IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 10225/2013

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

[19/9/2017]

.....

In the matter between:

G P Applicant

and

A P First Respondent

THE SHERIFF JOHANNESBURG NORTH Second Respondent

JUDGMENT

WILLIS AJ:

Introduction

1. The applicant and first respondent were divorced on 22 November 2013 by decree of divorce incorporating a settlement agreement. Two minor children were born of the marriage namely R (15) and T (10) ("the minor children") and whose interests are secured in the settlement agreement. In late 2014 the first respondent relocated together with the minor children to reside in Namibia. I will henceforth refer to the first respondent as the 'respondent'.

2. On or about 16 March 2016 the respondent caused a warrant of execution ("the warrant") to be issued out of the above court against the applicant for failure to make payments in terms of the settlement agreement.

3. The applicant applies to have the warrant of execution set aside and that the first respondent be ordered to pay the costs of the application on the attorney and client scale.

4. The applicant annexed neither the warrant of execution nor the respondent's affidavit in support of the warrant ("the warrant affidavit") to his founding affidavit. In fact the applicant only

annexed the settlement agreement, a thread of two emails on 14 January 2014 and a letter by his attorney.

5. Regarding the warrant: the court file did not contain a copy of the warrant either. I called for a copy of the warrant from the parties attorneys before handing down judgement. Until I had sight of the warrant, and even though the amount of R114 452.51 is totalled in paragraph 15 of the warrant affidavit as the amount owing by the applicant to the respondent, I was of the understanding that the amount in which the warrant was issued was the amount prayed in paragraph 18 of the warrant affidavit namely R89 207.61. Although not explained. Be that as it may, the warrant is in the higher amount and that is the amount the respondent made out in her warrant affidavit.

6. Regarding the warrant affidavit. It is the *causa* underpinning the warrant, and the applicant's case had to deal adequately therewith. In effect the applicant had the respondent's version from the start. The applicant dealt selectively in his founding affidavit with paragraphs from the warrant affidavit. It is apparent on the applicant's papers that the approach of the applicant was that the application is all about the interpretation of the settlement agreement and not a factual enquiry at all, whether maintenance or otherwise. The applicant is correct that the application was not a maintenance enquiry but incorrect to think it could only be a matter

of interpretation. Be that as it may the respondent annexed a copy of her warrant affidavit to her answering affidavit.

7. I am not told when the warrant was served, but the applicant launched his application on or about 28 August 2016.

8. The respondent caused the issuing of the warrant on the basis that the applicant failed to make payment of:

8.1. the escalation in maintenance in accordance with the consumer price index (CPI) per clause 7.3 of the settlement agreement;

8.2. 50% of medical expenses not covered by the medical aid scheme per clause 7.5 of the settlement agreement; and

8.3. 50% of extra ordinary expenses to which she says he agreed per clause 7.8 of the agreement;

during the period 1 November 2014 to 1 March 2016

9. The applicant's case is in essence the following. In December 2013 he was retrenched. He was remunerated for the next nine months but was required to sign an 18 month restraint of trade agreement which severely affected his ability to find gainful employment and he remains unemployed.

10. In respect of the CPI escalation provided for in the settlement agreement, he said it does not apply and there has been no escalation of the maintenance in respect of the minor children.

11. In respect of medical expenses not covered by the medical aid plan the applicant complains that upon the respondent's relocation to Namibia she selected a less comprehensive medical aid plan with reduced benefits, which since then has resulted in the applicant incurring increased expense in respect of items no longer covered. He complains that he does not fall to be held liable for an expense which was not initially envisaged in terms of the settlement agreement and which the first respondent has "instigated "as he puts it.

12. In regard to the extraordinary expenses the applicant says that in terms of the divorce settlement his liability is expressly limited to school fees and it was agreed that the first respondent would be responsible for all other educational expenses. Further that the bulk of monies claimed by the first respondent in the warrant are educational expenses other than the scholastic expenses for which he is liable. He states that he has to be consulted prior to any extra ordinary expenses being incurred and that the first respondent first incurred the expense and thereafter demanded payment of 50% from him.

13. The applicant alleges that he is unlikely to receive any form of income for the next two years or more and that he has already instructed his attorney to commence proceedings for a reduction in

maintenance as he cannot sustain his maintenance obligations based on his current finances.

14. The respondent argues that the applicant is earning a substantial monthly annuity from his capital and investments and is hiding his true financial position.

