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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 20424/2020**

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

**JUDGE LT MODIBA      16 OCTOBER 2020**

*In the ex parte applications:*

**1. CELL C LIMITED**

*Applicant*

and

**MOHAMED ADAMJEE**

*Respondent*

(Identity number: [...])

**2. CELL C LIMITED**

*Applicant*

and

**ADRIAAN PILLAY**

*Respondent*

(Identity number: [...])

**3. CELL C LIMITED**

*Applicant*

And

**MOHAMED ADAMJEE**

*First Respondent*

(Identity number: [...])

*Second Respondent*

**ADRIAAN PILLAY**

(Identity number: [...])

**THE STANDARD BANK OF SOUTH AFRICA  
LIMITED**

*Third Respondent*

(Registration number: 1962/000738/06)

**FIRST NATIONAL BANK, A DIVISION OF FIRST  
RAND BANK LIMITED** *Fourth Respondent*

(Registration number: 1929/001225/06)

**NEDBANK LIMITED** *Fifth Respondent*

(Registration number: 1951/000009/06)

**REGISTRAR OF DEEDS, JOHANNESBURG** *Sixth Respondent*

**REGISTRAR OF DEEDS, PIETERMARITZBURG** *Seventh Respondent*

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## REASONS FOR JUDGMENT

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### MODIBA J

[1] I wrote this judgment in response to a request for reasons by Mohamed Adamjee and Adriaan Pillay (individually referred to as Adamjee and Pillay and collectively as the respondents) dated 6 October 2020. The request relates to the orders that I granted on 28 September 2020 when the above three matters served before me in the unopposed motion court.

[2] On the said date, I granted an order disallowing the respondents leave to file opposing papers in all three matters. I also:

2.1 Confirmed the rule nisi granted by Wepenaar J in the third matter on 18 August 2020, returnable on 28 September 2020, to operate as an interim order pending the determination of legal proceedings which Cell C would institute against the respondents within 60 days of the said order;

2.2 Allowed Cell C leave to access the evidence preserved in terms of the rules nisi in the first and second matter for the purpose of instituting legal proceedings against the respondents;

2.3 Granted other ancillary relief.

[3] On the same date that the respondents filed a request for reasons, they filed a notice of application for leave to appeal in all three matters. The later application suggests that they only intend seeking leave to appeal the orders referred to in 2.1 and 2.3 above. I nonetheless deem it appropriate to furnish reasons for all the orders that I granted on 28 September 2020 to set out the context in which I dealt with the rules *nisi* on the return date.

#### **CONFIRMATION OF THE RULES NISI**

[4] I confirmed the rules *nisi* having been satisfied that Cell C has made out a proper case for the relief set out therein. I found that it has *prima facie* established that:

4.1 It has a cause of action against the respondents which it intends to pursue;

4.2 The respondents have in their possession email and WhatsApp communication which constitutes vital evidence in support of Cell C's cause of action;

4.3 Cell C has no personal right in respect of the email and WhatsApp communication;

4.4 Cell C has a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner spirited away by the time it calls on the respondents to discover it as part of the legal proceedings it intends pursuing against the respondents;

[5] The order was specifically designed to preserve the evidence by allowing Cell C, its forensic experts and the sheriff to enter the respondents' premises, search and copy the material under the watch of a supervising attorney, who would safeguard the respondents' privacy rights against undue intrusion when the rules nisi are executed. The sheriff would assume custody of the material so copied.

[6] Cell C's cause of action arises from possible collusion between the respondents, Cornastone Enterprise Systems (Pty) Ltd (Cornastone), and an entity named Techno Genius CC (Techno Genius) in respect of IT goods and services Cell C procured from Cornastone between 2012 to date. Cornastone is one of Cell C's vendors.

[7] Adamjee was employed by Cell C for the period January 2002 to 7 May 2020. Since September 2011, he was employed by Cell C as an Executive:

Business Operations Support. During his employment with Cell C, Adamjee was involved in IT related procurement.

[8] Pillay was employed by Cell C for the period September 2004 to July 2014. He was Adamjee's subordinate and reported to him. He resigned from Cell C in July 2014 while disciplinary proceedings were pending against him. The background to the disciplinary proceedings is not disclosed.

[9] Cell C discovered the aforesaid collusion during March 2020. It specifically discovered that:

9.1 Whenever it made payments to Cornastone for goods delivered or services rendered following a procurement process, Cornastone would pay a portion of the payment to Techno Genius and/or Pillay, that portion being the amount by which the invoice by Cornastone to Cell C has been exaggeratedly inflated;

9.2 From 2012 to date, and whenever it was necessary for Cell C to procure IT goods and/ or services, it would send a Request for Quote (RFQ) to three or four vendors with specific business requirements. Cornastone was one of these vendors. Adamjee was tasked to consider the quotes received from the targeted vendors. Owing to his insight into the prices by other vendors, Adamjee benchmarked the prices and quotes provided by Cornastone to Cell C, thereby facilitating the success of Cornastone's quotes. Through Adamjee's influence, Cell C

would contract with Cornastone as its “preferred supplier” for the required IT goods and/ or services not knowing that Cornastone’s quotes are exaggerated.

