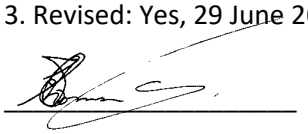
IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

1. Reportable: Yes
2. Of interest to other judges: Yes
3. Revised: Yes, 29 June 2020



IN RE: SEVERAL RELATED MATTERS ON THE INTERLOCUTORY COURT ROLL

Case no. 2018/44046

MUNYAI, SHUMANI MARIA Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2012/13337

MATSIMELA, PHINEAS SEGOPOTSO Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2017/32542

NYIDE, DUMEKAHLE Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2018/36275

HARDING, ROBERT HENRY Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2019/16443

MOSS, JERMAYN CRAIG ANTHONY Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2019/1055

MAKHAPELA, JOYCE DIKELEDI Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2017/33700

KOALANE, MOLELEKI JAMES Applicant

and

ROAD ACCIDENT FUND Respondent

Case no. 2019/6814

MORE, REITUMETSE PRISCILLA Applicant

and

ROAD ACCIDENT FUND Respondent

JUDGMENT

THOMPSON AJ

[1] During the course of the week of 18 May 2020 I was tasked with performing judicial duties in, what has become known as the trials interlocutory court ("the interlocutory court"). The interlocutory court is a motion court specifically dedicated, as set out in the Judge President's Directive[1] ("the directive") to deal with interlocutory matters in trial matters. The purpose of the interlocutory court is to assist parties to obtain procedural relief against recalcitrant litigants who are delaying matters from becoming trial ready.

[2] During my stint in the interlocutory court I became increasingly concerned at:

i. the lackadaisical manner in which affidavits were being drafted and presented to court for consideration; and
ii. the nature of relief sought in various instances.

This judgment is intended to deal with these concerns. These concerns also impact on the effectiveness of the interlocutory court as judicial resources are being spent on having to peruse papers which are inherently defective, either for the want of essential

[1] *2 of 2019*

allegations or due to the seeking of impermissible relief. Furthermore, as these matters were not dealt with in open court as a result of the national lockdown due to COVID-19. The parties relied primarily on written submissions. I accordingly deem it appropriate to provide reasons for orders made in certain of the matters that served before me.

[3] The appropriate starting point is the directive itself. Which reads as follows:

> *"19. A motion court, the Trials Interlocutory Court, dedicated to interlocutory matters in trial matters will sit Mondays to Thursdays every week, except during the period of dies non, between 15 December and 15 January.*
>
> *20. Matters shall be set down on notice filed before noon on the Thursday before the next week's session, be succinct and rarely more than five pages of affidavit, and, where appropriate, brief heads of argument shall be submitted at the hearing.*
>
> *21. Ordinary unopposed interlocutory matters not involving non-compliance in a trial matter must not be enrolled in this Court.*
>
> *22. Draft orders in the Interlocutory court in duplicate bearing the name of counsel, attorney and the email addresses of the parties attorneys, shall be presented to the court and the registrar shall prepare orders, with the draft orders as annexures, on the same day as they are granted, which shall be available to the parties immediately, and which, furthermore, shall be emailed to the parties thereafter as soon as possible.*
>
> *23. Any party who, having reason to be aggrieved by the other party's neglect, dilatoriness, failure or refusal to comply with any rule of court,*

provision of the practice manual or provision of this directive, must utilise the trials interlocutory court to compel compliance and cooperation from the delinquent party.

24. *In particular, plaintiffs in category "Y" matters who allege that the defendant is culpable in any way for an unnecessary delay, must not hesitate to utilise this court*

25. *Among the matters which this court will deal with will be:*

    25.1 the failure to deliver timeously any practice note or heads due,

    25.2 a failure to comply with rule 36,

    25.3 a failure to sign a rule 37 minute promptly,

    25.4. a failure to comply timeously with any undertaking given in a rule 37 conference,

    25.5. a failure to secure an expert timeously for an interview with a patient,

    25.6. a failure to secure a meeting of experts for the purpose of preparing joint minutes,

    25.7. non-compliance with any provision of this directive;

    25.8. any other act of non-cooperation which may imperil expeditious progress of a matter may be the subject matter of an application to compel; the list is not closed

26. *In a proper case, punitive costs (including an order disallowing legal practitioners from charging a fee to their clients) may be awarded where recalcitrance or obfuscation is apparent and is the cause of inappropriately delaying the progress of any matter."*

[4] The lackadaisical manner in which affidavits are being drafted is seemingly borne out of a misunderstanding of item 20 of the directive; which requires the affidavit supporting the interlocutory application to be “rarely more than 5 pages”. The value of the *Interlocutory Court* lies in its’ ability to function ‘expeditiously’. Item 20 is intended to avoid burdening the judge with long-winded, verbose documents. Furthermore, the court deals with procedural matters which stem from predefined precursory steps and thus mitigate in favour of succinct affidavits.

