



IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO.: **5979/2024**

In the matter between:

VUYISILE CHARLES NDABENI

1st APPLICANT

GLOBAL TOURISM LEGACY NETWORKS (PTY) LTD

2nd APPLICANT

MOTSWANA RE NA LE RONA NPC

3rd APPLICANT

And

HOD ITUMELENG MOGOROSI

1st RESPONDENT

DEPARTMENT OF SPORTS, ARTS AND CULTURE

2nd RESPONDENT

MEC TSOTSO TLHAPI

3rd RESPONDENT

REASONS FOR ORDER DATED 28 NOVEMBER 2024

INTRODUCTION:

- [1] The applicants in this matter, Vuyisile Charles Ndabeni (the first applicant), Global Tourism Legacy Networks (Pty) Ltd (the second applicant) and Motswana Re Na Le Rona NPC (the third applicant) launched an urgent application which was heard on 22 November 2024.
- [2] At the hearing of the matter, the first applicant appeared in person. The first applicant, (Mr. Ndabeni), informed the Court that he was appearing on behalf of the second and third applicants. There was no appearance for the respondents.
- [3] After hearing arguments from Mr. Ndabeni, the Court reserved judgment and on 28 November 2024 handed down an order in the following terms:
 - (i) The application is dismissed;
 - (ii) No order as to costs.
- [4] What follows hereinunder are the reasons for the court order dated 28 November 2024.

THE LAW

- [5] Every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief. (See: **Rule 6(1)** of the Uniform Rules of the Court).
- [6] An affidavit is a statement in writing sworn to before someone who has authority to administer an oath. It is a solemn assurance of fact known to the person who states it, and sworn to as his statement before some person in authority such as a commissioner of oaths.
- [7] Regulation 4(1) of the Regulations Governing the Administration of an Oath or Affirmation reads as follows: *"Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration."*
- [8] Regulation 4(2) of the Regulations Governing the Administration of an Oath or Affirmation reads as follows: *"The commissioner of oaths shall – (a) sign the declaration and print his full name and business address below his signature; and (b) state his designation and the area for which he holds his appointment or office held by him if he holds his appointment **ex officio**."*
- [9] In affidavits filed which are filed in support of the notice of motion. It is well established that the applicant should make out his or her case in the founding

affidavit and certainly not belatedly in argument. (See: **My Vote Counts NPC v Speaker of the National Assembly** 2016 (1) SA 132 (CC) at paragraph 177).

[10] The founding affidavit must at the least contain the following:

- (a) applicant's right to apply, that is the applicant's *locus standi*. Appropriate allegations to establish the *locus standi* of an applicant should be made in the founding affidavit. The applicant must satisfy the court that he or she has a direct interest in the relief sought, the interest must not be too remote, the interest must be actual, not abstract or academic and it must be current interest and not a hypothetical one. The duty to allege and prove *locus standi* rests on the party instituting the proceedings. (See: **Four Wheel Drive CC v Leshni Rattan NO** (1048/17) [2018ZASCA 124 (26 September 2018) at paragraph 7).
- (b) In addition, the founding affidavit should contain facts indicating that the court has jurisdiction.
- (c) The cause of action on which the applicant relies. (See: **National Council of Societies for the Prevention of Cruelty to Animals v Openshaw** 2008 (5) SA 339 (SCA) at 349A – B)
- (d) The evidence in support of the application. In application proceedings, the affidavits take the place of not only the pleadings in an action, but also the essential evidence which is to be led at a trial. (See: **National Credit**

Regulator v Lewis Stores (Pty) Ltd 2020 (2) SA 390 (SCA) at paragraph 29).

- [11] A company cannot conduct a case in court except by the appearance of counsel acting on its behalf (See: **Manong v Minister of Public Works** (518/2008) [2009] ZASCA 110 (23 September 2009) at paragraph 4).
- [12] In **Ganes v Telecom Namibia Ltd** 2004 (3) SA 615 (SCA) at 624G – H, the court held that a deponent to an affidavit need not be authorized to depose to the affidavit in support of the application. It is the institution of the proceedings and prosecution thereof that must be authorized.
- [13] In proceedings, where the applicant is an artificial person, evidence is required that the applicant has duly resolved to institute the proceedings and the proceedings are instituted at its instance. (See: **Tattersall and Another v Nedcor Bank Ltd.** (340/93) [1995] ZASCA 30; 1995 (3) SA 222 (AD); [1995] 2 All SA 365 (A) (28 March 1995) at paragraph 10)

THE HEARING OF THE MATTER

- [14] When this matter was heard, the Court indicated to Mr. Ndabeni, that there was no resolution from the second and the third applicants authorizing the first applicant, Mr. Ndabeni to bring the application.
- [15] The Court then asked Mr. Ndabeni if he was an attorney or an advocate. Mr. Ndabeni informed the Court that he was neither an attorney or an advocate.

