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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NUMBER 12111/24**

In the matter between

**J[...] V[...] R[...]**

**APPLICANT**

and

**THE DIRECTOR GENERAL OF HOME AFFAIRS**

**FIRST RESPONDENT**

**THE MINISTER OF HOME AFFAIRS**

**SECOND RESPONDENT**

**NATHAN DEMINK**

**MANAGER: LATE BIRTH REGISTRATIONS**

**THIRD RESPONDENT**

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**JUDGMENT**

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Date of hearing: 11 February 2025

Date of judgment: 19 February 2025

**BHOOPCHAND AJ:**

1. The Applicant attained his majority before being called upon to prove his birth, and that was only because he needed to reap a substantial award for damages arising from an accident he was involved in on 18 December 2015. He had completed his primary school education and progressed in high school. The Applicant had evaded the need for an identity document since 17 January 2005, the date of his birth. With the Road Accident Fund (“RAF”) refusing to release his award until he produced his birth certificate, the pressure turned on the Department of Home Affairs (“DHE”) to take notice of his birth and issue the birth certificate.

2. The RAF’s award on 16 November 2023 was recoupable six months later. The Applicant gave notice of his birth to the DHA, Bellville, on 29 November 2023. The DHA initiated the process of registering his birth, which is regulated by the Births and Deaths Registration Act 51 of 1992 and the Regulations on the Registration of Births and Deaths, 2014.<sup>1</sup>

3. The Applicant acknowledged that there are necessary steps to follow before one can be issued with an identity document. The Applicant’s father followed up on the Applicant’s application on 1 December 2023, 15 January 2024, and 31 January 2024. The father attended the DHA offices in February and March 2024 as well. In April 2024, the father travelled to Leratong Hospital in Randburg to request proof of the Applicant’s birth. Leratong Hospital advised the father that the Applicant’s birth records were destroyed but issued a maternity certificate confirming the Applicant’s birth. The maternity certificate was handed to the DHA on 30 April 2024. The Applicant instituted an application to order the Respondents to consider his application and provide him with a birth certificate on 23 May 2024. The application was set down for hearing on the unopposed roll of 14 June 2024.

4. This Court is assigned to determine the costs relating to the application to compel the Respondents to provide the Applicant with a birth certificate. The Honourable Justice Fortuin ordered the Respondents to determine whether the Applicant is entitled to a birth certificate. If the determination was favourable to the

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<sup>1</sup> Regulation 128 in Government Gazette, 26 February 2014

Applicant, the Respondents had to allocate an identity number and provide the Applicant with a birth certificate. The application was postponed for hearing in the Third division on 18 September 2024 to enable the Respondents to comply with the order. It was common cause that the DHA had received the Applicant's notice of late birth registration and was processing it. The Applicant instituted the application soon after providing the DHA with the maternal certificate. The verification of the certificate followed days after the institution of the application. The Applicant received his birth certificate on 13 August 2024.

5. On 3 September 2024, the Respondents requested the Applicant to remove the matter from the roll of 18 September 2024. On 5 September 2024, the Applicant informed the Respondents that they intended to seek a costs order and requested that the Respondents tender their party and party costs with Counsel's fees to be taxed or agreed on scale B. On 6 September, the Respondents replied that costs had already been granted on 14 June 2024, and the Applicant was unfairly requesting further costs. The Applicant responded on the same date that he had incurred further costs, and if the Respondent preferred to argue costs, it would appoint a more experienced Counsel and seek Counsel's costs on scale C. On 13 September 2024, the Respondents tendered the Applicant's costs up to 13 June 2024 and no further.<sup>2</sup>

6. On 18 September 2024, the Honourable Justice Lekhuleni granted an order by agreement, postponing the hearing on costs to the semi-urgent roll on 11 February 2025 and directed the further filing of affidavits and heads of argument. The Respondents filed their answering affidavit. The Applicant replied, and both parties provided heads of argument.

## **THE RESPONDENTS SUBMISSIONS**

7. The Respondents outlined the pressures on the Bellville office of the DHA and the process involved in the late registrations of births ("LRB"). The office receives fifteen late notices of births daily. They have 2000 active LRB applications. The office

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<sup>2</sup> The communication read "...until before 14 June 2024"

prioritises certain applications: those for children who are to be placed in foster care, for impending deaths and medical reasons, children up for adoption, child grant applicants, and children in grade 12 who need to register for the matric examinations.

