IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED
DATE: ……
SIGNATURE: …..……

CASE NO: 36381/2011

67261/2009

In the matter between: - DATE: 16/9/2015

JOHAN FRANCOIS LE ROUX	First Applicant
PIETER DANIEL LE ROUX	Second Applicant
JPP BOERDERY (PTY) LTD	Third Applicant
DELKOP BOERDERY BELEGGINGS CC	Fourth Applicant
K'SHANI PRIVATE GAME RESERVE (PTY) LTD	Fifth Applicant
and	
STANDARD BANK OF SOUTH AFRICA LTD	First Respondent
MICHAEL LAWRENCE STUART N.O.	Second Respondent

MARGUERITE ROUX N.O.	Third Respondent
PETRUS JACOBUS CORNE VAN STADEN N.O.	Fourth Respondent
KHASHANE LA MMAPOWANA MANAMELA NO.	Fifth Respondent
JERRY SEKETA KOKA N.O.	Sixth Respondent
ENVER MOHAMED MOTALA N.O.	Seventh Respondent

AND

Case No. 67261/2009

JOHAN FRANCOIS LE ROUX	First Applicant
PIETER DANIEL LE ROUX	Second Applicant

and

STANDARD BANK OF SOUTH AFRICA LTD	First Respondent
PETRUS JACOBUS CORNE VAN STADEN N.O.	Second Respondent
KHASHANE LA MMAPOWANA MANAMELA NO.	Third Respondent
JERRY SEKETA KOKA N.O.	Fourth Respondent
ENVER MOHAMED MOTALA N.O.	Fifth Respondent

***In re*:**

STANDARD BANK OF SOUTH AFRICA LTD	Applicant

and

PLASTON BOERDERY CC	Respondent

JUDGMENT

JANSEN J

Background:

[1] Two applications were set down as a special motion to be heard on 17 and 18 February 2015. The applications have a very long and tortuous history which is, to a large extent, incomprehensible, due to the applicants' haphazard way of litigating.

[2] When the matter was called, Mr van Zyl sought to seek a postponement on behalf of the applicants on the basis that he had been briefed the previous Friday and had been briefed to seek a postponement of the matter only. No formal affidavit seeking a postponement was filed and the application for a postponement was argued from the bar. Needless to say, it was refused. Thereafter, Mr van Zyl excused himself as he had not been briefed on the merits. In addition, his attorney was not present in court but allegedly at the Supreme Court of Appeal. Both the advocate for the respondent, Mr N Konstantinides and his attorney phoned the offices of the applicants' attorney of record only to ascertain that he was in his office and not at the Supreme Court of Appeal. As a result, the court informed Mr van Zyl to warn his attorney that the court was considering making a costs order *de bonis propriis* against him.[1] To date, no affidavit has been filed by the applicants' attorney of record to seek to explain his conduct and the reason why Mr van Zyl found

[1] The court is in no position to delay the delivery of this judgment any further.

himself in the invidious position in which he was. (According to Mr Van Zyl all the previous advocates had been fired – allegedly due to a lack of instructions). Mr van Zyl also mentioned that his attorney of record had filed complaints against three advocates of the Pretoria Society of Advocates, whom the said attorney had used in these matters. This would appear, in the absence of an explanation from the attorney, to be an attempt to transfer blame given the attorney's conduct referred to above.

[3] Ledwaba DJP directed that the two applications (case no. 36381/2011 and 67261/2009) be heard together. The applicants had been ordered to file their heads of argument by the 14th of November 2014 and Standard Bank by the 28th of November 2014.

[4] Contrary to the practice directive issued by Ledwaba DJP, the applicants delivered a practice note and heads of argument under case number 36381/2009 only, and briefly therein referred to case number 67261/2009. The heads of argument filed were entitled "short heads of argument" and the applicants omitted to file any heads in case number 67261/2009.