15. In regard to finances, there is no case for lack of affordability made out by the applicant. He says that he has made all payments up until now out of his capital funds and not his investments. It is common cause on the papers that both parties are possessed of substantial financial means. In their divorce the parties divided equally between them an estate worth in excess of R50 million. As the applicant puts it in his replying affidavit: the matter is not a determination of "*my ability to pay maintenance but rather is one of the correct interpretation of the settlement agreement*". The first respondent puts it "*I am enforcing my rights to claim the outstanding money that I consider to be owing by the applicant… in respect of the two minor children*."

16. The primary issue for determination is whether or not the case and facts on which the applicant relies to set aside the warrant amount to good cause. This after all is the guiding principle. I deal with the applicable law further below.

The escalation dispute

17. The amount claimed by the respondent under this dispute is R33 783.75. No issue is taken with the calculation and sum.

18. The relevant parts of the settlement agreement read as follows:

> *"7 MAINTENANCE: THE MINOR CHILDREN IN TERMS OF SECTION 18 (2)(d) OF THE ACT"*
>
> *7.1 It is the responsibility and duty of **both** parents to at all times maintain the minor children fully and in all respects as envisaged and referred to in Section 18 (2)(d) of the act.*
>
> *7.2 The Defendant will pay maintenance to the Plaintiff in respect of the minor children at the rate of R15, 000.00 (Fifteen Thousand Rand) per month per child until they become self-supporting.*
>
> *7.3 The maintenance payable by the Defendant in respect of the minor children shall escalate annually on the anniversary of the date of the final decree of divorce of each year by the same percentage as the Consumer Price Index ("CPI") for the Republic of South Africa, as notified from time to time by the Director of Statistics but not more than the percentage increase earned by the Defendant for the said year.*

19. Clause 7.3 deals with escalation and is on my reading, unequivocal. The parties agreed that the maintenance payable by the defendant in respect of the minor children shall escalate annually on the anniversary date of the final decree of divorce by the same percentage as the CPI (consumer price index), as more fully described in clause 7.3.

20. However the parties also agreed a qualification namely that the escalation percentage i.e. that of the CPI, will not be more than the percentage increase earned by the defendant for the year in issue.

21. The applicant's case is that he has not earned "*a percentage increase*" since his retrenchment i.e. his percentage increase was and remains zero, *ergo* no escalation.

22. The respondent's contention is that the applicant has substantial investments and capital from which he earns annuity income and which he lives off, and ought to have made a full disclosure to demonstrate what he has earned from this annuity type income. She estimates the applicant earns at least R100 000.00 per month. She alleges that the applicant's retrenchment package, shortly after the divorce, included R1.5 million plus profits, bonuses, restraint incentive and share options but he does not disclose these.

23. Bar denial the applicant does not deal with these allegations in reply. Furthermore the respondent believes the applicant is in a business called ENCA Health Care with a friend and is hiding his true financial position. Save to baldly deny this allegation of a new business interest the applicant does not deal therewith in reply. It does not escape me that the applicant's restraint of trade would have expired in about June 2015 already.

24. The CPI is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The annual percentage change in the CPI is well recognized as a measure of inflation or the general depreciation in the value of currency. Its application can ensure that the consumption power of money is not eroded over time and compensates for the diminishing value of money.

25. The word 'shall' in clause 7.3 fortifies an interpretation that the maintenance must increase each year. The need for an annual increase in maintenance according to some standard is obvious. The standard chosen is the CPI.

26. The first part of clause 7.3 was evidently designed to protect the respondent and minor children.

27. The qualification was clearly designed to protect the applicant. One can easily appreciate the applicant wanting to protect his finances in the event of him having no earnings whatsoever.

28. Each party is contending for the protection they believe they enjoy.

29. Clause 7.3 was agreed upon between the parties with the intention that it should have commercial operation. The principle in such instance is that the clause should not be held unenforceable because the parties did not express themselves as clearly as they might have done. In *Murray & Roberts Construction Ltd v. Finat*

Properties (Pty) Ltd[1] Hoexter JA repeated[2] the dictum of Lord Right in *Hillas & Co Ltd v. Arcos Ltd*[3]:

> "*Businessmen often record the most important agreements in crude and summary fashion; modes of expression, sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects.*"

30. There is no defect in clause 7.3, it just falls to be interpreted or construed in its proper context and purpose, fairly and broadly.

