

(1) Reportable: NO  
(2) Of interest to other Judges: NO  
(3) Revised: YES

Signature: [REDACTED]



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No: 042870/2022

In the matter between:

DR MOTHOBİ GODFREY KEELE

Applicant

and

MAGISTRATE MRS JANINE JANSEN VAN RENSBURG

First Respondent

DR MBALI ZAMATHIYANE KEELE

Second Respondent

COMMISSION FOR GENDER EQUALITY

Third Respondent

This judgment is issued by the Judge whose name is reflected hereon. This judgment is handed down electronically by circulation to the parties by email and by uploading it to the electronic file of this matter on Case Lines. The date of judgment is deemed to be the date upon which it is uploaded onto Case Lines.

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JUDGMENT

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GEACH, AJ

[1] Applicant, who appeared in person, seeks interlocutory orders "that in relation

to ('iro') the Report [entitled: "*When Relations Disentangle, assessing factors prohibiting unmarried, divorced, or separated biological fathers from exercising their parental rights, including contact with their children*", produced by the third respondent], CGE [the third respondent] is joined as the Third Respondent in the applicant's application under Case No 2022-42870" and: "In line with section 187(2) of the Constitution the CGE to assist (i.e. 'report' and/or 'advise') this Honourable Court iro its 'research' .....". Under that Case No 2022-42870, in the main application, the applicant seeks primarily an order reviewing and correcting a ruling by first respondent dated the 12<sup>th</sup> of August 2022 pertaining to an ongoing marital and custodial dispute between the applicant and the second respondent; applicant's principal complaint in that application being the denial of access to his minor children. As articulated by applicant: "this joinder application arises from a review application ... in respect of a pending divorce action and frustration of contact between me and my minor children for more than one thousand days in which unfounded and unsupported allegations of abuse were used including in an affidavit as a reason for such frustration; the allegations have since been dropped".

- [2] In addition, applicant asserts violation of his Constitutional right to dignity in the proceedings. The right to dignity is guaranteed in section 10 of the Constitution. Not only is dignity one of the foundational values of our democratic state, it is also an entrenched fundamental right. It is entwined with the right to equality.
- [3] The present interlocutory application is opposed by the third respondent. There is no appearance on behalf of either the first or the second respondents.
- [4] Rule 10(3) empowers the joinder of several defendants in one action whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action. The provisions of Rule 10(3) apply to applications by virtue of Rule 6(14).
- [5] The legal principles regarding applications for a joinder were enunciated by Nkabinde J (dissenting) in *National Union of Metal Workers of South Africa v Intervolve (Pty) Ltd and others* (2015) 36 ILJ 363 (CC) at par 186 as follows:



*"The test at common law is governed by the following principles: (a) there must be a legal interest in the proceedings and not merely a financial interest. (b) a party has a right to ask that someone be joined as a party 'if such a person has a joint propriety interest with one or either of the existing parties to the proceedings or has a direct and substantial interest in the court's order' and 'to avoid a multiplicity of actions and a waste of costs'."*

- [6] The applicant refers to section 187 of the Constitution, highlighting that the third respondent "*must promote respect for gender equality and the protection, development and attainment of gender equality*".
- [7] It is contended by the applicant that the joinder of third respondent is required as a matter of necessity, equating third respondent's Constitutional obligation to a substantial interest in the review application. However, notwithstanding the Constitutional imperative of the third respondent as stipulated in section 187 of the Constitution, it cannot be held that the third respondent has any "direct and substantial interest", i.e. a legal interest, in the subject matter of the pending review (see *Old Mutual Life Assurance Co SS Ltd v Swemmer* 2004 (5) SA 373 (SCA) at 381; *Transvaal Agricultural Union v Minister of Agricultural and Land Affairs* 2005 (4) SA 212 (SCA) at 226-7; *Gordon v Department of Health Kwazulu-Natal* 2008 (6) SA 522 (SCA) par [9] at 529 and par [11] at 530); nor, for that matter, in the litigation in the lower court between the applicant and the second respondent. "A person has a direct and substantial interest in an order that is sought in proceedings if the order would directly affect such a person's rights or interest" (*Snyders and Others v De Jager (Joinder)* (CCT186/15) [2016] ZACC 54; 2017 (5) BCLR 604 (CC) (21 December 2016) par [9]). As the substantial test is: whether the party that is alleged to be a necessary party for purposes of joinder does have a legal interest in the subject-matter of the litigation, which may be affected prejudicially by the judgment of the Court in the proceedings concerned (*Bowring NO v Vrededorp Properties CC and another* 2007 (5) SA 391 (SCA) par [21] at 398; *Judicial Service Commission and another v Cape Bar Council and another* 2013 (1) SA 170 (SCA) par [12] at 176; *ABSA Bank Limited v Naude N.O* (20264/2014) [2015] ZASCA 97 (1 June 2015) par [10]; *South African History Archive Trust v South African Reserve Bank and another* 2020 (6) SA 127 (SCA) par [30] at 138), the joinder herein of third respondent has consequently not been shown by the applicant to be a matter of necessity.

