



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

Case Number: 21462/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
E.M. KUBUSHI	DATE: 15 SEPTEMBER 2023

In the matter between:

KGAPANE MOHALE

APPLICANT

and

OFFICE OF THE CHIEFMASTER

FIRST RESPONDENT

POLOKWANE MASTER OF THE HIGH COURT

SECOND RESPONDENT

JUDGMENT

KUBUSHI J

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 15 September 2023.

[1] The Applicant, Kgapane Mohale (“Mr Mohale”), appeared in person before me in the Unopposed Motion Court, arguing an interlocutory application. The interlocutory application, according to Mr Mohale, emanated from an application relating to the estate of his late father, that was previously adjudicated upon by Vivian AJ in the Opposed Motion Court (“the main application”).

[2] The precise relief Mr Mohale sought in the main application was couched in the following terms:

- “a. the applicant prays the Court will issue a *mandamus* to the Office of the Chief Master, to immediately instruct the Polokwane Master of the High Court to issue K Mohale the letter of executorship for the estate 7924/2010 within two (2) days.
- b. the applicant prays the Court will issue a *mandamus* to the Office of the Chief Master, to immediately instruct the Polokwane Master of the High Court to surrender within two (2) days the complete file of the estate, including but not limited to:
 - (i) copies of all the work done by previous executors and their agents appointed to this estate, and the manner in which they were removed from executorship.
 - (ii) Full bank statements and relevant correspondences by an executor or agent acting on behalf of a previous executor. and that the accompanying affidavit of Kgapane Mohale will be used in support thereof.”

[3] Two Respondents were cited in the main application, namely, the Office of the Chief Master and the Master of the High Court, Polokwane.

[4] In opposition to the main application, the Respondents took a point *in limine* relating to the non-joinder of the other heirs and the person who they contended was appointed as the executor of the estate.

[5] In addition, when the parties appeared before Vivian AJ, he, *mero motu*, expressed concern as to whether the matter was properly before that Court.

[6] Having considered arguments of all the parties on these two issues, Vivian AJ, amongst others, made an order that the matter be removed to the Limpopo Division of the High Court in terms of Section 27 (1) (b) of the Superior Courts Act (Act 10 of 2013), and that the heirs and the person appointed as the executor of the estate be joined as the third to thirteenth Respondents.

[7] Aggrieved by the judgment and order of Vivian AJ, Mr Mohale applied for leave to appeal the said judgment and order, which application was refused.

[8] Before me, Mr Mohale's contention is that he had raised several points *in limine* in the main application which Vivian AJ failed to deal with in the main application judgment, but instead, ordered that they be disposed of in the interlocutory court. Thus, Mr Mohale's argument is that he has approached this Court as *per* Vivian AJ's judgment.

[9] Mr Mohale seems to have misconstrued Vivian AJ's judgment and orders. It is indeed so that Mr Mohale had, in his heads of argument in the main application, raised several issues which he referred to as points *in limine*. These issues were, correctly so, not addressed in Vivian AJ's main application

judgment, simply because that Court did not deal with the substance of the application as the matter was removed to the Limpopo Division of the High Court. Furthermore, Mr Mohale raised Vivian AJ's failure to deal with these issues as one of the grounds of appeal when he applied for leave to appeal. When addressing this ground of appeal in the judgment on the application for leave to appeal, Vivian AJ remarked as follows:

“20. It is undoubtedly so that some of this information comes to the Court through the answering affidavit. However, I have not made a decision on Mr Mohale's points *in limine* in respect of the notice of opposition and the answering affidavit. These remain open to him to advance in the Limpopo Division. In any event, even if my judgment were to be construed as condoning the late filing of the affidavit (and perhaps accordingly the notice of intention to oppose), such a decision would be interlocutory in nature and can be revisited by the Limpopo Division. Similarly, I have not made any decision in respect of the question as to whether or not the answering affidavit has been properly deposed to. That will be decided by the Limpopo Division in due course.

[10] It is quite clear from the above passage of Vivian AJ's judgment that there is no order that Mr Mohale's points *in limine* be disposed of in the interlocutory court. The judgment is clear, it says that the decision taken by Vivian AJ is interlocutory in nature and can be revisited by the Limpopo Division. It does not order the issues to be heard in the interlocutory court – actually nothing is said about the interlocutory court.

[11] Mr Mohale's points *in limine* cannot be entertained by this Court because the matter has been removed from this Court to the Limpopo Division where all Mr Mohale's concerns will be dealt with. Mr Mohale's application for leave to appeal has been dismissed and Mr Mohale has not taken any further steps regarding the appeal. Thus, this order stands until otherwise altered on appeal.

[12] Consequently, the application is dismissed.


E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

APPLICANT: IN PERSON.

RESPONDENTS: NO APPEARANCE.