31. A parent's financial obligations are not dependent on the parent's ability to pay through only one means for example employment. Not even a lack of cash flow is an excuse. Assets, investments and available capital all serve in general terms as a source of funding of the needs of minor children. Evidently the applicant is possessed of the sort of estate that has all three of the aforementioned. His contention or allegations of financial predicament are not received as broadly as he would like.

---

1 1991 (1) SA 508 (A)
2 At 514B-F
3 147 LTR 503 at 514

32. There it is no basis for me to find that the word "earned" in clause 7.3 refers only to earnings from employment. If that is what the applicant intended it to communicate it certainly does not do so.

33. The applicant relies entirely on his interpretation of clause 7.3. Inasmuch as he was in my view incorrect, he ought to have made out a case as to what the increase in his earnings percentagewise was in the relevant periods, and if less than the CPI, the increase in maintenance would have been limited to that percentage. No such case is made out. Accordingly I find that the applicant fails on this point.

The medical expenses dispute

34. The amount claimed by the respondent under this dispute is R3 035.26. No issue is taken with the calculation and sum.

35. The relevant parts of the settlement agreement read as follows:

> *7.4 The Defendant will retain the minor children on his medical aid scheme and pay the monthly medical premiums in respect thereof until they become self-supporting.*
>
> *7.5 The Defendant and the Plaintiff shall share in equal parts the cost of all reasonable medical expenses not covered by the medical scheme referred to in 7.4. Of the minor children, (sic) such costs to include, but not be limited to all medical, dental, surgical, hospital, orthodontic and ophthalmologic treatment required by the minor children, including any sums payable to a physiotherapist, occupational therapist, speech therapist,*

practitioner of holistic medicine, dermatologist, psychiatrist/psychologist, and chiropractor, the cost of medication and the provision where necessary of spectacles and/or contact lenses and pharmaceutical expenses incurred on doctors prescriptions.

7.6 Neither party shall allow the minor children to undergo any specialist medical treatment, (unless in an absolute emergency), without giving the other party at least seven days written notice (including via email) of that party's intention to do so calling for the other party's consent, which consent shall not be unreasonably withheld. The Defendant and the Plaintiff shall undertake to pay in equal parts all the reasonable costs incurred in respect of any specialist medical treatment and/or procedure performed in regard to the minor children.

36. Clause 7.4 makes clear that the parties intended for the minor children to be maintained on the applicant's medical aid. That was no longer possible when the respondent relocated together with the children to Namibia and had to secure a local medical aid. It is common cause that the applicant maintained the respondent and children on a Discovery comprehensive medical aid plan. From January 2015 when the respondent had settled in the Namibia the applicant paid the requisite premium to the respondent.

37. Clause 7.5 obliges the applicant and respondent *to "share in equal parts the costs of all reasonable medical expenses not covered by the medical plan".*

38. The applicant puts up a two prong complaint in argument and defence of not paying the medical expenses claimed.

39. The applicant's first prong is the complaint that the respondent "*elected to choose a less comprehensive medical aid with reduced benefits*.", that she failed to properly evaluate the choice of medical aid plan. The respondent's version is that she emailed the applicant the available options in order to choose a Discovery medical aid equivalent in Namibia and they agreed on the MHP Silver plan. She says this was the only equivalent plan available in Namibia comparable to the Discovery plan in South Africa. She informs further that the applicant had been the COO of a medical listed company before his retrenchment that she was guided by him. Whether she was or was not guided by the applicant I expect that she would have, in the best interests of herself and her children, wanted to be on a Discovery equivalent. To the extent that there is any relevance to this complaint there exists a dispute of fact.

40. In my view nothing turns on this complaint in the first prong but if I'm wrong I am in any event obliged to prefer the respondent's version over that of the applicant in accordance with the Plascon-Evans rule. In motion proceedings a final order may be granted if those facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. In certain instances the denial by

a respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact. It is *bona fide* disputes in motion proceedings which fall to be determined on the facts contained in the opposing papers which must be preferred in accordance with the rule in *Plascon-Evans Paints Ltd v. Van Riebeeck Paints (Pty) Ltd*[4].

41. The applicant's second prong is the complaint that he had not been consulted by the first respondent in regard to expenses falling outside of medical aid cover for which the respondent then demands his 50% contribution, arguing that that the medical expenses the respondent claims under the warrant are not covered by the settlement agreement and clause 7.5.