[5] As stated by the respondent's counsel in his in its heads of argument on behalf of the respondents: —

> "***The application under case number 36381/2011, which was launched by the applicants in that matter during June 2011, amounts in essence***

to an application for rescission of the Summary Judgment entered by His Lordship Mr. Justice Du Plessis ('Judge Du Plessis') against four of the applicants under case number 36381/2011 and an entity known as Plaston Boerdery CC:

Although rescission is pursued by Applicants as the main relief, alternative grounds of relief are also prayed for under the notice of motion, albeit that The Standard Bank of South Africa Ltd ('Standard Bank') contends that the said alternative relief amounts in essence to a prayer for rescission;"

[6] The grounds cited for rescission are far ranging – from impropriety on the part of the applicants' erstwhile legal representatives, attacks against the advocate appearing before Du Plessis J, an alleged release of the principal debtor from a debt thus allegedly prejudicing the sureties (the applicants), a sale in auction allegedly not being properly advertised, an alleged novation of a debt by Standard Bank with an entity called Magnolia Ridge etc. It is unnecessary to traverse this plethora of grounds for rescission in view of what is set out below.

[7] The second application, 67261/2009 relates to the liquidation of Plaston Boerdery CC as set out in the respondent's heads of argument: —

*"**On account of the actions on the part of the First and Second Applicants, who attended the sale in execution and purchased the items on sale (in the name of K'Shani Private Game Reserve (Pty) Limited) and never paid for them, the attempt to execute was subverted.***

***The inability successfully to execute against Plaston Boerdery CC resulted in Standard Bank incepting liquidation proceedings against it.**"*

[8] As a result, Poswa J, on the 18th of December 2009, placed the estate of Plaston Boerdery CC under liquidation.

[9] Leave to appeal Poswa J's judgment was sought and declined. Ditto regarding a petition to the Supreme Court of Appeal. Yet another appeal to the Constitutional Court met with no success. To state that the applicants are serial litigants seems to be somewhat of an understatement.

[10] In an astonishing turn of events, the second application is an application for leave to appeal the order of Poswa J – in the face of all the unsuccessful applications for leave to appeal. This approach is breathtaking in its insouciance. It is accompanied by a so-called application for condonation for the late filing of the application for leave to appeal. This application is so flawed that one is hard-pressed to believe that it was actually launched.

The first application:

[11] The facts and circumstances surrounding the summary judgment granted by Du Plessis J on the 6th of March 2009 are that because of the agreement entered into between the respondent and Magnolia Ridge on the 30th of May 2007 (after Standard Bank had initiated proceedings against the principal debtor on the 25th of September 2008) a novation of the debt had occurred and the sureties had been prejudiced. The first four applicants in case number 36381/2011 were sued as sureties and co-principal debtors for the indebtedness of Magnolia Ridge to Standard Bank.

[12] No affidavit resisting summary judgment was filed by the sureties including Plaston Boerdery CC (the principal debtor which had also signed as a surety).

[13] The agreement was that Magnolia Ridge would return the earthmoving equipment which it had purchased from Standard Bank, pending an undertaking to make payment of the outstanding monies in terms of its ten instalment sale agreement with Standard Bank. As a result, the summary judgment set down for the 20th of November 2008, was postponed. Magnolia Ridge returned the equipment but failed to make payment of the outstanding amounts.

[14] As a result of the breach by Magnolia Ridge of its undertaking, Standard Bank brought the application for summary judgment against the sureties for the week commencing the 23rd of February 2009.

[15] Advocate “X”, whom the court knows for his honesty, appeared on behalf of the sureties and requested Du Plessis J to stand the matter down until the next Friday in order to grant the sureties time to make payment in full to Magnolia Ridge. Du Plessis J acceded to the request. Advocate “X” further told Du Plessis J that he held instructions that, insofar as payment was not made as undertaken, he tendered judgment.

[16] Because payment was not made, Du Plessis J entered summary judgment against the sureties.

[17] Standard Bank has various defences against the rescission application, namely as stated above, the applicants’ attack on each previous legal representative; that the application deals with previous litigation in which they were embroiled with ABSA BANK; that the application sets out the alleged wealth of the Le Roux brothers and deals with other matter which do not have any bearing on the issues and which are wholly irrelevant to the rescission application which application runs into 980 pages. As stated, prejudice to the sureties is also raised as a defence (due to Standard Bank liquidating Magnolia Ridge), and an alleged cancellation of the original instalment sale agreements. As a result it was stated by the applicants that the instalment sale agreements had been cancelled.

