REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

12/9/24
DATE

[redacted]
SIGNATURE

CASE NO: 132918/2023

In the matter between:

SAKELIGA NPC	**APPLICANT**
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**FIRST RESPONDENT**
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	**SECOND RESPONDENT**
THE DIRECTOR GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	**THIRD RESPONDENT**
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GORVERNANCE	**FOURTH RESPONDENT**
THEMBI NKADIMENG	**FIFTH RESPONDENT**
MBULELO TSHANGANA	**SIXTH RESPONDENT**
THINAYHYO SKHOSANA	**SEVENTH RESPONDENT**
NKOSAZANA CLARICE DLAMINI-ZUMA	**EIGHTH RESPONDENT**
THE PRESIDENT OF THE REPUBLIC OF	**NINTH RESPONDENT**

SOUTH AFRICA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 14: 00 pm on 12 September 2024.

Clause 13.10 of the Practice Manual of the Gauteng Division Pretoria (effective date: 25 July 2011) – Interpretation of Clause 13.10 of the Practice Manual The clause is not intended to bind judicial discretion –. The directions contemplated in the clause are for the future conduct of the matter

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JUDGMENT

MOSHOANA, J

Introduction

[1] On this day, this Court was sitting as a Court assigned to deal with unopposed applications. Mundanely, if a matter becomes opposed, it loses its place on the unopposed roll. As the name of the roll suggests, an unopposed Court is designed for unopposed cases. This Court was compelled into penning this judgment because the applicant persisted with some strange application which was predicated on its misinterpretation of the provisions of the Practice Manual of the Gauteng Division Pretoria (effective: 25 July 2011) (Practice Manual). It availed to this Court to have simply refused to hear this strange application. However, the applicant was persistent and created an impression to this Court that the provisions of the Practice Manual permitted such an application to be moved in the unopposed Court.

[2] For expediency and in the interest of justice, this Court exercised its discretion and listened to the application. Given the novel issues raised in this strange application, it would have been inappropriate for this Court to issue an order without providing the parties with reasons, more particularly the applicant, given the view this Court takes at the end of this judgment.

[3] This Court chose to label the application addressed in this judgment as a strange one because it mushroomed, as it were, at the back of an enrolled unopposed contempt application. When the unopposed application was mentioned in the morning both counsel agreed to have the matter stand down for discussion. It became apparent to the Court that the matter became opposed and expected both counsel to emerge with an agreed order removing the matter from the unopposed roll. Sadly, when the matter was re-mentioned, this Court was informed that this strange application has since become necessary to be argued. No amount of ferocious but robust debate between the Court and counsel for the applicant would lead to a relent on this strange application.

Background facts appertaining the present application

[4] Owing to the limited nature of the issues appertaining this judgment, it is obsolete to punctiliously narrate all the facts in the dispute. It suffices to mention that the parties before me had locked horns as far back as 2022. Pertinent to the presently enrolled application of contempt, on 9 November 2022, the Honourable Acting Justice Lukhaimane issued an order reviewing and setting aside certain decisions made on 26 June 2021 and 25 February 2021 respectively. Relevant to the present dispute is an order couched in the following wide terms:

> "3 The First, Second, Third and Fourth Respondents are ordered to comply with the Applicant's PAIA request for information within 30 days of the date of this order and to provide the Applicant with all of the document and/or information requested therein as is in possession and/or under their control."

[5] It is the applicant's allegation that the named respondents failed to comply with the terms of the order set out above. Ostensibly, this compelled the applicant to, on 13 December 2023, launch an application seeking in essence, an order declaring seven respondents to be in contempt of the order set out above and to direct compliance by the named respondents within 20 days of the anticipated order. The applicant informed the respondents that if no notice of intention to oppose and an answering affidavit is received, it intends to proceed unopposed on 6 September 2024. On 6 February 2024, the cited respondents filed an intention to oppose the relief sought by the applicant. Around July 2024, the respondents filed an answering affidavit. In the answering

affidavit it was pertinently alleged that the requested information was furnished on three occasions.

[6] On or about 8 April 2024, the applicant opted to set the contempt application down, according to it, in terms of the provisions of clause 13.10.2 of the Practice Manual, owing to the fact that the time to file an answering affidavit had expired on 29 February 2024. In the answering affidavit the respondents testified as follows, which testimony ignited the strange application:

> "37 It is perhaps appropriate to record at this stage that the former Minister Dlamini-Zuma was also faced with a similar request for access to information from Member of Parliament, Advocate Glynnis Breytenbach. That PAIA request is attached hereto and marked as "**MT2**". As is apparent therefrom, the request mirrors the applicant's request. The index to that record is attached as "**MT3**" hereto, and the sufficiency of that record was never called into question. Since the record is voluminous to avoid prolixity, it will be uploaded onto Caselines as an independent section. For the sake of completion, I also attach as "**MT4**" the index to the record furnished in implementing the 9 November 2022 order, and that record too will be loaded onto Caselines."

[7] Owing to its interpretation of clause 13.10.2 of the Practice Manual, the applicant persisted that this Court must issue a directive ordering the respondents to upload the documents as undertaken. On its contention this Court is empowered to issue such an order under the clause. As indicated above, this quest to compel uploading was met with resistance.