- [16] Mr. Ndabeni was then referred to the document written "FOUNDING AFFIDAVIT". The Court referred Mr. Ndabeni to the second page of the document. The Court pointed out to Mr. Ndabeni that although the police official whose names and rank are not reflected in the document but he or she is identified as a commissioner of oaths signed the document under the signature of Mr. Ndabeni. The police official failed to attach a certificate below Mr. Ndabeni's signature certifying that Mr. Ndabeni had acknowledged that he knows and understands the contents of the declaration and he further failed to state the manner, place and date of taking the declaration. Mr. Ndabeni informed the Court that he did not know that was a requirement and had no comment.
- [17] Mr. Ndabeni was informed by the Court that the Court had read the document marked "FOUNDING AFFIDAVIT" and Mr. Ndabeni was asked if he wished to make any further submissions or if he stood by what is contained in the document marked "FOUNDING AFFIDAVIT". Mr. Ndabeni informed the Court that the matter had sat before Djaje DJP on 15 November 2024 and on 18 November 2024, Djaje DJP handed down judgment in which the Honourable Djaje DJP found that Mr. Ndabeni did not have the *locus standi* to bring the application.
- [18] The Court considered the contents of the document marked "FOUNDING AFFIDAVIT". The Court noted that Mr. Ndabeni made an allegation that he was duly authorized to bring the application on behalf of the second and third applicant.

- [19] Mr. Ndabeni averred that on 20 February 2024, he had sent a letter of demand on behalf of the second and third applicants to the first respondent, HOD Itumeleng Mogorosi. The letter requested specific information with regard to the lack of vision, leadership and execution within the Department of Sports, Arts and Culture.
- [20] The Court noted that Mr. Ndabeni averred that the response of the first respondent was dismissive and disrespectful, demonstrating a contemptuous attitude.
- [21] The Court noted from the reading of the document marked "FOUNDING AFFIDAVIT" that the applicants sought the requested information to ascertain the state of governance and leadership in the department and undermines their rights to transparency, performance and accountability.
- [22] The Court when examining the notice of motion noted the notice of motion sought relief in the following terms, "AN INTERDICT RESTRAINING THE FIRST RESPONDENT AND THE SECOND RESPONDENT FROM CONVENING THE DEPARTMENTAL EXECUTIVE MANAGEMENT MEETINGS UNTIL THERE IS TRANSPARENCY, PERFORMANCE AND ACCOUNTABILITY."

ANYLYSIS

- [23] Although Mr. Ndabeni informed the Court that he is representing the second and third applicants and, in the document, marked "FOUNDING AFFIDAVIT" at

paragraph 1, an averment is made that Mr. Ndabeni is duly authorized to bring the application on behalf of the second and third applicants. There is no resolution from the second applicant and the third applicant before the court authorizing Mr. Ndabeni to bring this application on behalf of the second and third applicants.

[24] I am not satisfied that the second and third applicants authorized Mr. Ndabeni to bring the application on their behalf. Even if I am wrong, Mr. Ndabeni had indicated to the Court that he is not an attorney or an advocate. The authorities are clear on this issue, an artificial person cannot be represented in court proceedings by a person who is not an attorney or an advocate. I am consequently not satisfied that the second and third applicants were before the court on 22 November 2024 when this matter was heard.

[25] The documents marked "FOUNDING AFFIDAVIT" was not properly commissioned. Mr. Ndabeni did not move an application for condonation of the noncompliance with Regulation 4(1) of the regulations governing the administration of an oath or affirmation. Accordingly, the application of the first applicant was not accompanied by an affidavit.

[26] When the matter was heard, the Court viewed the papers of Mr. Ndabeni benevolently because Mr. Ndabeni is not a legal practitioner. There is however a limit within which the Court could look benevolently on the papers. The document marked "FOUNDING AFFIDAVIT" in addition to not being an affidavit, does not speak to the relief that is sought in the notice of motion. Mr. Ndabeni failed to

make out a cause of action which the applicants rely for an order interdicting restraining the first and second respondents from convening the Departmental Executive Management meetings until there is transparency, performance and accountability. There is no legal connection between the documents sought by the applicants and the interdict that is sought.

- [27] Mr. Ndabeni failed to make appropriate allegations to establish the *locus standi* of the applicants for the relief that they seek. The applicant must satisfy the court that he or she has a direct interest in the relief sought, the interest must not be too remote, the interest must be actual, not abstract or academic and it must be current interest and not a hypothetical one. Mr. Ndabeni failed in this regard.

COSTS

- [28] The general rule is costs follow the cause. The respondents have not taken part in this matter.



- [29] In exercising my discretion, I found it would be fair on both sides if no order is made as it relates to costs.

ORDER:

- [30] Resultantly, the following order was made: -

- (i) The application is dismissed;

- (ii) No order as to costs.

T MASIKE
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE FOR HEARING	:	22 NOVEMBER 2024,
DATE OF JUDGMENT	:	28 NOVEMBER 2024
DATE OF REASONS	:	4 DECEMBER 2024
FOR 1st APPLICANT	:	IN PERSON
INSTRUCTED BY	:	IN PERSON
Email Address	:	<u>ndabenic@gmail.com</u>
FOR THE RESPONDENTS	:	NO APPEARANCE