



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

9 November 2021

DATE

SIGNATURE

In the matter between

Case no: 14159/17

V.L. GAMA

Applicant

and

P.S. MASIPA

Respondent

JUDGMENT

1. This is an application in which the applicant, as defendant in the main action, prays for leave to appeal against the whole order and judgement of this court

granted on 21 May 2019. The respondent, who was the plaintiff in the main action, opposed the application.

2. When the matter was finally heard on 8 November 2021, counsel for the applicant announced that the applicant withdraws the application for leave to appeal and tenders wasted costs. On behalf of the respondent counsel appearing for the respondent accepted that the application had been withdrawn but submitted that the applicant should be ordered to pay costs on a punitive scale of attorney and own client costs.
3. The background is briefly the following. After the judgement was handed down in this matter the applicant waited more than 8 months to file the application for leave to appeal. No application for condonation accompanied the application and up to the present none had been filed. Eventually the respondent applied for the matter to be set down and did all that was necessary for the matter to be heard. The matter came before this court 19 October 2021 but there was no appearance on behalf of the applicant. The attorney of the respondent did his utmost to have the matter heard but was met with numerous difficulties due to the non-responsiveness of the applicant and the fact that he changed attorneys. On 19 October 2021 the matter was postponed to 8 November 2021. On that day there was initially also no appearance on behalf of the applicant but due to the efforts of the respondent's attorney and counsel, advocate Marishane eventually joined the hearing on behalf of the applicant and he did so from the offices of the respondent's attorney. Advocate

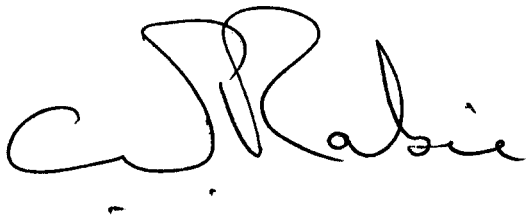
Marishane confirmed that the applicant had withdrawn the application and was tendering wasted costs.

4. Prior to advocate Marishane appearing on 8 November 2021, and while respondent's attorney was still in the process of searching for somebody who might appear on behalf of the applicant, advocate Mhlongo, appearing on behalf of the respondent, informed the court that the respondent's attorney had shortly before the hearing received a new substantive application from the applicant which was inter alia aimed at setting aside this court's order of 21 May 2019. This was a completely separate process which had nothing to do with the present application for leave to appeal. When advocate Marishane addressed this court on 8 November 2021 he made no mention of the aforesaid new application and in my view it is not necessary for this court to say anything further about that matter.
5. Advocate Mhlongo submitted that the application for leave to appeal had been nothing other than a delaying tactic and that the court should show its disapproval by way of a special order for costs. Apart from being extremely late, the applicant did not even bother to file an application for condonation of his lateness. Advocate Mhlongo further submitted that the applicant had failed to make out a proper case in support of the application for leave to appeal and that it therefore came as no surprise that the application was withdrawn at the eleventh hour. Such conduct, so it was submitted, constitutes an abuse of the process of this court in respect of which this court should show its displeasure

and disapproval. It was further submitted that the respondent incurred costs in respect of the application for leave to appeal and that she should not be out of pocket in regard thereto.

6. I agree with the submissions on behalf of the respondent. I have studied the grounds for leave to appeal as set out in the applicant's application and it is clear that they are all without any merit and that the applicant has no prospects of success on appeal. Having regard to the applicant's complete lack of prospects of success together with the lateness of the application and the final withdrawal thereof when it was found that there could be no further delay, I can come to no other conclusion that the applicant indeed abused the process of this court in order to serve his own personal interests.
7. Although punitive orders for costs are rarely awarded, such orders are appropriate when it is clear that the party has conducted itself in a vexatious and reprehensible manner or has abused the process of court. I find that the present matter is such a case and that this court should show its disapproval to the conduct of the applicant and also thereby ensuring that the respondent is not out of pocket. Accordingly, a punitive order for costs should be made.
8. In the result, the following order is made:
 1. It is noted that the application for leave to appeal had been withdrawn by the applicant.

2. The applicant is ordered to pay the respondent's costs of the application for leave to appeal on the scale of attorney and own client.

A handwritten signature in black ink, appearing to read 'C.P. Rabie'. The signature is fluid and cursive, with the first part being a stylized 'C' and 'P' followed by the name 'Rabie'.

C.P. RABIE

JUDGE OF THE HIGH COURT

9 November 2021

Attorneys for the Applicant:

TLHASI INC

info@tlhasiinc.co.za

Counsel for the Applicant:

Adv Marishane

Tel.: 012 320 0361

tkmarishane@gmail.com

Attorneys for the Respondent: MASHAMAITE MR ATTORNEYS INC

Ref.: MMR/118/2017

Tel.: 012 321 1135

mrmashamaiteattorneys@gmail.com

Counsel for the Respondent: Advocate N. Mhlongo

Date of hearing: 8 November 2021

Date of judgement: 9 November 2021