Analysis

[8] This strange application calls for the interpretation of the implicated clause. For the sake of convenience, it is necessary to extrapolate the provisions of the implicated clause of the Practice Manual.

> "**13.10 ENROLMENT OF APPLICATIONS AFTER NOTICE OF INTENTION TO OPPOSE**
>
> 1 Where the respondent has failed to deliver an answering affidavit and has not given notice of intention only to raise a question of law (rule 6(5)(d)(iii)) or a

point in *limine*, the application must not be enrolled for hearing on the opposed roll.

2 Such an application must be enrolled on the unopposed roll. In the event of such an application thereafter becoming opposed (for whatever reason), the application will not be postponed as a matter of course. The judge hearing the matter will give the necessary directions for the future conduct of the matter.

3 The notice of set down of such an application must be served on the respondent's attorney of record."

[9] Before this Court can interpret this clause for the parties, it is necessary to refer to chapter 1 of the Practice Manual. Clause 2 of chapter 1 provides amongst others that it must be emphasised that no judge is bound by practice directives. Accordingly, the Practice Manual is not intended to bind judicial discretion. Contrary to the applicant's counsel's submissions, this Court is not bound to issue a directive sought by the applicant.

[10] On proper interpretation of the clause, the necessary directions referred to in the clause does not mean some application to compel a party to produce a document. The directions contemplated in the clause are for the future conduct of the matter. In this particular instance, the matter that has been enrolled is the contempt application. Therefore, any necessary direction must pertain to the future and not the present conduct of the contempt application.

[11] What the applicant sought to do in this strange application is not provided for in the clause relied on. The directions sought are not for the future conduct of the contempt application. What the applicant seeks to do is an equivalent of what rule 35(12) of the Uniform Rules of Court provides. The rule states the following:

"(12) (a) Any party to any proceedings may at any time before the hearing thereof deliver a notice … to any party in whose pleading or affidavits reference is made to any document or tape recording to-

(i) Produce such document or tape recording for inspection and to permit the party requiring production to make a copy or transcription thereof; or…"

(b) Any party failing to comply with the notice referred to in paragraph (a), shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

(13) The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications."

[12] In this strange application, the applicant is effectively asking this Court to compel the respondents to produce the documents mentioned in paragraph 37 of the answering affidavit. If the applicant, as it is apparent that it is its wish, wishes to have the documents mentioned produced, since the contempt proceedings are launched by way of motion, it must first seek directions from a Court to apply the provisions of rule 35, whereafter, if permitted to use rule 35, deliver a notice in terms of rule 35(12). The applicant cannot simply bypass the rules and seek to use the Practice Manual in the manner it seeks to use it now. The Practice Manual in its introductory part specifically provides that:

> "This is still the status of this practice manual. The provisions set out in the practice manual are not rules of court. It does not displace or amend rules of court..."

[13] Nevertheless, the interpretation of clause 13.10.2 of the Practice Manual by the applicant is a wrong one. The necessary directions do not mean every conceivable direction desired by a litigant. It is necessary directions for future conduct of the matter. The "matter" referred to in the clause for the present purposes is the contempt application and no other. Seeking production of the documents mentioned in paragraph 37 is not related to the future conduct of the matter but a present compel for the respondent to produce those documents by way of uploading as undertaken.

[14] This which the respondents alleged, is akin to a party stating in a discovery affidavit that it is in possession of mentioned documents. If the other party desires to have access to those documents, the available route or vehicle is rule 35(12). There is no other known route or vehicle other than rule 35(12). Using the implicated clause in the face of the rule 35(12) route is inappropriate. On the contrary, what the applicant now seek, equates a substantial relief similar to the one sought in the pending

contempt application. Before Lukhaimane AJ, the applicant sought an order for the respondents to comply with its PAIA request. The learned Acting Justice granted the applicant such an order. In the contempt application, the applicant contends that there was no compliance with such an order. The documents mentioned in paragraph 37 are the same documents the applicant sought access to before Lukhaimane AJ. Accordingly, if this Court were to direct production before the contempt application is fully heard, this Court would effectively render the contempt application moot, particularly in an instance where the respondents allege that the documents were furnished three times already.

Conclusions

[15] For all the above reasons, clause 13.10 finds no application to the strange application persisted with by the applicant. The necessary directions contemplated in the clause does not refer to substantive reliefs equivalent to the one contemplated in rule 35(12) which can only be achieved after a rule 35(13) application has been launched and granted. With regard to costs, although the strange application was somewhat launched at the back of the contempt application, it has no relation to the future conduct of the contempt application, and the applicant did not achieve success. As correctly argued by Mr Moerane SC appearing with Ms Tulk for the respondents, the costs must follow the results. It shall be inappropriate to make the wasted costs of the strange application to be costs in the cause. By so doing, this Court would be burdening the Court hearing the pending contempt application unnecessarily.

Order

1 The contempt application is removed from the unopposed roll

2 The application for directions is refused

3 The applicant is ordered to pay the wasted costs of the respondents in resisting the application for directions on a party and party scale B, which costs must include the costs of employing two counsel.

[redacted]

GN MOSHOANA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant:	Mr B Bester instructed by Kriek Wassenaar and Venter, Pretoria
For the Respondents:	Mr M Moerane SC and Ms R Tulk instructed by State Attorney Pretoria
Date of the hearing:	6 September 2024
Date of judgment:	12 September 2024