IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: 2023-132918

In the matter between:

SAKELIGA NPC	Applicant
and	
VELENKOSI HLABISA	First Respondent
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Fourth Respondent
THEMBI NKADIMENG	Fifth Respondent
MBULELO TSHANGANA	Sixth Respondent
THINAYHYO SKOSANA	Seventh Respondent
NKOSAZANA CLARICE DLAMINI ZUMA	Eighth Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Ninth Respondent

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RESPONDENTS' HEADS OF ARGUMENT

INTRODUCTION AND OVERVIEW

1. This is an opposed interlocutory application seeking to join the current Minister of Cooperative Governance and Traditional Affairs, Minister Hlabisi, in his personal capacity, to the main contempt application initiated by the applicant (**"Sakeliga"**).

2. Sakeliga seeks to join the Minister in his personal capacity on three grounds.

   2.1. First, in terms of Uniform Rule 10, contending that he has a direct and substantial interest in the subject matter of the main litigation, i.e. the contempt application;

   2.2. Secondly, under the common law grounds of convenience and equity, and

   2.3. Thirdly, because "*of the second to ninth respondents' (misguided) contention that it is necessary to join the first respondent in his personal capacity*." The applicant argues that the joinder application "*is motivated by a line of contentions contained throughout the answering affidavit in the Main Application that the applicant is not entitled to the relief sought owing to the fact that the correct parties are*

not before the above Honourable Court insofar as the Main Application is concerned."

NATURE OF OPPOSITION

3. The purpose of joinder under Rule 10 is to ensure that all parties whose rights or interests may be affected by the court's order are before the court to prevent multiple or inconsistent judgments.[1]

4. The Minister, in his personal capacity, was not a party to the order of 9 November 2022, which forms the subject matter of the main contempt application. Thus, he has no direct and substantial legal interest in his personal capacity in the enforcement of the order, which order was, in any event, implemented. Accordingly, on this basis alone, there are no grounds to join the Minister personally in terms of Rule 10.

5. Moreover, there is no nexus between the Minister in his personal capacity and the enforcement of the order of 9 November 2022. The applicant cites the Minister personally for the sole purpose of seeking his committal to prison. This, it will be argued is an abuse

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[1] *Joubert v Black Rhino Game Lodge (Pty) Ltd and Others* 2026 JDR 0277 (GP) at para [14]

of process because the order does not implicate Minister Hlabisa personally, and given the absence of any personal knowledge on his part of the underlying PAIA record, and the implementation of the order, he cannot speak to the furnishing of the record and the compliance with the order, at least in his personal capacity.

BACKGROUND FACTS

6. On 13 December 2023, the applicant issued a contempt application out of this court, contending that Minister Dlamini Zuma and her administration failed to implement the order of 9 November 2022. Minister Dlamini-Zuma complied with the order of 9 November 2022. She issued the record sought in terms of the order on three separate occasions. This is explained in the answering affidavit to the joinder application as follows:

"The applicant was furnished with a record on three occasions. This was done firstly by uploading several documents that formed part of the record onto the Caselines platform. Next, documents were delivered to the applicant's attorneys of record in December 2022,

and finally, further documents were delivered in January 2023, after the applicant's attorneys closed their offices in December 2022."[2]

7. The applicant issued the contempt application because of its view that the record ordered to be furnished by the order of 9 November 2022 remained incomplete. While the order was issued against Minister Dlamini Zuma and her administration, when Minister Nkadimeng and her administration took office, the application was issued against her and her newly appointed Director-General, Mbulelo Tshangana and Information Officer, Thinavhuyo Skosana. They were also cited in their personal capacities as the fifth, sixth and seventh respondents, respectively, and an order was sought for their committal to prison.

8. Similar to the position that Minister Hlabisa finds himself in, they were not parties to the order of 9 November 2022, and they were sued for contempt even though no averments were made on how they were alleged, in their personal capacities, to have wilfully failed to comply with the order of 9 November 2022. As in the case of Minister Hlabisa, they were cited for the sole purpose of having an order of contempt and imprisonment issued against them.

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[2] Caselines 0007-8 – 0007-9 at para 14

9. As the answering affidavit to this application shows, the applicant seeks to join Minister Hlabisa personally for the sole purpose of having the committal order enforced against him, not because he is alleged to have played any official role where he was personally responsible for the implementation of the order of 9 November 2022. As Minister Hlabisa indicates, this "*is no longer a material misdirection, but a blatant stratagem and thus an abuse of process. Taking a misguided approach once may be excused as a mistake. But repeating that approach shows intention.*"

THE JOINDER APPLICATION MUST FAIL

10. In *Gordon v Department of Health, KwaZulu-Natal*[3] the Supreme Court of Appeal ("**SCA**") confirmed the trite principle that a person must be joined when they have a direct and substantial interest in the subject matter of the litigation that may be prejudicially affected by the Court's judgment.

