

Case summary written by Jarrod Van Der Heever and checked by Courtney Altmuner.

Background

The Minister of Police ("**the Applicant**") brought an Application in the Pretoria High Court ("**the Court**") against the Sheriff Pretoria Central ("**the First Respondent**") and three others (collectively referred to hereinafter as "**the Respondents**") for an order that costs be unreserved and that the Respondents be ordered to pay such costs.

In this case, urgent relief was granted in favour of the Respondents on **8 October 2019**, wherein a rule *nisi* was issued which was returnable on **4 November 2019**. The order handed down on **9 October 2019**, further held that the Respondents would cause a substantive application which had been contemplated in the order, to be issued within three days of the granting of the urgent relief. This substantive application was, however, only issued in and during **December 2019**.

Subsequent to the granting of the urgent relief and failure to issue the substantive application contemplated therein, the Applicant's attorneys sought clarity from the Respondents' attorney as to what would occur on the return date of **4 November 2019**. Nothing of substance could have occurred on the return date in light of the Respondents' failure to issue the substantive application as directed by the Court.

Despite several requests from the Applicant's attorneys, no response from the Respondents' attorneys was forthcoming and, as such, the Applicant's attorneys were required to brief counsel to appear on **4 November 2019**. **On even date**, the rule *nisi* was extended to **2 March 2020**, and costs were reserved.

On **2 March 2020**, the substantive application contemplated in the urgent relief granted on **9 October 2019**, had been issued and was enrolled for hearing on the opposed motion roll for **9 March 2020**. The matter was, however, also enrolled on the urgent court roll for **2 March 2020**, and on this date, the rule *nisi* was extended to 9 March 2020, with costs reserved. Once again, the Applicant appointed counsel to attend court on **2 March 2020**, for this purpose. It is in respect of the costs which had been reserved that the Applicant seeks relief.

Court held

The Court noted that the Respondents did not in any serious manner dispute the Applicant's entitlement to the costs which had been reserved. The Court opined that the costs which had been incurred by the Applicant were attributed to the failure by the Respondents' Attorney to advise the Applicant's Attorney timeously as to the status of the matter. The Court noted further that the rule *nisi* which had been granted on **9 October 2019**, should have simply been extended by agreement between the parties and this would have negated the need for the Applicant to brief counsel.

Upon consideration of the aforesaid, the Court held that a proper case had been advanced by the Applicant for costs to be unreserved. The Court, however, held that the scale of the costs in respect of the appearance of counsel on **4 November 2019**, and **2 March 2020**, should be on an unopposed scale. The Court held that it could hardly have been contemplated by the Applicant's counsel that the appearance on the aforementioned dates would have been in anticipation of an opposed hearing.

The Court held that costs were not to be awarded on a punitive scale as sought by the Applicant. In this regard, the Court held that whilst the Respondents' attorneys were somewhat dilatory in not resolving a resolvable issue regarding the matters being on the roll for **4 November 2019**, and **2 March 2020**, such conduct should not attract punitive costs order against the Respondents.

In light of the aforementioned, the Court held that the costs which had been reserved on **4 November 2019**, and **2 March 2020**, respectively be unreserved and awarded in favour of the Applicant on an unopposed basis on a scale of party and party.

Sheriff Pretoria Central v Minister of Police (67117-2019) [2021] ZAGPPHC 27 [Download](#)