

REPUBLIC OF SOUTH AFRICA



HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

4/6/2014

REPORTABLE

In the matter between:

CASE NO: 13700/2012 ✓

STANDARD BANK OF SA LTD

Plaintiff

and

CASTER TRANSPORT CC

First Defendant

MOGAMAT RIEDAA CASTER

Second Defendant

MARIAM CASTER

Third Defendant

In the matter between:

CASE NO: 4444/2014 ✓

ABSA BANK LTD

Plaintiff

and

MARSHMAN ZAYD

First Defendant

MARSHMAN FAEZA

Second Defendant

In the matter between:

CASE NO:12737/2014 ✓

ABSA BANK LTD

Plaintiff

and

NKOSINATHI COLIN ZUMA

First Defendant

ANNE VERONICA MABVUTO MASINA

Second Defendant

J U D G M E N T

MAKGOKA, J:

[1] This judgment arises from my disquiet about the contents of the sheriffs' returns of service in three applications I heard in the unopposed motion court on 22 May 2014. In *Standard Bank v Caster Transport and Two Others*, I postponed the application *sine die* at the instance of the parties, but retained the file for the purpose of this judgment. I reserved judgment in the matters of *Absa v Marshman and Another* and *Absa Bank v Zuma and Another*. The latter two, which are for foreclosure on mortgage bonds, are substantively in order, and it is not necessary to venture into their respective merits.

[2] In *Standard Bank Ltd v Caster and Another*, one of the sheriff's returns of service mentions that service was effected on 'Bongiwe, a domestic helper'. The other return of service simply mentions 'Bongiwe' as the recipient. In *Absa Bank Ltd v Marshman and Another*, the documents are said to have been served on 'The Domestic Faith', while in *Absa Bank Ltd v Zuma and Another*, the return of service says that the process was served on 'Eliza, Domestic worker'.

[3] From these returns of service, reference to the recipients stands out. There is no mention of their marital status or surnames. One thing is clear, though – all of them are indigenous African women. Two things would have happened during service of the documents. Either the deputy-sheriffs never bothered to enquire from the recipients as to their marital status or surnames, or having made such enquiries, the sheriffs decided to ignore those particulars for the purposes of the returns of service. Either way, the conduct is decidedly undignified, demeaning, and in clear violation of s 10 of the Constitution,¹ which guarantees everyone the right to inherent human dignity and the right to have their dignity respected. The Constitutional Court has identified human

¹ Constitution of the Republic of South Africa Act 108 of 1996.

dignity as one of the two 'most important of all human rights, and the source of all other personal rights'.²

[4] As a nation, we emerge from a disgraceful and painful past, where an irrational system of institutionalized racism was visited upon indigenous African people, where adult African women and men were contemptuously (and still are, in some instances) referred to as 'girls' and 'boys'. The contents of the returns of service in these matters are reminiscent of that era, and conjure up deeply painful memories for the majority of the citizens of our country. It does not help that in two of the present matters, the deputy-sheriffs who served the documents appear to be white men.

[5] I have in the past raised this issue in court, and expressed my detestation for it. Without fail, each time I had sat in the motion court, I have encountered similar returns of service. From my experience, it is mostly indigenous African people who are the subject of such mode of address in returns of service. I have yet to come across a return of service referring to a non-indigenous African person in the manner reflected in the returns of service under consideration. To illustrate this point, in the *Standard Bank* matter, for example, the same sheriff, had, during May 2013, served the plaintiff's plea to the defendants' counterclaim. In his return of service, he mentioned that he had served the process upon '*Mr Caster, the husband.*'

[6] The mindset discernable in the returns of service referred to above, has no place in an open and democratic society premised on the foundational values of human dignity and respect. The sheriffs perform a critical task in the administration of justice, and thus have an abiding duty to treat everyone with dignity, irrespective of their race or social standing. The side bar should also be conscious of its duties, and decline to accept returns of service couched in the

² *S v Makwanyane* 1995 (3) SA 391 (CC) para 144. See also *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 36.

manner referred to above. It is not good enough for attorneys to shrug off their shoulders and say they have no control over the contents of the sheriffs' returns. Of course they have. The sheriffs act on their instructions, and for that reason, the attorneys have a duty to ensure that returns of service, are properly worded. We are all enjoined to infuse a constitutional ethos.

[7] Next I consider what should happen to the two applications which are substantially in order. To balance the concerns raised above, against the entitlement of the applicants to the relief they have made out a case for, I intend allowing the applications. This should, however, not be construed as an approval of the returns of service. This court will not hesitate in future to refuse relief where the returns of service fail to take into account the concerns raised in this judgment.

[8] With regard to the deputy-sheriffs concerned, they should all be ordered to redress the indignity they have visited upon the recipients of their returns of service. It might be argued that those recipients are not aware of the manner in which they were referred to in the returns of service. That is beside the point. As stated above, the very fact that the deputies who served court process on them most likely did not enquire as to their marital status and surnames, is, in my view, itself a violation of their dignity.

[9] This is in no way placing form above substance, nor is one being pedantic. It is about a constitutional right which has been violated. Speaking for myself, a court of law, as a repository of the values enshrined in the Constitution, can ill-afford a supine attitude in the face of perpetuation of an injustice, which is a relic of the past.

[10] In the result I make the following orders:

1. In case number 4444/2014 (*Absa Bank v Marshman and Another*) an order is made in terms of a draft, which is dated, initialed and signed by the court, and marked 'X';
2. In case number 12737/2014 (*Absa Bank v Zuma and Another*) an order is made in terms of prayers 1, 2 and 5 of the application for default judgment dated 18 March 2014. Prayer 4 is postponed *sine die*.
3. The Deputy-Sheriff Mr S Koopman, is ordered, at his cost, within 15 days of this order, to verify the marital status and surname of the person referred to as Bongiwe in his returns of service dated 7 March 2014, with reference numbers H1403/119 and H1403/120, respectively, and thereafter serve that person with a written apology for having referred to her merely as 'Bongiwe Domestic Helper' in one of the returns of service referred to above;
4. The Deputy-Sheriff Mr M Pavkovich, is ordered, at his cost, within 15 days of this order, to verify the marital status and surname of the person referred to as Faith in his returns of service dated 26 March 2014, with reference number 2014/01/05101 and 2014/02/05101, respectively, and thereafter serve that person with a written apology for having referred to her merely as 'The Domestic Faith' in the returns of service referred to above;
5. The Deputy-Sheriff Ms N Seti, is ordered, at her cost, within 15 days of this order, to verify the marital status and surname of the person referred to as Eliza in her returns of service dated 25 February 2014, with reference numbers 533821 and 533822, respectively, and thereafter serve that person with a written apology for having referred to her merely as 'Eliza Domestic Worker' in the returns of service referred to above;
6. Each of the deputy-sheriffs referred to above, shall, within 5 days after service of the written apology referred to respectively in paragraphs 3,4 and 5 above, report to the Registrar of this court in writing as to compliance with this order;

7. The Registrar of this court is directed to bring a copy of this judgment to the attention of the Chairperson of the South African Board for Sheriffs and to the Director: Professional Affairs, the Law Society of the Northern Provinces, who should, respectively, ensure that a copy of this judgment is circulated among their respective members.



T.M. MAKGOKA
JUDGE OF THE HIGH COURT

DATE HEARD : 22 MAY 2014

JUDGMENT DELIVERED : 4 JUNE 2014