[18] In essence therefore it was argued that at the time of the grant of the summary judgment, the sureties were no longer indebted to Standard Bank, having been

prejudiced, and furthermore the ten instalment sale agreements had been cancelled. In addition, the reason for the non-filing of an affidavit in opposition of the summary judgment is stated by the applicants to be the following: —

> *"**As the goods had been voluntarily returned by Magnolia to the first respondent as set out above, the second applicant and I were confident that, as the goods were of sufficient value to cover Magnolia's indebtedness to the first respondent, the sureties would in any event not have to pay anything to the first respondent.**"*

[19] Allegedly the applicants' erstwhile attorneys grievously wronged them by not informing them of all of the defences raised in the rescission application.

[20] However, when the le Roux brothers became aware of the fact that a summary judgment had been granted against them, they did nothing and in fact, in written documents, admitted the liability of Magnolia Ridge to Standard Bank for the shortfall in the liquidation of Magnolia Ridge.

[21] Hence, the applicants are no longer in a position to contest their liability to Standard Bank.

[22] Furthermore, notwithstanding all the allegations aforesaid, the applicants waited two and a half years before launching the rescission application against the judgment of Du Plessis J. Although termed a rescission application it does

not fall within the provisions of Rule 31(2)(b) of the Uniform Rules of Court because no defence is made out which can be termed *bona fide* (not to mention the non-compliance with the time period set out in the rule).

[23] In its heads of argument, Standard Bank argues that: —

> *"**The Applicants have misconstrued the legal effect of Magnolia Ridge having handed over possession of the farm and earthmoving equipment to Standard Bank in November 2008. The Applicants advance the proposition that the effect of the handover was to bring about a cancellation of the ten instalment sale agreements. On the strength hereof the Applicants mount the challenge that the sale of the goods and the sale of the farm and earthmoving equipment by the liquidators of Magnolia Ridge was incompetent, given that the said farm and earthmoving equipment no longer form part of the estate of Magnolia Ridge (in liquidation).***
>
> ***The above construct is misguided and fails to head the legal consequence of the common cause agreement concluded in November 2008. The facts established that on a proper construction of the agreement of November 2008 it admits of only one consequence. The ten instalment sale agreements were kept alive. However, it was an express term of the agreement that, insofar as Magnolia Ridge discharged its obligations to Standard Bank by 17 February 2009, Standard Bank would return the farm and earthmoving equipment to***

Magnolia Ridge, whereafter the ten instalment sale agreements would run their course. There would be no basis upon which Magnolia Ridge would become entitled to the return of the equipment and for the resumption of the ten instalment sale agreements after the arrears were settled in February 2009, if the giving up the possession of the farm and earthmoving equipment had the consequence of cancelling the agreement."

[24] Furthermore, to add insult to injury, with full knowledge of the summary judgment, on the applicants' version, they attended the sale of the movable assets of Magnolia Ridge in August 2009 and, after purchasing the equipment, failed to pay therefor.

[25] This conduct, and the Le Roux brothers' admission of their indebtedness to Standard Bank, is incongruent with an intention to seek the rescission of Du Plessis J's judgment.

[26] However, and most importantly, no grounds are advanced for a hiatus period of some two and a half years after the grant of the summary judgment.

[27] As a result of Standard Bank's belief that the rescission application is scurrilous and vexatious, as envisaged by Rule 47(1), the applicants were requested to furnish security. All the applicants admitted that they had to furnish security, which they did, hence conceding Standard Bank's allegations of scurrilous and vexatious conduct and an abuse of court proceedings.

The second application

[28] The applicants' argument that the second application (allegedly "an appeal") for rescission of Poswa J's judgment based on the fact that it is allegedly a nullity, and hence void *ab initio* is, in the court's opinion, nonsensical.

[29] As stated, this judgment was unsuccessfully appealed against and all further applications for leave to appeal to the Supreme Court of Appeal and the Constitutional Court met with failure.

[30] The current "appeal" application and condonation application have absolutely no foundation in law whatsoever and is devoid of merit.

Conclusion on the merits of the applications

[31] As a result of the complete lack of any merit in any of the two applications and the applicants' conduct in launching them nonetheless, warrants a punitive costs order.

[32] Furthermore, the oral application from the bar for a postponement at the hearing of the matter, is shocking. The attorney did not even have the courtesy to inform the court that a postponement would be sought. In this regard, Standard Bank referred to correspondence which had been exchanged between the parties before this sudden twist of events.

[33] From what has been set out above, the applicants' conduct has been dilatory and obstructive to the extreme. In fact, the court has never encountered such conduct.