11. Plainly, the term 'direct and substantial interest' means an interest in the right, which is the subject-matter of the litigation; and not merely an indirect financial interest in the litigation. It is also trite that the question of joinder depends on the extent to which the

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[3] 2008 (6) SA 522 (SCA)

Court's order may affect the interests of third parties and that "*a party can only be said to have a direct and substantial interest in the matter if the relief cannot be sustained and carried into effect without prejudicing their interests*."

12. The subject matter of the litigation is whether the order of 9 November 2022 was implemented. As the answering affidavit demonstrates, the order was indeed implemented. But aside from the implementation of the order, the question of its implementation, and carrying it into effect, does not personally affect Minister Hlabisa because:

12.1. He is not a party to the order;

12.2. The order did not impose any obligations on Minister Hlabisa that he was personally responsible for implementing in his official capacity.

12.3. Minister Hlabisa was not in office when the order was issued. He only took office on 2 July 2024, and

12.4. The order does not affect Minister Hlabisa in his personal capacity.

13. Therefore, there are no grounds to join the Minister personally in terms of Rule 10.

14. Moreover, it is trite that a joinder of convenience occurs where *"it is practical and expedient to join parties or causes of action in one proceeding, although each could have been heard separately. The purpose is to avoid a multiplicity of actions, save costs, and ensure judicial fairness. This type of joinder is permissible for efficiency, and it is not legally required. The court has a discretion to allow or refuse it."* [4]

15. On joinder of convenience our courts have also held that such an application is usually sought in terms of Rule 10(3) because "*there is a lis 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*." [5] A *lis* has been defined as a legal tie or legal chain.[6]

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[4] *Joubert supra* at para [16]

[5] *Ronnie Dennison Agencies (Pty) Ltd t/a Water Africa SA v SABS Commercial Soc Ltd* Neutral Citation [2014] ZAGPPHC 998 at paras [14] and [15]

[6] *Ronnie Dennison* supra at footnote 8; see also *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd and Another* 1980 (3) SA 415 (W) at 419E cited with approval in *Keele v Jansen Van Rensburg and Others* 2026 JDR 0273 (GP) at para [10]

16. There is no basis for joinder in terms of Rule 10(3) or the common law because, among others:

16.1. There is no *lis* between the applicant and the Minister in his personal capacity.

16.2. The Minister is not a party to the order of 9 November 2022 in his personal capacity.

16.3. The Minister did not make any decisions on the thirteen (13) extensions of the state of disaster, nor did he make any decisions on the seven (7) amendments to the regulations.

16.4. The Minister cannot speak to the nature of the PAIA record furnished, and it cannot be said that by the mere act of taking office, he failed in his personal capacity to give effect to an order of court.

16.5. At its most generous level, only Minister Dlamini-Zuma and her administration have the requisite personal knowledge to:

16.5.1. Sort, collate, and categorise the documents in the manner sought by the applicant; and

16.5.2. Declare that there are no further documents to be disclosed;

as sought by the applicant; and

16.6. Finally, the Minister is also not able to implement the order because:

16.6.1. The order was already implemented on three occasions;

16.6.2. He is not familiar with the PAIA record furnished by Minister Dlamini Zuma and her administration; and

16.6.3. There were no personal obligations on Minister Hlabisa in his official capacity to give effect to the order.

16.7. Moreover, Minister Hlabisa has no direct knowledge of the documents relied on for the:

16.7.1. Declaration of the state of disaster;

16.7.2. Extensions of the state of disaster; and

16.7.3. Amendments to the Regulations.

17. Therefore, the very basis for the joinder application that:

> *"13.20 both the former and current Ministers, the Department, the Director-General and the Information Officer have:*
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> *"13.20.1 Failed to comply with a binding order.*
>
> *13.20.2 Misrepresented compliance with the Order.*
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> *13.20.3 Engaged in delay tactics and provided contradictory justifications over several months.*
>
> *13.20.4 Ignored multiple invitations to comply and avoid contempt proceedings.*

cannot be substantiated, and the application must therefore fail.

