rd of May 2023.
- [8] On the 3rd of May 2023, counsel for the respondents, Adv L Kalashe, and

attorney for the first applicant, Mr Gagu, appeared before me. The first applicant was also present in court and was seated next to his attorney whilst both legal representatives addressed the court.

[9] Mr Kalashe referred the court to the answering papers and the fact that the record had already been filed and that the third respondent had consented to the review. Mr Gagu for the first applicant confirmed that this was the case, but indicated that the issue of costs remained contentious. I indicated to the parties that sitting as an unopposed motion court, I was disinclined to hear an opposed argument on costs. I requested the legal representatives to engage with one another in an attempt to agree to a draft order which would deal with the review proceedings and the filing of further affidavits on costs to be argued and determined on the opposed motion roll at a later date. The legal representatives requested the matter to stand down momentarily for this purpose and as a result, the court adjourned.

[10] When the parties requested the court to reconvene, I was presented with a draft order which was prepared by agreement between the parties. The first applicant was still present in court and seated next to his attorney. The two legal representatives addressed the court and confirmed that the draft order was by agreement and requested the court to make the draft order an order of court. This was done.

[11] I have nothing further to add.

F BEZUIDENHOUT

**ACTING JUDGE OF
THE HIGH COURT**

DATE OF HEARING: 3 May 2023

DATE OF REASONS: 11 July 2023

APPEARANCES AT HEARING:

On behalf of applicant: Mr Simphiwe Gagu (attorney)
SN Attorneys
(011) 492-3474
simphiwegagu@snaidooattorneys.co.za

On behalf of respondents: Adv Luzuko Kalashe
082-385-3686
advkalashe@duma.nokwe.co.za