[34] In addition, Standard Bank had to threaten the applicants with an application to strike out before they provided security for costs, and, as stated, no proper heads of argument were ever filed.

[35] Standard Bank's attorney, Roy Suttner Attorneys ("**Mr Suttner**") on the 19th of March 2014 and the 25th of March 2014 pointed out to Louis Benn Attorneys ("**Mr Benn**") that proper heads of argument had not been filed by the applicants.

[36] These e-mails were neither acknowledged nor responded to. In desperation, Mr Suttner approached Ledwaba DJP per letter placing Mr Benn's conduct on record: —

> *"**The response which was forthcoming was a letter from Mr. Benn to Mr. Suttner, dated 29 May 2014, in which the applicants noted that on their version the undertakings in regard to Heads of Argument was that the 23rd of May 2014 represented a date on which the heads '…could not be finalised…', recording further that it was not the intention of the Applicants '…to provide you with a firm date when the Heads of Argument would be finalised.', adding that 'the matter is receiving urgent attention and the heads of Argument will be served on your offices soon.'**"*

[37] On the 18th of June 2014 and the 7th of July 2014 Mr Suttner once again recorded that no heads of argument were forthcoming: —

> ***"On 4 August 2014, Mr. Suttner addressed an e-mail to Mr. Benn recording that 'Our emails dated 13 May, 2014, 18 June, 2014 and 7 July have reference….You have ignored all our correspondence.'"***

[38] Mr Suttner then approached Ledwaba DJP seeking a meeting with him on the 28th of October 2014. This fact was communicated to Mr Benn by way of e-mail and Mr Suttner also confirmed the date per e-mail with Ledwaba DJP. No response, as per usual, was forthcoming from Mr Benn.

[39] On the 29th of September 2014 Mr Suttner addressed a further letter to Mr Benn, by way of email and fax.

[40] On the 30th of September 2014 Ledwaba DJP indicated per e-mail that he would see the parties on the 7th of October 2014. Given the earlier date, Mr Suttner enquired per e-mail from Ledwaba DJP whether the date was correctly reflected in his e-mail.

[41] Furthermore, on the 1st of October 2014, Mr Suttner addressed a further e-mail to Mr Benn referring to his earlier e-mails of the 23rd and 24th of September 2014 and the new date of the 7th of October 2014.

[42] Mr Suttner informed Ledwaba DJP that he and his counsel would make themselves available on the 7th of October 2014 and would inform Mr Benn accordingly, which Mr Suttner duly did.

[43] The applicants did not attend the meeting of the 7th of October 2014, and Mr Suttner again duly addressed an e-mail to Mr Benn dated the 10th of October 2014, enclosing his e-mails of the 23rd and 24th of September 2014, and the communication from Ledwaba DJP.

[44] On the 24th of October 2014 Mr Benn awoke from his slumber. Mr Benn wrote an e-mail to the following effect: —

> *"**We also record our dismay with the expediting of the meeting with the Deputy Judge President from the 28th of October 2014, which was the original date allocated, to the 7th of October 2014. Your notification by email that the meeting has been moved to the 7th of October 2014, was unnoticed. We were involved in a trial and could not attend the meeting in any event. We reserved counsel for the 28th of October 2014 which date suited both us and counsel.**"*

[45] On the 14th of November 2014 Mr Benn filed a practice notice and there was no indication that it would be impossible to file heads of argument.

[46] On the 18th of November 2014 Mr Suttner recorded that no heads of argument had been received under case number 67261/2009.

[47] On the 27th of November 2014 Mr Suttner addressed an e-mail to Mr Benn recording, *inter alia*: —

> "***… the conduct of our client or the filing of the heads of argument or practice note is to in any way be construed*** (sic) ***as a waiver of any of our client's rights to, inter alia, resist any attempt on the part of your clients to file either 'long heads' under case number 36381/2011 or heads of argument out of time in case number 67261/2009.***"

[48] Mr Benn remained mum again until the 3rd of February 2015, blaming counsel.

[49] On the 4th of February 2015, Mr Suttner beseeched Mr Benn to file proper heads of argument, although out of time and expressly stated he would not stand in the applicants' way should they wish to file their heads of argument, albeit belatedly. Mr Benn was also invited by the applicants' to draft an application for postponement if they were unable to file heads of argument timeously.

