

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

Rev case No: 89/22

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE..... SIGNATURE:.....	

In the matter between:

MALOPE ABEL RAMOLOTJA

APPLICANT

And

JACKEY TSELANE MOTAUNG

FIRST RESPONDENT

ALL OTHER ILLEGAL OCCUPANTS OF

ERF 213 BELA-BELA

SECOND RESPONDENT

BELA-BELA LOCAL MUNICIPALITY

THIRD RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant has instituted an eviction application against the first and second respondents in Bela-Bela magistrate court. The respondents appeared in person and have filed opposing papers. The matter came before magistrate Montane on 29th June 2022, and he gave the respondents an opportunity to supplement their opposing papers with oral evidence. After the respondents have testified, the applicant did not tender any evidence. The matter was postponed to 18th August 2022 for closing address and judgment.
- [2] On 18th August 2022 the presiding magistrate proceeded to deliver his judgment by reading his written judgment into record without giving the parties an opportunity to address him on the merits of the matter. It was only in the middle of him delivering his judgment that he realised that he had not given the parties an opportunity to address him on the merits of the matter. At that moment the presiding magistrate stopped delivering his judgment and gave the parties an opportunity to address him on the merits of the matter. After the parties have addressed him, the presiding magistrate sent this matter on special review for guidance and directions of how to handle the matter further.
- [3] Section 22(1) of the *Superior Courts Act*¹ provides that the grounds upon which the proceedings of any magistrates' court may be brought under review before a court of a Division are (a) absence of jurisdiction on the part of the court; (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer; (c) gross irregularity in the proceedings; and (d) the admission of inadmissible or incompetent evidence and the rejection of admissible or competent evidence. This section in my view, confers the High

¹ 10 of 2013

Court with inherent jurisdiction to review proceedings of whatever nature from the lower courts.

- [4] It is trite that High Courts have supervisory powers over the conduct of proceedings in magistrates' courts in both civil and criminal matters, and this include the power to intervene in unconcluded proceedings. (See *Magistrate, Stuttenheim v Mashiya*²). In the matter at hand, the eviction proceedings were by way of motion proceedings. In motion proceedings the affidavits of the parties serve as evidence, and when the parties appears in court they normally do not lead oral evidence, but proceed to present their arguments on the matter. In this case the respondents were appearing in person, and in the interest of justice, the presiding magistrate gave the respondents an opportunity to augment their opposing papers with oral evidence. The applicant did not tender any oral evidence.
- [5] After the evidence was led, the presiding magistrate postponed the matter to a specific date for the parties to address him on the merits of the application and thereafter deliver his judgment. However, on the date on which the parties were supposed to address the court on the merits of the application, the presiding magistrate proceeded to deliver his written judgment by reading it into record, which the presiding magistrate has stated that he intended to hand copies of that judgment to the parties after he had read it into record.
- [6] As I have already pointed out in paragraph 4 above that this was a motion proceeding, and the parties were supposed to have first addressed the court before a judgment was delivered. In this case, the presiding magistrate came with a written judgment which was prepared before the parties could address

² 2003 (2) SACR 106 (SCA) at 111c-d

him on the merits of the application. In *De Lange v Smuts NO and Others*³ Mokgoro J said:

“Everyone has the right to state his or her own case, not because his or her version is right, and must be accepted, but because, in evaluating the cogency of any argument, the arbiter, still a fallible human being, must be informed about the points of view of both parties in order to stand any real chance of coming up with an objectively justifiable conclusion that is anything more than a chance.”

[7] Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. The presiding magistrate had finalised his written judgment without having been informed about the points of view of both parties. The presiding magistrate only gave the parties an opportunity to address him during the middle of delivering of his judgment after he had realised the irregularity he had committed. The irregularity committed is so gross to the extent that the opportunity that was granted to the parties to address him at that late stage of the proceedings will not rectify that irregularity.

[8] By the time the presiding magistrate gave the parties an opportunity to address him on the merits of the application, he had already made up his mind about the case, and I doubt whether any argument presented by the parties will be able to persuade him to rule otherwise, than what is contained in his written judgment. It is a gross irregularity to come to court with a preconceived judgment before giving the parties an opportunity to address the court on the matter. What the presiding magistrate had done, was not only in contravention

³ 1998 (3) SA 785 (CC) at 836A-B

of the *audi alteram* rule, but is in conflict with section 34 of the Constitution. In my view, the hearing was not held in a fair manner to the parties. The irregularity committed by the presiding magistrate is so gross that it taints the whole proceedings, and they therefore stand to be reviewed and set aside.

[9] In the result the following order is made:

9.1 The proceedings before Additional Magistrate Montane M in abovementioned are hereby reviewed and set aside in its entirety.

9.2 The matter is referred back to the magistrate court for a hearing *de novo* before another magistrate.

KGANYAGO J

**JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE**

I AGREE

NAUDE – ODENDAAL J

**JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE**

Electronically circulated on 25th November 2022