42. Clause 7.5 does not remotely suggest that the applicant must first be consulted by the first respondent in regard to expenses falling outside of the medical aid cover.

43. Clause 7.6 requires a party to give at least seven days' notice to the other party in the event of one of the minor children needing to undergo specialist medical treatment, but the applicant correctly does not rely on this.

44. The only question is whether or not the costs the applicant is called upon by the respondent to share in the payment of, are reasonable

[4] 1984 (3) SA 623 A at 634 E – 635 C

medical expenses. The applicant did not attack the warrant on this basis in the founding or replying affidavits, and no argument was advanced along these lines either.

45. The applicant must fail on this point of dispute.

The extra ordinary expenses dispute

46. The amounts claimed by the respondent under this dispute are R71 580.10 and R6053.50.

47. The applicant denies that he consented to be liable for any part of the extraordinary expenses.

48. There are two sets of extraordinary costs involved, the first being two school trips that the parties minor son R took to Harvard University in 2014 and Europe in 2015, in respect of which the respondent claims the sum of R71 580.10 on the basis that the applicant agreed to share in the costs.

49. The second set of extraordinary costs is the purchase of an iPad for their minor son T in the amount of R9507.00 plus the cost of repairing the iPad that T presently has in the amount of R2600.00, 50% of which total is claimed in the sum of R6053.50 on the basis that the applicant agreed to pay same.

50. The relevant parts of the settlement agreement read as follows:

7.7 The Defendant will bear all the reasonable education costs in respect of the minor children. Educational costs shall include but be limited to all private school fees and additional tuition fees reasonably required by the minor children. The cost of school uniforms, school books, sporting equipment, school outings and camps, reasonably required by them as prescribed by the minor children school, relating to their education and extra-curricular school activities engaged in by them shall be the responsibility of the Plaintiff.

7.8 In the event of the Plaintiff incurring an extraordinary item of expenditure in this regard the Plaintiff may request that the Defendant consent to pay 50% of the cost the two prior to incurring such expense, which consent shall not be unreasonably withheld."

51. The applicant makes the allegation that the settlement agreement expressly states that he is to be consulted prior to any extraordinary expenses being incurred. His understanding of clause 7.8 is mistaken. There is no requirement that the applicant be consulted. Clause 7.8 applies to extra ordinary expenditure. What clause 7.8 makes clear is that in the event of the respondent incurring extraordinary expenditure, whether before or after getting the applicant's agreement to share in the expense, the applicant has to consent to, agree or undertake to share in that expense for the applicant to attract an obligation.

52. Clause 7.8 clearly distinguishes ordinary item expenses from extra-ordinary item expenses. The ordinary item expenses are specific expenses and nature of expenses which are dealt with in the

settlement agreement. Extra-ordinary item expenses are those either not specifically dealt with in the settlement agreement and/or all those item expenses outside of the nature of expenses dealt with in the settlement agreement. It is common cause between the parties that the overseas trips are extra ordinary expenses.

53. In the warrant affidavit at paragraphs 10 to 12 in particular the applicant made the unequivocal allegation repeatedly that the applicant had agreed to pay 50% of the costs which she had incurred in respect of both the Harvard and Europe trips.

54. Except for the Harvard trip, the applicant deals with the respondent's allegations by bare denial evidently relying on his interpretation of the settlement agreement. In one instance in his founding affidavit the applicant made reference to the existence of documents saying that they would be provided at the hearing of the application, if needed. He made a similar comment in reply. The onus is on the applicant to establish the facts on which his case is based in his founding papers, which constitute and must contain both the pleadings and evidence. See *inter alia Titties Bar and Bottle Store (Pty) Ltd v. ABC Garage (Pty) Ltd*[5], *Director of Hospital Services v. Mistry*[6]. An applicant is required to do so at least in satisfaction of the general rule that the party who alleges must prove.

[5] 1974(4) SA 362 T at 368 H to 269 B
[6] 1979 (1) SA 626 A

55. Before dealing more specifically with allegations made by the applicant, this is an appropriate stage to address the requirements and standards for setting aside a warrant or writ of execution.

