

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023-107942

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED. <u>✓</u>
	<u>22/11/2024</u> DATE
	<u>[REDACTED]</u> SIGNATURE

In the matter between:

LESEDI LOCAL MUNICIPLITY

APPLICANT

And

LYNNETTE STRYDOM SYTRYDOM

RESPONDENT

J U D G M E N T

MABESELE J:

The applicant seeks an order in the following terms:

- [1] 1. Calling upon the magistrate G. Strydom to show cause why the proceedings in the matter between Lynette Strydom N.O, Izak Jacobs Du Plessis Van Den Berg N.O and Lesedi Local municipality, held at Heidelberg, should not be reviewed, corrected and/or set aside.
2. Calling upon the magistrate Strydom to dispatch, within 15 days after receipt of notice, to the registrar of this court, the record of the proceedings with such reasons as he is by law required to give or make, and to notify the applicant

No relief was sought against the second and third respondents in this notice of motion.

[2] In the founding affidavit the applicant seeks the following order:

1. The respondent and/or any interested parties be summoned to give reasons, if any, why the following findings made by the first respondent G Strydom, should not be reviewed, corrected and/or set aside on account of the fact that the first respondent allowed the application to be heard urgently where a case of urgency was neither pleaded nor made by the second and third respondents; where the application was brought on ex-parte and addressed to both the clerk of the court and the applicants, however, only served on the clerk of the court, in instances where relief was claimed against the applicant and a rule nisi was confirmed in its absence.

[3] Counsel for the respondents raised an issue concerning the nature of the application with reference to paragraphs 10 and 37 of the founding affidavit. He argued that the applicant intends to argue the matter as an appeal which is disguised as a review. His argument is that confirmation of rule nisi is a final order which should be appealed against and not reviewed.

[4] In paragraph 10 of the founding affidavit the applicant refers to a review application whereas paragraph 37 refers to an appeal. Paragraph 37 reads:

'I will now deal with the substantive part of the grounds of appeal in turn, albeit briefly, since it will be argued on behalf of the applicant at the hearing of this matter that both the order dated 6 April 2023 and the subsequent confirmation of the rule nisi on the return date were predicted on the issue which was no longer live between the parties and should have been discharged with costs....'

[5] paragraph 38 reads:

'I am advised that where a point of law is apparent on the papers, but the common approach of the parties proceed on a wrong perception, a court of appeal¹

*is not only entitled, but is in fact also obliged, *mera motu*, to raise a point of law....'*

¹Emphasis added

[6] Counsel for the applicant was invited to address the court on the discrepancies in paragraphs 11 and 37, including 38. His response was that there is an “an overlap’ between review and appeal in this application. He acknowledged that there is a difference between appeal and review procedures. That said, counsel argued that the matter should be treated as a review, but has failed to state why the applicant considered it as an appeal, too, thus, confused both the court and respondents.

[7] The other issue that needs attention, also raised by the respondents, is the relief sought by the applicant. The applicant, in its notice of motion, seeks relief against the magistrate only. In the contrary, the relief is sought against the respondents in the founding affidavit. What is crystal clear is that this application is defective. The applicant should have not proceeded with this defective application.

[8] In the result, the following order is made:

8.1 The application is dismissed.

8.2 The applicant should pay costs of the second and third respondents,
including costs of respondent’s Counsel, on Scale B.



M.M MABESELE

(Judge of the High Court Gauteng Local Division)

Appearances

On behalf of the Applicant	:Adv Mthombeni
Instructed	: Mabunda Incorporated Attorneys
On behalf of the Respondent	: Mr S.Meiklejohn
From	: Meiklejohn Attorneys
Date of Hearing	: 18 November 2024
Date of Judgment	: 22 November 2024