[50] Nothing further was heard until the 13th of February 2015 when the first applicant in both applications (Mr. Johan Le Roux) addressed a letter to Mr. Suttner containing proposed amendments to the notices of motion and setting out some basis upon which Mr. Le Roux intended to deal with the matters. Mr. Le Roux also attached a 94 page document setting out a very wide array of allegations.

[51] The refusal by this court, against the background aforesaid, to grant a postponement is self-evident. No proper heads of argument were filed and neither was an application for postponement drafted. Mr van Zyl was sent as the proverbial sacrificial lamb to seek to argue away Mr Benn's conduct on the first hearing date.

[52] A postponement is not to be had for the asking. Factors to be taken into account are:—

[52.1] Whether the application has been timeously made;

[52.2] Whether the explanation given for the postponement is full and satisfactory;

[52.3] Whether there is prejudice to any of the parties and whether the application is opposed.[2]

[53] In the matter of ***National Police Service Union and Others v Minister of Safety and Security and Others*** **2000 (4) SA 1110 (CC)** at 1112 C-F, the Constitutional Court held as follows**: —**

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[2] ***Shilubana v Nwamitwa (National Movement of Rural Women and Commission for Gender Equality as Amici Curiae*** **2007 (5) SA 620 (CC)** at paragraph [10]; ***AG Petzetakis International Holdings Ltd v Petzetakis Africa (Pty) Ltd and Others (Marley Pipe Systems (Pty) Limited and Another Intervening)*** **2012 (5) SA 515 (GSJ)** at paragraphs [7] to [8].

> ***"The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that is in the interests of justice to do so. In this respect the applicant must show that there is cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed.***"

[54] During Mr Van Zyl's oral application for a postponement it transpired that Mr Benn had, as mentioned above, filed complaints against not only advocate "X" but also two other advocates of the Society of Advocates. It appears to the court that the third advocate briefed in these matters had been fired in order to ask for a postponement on the hearing date. Given the warning conveyed to Mr Van Zyl to advise Mr Benn that the court was considering an order *de*

bonis propriis against him, it is surprising that no affidavit has been forthcoming from Mr Benn.

[55] In view of the flagrant conduct by Mr Benn: —

[55.1] In ignoring directions issued by Ledwaba DJP;

[55.2] Not answering e-mails;

[55.3] Not filing proper heads of argument;

[55.4] Blaming counsel;

[55.5.] The absolute lack of any merit in the applications launched by him;

[55.6] The total waste of the court's time in preparing for the special motion consisting of two applications; and

[55.7] A lack of any endeavour to bring a substantive application for postponement, such an order seems to find application.

[56] The matter of ***January v Standard Bank of South Africa Ltd*** **(2235/2008) [2010] ZAECGHC 6 (28 January 2010)** at paragraphs [35] to [70] contains a useful summary of cases which demonstrate when costs orders *de bonis propriis* will be granted.

[57] In the said paragraphs it is stated that the general principle at common law is that a party who litigates in a representative capacity (such as a trustee) cannot be ordered to pay the costs *de bonis propriis* unless he or she has been guilty

of improper conduct.[3] Such party may however be ordered to pay such costs where there is a want of *bona fides* on his or her part or if he or she has acted with gross negligence.[4]

[58] Orders of this nature have been made against attorneys where, for example, in the prosecution of appeals, there has been a flagrant disregard of the rules applicable to appeals and in particular the preparation of the record.[5]

[59] Where a legal practitioner has conducted himself flagrantly in disregard of the rules of court such a cost order marks the Court's disapproval of such conduct.[6]

[60] In particular, the citation from the case of ***South African Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others* 2009 (1) SA 565 (CC)** at paragraph [54] is particularly relevant: —

> "***An order of costs de bonis propriis is made against attorneys where a court is satisfied that there has been negligence in a serious degree***

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[3] ***Cooper NO v First National Bank of South Africa Limited* 2001 (3) SA 705 (SCA)**.

[4] ***Blou v Lampert and Chipkin NNO and Others* 1973 (1) SA 1 (A)**.

[5] *cf.* ***Napier v Tsaperas* 1995 (2) SA 665 (A)***; H Merks & Co (Pty) Ltd v B-M Group (Pty) Ltd and Another* [1995] ZASCA 45*; 1996 (2) SA 225 (A)**; ***Salviati & Santori (Pty) Ltd v Primesite Advertising (Pty) Ltd* 2001 (3) SA 766 (SCA)***; *Jeebhai and Others v Minister of Home Affairs and Another* 2009 (4) SA 662 (SCA)**.