[5] Practitioners have unfortunately taken the stance that item 20 allows them to negate their professional obligations and submit affidavits with largely) unsubstantiated allegations leaving the judge the unenviable task to make assumptions. A legally untenable state of affairs The most frequent example of this state of affairs that came before me is where an applicant sought an order to compel the other party to discover. In this regard the allegation relied upon is usually phrased as “*To date hereof, the respondent has yet to deliver a signed discovery affidavit in the main action, despite the impending trial date.*” A further allegation is then made in a follow-up paragraph dealing with prejudice that there has been non-compliance with Rule 35(1). The problem with the aforesaid is that the alleged failure to comply with Rule 35(1) pertains to the allegation of prejudice and not the precursory procedural step of calling upon the other party, in writing, to file a discovery affidavit. The latter being the necessary allegation in order to sustain a claim to compel discovery.

[6] The obligation to file a discovery affidavit arises either through being called upon, in writing, to deliver a discovery affidavit in terms of Rule 35(1)[2] or, as contemplated by Rule 37(1)[3], through a party receiving notice of a trial date. In all of the applications before me, no allegation is made that either a Rule 35(1) notice was delivered or that the other party had received notice of the trial date. The court is expected to assume that a Rule 35(1) notice was served. As a fallback position the argument is raised that even if the court is hampered by the lack of an allegation and proof that a Rule 35(1) notice had been served, Rule 37(1) can be relied upon as there is an impending trial date. Anyone who has ever been at roll call for trial matters know that where there is no appearance for a party, the court must be satisfied that due notice of the trial date had been given. The manner of giving notice of a trial date is governed by Gauteng Rule 7, in particular sub-rule (5)[4] of Rule 7. Although infrequent, it does occur that a party did not receive notice of a trial date. It cannot automatically be assumed that notice of the trial date was duly served.

[7] The precursory jurisdictional element of either a Rule 35(1) notice being delivered or notice of a trial date as contemplated by Rule 37(1) is thus a requirement before a court can compel a party to deliver a discovery affidavit. To make such

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[2] "*Any party to any action **may require any other party thereto, by notice in writing**, to make discovery on oath within twenty days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such other party. Such notice shall not, save with the leave of a judge, be given before the close of pleadings.*" [***emphasis added***]

[3] "*A party **who receives notice** of the trial date of an action shall, if such party has not yet made discovery in terms of rule 35, within 5 days deliver a sworn statement which complies with rule 35(2).*" [***emphasis added***]

[4] *"Every party to an action who receives notice of the trial date shall forthwith, and in any event not later than seven days after receipt of such a notice, give notice in writing to every other party or his or her attorney of the date which was allocated by the registrar for the hearing: Provided that the party receiving notice from the registrar need not give such notice to a party who is represented by the same attorney as the party who is so obliged to give notice."*

allegations would require no more, as an example, than a statement to the effect that "*On [a particular date] a notice in terms of Rule 35(1) was served on the respondent's attorneys. A copy of the notice is attached as annexure "*".*" As a court cannot issue orders based on assumptions, crisp and concise allegations such as the aforesaid is strictly necessary for the court to assist an applicant by granting an order to compel discovery. Legal representatives to applicants can hardly complain that matters are being delayed if orders are not granted in instances where the most basic of jurisdictional allegations in order to obtain relief are not made.

[8] The interlocutory court will be quick to assist litigants to ensure that their matters are trial ready and to call to order a recalcitrant litigant who is preventing a matter from becoming trial ready. That being said, the interlocutory court, no less so than any other, will insist that the full gamut of legal procedure and protocol necessary is followed and set out in the necessary affidavit before the relief sought, is granted.