- [8] As was stated in *J.C.S v J.J.S and others* (82452/2015) [2021] ZAGPPHC 647 (16 September 2021) par [27]:

“Apart from a joinder out of necessity a court can join a party under the common law on grounds of convenience, equity, the saving of costs and the avoidance of multiplicity of actions. The court has the inherent power to order the joinder of further parties in an action which has already begun in order to ensure that that person’s interest in the subject matter of the dispute and whose rights may be affected by the judgment are before court.”

- [9] No right of the third respondent can conceivably be affected prejudicially by the judgment of the court in the pending review application (*Ploughman NO v Pauw* 2006 (SA) 334 (C) at 341) and any order of that court can certainly be sustained or carried into effect without prejudicing the third respondent in any way (See *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 659). There is no question of any multiplicity of actions. The applicant has failed to persuade this court that there exist considerations of equity, savings of costs or convenience sufficient to justify the joinder of third respondent in the pending review application.
- [10] As is succinctly stated in *De Beers Consolidated Mines (Pty) Ltd v Regional Manager Limpopo: The Department of Mineral Resources & Energy and others* 2023 JDR 3383 (GP) par [110]:

“Joinder is a procedure by which multiple parties or multiple causes of action are joined together in a single action. There are two forms of joinder of parties: joinder of convenience and joinder of necessity. In order for the applicant to succeed with an application to join the respondent in necessity it should prove that the respondent has a direct and substantial interest in the subject matter of the pending litigation [*Ronnie Dennison Agencies (Pty) Ltd t/a Water Africa SA v SABs Commercial Soc Ltd* (10136/14) [2014] ZAGPPHC 998 (19 December 2014)]. A party is joined of convenience because there is a legal tie between the party to be joined and the applicant, which on the ground of equity, the saving of costs, or the avoidance of multiplicity of actions, the Court will deem it in the interest of justice that the matters should be heard together [*Rabinovich and others NNO v Med: Equity Insurance Co Ltd* 1980 (3) SA 415 (W) at 419 E]”.

The applicant has failed to make out a proper case for the joinder herein of third respondent on either of these bases. Possible concerns about the applicant’s undoubted Constitutional right to dignity cannot *per se* sway this court to grant the unjustified relief sought. Counsel for the third respondent, at the suggestion of this court, graciously indicated that he would request third respondent to consider possibly being of assistance as an *amicus curiae* in the main



application going forward. Of course the decision whether or not to do so, rests exclusively with the third respondent.

- [11] In the premises, applicant's application for the joinder of the third respondent is dismissed.
- [12] Even the rule that costs follow the event is subject to the discretion of this court regarding costs, provided such discretion is exercised judicially. Although the applicant has been unsuccessful and this is certainly not Constitutional litigation even though applicant professes to be asserting his fundamental right to dignity, it seems nevertheless inequitable that he should be mulcted in costs. According to its own website, the third respondent is a constitutional entity, relied upon to strengthen constitutional democracy. There can be no doubt that applicant was acting in good faith and is *bona fide* in his belief that the third respondent could and should be required to assist in his endeavour to assert his dignity. It is plain for all to see that the applicant who feels he was hard done by, is motivated by a heartfelt need for contact with his children; and has a genuine desire to seek justice. Having regard to the circumstances of this interlocutory application, it is held to be just and equitable that there should be no order as to costs.
- [13] Consequently: the applicant's interlocutory application for the joinder of the third respondent is hereby dismissed with no order as to costs.

  
BP GEACH

ACTING JUDGE OF THE HIGH COURT