[6] ***Khunou and Others v M Fihrer & Son (Pty) Ltd and Others* 1982 (3) SA 353 (W)**; see also ***Washaya v Washaya* 1990 (4) SA 41 (ZH)**.

which warrants an order of costs being made as a mark of the court's displeasure.[18] An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy. Filing correspondence from the Constitutional Court without first reading it constitutes negligence of a severe degree. Nothing more need be added to the sorry tale already related to establish that this is an appropriate case for an order of costs de bonis propriis on the scale as between attorney and client. The order is made against the office of the State Attorney, not personally against the attorney concerned. This Court's displeasure is primarily directed against the office of the State Attorney in Pretoria whose systems of training and supervision appear to be woefully inadequate."

[61] In ***Mcpherson v Teuwen and Another*** **(2009/27002) [2012] ZAGPJHC 18 (22 February 2012)** the following case was cited with approval at paragraph [64]: —

"***In Webb v Botha 1980 (3) SA 666 (N) at 673D–F, an attorney was saddled with an order to pay costs de bonis propriis for obstructing the interests of justice, and have occasioned unnecessary costs to be incurred by all the parties to an appeal and delayed the final determination of the action resulting in a situation which was seen as being potentially prejudicial.***"

[62] In ***Khan v Mzovuyo Investments (Pty) Ltd*** **1991 (3) SA 47 (Tk)** the court ordered the plaintiff's attorneys to pay the costs of a postponement of the matter *de bonis propriis* in circumstances where the matter was set down when it was not ripe for hearing after it had been removed from the roll on seven previous occasions. Hancke J outlined the approach (at page 48) as follows: —

> "***The principle of awarding costs de bonis propriis is summed up by Innes CJ in Vermaak's Executor v Vermaak's Heirs 1909 TS 679 at 691 as follows:***
>
> > '***The whole question was very carefully considered by this Court in Potgieter's case (1908 TS 982), and a general rule was formulated to the effect that in order to justify a personal order for costs against a litigant occupying a fiduciary capacity his conduct in connection with the litigation in question must have been mala fide, negligent or unreasonable.***'
>
> ***See also Estate Orr v The Master 1938 AD 336; Gangat v Bejorseth NO 1954 (4) SA 145 (D) at 150; Grobbelaar v Grobbelaar 1959 (4) SA 719 (A) at 725B - C; Venter NO v Scott 1980 (3) SA 988 (O) at 993H.***
>
> ***In my view plaintiff's attorney's slack and apparently unconcerned handling of his client's case in the present matter, namely to enrol the***

matter while it was not ripe for hearing at a stage when it had been either postponed or removed from the roll on seven previous occasions, amounts to such unreasonable conduct as to warrant the present order as to costs. In my opinion it would be grossly unfair to order the plaintiff to bear the costs occasioned by his attorney's unreasonable and negligent conduct, particularly in view of the fact that plaintiff was mulcted with costs on three previous occasions."

[63] The court hereby orders Mr Benn to pay the costs of the hearing days and the further preparation of heads of argument setting out the background correspondence preceding the oral request for postponement referred to by counsel for the respondents during oral argument.

[64] In consequence, the following order is made: —

Order

1. The two applications are dismissed.
2. Mr Benn of the firm of attorneys of Louis Benn Attorneys is ordered to pay the costs of the two hearing days *de bonis propriis on* an attorney and client scale as well as the costs incurred in drafting heads of argument, at the court's behest, setting out the e-mails which were exchanged between the parties' attorneys, preceding the hearing, on the same punitive scale.

3. The remaining costs pertaining to the applications are to be paid by the applicants on an attorney and client scale, the one paying, the other to be absolved including any costs which may have been reserved on previous occasions.

4. All such costs order are to include the costs of two counsel in the instances where the services of two counsel were employed.

JANSEN J

JUDGE OF THE HIGH COURT

For the Applicants **Advocate Van Wyk**
Instructed by Louis Benn Attorneys (012 991 771/1115)

For the First Respondent **Advocate Konstantinides**
Instructed by Roy Suttner Attorneys c/o Jacobson & Levy Inc (012 342 3311)