[9] It is a trite principle of law that in civil matters the parties are the masters of their own ships. They decide how to plead their cases, subject only to general principles of law in relation to what must be pleaded. They decide what witnesses, if any, they wish to call and they also decide the manner in which they are to lead the evidence of witnesses. Despite the aforesaid trite principle, legal practitioners have taken to misconstruing, in particular, item 25.5 of the directive as giving a license to applicants to ask a court to direct a respondent to appoint experts and do so within specified time-periods. The directive was never intended to, nor could it, confer any power on the courts to order a litigant to appoint experts. The intent/purpose of the directive is simply

put, to enable an applicant to approach the court for an order to place a respondent on terms to decide how it wishes to conduct and/or present its case. To understand the difference, an analysis of Rule 36,[5] in so far it pertains to the appointment and calling of expert witnesses, is required.

"*(1) A party to proceedings, in which damages or compensation in respect of alleged bodily injury is claimed, shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof, to submit to a medical examination.*

(2) (a) A party requiring another party to submit to a medical examination shall deliver a notice to such other party that—

(i) specifies the nature of the examination required;

(ii) specifies the person or persons who shall conduct the examination;

(iii) specifies the place where and the date (being not less than 15 days from the date of such notice) and time when it is desired that the examination shall take place; and

(iv) requires the other party to submit himself or herself for the medical examination at the specified place, date, and time.

. . .

(8) Any party causing an examination to be made in terms of subrules (1) and (6) shall—

(a) cause the person making the examination to give a full report in writing, within two months of the date of the examination or within such other period as may be directed by a judge in terms of rule 37(8) or in terms of rule 37A, of the results of the examination and the opinions that such person formed as a result thereof on any relevant matter;

(b) within five days after receipt of such report, inform all other parties in writing of the existence of the report, and upon request immediately furnish any other party with a complete copy thereof and

(c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.

(9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless—

(a) where the plaintiff intends to call an expert, the plaintiff shall not more than 30 days after the close of pleadings, or where the defendant intends to call the expert, the defendant shall not more than 60 days after the close of pleadings, have delivered notice of intention to call such expert; and

(b) in the case of the plaintiff not more than 90 days after the close of pleadings and in the case of the defendant not more than 120 days after the close of pleadings, such plaintiff or defendant shall have delivered a summary of the expert's opinion and the reasons therefor: Provided that the notice and summary shall in any event be delivered before a first case management conference held in terms of rules 37A(6) and (7) or as directed by a case management judge.

(9A) The parties shall—

(a) endeavour, as far as possible, to appoint a single joint expert on any one or more or all issues in the case; and

(b) file a joint minute of experts relating to the same area of expertise within 20 days of the date of the last filing of such expert reports.

. . ."

[10] Rule 36(1) creates a general procedural right to any party, where damages or compensation in respect of alleged bodily injury is claimed, to require the claimant party to submit to a medical examination. This general procedural right does not mean that a defendant is obliged to require a plaintiff to submit to a medical examination. A defendant may accept the medical evidence submitted by the plaintiff.

[11] Where a defendant does require a plaintiff to submit to a medical examination in terms of Rule 36(1), the procedure by which this is procured is set out in Rule 36(2). One of two scenarios now arise. The first scenario is where the defendant, after the plaintiff has submitted to the requisite medical examination, decides and elects not to call the expert who conducted the medical examination as a witness. Seemingly, legal practitioners have formed the view that due to item 25.2, the interlocutory court can now be approached to have the court compel the defendant to deliver a Rule 36(9)(a) notice and thereafter a Rule 36(9)(b) expert summary/report. Nothing in the directive lends itself to this interpretation. The prerogative of whether to utilize a particular expert as a witness remains within the discretion of the respective parties.[6] This is due to the fact that a particular witness may not advance the cause of the party who required the medical examination in terms of Rule 36(1), or the expert does not, in the opinion of the party who requested the submission to the medical examination, add anything of value to that party's case.