8. The verification process, which authenticates information provided by an applicant's documents, is geared towards preventing fraudulent birth registration. The DHA has established a screening committee to interview all persons who give or support notices of birth. The screening committee recommends whether the Director General approves or rejects a notice of birth. The screening committee acts *ad hoc* depending on the priority, number of applications, and availability of its Chair, the DHA's Western Cape Provincial Manager. The verification of information, which includes scrutinising the applicant's factual background and fingerprints, must occur before the screening committee conducts its interviews.

9. When the Applicant's birth notice was received, the DHA established that the Applicant's sister was also unregistered. The Applicant's father was advised that he had to submit an LRB notice for his daughter, which he undertook to do. The Applicant had not submitted a proof of birth form with his application. He submitted a maternity certificate dated 17 November 2023. The DHA asked Leratong Hospital in Randburg, where the Applicant was born, to verify the maternity certificate. The deponent to the answering affidavit, Ms Clarence, alleged that in her experience, the verification of birth records is not ranked high on a hospital's list of priorities. Delays ensue when the hospital or medical facility is in another province. The hospitals are concerned that disclosing a person's personal information may contravene the Protection of Personal Information Act 4 of 2013.

10. The DHA was awaiting the verification of the birth records in February 2024. On 30 April 2024, the DHA requested assistance from an official at their Randburg office to approach Leratong Hospital to request the verification, presumably after it had received the certificate obtained by the Applicant's father. The verification was not forthcoming. On 30 May 2024, they received the verification. The Applicant had also provided the incorrect school letter. The school letter was from the Applicant's high school, not the primary school. The school letter aims to establish the child's pattern of movement, which the DHA verifies with the relevant school and the

Department of Education. The DHA tried to contact the father to no avail in December 2023. The father was informed of the requirement when he attended the DHA's offices on 16 January 2024. He produced the correct letter on 1 February 2024. The letter was dated 19 January 2024. The primary school provided the further information the DHA required on 23 February 2024.

11. There were also problems with the legibility of the Applicant's fingerprints, which had to be retaken. The DHA experienced problems contacting the Applicant's father to redo the Applicant's fingerprints. There was a delay between February and the end of April before contact was made. The Applicant's fingerprints were retaken on 3 June 2024. The outcome of the fingerprint verification was received on 5 August 2024.

12. The Applicant's father submitted the LRB verification application for his daughter on 3 June 2024. Although her application was also incomplete, the DHA commenced the verification process since they intended to place both applications before the screening committee to avoid duplication. The sister's fingerprints were taken on 10 June 2024.

13. The screening committee was scheduled to sit on 6 June 2024 to conduct interviews. Ms Clarence called the Applicant's father to arrange for him, the Applicant, and the daughter to attend the Bellville offices on 6 June 2024 to appear before the screening committee. The father did not answer his phone. Ms Clarence left a message for him on his voicemail. The intention was to conduct the interviews while awaiting the fingerprint verification's outcome. The father attended the Bellville offices during the week of 10 June 2024. Special permission was obtained for the screening committee to sit on 25 July 2024 to adjudicate the Applicant's and the daughter's applications. Although the father was informed of the special arrangement, they did not attend. The father informed Ms Clarence that he missed her email and the daughter was unavailable. The interview eventually occurred on 1 August 2024, and the screening committee made its recommendations. The committee was specially convened to adjudicate the Applicant's LRB application. The fingerprint verification was obtained on 5 August 2024, and the Applicant's birth certificate was issued on 12 August 2024.

## THE APPLICANT'S SUBMISSIONS

14. In his reply, the Applicant raised a point *in limine*, alleging that Fortuin J decided the merits in the Applicant's favour on 14 June 2024. The Applicant alleged that the Respondents understood the effect of the order to mean the same. He referred to the State Attorney's letter addressed to the Applicant's attorney on 7 September 2024. The Applicant relied on the agreed order granted by Lekhuleni J that the matter was postponed to determine its costs. The Applicant submitted that the Respondents could not belatedly make submissions that this application had no basis in fact or law as the answering affidavit seeks to do.

15. The Applicant also applied to strike out certain paragraphs of the answering affidavit. The Applicant referred the Court to paragraphs of the answering affidavit that sought to establish that the Applicant had not made out a case for the relief sought and asked that they be struck out.

16. The Applicant sought costs on an opposed basis, including, but not limited to, the opposed Court appearances on 14 June 2024 and 18 September 2024. Applicant sought the fees of his Counsel, including but not limited to the day fees of 14 June 2024 and 18 September 2024 on scale B. The Applicant also sought the costs of this hearing, Counsel's day fees and the costs of preparing written heads of argument on scale C. The Applicant emphasised that the issues for determination by this Court are not limited to the costs of instituting the application but also include all other costs related to the application.

