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## REPORTABLE / NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE, BHISHO**

**Case no: 253/2013**

**In the matter between:**

**T[...] M[...] M[...]**

**Applicant**

**vs**

**MEMBER OF THE EXECUTIVE COUNCIL FOR SOCIAL  
DEVELOPMENT AND SOCIAL PROGRAMMES, EASTERN  
CAPE**

**First Respondent**

**THE DIRECTOR-GENERAL OF THE DEPARTMENT  
OF SOCIAL DEVELOPMENT AND SOCIAL  
PROGRAMMES, EASTERN CAPE**

**Second Respondent**

**THE DESIGNATED SOCIAL DEVELOPMENT  
AND SOCIAL PROGRAMMES**

**Third Respondent**

Date heard : 4<sup>th</sup> December 2014  
Date delivered : 10<sup>th</sup> March 2015

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## JUDGMENT

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### **MALUSI AJ:**

[1] This is an application to compel the respondents to process a social grant application.

[2] The applicant is the grandmother to a minor child. The child's mother, Z[...] M[...] died on 12 May 2011. During her lifetime she lived with the minor child in

Klerksdorp in Gauteng. After her demise, the applicant took custody of the minor child. The applicant is a pensioner and indigent.

[3] It is common cause that the applicant approached the respondents' Mdantsane offices to apply for a foster care grant. It is further common cause that the applicant was asked to provide details of the minor child's biological father. The applicant avers that the biological father's details are unknown to her as the minor child never had any relationship with his father.

[4] The applicant avers that after submitting the required documentation, she was informed a social worker would visit her to conduct an assessment. No such visit took place causing her to approach her attorney of record. The attorney wrote an ordinary letter of demand to the respondents which did not elicit a reply. This application was thereafter lodged.

[5] In the answering affidavit, the respondents took issue with their incorrect citation. They further denied that the applicant visited their Mdantsane office on the date alleged by the applicant. The respondents avered that on an alternate date, the applicant was interviewed by a social worker during a preliminary interview. It transpired the biological father is alive and gainfully employed but his particulars were not in applicant's possession at the time. A further appointment was arranged for the applicant to provide the required particulars. The applicant did not honour the appointment which resulted in the application not being processed.

[6] The application was initially set down for hearing on the 20<sup>th</sup> November 2014. The hearing did not proceed as there was no appearance for the applicant. Her

attorney of record had withdrawn on the 24<sup>th</sup> October 2014. The notice of withdrawal did not comply with the joint rules of practice of this Court. The matter was postponed to the 4<sup>th</sup> December 2014 to allow the attorney to file a proper notice of withdrawal and file an affidavit giving reasons why costs *de bonis propriis* should not be ordered against him. The reasons for the postponement were brought to the applicant's attorney attention by the assistant State Attorney who filed an explanatory affidavit on this aspect. The applicant filed an explanatory affidavit dealing with the affidavit that had earlier been filed by the respondents' on her behalf disavowing the mandate to her attorney of record.

[7] At the hearing of this application I was informed that the application for a foster care grant application had been processed by the respondents. The only outstanding issue for adjudication was the costs of the application.

[8] *Mr Klaas*, who appeared for the applicant, highlighted what he argued was a delay by the respondents to process the application for the grant. The delay was compounded by the failure of the respondents to reply to the letter of demand so it was argued.

[9] *Mr Poswa*, who appeared for the respondents, submitted that the applicant had not complied with a number of practice rules. Consequently, even if the main relief had not been settled, the applicant would not have been successful.

[10] The joint rules of practice for this division provide a comprehensive procedure in applications for social grants. The provision is peremptory for such applications.

Rule 21(a)(ii) provides that an applicant must provide proof of the original application for the grant with specified details. If no such proof is available then an explanatory affidavit must be filed. The applicant failed to comply with rule 21(a)(ii).

[11] The applicant is required to deliver a letter of demand to the authority where the original application was made in terms of rule 21(a)(iii). The applicant did not comply with this provision and no explanation has been provided.

[12] Rule 21(b)(i)-(iii) sets out a procedure for the State Attorney and the applicant to follow to obtain instructions and hold a conference. This is to ensure that the parties explore settlement before setting down the application for a hearing. The applicant simply ignored the procedure and proceeded to set down the matter for hearing.

[13] It is clear from the above that the application was not properly before Court due to failure of the applicant to comply with practice rule 21. I enquired from *Mr Klaas* the reason for the non-compliance. He submitted that it was due to the respondents' failure to acknowledge the application and the letter of demand. There is no merit in this submission. Whatever the respondents' conduct it does not absolve the applicant of her obligation to comply with the Court rules.

[14] It is unnecessary to consider the prospects of success on the merits of either party in any detail in view of the non-compliance outlined above. It suffices to state that even on the merits the applicant would not have been successful due to the factual inaccuracies in her affidavit.

[15] I have given the matter anxious consideration. It appears to me that the application would have failed principally due to the manner in which the applicant's attorney handled the matter. The drawing of the affidavit leaves much to be desired. It is riddled with numerous errors. On the very first paragraph of the affidavit, the applicant is described as a "male person" when her names and appearance on the attached identity document clearly indicate she is a female person. The affidavit does not improve from that only getting worse with numerous other errors. I gained the distinct impression that the affidavit was prepared using a template, the so-called cut and paste job. I have earlier dealt at length with the non-compliance with rule 21 which also can only be blamed on the applicant's attorney. The applicant cannot be blamed for this lapse as it is clear from her explanatory affidavit that she cannot read English and requires translation of documents. Neither could the apparent negligence of her attorney be imputed on her. I am satisfied that it is only fair and just that she is not mulctated with costs in these circumstances.

[16] The other aspect that needs consideration are the wasted costs occasioned by the postponement of the 20<sup>th</sup> November 2014. The matter was postponed to afford the applicant's attorney an opportunity to give reasons why he should not be held liable for the costs. He has spurned that opportunity. Instead, the applicant has filed an affidavit clarifying that she had always instructed her attorney and repudiating an earlier affidavit. She does not deal with the late notice of withdrawal nor why the notice does not comply with practice rule 7. The applicant's attorney appears not to be aware that the explanation was required from him personally as provided in practice rule 7. In the absence of the explanation it follows that in view of

the flagrant disregard of the provisions of practice rule 7, the applicant's attorney must be ordered to pay the wasted costs.

[17] In the circumstances and for the above reasons it is ordered:

**[17.1] Each party is to pay its own costs.**

**[17.2] Attorney Mcebisi Templeton Klaas is to pay the wasted costs occasioned by the postponement on 20 November 2014 *de bonis propriis*.**

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T. MALUSI  
ACTING JUDGE OF THE HIGH COURT

For the applicant	:	Mr Klaas
Instructed by	:	M.T. Klaas Attorneys c/o Potelwa Attorneys KING WILLIAMS TOWN
For the respondents	:	Mr Poswa
Instructed by	:	State Attorneys c/o Shared Legal Services KING WILLIAMS TOWN Ref: 366/13-P11