56. There is no specific Uniform Rule of Court or section of an act applicable as for instance in section 62 (3) of the Magistrates Court Act 32 of 1994 which reads: *"Any court may, on good cause shown, set aside any warrant of execution or arrest issued by itself".*

57. In terms of its inherent jurisdiction, the High Court has a discretion to set aside a warrant or writ of execution on good cause shown. The general principle is that a warrant of execution will be set aside if the warrant is not supported or is no longer supported by its *causa.* See *Le Roux v. Yskor Landgoed (Edms) Bpk en Andere*.[7] See also *Strime v Strime*[8] in the words[9] of Tebbutt J:

> "*Execution is a process of the court and the court has an inherent power to control its own process subject to the rules of court. It accordingly has a discretion to set aside or stay a writ of execution (see Williams v. Carrick 1938 TPD 147 at 162; Graham v. Graham 1950 (1) SA 655 (T) at 658; Cohen v. Cohen 1979 (3) SA 420 (R) at 423B- C). The court will, generally speaking, grant a stay of execution where real and substantial justice requires such a stay or, put otherwise where injustice would otherwise be done.*"

[7] 1984 (4) SA 252 T at 257 B
[8] 1983 (4) SA 850 (K)
[9] 852 A -B

58. 'Good cause' is a well-known phrasing of a standard for certain types of relief. There is no *numerous clausus* or definition of what constitutes good cause as a recognised standard. In *South African Forestry Co v. York Timbers Ltd*[10] the SCA said the following about the phrase:

> *""Good cause" is a phrase of wide import that requires a court to consider each case on its merits in order to achieve a just and equitable result in the particular circumstances. As pointed out by Innes CJ in Cohen Brothers v Samuels 1906 TS 221 at 224 in relation to the meaning of that phrase …" No general rule which the wit of man could devise would be likely to cover all the varying circumstances which may arise in application of this nature. We can only deal with each application on its own merits, and deciding each case with a good cause has been shown."*

59. It was for the applicant to make out a case for good cause. Indeed if the warrant is premised on a wrong interpretation of a judgement or a settlement agreement, then that alone could constitute good cause. I return to the case made out in the founding affidavit.

60. I is evident that the applicant was consulted regarding the Harvard trip by latest 14 January 2014. It is relevant that the applicant did not ask in her email, to which the applicant was replying, that the

[10] 2003 (1) SA 331 SCA

applicant fit 50% of the bill but that they use R's scholarship savings. The applicant refused consent either way, at that stage anyway, and in my view not unreasonably on his version. In the email he told the respondent that it would be fair if she paid for the trip because he had paid R90 000.00 the previous year for a Mount Everest trip for both the respondent and R. He did also reference his "*financial predicament*".

61. That was January 2014 and the trip took place in July 2014. The respondent's allegation in her warrant affidavit is that the applicant consented to pay "*his 50% contribution for these trips"* referring to Harvard and Europe. In his email the applicant also requested a host of information and ended the email with "*Hopefully you will get more information and feedback from them."* I reasonably infer that the parties had further discussions, weather the applicant consented, at some stage, to fit 50% of the expenditure, or not. The respondent certainly did not make the allegations in her warrant affidavit premised on the email put up by the applicant. Surprisingly the respondent did not in her answering affidavit factually address the applicant's denial. One would expect there to be further information of their interaction, maybe even emails but if not, then at least when or at what stage and how or with words to what effect the applicant allegedly consented.

62. The respondent argues that the applicant did consent to R travelling overseas because he signed the Visa forms. Consenting to R travelling overseas does not show that the applicant consented to share the costs to the measure of 50%. The net effect is that in the face of evidence by the applicant, there is no controverting version put up by the respondent, neither in her warrant affidavit nor answering affidavit. I cannot find that the applicant agreed to contribute to the Harvard trip. Accordingly the applicant shows good cause why he should never have been made liable for the Harvard trip in terms of the warrant. In terms of the warrant affidavit the respondent claimed 50% of R12 941.00 in respect of the Harvard trip air ticket and 50% of R48 399.00 per the leadership summit document. The 50% portion of these is R30 670.00 for which the applicant is not liable. The applicant is also not liable for USD 750.00 being the 50% part of R's pocket money for the Harvard trip. The respondent calculated the USD1500 and Euro 1500 in Rands and put them up as one Rand amount of R50 490.00. I can only assume she calculated the US dollar amount as at the date of trip. On the papers R flew on or about 27 July 2014.

63. Regarding the Europe trip, bar a bare denial the applicant fails to deal therewith, even in reply where he deals further with the Harvard trip. Accordingly in the face of the respondent's allegations

the applicant shows no cause why he should never have been made liable for the Europe trip in terms of the warrant.