17. The Applicant denied that the provisions of the POPI Act could contribute to delays in this matter as the personal information concerned was sought directly at the request of the data subject. He submitted that neither he nor his father can be blamed for the fingerprints that were incorrectly taken. The Applicant submitted that the State Attorney knew that his attorneys had been representing him since 27 May 2024, the day the application was served on them. The problems in arranging suitable consultation times can largely be ascribed to the fact that the Respondents

and the State Attorney failed to correspond with his attorneys. He states that he does not always check his emails or answer phone calls from unknown numbers.

## EVALUATION

18. The Applicant raised an application on the unopposed motion roll to compel the Respondents to consider his application for a birth certificate submitted on 29 November 2023 and order them to furnish him with it. The Applicant sought the costs of the application on an attorney and own client scale.

19. Determining the Applicant's point *in limine* will not dispose of the application or interfere with the task assigned to this Court. The Applicant refers to paragraph 79 of the answering affidavit where the Respondents asked, "Applicant's application be dismissed with costs". The answering affidavit proceeds to deal with the merits of the application.

20. In the answering affidavit filed on behalf of the Respondents, they alleged that the only issue for determination was whether the Applicant was entitled to the costs of instituting the application. They asserted that the application for a *mandamus* was misguidedly instituted and provided their reasons for this contention. The Respondents are misguided about the issue this Court had to hear. That was spelt out in the order of Lekhuleni J, which stated that the hearing was about costs. The Court will consider their submissions to the extent that they are relevant to the issue of costs. Let's test the Respondents submission that the order sought by the Applicant differs from the order granted by Fortuin J by applying the *Endumeni* principles to its interpretation.<sup>3</sup> The proper approach to interpreting legal documents, including judgments and orders, is to read the words used in the context of the document as a whole and in light of all relevant circumstances attendant upon its coming into existence along with its text, the context and the purpose.

21. The Applicant asked the Court to order the Respondents to "consider" the Applicant's application for a birth certificate submitted on 29 November 2023 and to

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<sup>3</sup> Natal Joint Municipal Pension Fund v Endumeni Municipality (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012) at para 24

order the Respondents to furnish him with the certificate. Fortuin J ordered the Respondents to make a determination as to whether the Applicant is entitled to the issue of a birth certificate. There is a difference, albeit minimal. 'Consider' means to think carefully about something before making a decision. 'Determine' means to ascertain or establish exactly by research or calculation. The circumstances attendant upon the order coming into being was that the Applicant had given late notice of his birth, and the Respondents were already considering and processing his application. The Court ordered the Respondents to determine whether the Applicant is entitled to the issue of a birth certificate. That decision would be in the hands of the screening committee and the Director General of the DHA. The Applicant asked for relief that had already begun.

22. This Court will not give further credence to the point *in limine* or the application to strike out paragraphs of the answering affidavit except to say that any talk of dismissing the application that has already served before two Judges in this division who issued interim orders is misguided. This Court must examine the application's merits to discharge its obligation to determine costs. The significance of the Fortuin J order is in its relevance to costs. Fortuin J ordered the Respondents to pay the costs of the postponement of the matter to 18 September 2024. Another way of framing the costs order is that the Respondents were ordered to pay the wasted costs occasioned by the postponement, meaning the costs of 14 June 2024 alone. Fortuin J did not grant the costs of the application, which would have been determined subsequently or by agreement. The Applicant received his birth certificate, and the application became moot, except for the cost issue.

23. The awarding of costs remains at the discretion of the Court.<sup>4</sup> The rule that costs follow the result is subject to the above overriding principle.<sup>5</sup> The first principle in the award of costs is that, unless otherwise expressly enacted, it is at the discretion of the presiding judicial officer. The second principle is that the successful party should have their costs as a general rule.<sup>6</sup> The second principle is subject to many exceptions where the successful party is deprived of their costs. The

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<sup>4</sup> *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at para 25

<sup>5</sup> *Unimark Distributors (Pty) Ltd v Erf 94 Silverton Day (Pty) Ltd* 2003 (1) SA 204 (T) at 215 E-F

<sup>6</sup>



circumstances where a Court may deprive a party of its costs are not exhaustive but include the conduct of the parties, the conduct of the legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. A deviation from the general rule that costs follow the result requires a Court to be meticulous in its assessment to arrive at a just and fair result. The principles which have been developed about the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise

