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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 56563/2021

Reportable: No

Of interest to other judges: No

7 November 2022

In the matter between:

KESETSENG MARIA MOATSHE

Applicant

And

GIVEN KGANAKGA

Respondent

Judgment

Strijdom AJ

Introduction

[1] This is an opposed Rule 35(7) application in which the Applicant sought an order that the Respondent be ordered to comply with Applicant's Rule 35(3) notice.

[2] The application is opposed by the Respondent on the basis that it was not properly served upon the Respondent and that the Respondent did comply with the Rule 35(3) notice.

Condonation

[3] Condonation is granted for the late filing of the Respondents' answering affidavit and the late filing of the Applicants' replying affidavit.

[4] On the 7th of March 2022 the Applicant filed a further discovery notice in terms of Rule 35(3) on the basis that the Respondent has failed, omitted and or neglected to discover certain documents, which documents are in the Respondents possession. The notice was served upon the Respondents' attorneys by e-mail.¹

[5] On the 28th March 2022 the Applicant filed a notice of motion in terms of Rule 35(7) to compel the Respondent to comply with the Rule 35(3) notice.²

[6] On the 26th April 2022 a notice of set down for an application in terms of Rule 35(7) was served on the Respondents attorneys by e-mail. The matter was set down for the 15th of July 2022 and was removed from the unopposed motion roll to be enrolled on the opposed motion roll. The Respondent was ordered to pay the costs of the application.³

Service of The Rule 35(7) Application

¹ Caselines: p014- 9 to 12.

² Caselines: p014 - 1 to 3.

³ Caselines: Court order p00 - 1 to 2.

[7] On the 28th March 2022, the Respondents' attorneys received an e-mail from the Applicants' attorneys to which was attached an Application in terms of Rule 35(7).

[8] On the same day a further e-mail was received from the Applicants' attorneys stating that the earlier two e-mails must be withdrawn as they contain errors.

[9] The Respondents' attorneys concluded based on the contents of the e-mails that the application in terms of Rule 35(7) was withdrawn.

[10] It was submitted by the Respondent that no agreement was reached between the attorneys to effect service by electronic mail transmission.⁴

[11] It was stated by the Applicant that there was an agreement telephonically between the attorneys to serve via e-mail.⁵

[12] In my view mere knowledge of issue of the application by the Respondent does not constitute service and cannot relieve an Applicant of his or her obligations to follow the prescribed rules.

[13] Having considered the papers I am not persuaded that there was an agreement between the parties to effect service by e-mail. I concluded that there was no proper service of this application as prescribed in Rule 4 of the Uniform Rules of Court.

The Response to Rule 35(3) Notice

[14] In its further discovery notice in terms of Rule 35(3) the Applicant seeks inter alia copies of the Respondent's⁶:-

⁴ Caselines: Answering affidavit p. 014-36 para 8.2.

⁵ Caselines: Replying affidavit p.014-62 para 20.

⁶ Caselines: p014-9 to 11.

14.1 Life policies, investments and bank account statements;

14.2 Disclosure of income and assets;

14.3 Financial statements relating to businesses;

14.4 Registration documents (Title Deeds) relating to immovable properties forming part of the joint estate;

14.5 Copies and or registration details of all motor vehicles which form part of the joint estate

14.6 Details of the agent who sold the immovable property situated at no [....] G[....] Street, B[....], Kempton Park.

14.7 Details of the proceeds of sale and details of the conveyancing attorney.

[15] The reply to the Applicants' Rule 35(3) notice was served on the Applicants' attorneys on the 1st June 2022.⁷

[16] In this reply the Respondent answered as follows;

"2.1.1 I do not have any investments and are not in possession of any documents capable of being discovered / inspected by the Defendant.

2.1.2 My **FNB** Current Account statement, FNB Life, Hollard, 1 Life and B3 Funeral policies documents may be inspected at my attorneys' offices between 08h00 to 16h00 on working days.

2.2.1 A completed Financial Disclosure Form with supporting documents will be made available to the Defendant as per the Judge President's

Directive.

2.2.2 The documents to the Plaintiff's spousal pension income are obtainable from the Government Employees Pension Fund.

2.3.1 I do not have any business banking accounts or any business that has any financial record.

2.3.2 The bank account which belonged to the business entity Seithati Trading Enterprises (Pty) Ltd has been closed and the records or documents in relation thereto are in the possession of **FNB** under account number [....]

2.4 I am not in possession of any Title Deed in respect of any immovable property and there is no immovable property registered in my name.

2.5.1 The registration certificates of the three Toyota Quantum minibuses, Geely and Chevrolet Utility motor vehicles may be inspected at my attorney's offices during office hours on working weekdays between 08h00 to 16h00.

2.5.2 The foregoing are the only vehicles registered in my name.

2.6.1 The immovable property referred to was part of the Estate of the Late Molwazi Juliet Petunia Matiyane as per the attached Deed of Transfer No [....]

2.6.2 The documents relating to the administration of the Estate of the deceased are in the possession of the Master of the High Court, Johannesburg.

2.7 I have completed a Financial Disclosure Form as per the Judge Presidents Directive and do not have anything to add thereto."

[17] Even if I erred in my view that there was no proper service of this application, I concluded that the Respondent gave a detailed and full disclosure of the information and or documents requested by the Applicant in the Rule 35(3) notice.

[18] In the result:

1. The application is dismissed with costs.

J.J. STRIJDOM

Acting Judge of the High Court of
South Africa, Gauteng Division, Pretoria

Heard on: 29 August 2022

Date of Judgment: 07 November 2022

Appearances

For the Applicant: Advocate M.P. Zwane

Instructed by: Tshabalala A. Attorneys

For the Respondent: Mr. K.P. Seabi

Instructed by: K.P. Seabi & Associates