[12] The first scenario is not without consequence to the defendant. The plaintiff is entitled to know the opinion of the expert employed in terms of Rule 36(1). To this end

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[6] See generally ***Doyle v Sentraboer (Cooperative) Limited*** 1993 (3) SA 176 (SECLD) at 180G "*Rule 36(9) is a limitation on the right of litigants to* ***call whoever they choose*** *as witnesses. Normally a party does not know* ***what witnesses the other party is going to call****, or what such witnesses are going to say.* ***He must prepare as best he can by assembling his own witnesses*** *to deal with the issues raised on the pleadings. There are other provisions of Rule 36. . .whcih assist a part in preparing for trial. Moreover a party is not required to inform his opponent who his witnesses are. . ."* [emphasis added]

Rule 36(8) is applicable. Thus, in instances where a plaintiff submitted to a medical examination in terms of Rule 36(1) and the Defendant had not yet given notice in terms of Rule 36(9)(a) that it intends to call that expert as a witness, the plaintiff cannot request the court to order the defendant to deliver a Rule 36(9)(a) notice. This is because the court cannot tell the defendant how it should conduct its case or who it should call as witnesses. This does not leave the plaintiff without relief. The plaintiff can, in terms of item 25.2 of the directive, call upon the defendant to furnish it with a copy of the report. The plaintiff can also request the court to place the defendant on terms to decide whether the defendant intends to call a particular expert as a witness and, if the defendant elects to call a particular expert as a witness to deliver its Rule 36(9)(a) notice within a particular time. This course of action by the court is permitted as the court is not directing the defendant how it should present its case or which witnesses it should call, all the court is doing is placing the defendant on permissible terms to make decisions to avoid delays in matters becoming trial ready.

[13] In order to obtain the aforesaid relief a series of procedural steps are required, compliance to which must be detailed in the affidavit. For example, "*The defendant caused Rule 36(1) and (2) notices to be served on the plaintiff in respect of [particular expert/s]. The plaintiff submitted to the medical examination and the examination was done on [date]. The two months contemplated by rule 36(8)(a) has lapsed and the defendant has not informed the plaintiff of the existence of such report in terms of rule 36(8)(b), nor has the defendant given notice, in terms of rule 36(9)(a) that it intends to call the aforesaid as an expert witnesses. A notice in terms of Rule 30A was served on the defendant on [date], calling upon the defendant to comply with rule 36(8)(a) and (b). A copy of the Rule 30A notice is attached as Annexure "*". The dies in terms*

of Rule 30A(1) lapsed on [date] and the defendant has failed to comply with the rules. The plaintiff seeks an order compelling the defendant to comply with rule 36(8). In addition, the plaintiff seeks an order compelling the defendant to make an election whether it intends to call any expert witnesses and, if the defendant so elects, to be ordered to deliver its rule 36(9)(a) notices within a time period as specified by this court." These allegations cover all the necessary procedural steps required and is sufficiently succinct to not exceed the provisions of item 20.

[14] The second scenario pursuant to a plaintiff's submission to a medical examination in terms of Rule 36(1) is where the defendant elects to call the expert as a witness and delivers a Rule 36(9)(a) notice. Hereafter the relief that can be sought by a plaintiff is relatively clear. A plaintiff can seek a court to compel the defendant to deliver its Rule 36(9)(b) expert summary/report within an allotted time.

[15] This brings me to item 25.5 of the directive. Legal practitioners have taken to interpreting item 25.5 of the directive to mean that the court can compel a defendant to cause a plaintiff to submit to a medical examination. This interpretation is only partially correct. If the defendant had given notice, in terms of Rule 36(9)(a), of its intention to call a particular expert, the court can be approached to compel the defendant to cause the plaintiff to submit to a medical examination in terms of Rule 36(1). In this scenario the court will not overstep its' bounds as the court will not be ordering the defendant how to conduct its case or which witness to call. Rather, the defendant has already indicated which witness it intends to call and thereby how it intends to conduct its case. The court is merely requested to assist in getting the

defendant to timeously conduct its case in a manner that will ensure that the matter is trial ready sooner rather than later.

[16] However, when a defendant has not delivered a Rule 36(9)(a) notice the court cannot order the defendant to cause the plaintiff to submit to a medical examination as this will amount to the court telling the defendant how to conduct its case. This does not leave the plaintiff without a remedy. Nothing prevents the plaintiff, where a defendant is recalcitrant in making decisions whether to appoint experts or not, to approach the interlocutory court to compel the defendant to make an election whether it wants to either have a plaintiff submit to medical examination in terms of Rule 36(1) in order to decide whether it wants to appoint an expert in terms of Rule 36(9)(a) or whether it wants to appoint an expert in terms of Rule 36(9)(a) and require the plaintiff to submit to a medical examination in terms of Rule 36(1).