24. The Applicant obtained an award of damages for injuries sustained in an accident from the Road Accident Fund. The legal representatives of both parties would have known that one of the requirements for lodging an RAF claim and payment of an RAF award is furnishing an identity document to the RAF. The Applicant's attorney is a seasoned RAF practitioner, and the Respondent's attorney, the State Attorney, acts on behalf of the RAF. The Applicant was involved in a motor vehicle accident on 18 December 2015. He does not state when his claim against the RAF was lodged. The significance of the date means that both he and his attorney would have known that the Applicant required an identity document to obtain compensation from the RAF. The claim was probably lodged on his behalf by his father. Still, once the Applicant turned eighteen on 17 January 2023, he would have required an identity document to receive any monetary award for his RAF claim. There is no merit in the Respondents submission that the Applicant could have sought to enforce the RAF award without an identity document. The Respondents legal representative would have known that this was incorrect.

25. The Respondent provided a timeline of events relating to the Applicant's application for his identity document. The DHA established that the Applicant's sister's birth had also not been registered. The Applicant's father was informed that he should also submit an LRB on her behalf. The DHA attempted to contact the Applicant's father on 22 December 2023 to inform him that the Applicant had submitted the incorrect school report. The need for the correct school report was communicated to the father on 16 January 2024 when he attended the DHA's offices. The correct school certificate was issued on 31 January 2024. Leratong Hospital failed to verify the Applicant's birth information until 31 May 2024, one month after

the father obtained the maternity certificate. The *mandamus* had already been instituted by then.

26. The DHA arranged for the screening committee to interview the Applicant and his father on 6 June 2024 and 25 July 2024. The Applicant's father did not answer his phone or read the messages left for him to attend. The interview occurred on 1 August 2024, and the birth certificate was issued on 12 August 2024.

27. Two months in the process were lost, i.e., between November 2023 and January 2024, because the father did not answer his phone in December. The DHA could not be held responsible for this efflux in time. Three months were lost because the Leratong Hospital would not verify the Applicant's birth. Neither party could be held responsible for this loss of time in the processing of the application. Once the Applicant's birth verification was confirmed, the Applicant failed to attend two interviews. Two further months passed in the process. The delayed submission of the Applicant's sister's application further delayed the process. The screening interviews were scheduled simultaneously. The Applicant has to take responsibility for the delay that ensued.

28. The Applicant instructed two Counsel, one who fell below the five-year bracket of enrolment as a Counsel and the other with over thirty years of enrolment as an advocate. The junior Counsel prepared the founding papers, and the more experienced Counsel prepared the replying papers, the heads of argument, and provided argument at the hearing. This Court emphasised to Counsel that the application instituted on 23 May 2024 was a simple application that fell within the competency of the Applicant's second Counsel. The Applicant's more experienced Counsel correctly agreed and tempered the cost expectation against the Respondent. The Applicant had sought costs for its junior Counsel on scale B and its more experienced Counsel on scale C. This application could justify neither. Applicant's Counsel agreed that the normal costs order should apply if this Court grants an order in their favour, meaning that one Counsel may recover their fees on scale A. A Court may be receptive to granting a more favourable costs order against a Department of the State if the opposing party promotes the principles of transformation in selecting Counsel to represent them. That is not the case in this matter.

29. The parties exchanged correspondences relating to the costs of this application after the Applicant obtained his birth certificate. The Respondent initially denied any liability for costs, alleging that the Fortuin J order settled the matter of costs. The Respondent eventually offered on 13 September 2024 to pay the Applicant's costs till 13 June 2024, the day before the application was heard by Fortuin J. The Applicant rejected the offer.

30. Considering the circumstances of this matter, the question arises whether this Court should deviate from the normal costs order that follows the result. The Respondent urged the Court to do so as the circumstances in this matter required it to follow a statutory process, and it was not responsible for the delays that ensued in the processing of the application. What is apparent from the uncontested facts placed before the Court is that the Respondents could not be faulted for their effort in processing the application and that the Applicant has to assume the responsibility for delays that eventuated through his failure to be contacted.

31. Any South African citizen must give notice of the birth of their child within thirty days of the birth. Regulation 128 provides for late registration of births in two categories: between thirty days and one year of age, and then for those older than one year. The Applicant fell into the latter category, and Regulation 5 applied to his birth registration.