18. The applicant seeks Minister Hlabisa's personal joinder in circumstances when he was not in the Department of Cooperative Governance and Traditional Affairs when the order was taken. Minister Hlabisa, therefore, has no personal knowledge of why

certain decisions were made in the enforcement of the order. He also cannot make any submissions on the PAIA record. When the record was furnished and the order implemented, there were no personal obligations on Minister Hlabisa. This is addressed in the answering affidavit opposing the joinder application at Caselines 0007-7 to 0007-8 at para 12.

19. The only reason for the joinder is to enforce the committal order. Minister Hlabisa explained at paragraph 13 of his answering affidavit that "*[a]s a result…it is my firm belief that this application is an abuse of process. There is an ulterior motive in bringing these proceedings. The applicant seeks to join me in my personal capacity merely to threaten and harass me with contempt proceedings to gain traction with its supporters. This plainly does not meet the legal threshold test for joinder.*"

20. While courts are slow to characterise conduct as abusive, the cumulative effect of the applicant's actions of personally citing Minister Hlabisa, where:

    20.1. The order of 9 November 2022 grants no relief against the Minister.

20.2. Was issued against Minister Dlamini-Zuma and her administration and could only effectively be enforced by her and that administration; and

20.3. Minister Hlabisa's lack of knowledge on the reasons why Minister Dlamini-Zuma declared the state of disaster, extended it, and amended the regulations governing the state of disaster

demonstrates a pattern inconsistent with *bona fide* litigation.

21. Minister Hlabisa has been prejudiced by having to respond to an application that also seeks new relief outside the terms of the order of 9 November 2022, namely the sorting and collation of documents and the requirement that an undertaking be furnished that "no further documents and/or records falling within the ambit of the applicant's PAIA request for information are in the first to fourth respondents' possession."[7]

22. Minister Hlabisa cannot personally provide such an undertaking since he has no direct, personal knowledge of the decisions taken regarding the state of disaster, which would underpin the record

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[7] Caselines 0007-13 para 27

furnished; the reasons why the documents furnished to the applicant were included in the PAIA record; and the manner in which the said collation request would have to be implemented. As he stated in his answering affidavit, he agrees with Mr Tshangana that this information is within the sole remit of former Minister Dlamini-Zuma and her former Director-General, Ms Avril Williamson.

23. He would be prejudiced by having to respond to a defective application lodged against a former Minister and administration who were not responsible for the implementation of the order.

24. In these circumstances, the joinder application is being pursued as a tactical measure, and to harass and threaten Minister Hlabisa with imprisonment. This we submit amounts to an abuse of this court's process. In this regard, we submit that the underlying principle of having an "ulterior purpose" in litigation amounts to an abuse of process. This principle came to the fore in Mr Zuma's private prosecution of Mr Downer and Ms Maughan. The Supreme Court of Appeal in the matter of *Zuma v Downer and Another* 2024 (2) SA 356 (SCA) recorded that the reason why that litigation was an abuse of process was:

"[11] The facts demonstrate that the private prosecution of Mr Downer is an abuse of the process of the court, for multiple reasons: first, as the high court found, it was instituted as a further step in a sustained attempt by Mr Zuma to obstruct, delay and prevent his criminal trial – this is an ulterior purpose, and the institution of the private prosecution was accordingly unlawful; second, it was instituted in order to have Mr Downer removed as the prosecutor in Mr Zuma's trial – this too is an ulterior purpose, which renders the private prosecution unlawful; and, third, the contemplated private prosecution is patently a hopeless case. It is obviously unsustainable. Mr Zuma has not made out any possible basis on which Mr Downer might be convicted, even on Mr Zuma's own version of the facts. This, too, renders the private prosecution an abuse of the process." (emphasis supplied)

25. We submit that these principles should equally apply here: the application has been instituted for an ulterior purpose, and the relief is "obviously unsustainable". Accordingly, the application should be dismissed.

CONCLUSION

26. The applicant has failed to make out a case that Minister Hlabisa has a legal interest in his personal capacity in the enforcement of the order of 9 November 2022. That order has, in any event,

already been implemented. Thus, there is no basis to join Minister Hlabisa on the grounds of necessity.

27. The applicant has also failed to show that there is a *nexus* between the order of 9 November 2022 and Minister Hlabisa personally. Thus, there is no basis for his joinder on grounds of convenience or equity.

28. Finally, the applicant seeks to join Minister Hlabisa only to harass him with the threat of imprisonment. On that score, this application is an abuse of process that must be dismissed with punitive costs, including costs occasioned by the employment of two counsel, being one Senior Counsel and a junior.

MTK Moerane SC

A Nacerodien

R Tulk

Counsel for the Respondents

Chambers: Durban, Cape Town and Johannesburg

14 April 2026