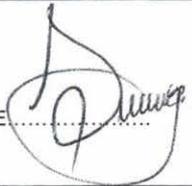


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 3406/2018

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
.....	
DATE: <u>14-6-2018</u>	SIGNATURE: 

In the matter between:

MODIMOLLE-MOOKGOPONG

APPLICANT

LOCAL MUNICIPALITY:

And

MAPHOKE P K MOGANE INCORPORATED:

1ST RESPONDENT

THE SHERIFF OF THE HIGH COURT FOR

2ND RESPONDENT

NYLSTROOM, MODIMOLLE & WATERBERG :

THE LAW SOCIETY OF

3RD RESPONDENT

THE NORTHERN PROVINCE:

JUDGEMENT

SEMENYA J:

1. The applicant launched this applicant in two parts. In part A, the applicant seeks an order, on an urgent basis, for the suspension of the order granted by this court on the 17 May 2018 pending the application for the rescission of that judgment in Part B. In addition, the applicant seeks an order for the suspension and/or setting aside of the writ of execution issued in terms of that order.
2. The parties agree that the ancillary prayer, being for the referral of the alleged improper conduct of the 1st respondent to the 3rd respondent is a matter that cannot be heard on an urgent basis. I find no fault in the parties' submission. I will therefore no take this aspect further.
3. The 1st respondent in a supplementary affidavit raised a point of law that the founding affidavit was not properly commissioned in that the gender of the deponent

is not clear. It was submitted that the commissioner should have deleted the he or the she whatever the case may be. This issue is resolved in that the commissioner of oath deposed to an affidavit that explain that the deponent was a female.

4. The other issue raised by the 1st respondent is that of lack of authority on the part of the Municipal Manager, the deponent to the applicant's founding affidavit, to act on behalf of the applicant.

5. On this issue, counsel for the applicant contended that the 1st respondent admitted the authority of the Municipal Manager to act in his answering affidavit and can therefore not challenge it in his supplementary affidavit. I agree that the Municipal Manager's authority has indeed been admitted. It is therefore not necessary to take this matter further.

6. The issue of the authority of the applicant's attorney to act on behalf of the applicant was also raised in the supplementary affidavit. In answer to this point of law, the applicant attached two letters which appointed the attorney to act on behalf of the applicant. In the first letter, the municipal manager states that he/she has appointed the applicant's attorney to serve on the Mookgopong Local Municipality's panel for Legal Services. I agree with Mr Mohoto, who appeared on behalf of the first respondent that the letter as it is cannot serve as authority to launch this application. In the second letter the Senior Manager: Corporate Services dated the 16 June 2018

wrote that he is authorizing the attorney to bring this instant application. Mr Mohoto challenged the authority of the author of the letter to appoint the attorney to act on behalf of the applicant.

7. What is required in Rule 7 is that the court must satisfy itself that the attorney is so authorized to act. On this aspect, I deem it necessary to borrow the words used by Brand JA in *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at 207 (City of Johannesburg), paragraph [16] in which he asked the question: "Is it conceivable that an application of this magnitude could have been launched on behalf of the municipality with the knowledge but against the advice of its own director of legal services? The question can, in my view, be answered only in the negative."
8. In bringing the sentiments made by Brand JA in *City of Johannesburg* matter in line with the application before me, I find that it cannot be said that the Municipal Council authorized the Municipal Manager to launch this urgent application without knowledge of the attorney she would have to instruct to assist her in this regard. The first respondent's argument that the attorney has no authority to act on behalf of the applicant is rejected on the authority of the *City of Johannesburg* matter.
9. The only remaining issue is one for urgency. It was argued on behalf of the first respondent that the municipality has an alternative relief in the form of an

interpleader application. That all it has to do is to inform/instruct the sheriff launch the application. It was further submitted that the urgency is self-created on the basis that the municipality would not have found itself in this position, had it paid the first respondent's claim in time.

10. Counsel for the applicant argued that the first respondent's argument is misplaced. It was submitted that it is not the applicant's case that the judgment granted in favour of the first respondent is correct, hence the application to have it rescinded. It was contended that interpleader proceedings application can only be launched where the goods of a third party is attached on the strength of a valid order. It was further contended that the first respondent's argument loses sight of the fact that the application is brought in terms of Rule 45A.

11. Rule 45A provides as follows:

"The court may suspend the execution of any order for such period as it may deem fit.

12. In exercising its discretion to suspend a court order the court in **Soja Ltd v Tuckers Land Develop Corp 1981 (1) SA 407 (W) at 411** took into consideration the interest of justice in the applicant retaining the opportunity of showing that the judgment appealed against is incorrect, the prejudice to the applicant if the sale proceeds and the right to appeal is frustrated, is manifest. It also considered the prejudice that the respondent would suffer if the order is suspended.

13. In the present matter, the applicant has already made an application for the rescission of the order granted in favour of the first respondent. The property which is attached is highly necessary in the applicant's duty to carry out its constitutional mandate to provide services to the citizens. Should the sale in execution proceed, the cash strapped municipality may find it difficult to replace the vehicles.

14. I agree with counsel for the applicant that the first respondent failed to show any form of prejudice that he may suffer should the application succeed. I cannot find any prejudice that the first respondent may suffer either. It would be proper to allow the application for rescission to take its course. The first respondent would be entitled to payment should the application fail.

15. In **Gois t/a Shakespear's Pub v Van Zyl and Others 2011 (1) SA 148 (LC)** the court held that the stay of execution will be granted where the underlying causa is the subject matter of an ongoing dispute between the parties. It was further held that an application for review, as in the present case, qualifies as an attack on the underlying causa.

16. I find that the applicant has made out a case for urgency in that an interpleader proceeding would delay the provision of services to the citizens. It will further leave the applicant at the mercy of the sheriff. Furthermore, the validity of the order made in favour of the applicant is disputed.

17. I therefore make the following order:

(i). The attachment of the applicant's property in terms of a writ of execution is suspended pending the determination of the application for the rescission of the order granted by this court on the 17 May 2018.

(ii) Costs to be costs in the rescission application.



M.V SEMENYA
JUGDE OF THE HIGH COURT; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT : ADV. D VAN DEN BOGERT

INSTRUCTED BY : GEYSER & FERREIRA INC

FOR THE RESPONDENT: MR MOHOTO

INSTRUCTED BY : TP MOLOTO ATTORNEYS

DATE OF HEARING : 12 JUNE 2018

DATE OF JUDGEMENT : 14 JUNE 2018