32. Regulation 5 requires the biological parents to give notice of their child's birth except where the child is older than eighteen years. A person older than eighteen years may initiate the process themselves. The notice of birth is given in a prescribed form. It has to be accompanied, among others, by the following documents: proof of birth, an affidavit by a person who witnessed the birth, fingerprints of the parents and the child, photographs, certified copies of the parent's identity documents, and proof of payment of the applicable fee. The Director General must authenticate the veracity of the information provided to the DHA in the notice. A notice of birth that does not meet the requirements may be rejected.

33. The DHA must follow a statutory process where delays may ensue in verifying information, as has happened in the Applicant's case. The Applicant has to shoulder the blame for at least two periods in the delayed process, i.e., the provision of the school report and the failure to respond to the interview dates. The regulations do not make provision for the submission of school certificates, but the Respondents explained this requirement.

34. This Court cannot attribute any delay in processing the Applicant's birth certificate to the DHA, but the Applicant cannot escape the delays that eventuated from his side. It is unclear how speedily the Applicant expected the DHA to process his application. He had not filed the correct school certificate, and the first delay ensued from filing the correct one. The delay attributable to Leratong Hospital was not the DHA's fault. The Applicant's father provided the maternal certificate issued by Leratong Hospital to the DHA on 30 April 2024 and issued this application three weeks later. The problem experienced with verifying the Applicant's fingerprints cannot be attributed to him, except for his delay in responding to the need for it to be redone. The Applicant would have known the process involved in late birth registrations, or his attorneys would have advised him of the peremptory steps. The process is designed to prevent fraud, just as the RAF awards are paid out on proof of identity to achieve the same purpose.

35. The Respondents submitted that if this Court finds that the Applicant was successful under the Fortuin J order, there was cause for it to deviate from the usual costs order that follows the result. The Respondents relied upon the legislative framework as their point of departure to argue that the costs should not follow the result. The procedure for late birth registration is statutorily defined and regulated. The DHA has to ensure that the legislative requirements are met before deciding on an application for the late registration of births. The Respondents submit that there is no evidence that the DHA delayed the process or refused to grant the Applicant a birth certificate to warrant the institution of the application. The Applicant's hasty action for instituting the application when the LRB process was still underway is responsible for the costs incurred.

36. This Court believes there are grounds to deviate from the usual costs order after considering the conduct of both parties in this application. The principle guiding the order it makes is that peremptory statutory provisions require the cooperation of all parties. It is inopportune for a party to delay the process and then seek a *mandamus* to enforce it.

37. This Court is left with the impression that the institution of this application was inopportune. The Applicant deserved calm and considered counsel, taking into account the processes of the DHA and any delay caused by the Applicant before deciding whether the application was warranted. The Respondents correctly claim that the dies for them to give notice of their opposition to the application had not elapsed before the application was heard. Meticulous attention to detail would have warned the Applicant's legal representatives that the dies for filing the Respondent's notice of opposition had not expired before the application was heard on 14 June 2024. They should have also urged the Applicant to commence the late registration process with the DHA well before he obtains his award of damages.

38. In the premises, this Court clarifies that the Fortuin J order entitled the Applicant to claim his costs for 14 June 2024. The delay that ensued from 14 June 2024 to the issue of the Applicant's birth certificate cannot be attributable to the DHA. The evidence is that they made special arrangements to accommodate the Applicant and his sister. The Respondents made a fair offer to settle the Applicant's costs up to 13 June 2024. The Applicant rejected that offer but instead threatened to appoint additional Counsel and seek unjustified costs of Counsel on the B and C scales. The Respondents subsequently revoked that offer.

39. When the Honourable Fortuin J granted the order of 14 June 2024, she did not have recourse to the Respondents version of events. The order made by the Honourable Lekhuleni J allowed for proper ventilation of the issues and for the parties to supplement the papers that this Court had to consider. After carefully considering the papers and the arguments presented, this Court finds that this case calls for it to exercise its discretion and deviate from the usual order that costs follow the result.

## **ORDER**

1. Each party shall pay its own costs from the institution of the application to 13 June 2024.
2. From 14 June 2024, each party shall pay its own costs, including the costs of the hearings on 18 September 2024 and 11 February 2025.

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**Ajay Bhoopchand**  
**Acting Judge of the High Court**  
**Western Cape Division**  
**19 February 2025**

Judgment was handed down at 10h00 on 19 February 2025 and delivered to the parties by email.

Applicants Counsel: A Laubscher, J-H Gouws Instructed by Adendorff Attorneys Inc.

Respondents Representative: State Attorney, L Manuel