[17] The interlocutory court is intended to do no more and no less than being an easily approachable court, whilst abiding by the normal rules of evidence and procedure to making out a case, on time periods as envisaged by Rule 6(11),[7] to assist the parties in getting a matter trial ready. To this end the interlocutory court cannot direct or order a party how it should conduct its case or what witnesses it should call, but the interlocutory court can compel compliance with the rules or require a party to make an election, within a specified time period, whether it is going to employ the available provisions of the rules.

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[7] *"Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge."*

[18] I now turn to the respective cases before me.

[18] In ***Munyai v RAF***[8] the plaintiff sought that I order the defendant to deliver its Rule 36(9)(b) expert summary/reports that are still outstanding. Glaringly absent from the founding papers was an allegation that the defendant delivered Rule 36(9)(a) notice. I permitted the plaintiff to deliver a supplementary affidavit dealing with this *lacuna* in the application. In the supplementary affidavit it turned out at the time of the delivery of the interlocutory application to compel, no Rule 36(9)(a) notices had been delivered by the defendant, but subsequent thereto Rule 36(9)(a) notices had been delivered by the defendant. As a trial date of 3 June 2020 have been obtained and as the only two expert reports outstanding on the part of the defendant relates to medical examinations that already took place on 10 and 17 October 2019, and further taking into consideration that the time period as provided for in Rule 36(8)(a) had long since run its course, I am inclined to exercise my discretion in favour of the plaintiff. I am of the view that the interlocutory court is not designed to frustrate a party in ensuring a matter is trial ready, but rather to assist parties in getting a matter trial ready. The fact that the Rule 36(9)(a) notices by the defendant was only delivered after the interlocutory application was launched should not, in the particular facts of this case, preclude the plaintiff from obtaining relief. As such I made the following order:

1. The respondent is ordered to deliver its outstanding Rule 36(9)(b) expert summaries/reports in respect of the occupational and industrial psychologists for which it gave notice for in terms of Rule 36(9)(a) on or before 25 May 2020.

[8] 2019/7093

2. The respondent shall not be entitled to call as witnesses any person to give evidence as an expert in respect of whom an expert summary/report in terms of Rule 36(9)(b) has not been delivered by 25 May 2020, unless a court of competent jurisdiction, on good cause shown, otherwise directs or the applicant agrees to the calling of such expert witness.

3. The parties shall obtain joint minutes between all overlapping expert witnesses, on the basis of such expert reports which have been timeously delivered by no later than 25 May 2020, which joint minutes shall be delivered by no later than 27 May 2020, or such date as a court of competent jurisdiction, on good cause shown, may direct .

4. The applicant is granted leave to re-apply for a case management meeting for purposes of obtaining a certificate of trial readiness, which case management meeting may not be prior to 28 May 2020.

5. The respondent shall pay the costs of this application.

[20] In ***Segopotso v RAF***[9] the applicant sought an order compelling the respondent to comply with the applicant's rule 36(9)(b) notice. The relief sought is nonsensical. Upon a perusal of the affidavit it became clear that the applicant wanted the court to order the respondent, as the respondent had caused the plaintiff to submit to medical examinations, to file the reports of those experts in terms of rule 36(9)(a). For obvious

[9] 2012/13337

reasons I cannot compel the respondent as to whom they wish to call as a witness. I raised this concern with the applicant's legal representative. In response it was indicated that the application is to be removed from the roll for the applicant to pursue its remedies in terms of Rule 30A. In the premises I made the following order:

1. The application is removed from the roll.

2. No order as to costs.

[21] In ***Nyide v RAF***[10] the plaintiff sought to be provided, in terms of Rule 36(8) with the reports of two medical practitioners to whom the plaintiff submitted to medical examinations for in terms of Rule 36(1). In addition thereto the plaintiff sought an order that joint minutes must be obtained in respect of all the experts that overlapped by virtue) of the Rule 36(1) examinations. However, the defendant has not given any indication, in terms of Rule 36(9)(a), that it intends to call either of these as expert witnesses I see no reason why the defendant should, taking into consideration that public money is involved, be put to the expense of having experts attend to joint minutes where there is no indication that those experts will be utilized at trial by the defendant. The plaintiff, upon me raising the latter aspect as a query, abandoned such relief. No amendment to the relief prayed for was sought in order to put the defendant on terms to make an election whether it intends to call either or any of the two experts as witnesses. In the premises I made the following order:

[10] 2017/32542

1. The respondent is ordered, in terms of Rule 36(8), to furnish to the applicant with the reports of the occupational therapist, M Magoele, and the industrial psychologist, L Marais, within 5 (FIVE) days from the date of service of this order on the respondent's attorneys of record;

2. The respondent is ordered, in terms of rule 35(7), to furnish the applicant with its discovery affidavit within 5 (FIVE) days from the date of service of this order on the respondent's attorneys of record, provided that should the defendant be unable to depose to a discovery affidavit due to the closure of its offices in terms of any lockdown regulations, the discovery affidavit shall be delivered within 5 (FIVE) days of the defendant's offices officially reopening;

3. The respondent is to pay the costs of the application.

[22] In the ***Harding v RAF***[11] the same issue arose as in the *Nyide*-matter. In the premises I made the following order:

1. The respondent is ordered, in terms of Rule 36(8), to furnish to the applicant the reports of the orthopedic surgeon, Dr Mushwana, the occupational therapist, P Chiloane, and the industrial psychologist, Dr N Runguqu-Mshumpela, within 5 (FIVE) days from the date of service of this order on the respondent's attorneys of record;

[11] 2018/36275

2. The respondent is to pay the costs of the application.

[23] In ***Moss v RAF***[12] the same issue arose as in the *Nyide*-matter. In the premises I made the following order:

1. The respondent is ordered, in terms of Rule 36(8), to furnish to the applicant the reports of the orthopedic surgeon, Dr Vlok, the occupational therapist, Dr Rice, and the industrial psychologist, Dr Martiz, within 5 (FIVE) days from the date of service of this order on the respondent's attorneys of record;

2. The respondent is to pay the costs of the application.

[24] In ***Makhapela v RAF***[13] and in ***Koalane v RAF***[14] the applicants sought an order compelling respondent to appoint medical experts in terms of Rule 36(1). As already indicated, I have no such power in law. Further relief was sought to place the respondent on terms, assuming the success of the first order of relief sought, to deliver the expert reports within 15 days of the assessments having been done. No case was made out, or even advanced, why the normal time period as allowed for in Rule 36(8)(a) should not be allowed. In any event, in light of the fact that the first part of the order being sought could not be granted, the second part of the order can also not be granted. In the premises I made the following order in both the aforesaid matters:

[12] 2019/16443
[13] 2019/1055
[14] 2017/33700

1. The application is dismissed.

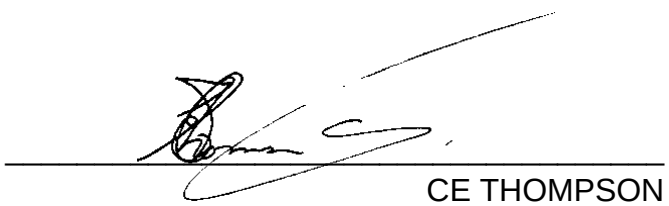
2. There is no order as to costs.

[25] In ***More v RAF***[15] the applicant sought an order compelling the respondent to indicate, within 5 days, whether it intends to appoint experts and, if the defendant so intends, to appoint its experts within 10 days of having so indicated its intention. The respondent has since indicated that it does intend to appoint experts in this matter. In the premises I made the following order:

1. The respondent, having indicated that it intends to appoint experts in this matter, is hereby ordered to appoint such experts it intends to by delivering its Rule 36(9)(a) notices within 15-days of the granting of this order.

2. Should the respondent fail to appoint experts, or any one particular expert, within the time period prescribed in paragraph 1 hereof, the respondent is barred from doing so unless a court of competent jurisdiction, on good cause shown, otherwise permits or unless the applicant consents thereto;

3. The respondent is to pay the costs of the application.



CE THOMPSON
ACTING JUDGE OF THE HIGH COURT JOHANNESBURG

[15] 2019/6814

Heard on: 21 May 2020
Delivered on: 29 June 2020 electronically, by e-mail

2018/44046

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2012/13337

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Attorney for the Respondent: Pule Incorporated

2017/32542

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2018/36275

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2019/16443

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2019/1055

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Attorney for the Respondent: Nozuko Nxusana Inc

2017/33700

On behalf of the Applicant: Adv Bd Molojoa
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2019/6814

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