64. As far as the iPad expenses are concerned the applicant denied giving consent stating that it was an expense which the respondent was responsible for. In my view clause 7.7 includes the iPad expenses, particularly in as much as the respondent herself cited same as necessary schooling expenses and she is ordinarily responsible for that. Accordingly in my view the iPad expenses are not extraordinary and do not resort under clause 7.8. The applicant's denial and reasoning accords with clause 7.7 of the settlement agreement. In my view the respondent did not make out a proper case for why the applicant should be liable for the iPad expenses. It may well be that the respondent did ask and the applicant did agree to pay for such but no facts to that affect can be found in the warrant affidavit or the answering affidavit. While an allegation of consent might be adequate to give rise to an agreement foreshadowed in clause 7.8, (as I found in the case of the Europe trip, for the reasons stated) for the respondent to show an agreement contrary to the terms of clause 7.7 the mere allegation that the applicant consented to pay these expenses is inadequate especially in the face of there being no obligation on the applicant to do so and in face of the obligation falling on the respondent. Accordingly I find that the applicant shows good cause

why he should not have been held liable for the iPad costs in terms of the warrant. The 50% in relation to the iPad's which the applicant is not liable four is the sum of R6 053.50.

Conclusion

65. In conclusion I find that the applicant failed to show good cause for the warrant to be set aside which was the relief prayed.

66. However the applicant did show good cause for the warrant to be varied. He showed he is not liable for payment of R36 723.50 and the Rand amount of USD1500.00 in terms of the warrant.

67. A variation is indeed not prayed as a specific alternative but in my view follows in the interests of justice even though the applicant did not pray the "*further and/or alternative relief prayer*".

68. My findings leave me with the task of crafting an order to vary the warrant.

69. There was some argument in respect of the content of a letter by the applicant's attorney to the respondent's attorney in particular and the reasonable conduct and *bona fides* of the parties and their attorneys. Ultimately what is clear is that the parties took different views on the meanings of the settlement agreement clauses which has played itself out. At best these arguments go to costs. In considering the costs issue I considered *De Crespigny v. De*

Crespigny[11] where Holmes J (as he then was) said[12] the following about execution:

> "*The civil administration of justice provides machinery inter-alia for the enforcement of rights. It provides, amongst other things, for litigation, judgement, and execution. As execution is a process for enforcing judgements, it seems to me axiomatic that it is only available when the claim or* lis *has not been judicially resolved if the amount payable under the judgement can only be ascertained after a further problem of law has been decided. It is not within the province of the plaintiff to decide such problems. In such a case, failing agreement between the parties, a plaintiff's remedy, at any rate in the Supreme Court, would, I think be to apply for a definition of his rights under the judgement. Whether this could be done by way of an application for a declarator, or in the course of applying for leave to execute, I need not decide*"

70. The applicant misconstrued clauses 7.3 and 7.5. Both parties misconstrued clause 7.8. Ultimately the respondent failed in respect of the Harvard trip for want of allegations to sustain a case of 'consent' and the applicant failed in respect of the Europe trip for want of allegations to support a denial.

71. The cost order granted in my discretion below, is the result of careful consideration of the relative degrees of success of the parties, fairness and justice.

---

[11] 1959 (1) SA 149 (N)
[12] 150 F-G

Order

72. In the result I make the following order:

72.1. The applicant is not liable for payment of the amount of R36 723.50 and the Rand amount claimed for USD750.00 in terms of the warrant of execution dated 18 March 2016 issued out of the above court under case number 10255/2013.

72.2. The warrant of execution aforementioned is varied by substituting for the amount of R114 452.51, the sum of R77 729.01 less the Rand amount of USD750.00 exchanged as at 27 July 2014.

72.3. The registrar is directed to re-issue the warrant in accordance with this order.

72.4. Each party is to pay their own costs.

RS WILLIS

JUDGE OF THE HIGH COURT

Date of Hearing: 21 April 2017
Judgment Delivered: 21 September 2017
APPEARANCES

On Behalf of the Applicant: A Saldulker

Instructed By: Jennifer Scholtz Attorney

12 Robina Crescent Fourways Gardens Phase 2

0114671165

Email: Candice@jenniferscholtz.co.za

On Behalf of the Respondent: V Vergano

Instructed By: Leslie Cohen and Associates

Ilovo Law Chambers 4 Fricker Road

Illovo

011 447 7747

Email: leslie@icalaw.co.za