9.3 When Cell C paid Cornastone for the goods and services so procured, Cornastone would retain the amount for the *bona fide* price and pay over the exaggerated portion to Techno Genius and/or Pillay. Pillay was at all relevant times the sole director of Techno Genius. Adamjee and Pillay are business associates. They each hold a co-50% beneficial ownership of House and Home Refurbishments CC.

9.4 The total payments made by Cell C to Cornastone during the period 2012 to date amount to R357, 329, 677.30 of which approximately R61, 625, 713.30 was on-paid to Techno Genius and/or Pillay as described above. Cell C believes that Adamjee has received part of the funds that were paid to Techno Genius and/ or Pillay.

9.5 During May 2020, several representatives of Cell C met with Adamjee and presented to him an email which they have uncovered, sent from his Google mail account to Cornastone relating to a payment to be made to Techno Genius. This discovery led Cell C to believe that Adamjee used his Google mail and/or other private email accounts to correspond with Cornastone and

Techno Genius relating to the procurement activities referred to above.

[10] Cell C intends instituting legal action against Adamjee and Pillay but fears that by the time it requires them to make discovery, they would have destroyed the emails on their private email accounts as well as WhatsApp messages relating to the irregular procurement activities set out above. Hence, it sought and obtained rules nisi against them on an *ex parte* basis, which Wepener, J granted on 18 August 2020. The rules nisi have been executed. The evidence is in the custody of the sheriff as per Wepenaar J's order.

[11] Wepenaar J's order also authorizes the freezing of the respondents' specified bank accounts held with the cited banks. Further, it compels the banks to disclose any accounts held with them in which the respondents hold an interest, as well as bank statements for the specified bank accounts for the period of the alleged collusion. I am satisfied that the basis for this relief is consistent with the dictum in *NAMPAK*<sup>1</sup> in that:

11.1 The cited banks are the respondents' bankers;

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<sup>1</sup> *Nampak v Vodacom and Others* 2019 (1) SA 257 (GJ) (31 January 2018)

11.2 The respondents may have utilized their bank accounts in relation to Cell C's cause of action;

11.3 The banks may hold other accounts in which the respondents have an interest, which they may also have utilised in relation to Cell C's cause of action;

11.4 Information in respect of the accounts in 11.3, if the accounts exist, is not at Cell C's disposal. So is information in respect of transactions in the specified bank accounts.

11.5 Disclosing of this information to Cell C serves its right of access to the courts, as it will substantiate its cause of action against the respondents.

[12] A caveat placed against the respondents immovable property registered in the deeds office would prevent them from alienating it to defeat Cell C's cause of action in the event that they lack sufficient funds to satisfy its substantial claim against them. Cell C's apprehension that they may dissipate their assets to defeat its claim is reasonable and well-founded given their evasive response to it since it has discovered the alleged collusion.

## **REFUSAL OF LEAVE TO FILE OPPOSING PAPERS**

[13] The respondents were served with the rules *nisi* on 18 August 2020. They waited until 17 September 2020 to request documents they purportedly require to file opposing papers. They did so by letter. It took them a further 4 court days to file their notice of opposition. They failed to file an answering affidavit. Their attorney prepared a detailed Practice Note urging the court not to read the papers because the respondents have filed a notice of intention to oppose.

[14] When the matters served before me, Mr Manilla appeared on behalf of the respondents contending that since the respondents have filed a notice of intention to oppose, the matter has become opposed. He sought leave from the bar for time to file an answering affidavit. Mr Hellens SC for Cell C vigorously opposed his request. Mr Manilla complained that the respondents could not file an answering affidavit earlier because various annexures to the founding affidavits and/ or confirmatory affidavits are missing and/ or illegible. He also contended that the notices of motion fail to specify the time frames for the filing of opposing papers. The court frowned upon his request for the following reasons:

14.1 The respondents could set down the rules *nisi* for reconsideration on an urgent basis<sup>2</sup> but did not do so, despite the serious allegations made against them in the founding affidavits. The rules *nisi* made provision for the return date 27 court days after they were granted. This is a generous allowance for the respondents to file opposing papers given that the rules *nisi* were granted on the basis of

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<sup>2</sup> Rule 6 (12) (c)

urgency. I pause to mention that this is the period that the respondents would be afforded in terms of the uniform rules to file opposing papers in the ordinary cause.

14.2 The respondents waited until 1 court day before the return date to file their notice of intention to oppose. When they filed it, they were evidently out of time to answer to the applications which, due to their substantial volume, would require considerable time to consider and answer to.

14.3 The respondents failed to follow the procedure provided for in rule 35(12) of the uniform rules of court to request copies of the missing and/ or illegible annexures from Cell C, and if it refused, to compel it following the mechanism provided for in the uniform rules.

14.4 When the rules *nisi* were executed, the respondents were represented by their current attorney of record. Therefore, their failure to file opposing papers prior to the return date is inexcusable.

14.5 They knew that they will not be able to file their answering affidavits prior to the return date but failed to file an application for condonation.

14.6 In the absence of an explanation for their delay in calling for the illegible and/ or missing documents, as well as filing their notice of intention to oppose and answering affidavits, a finding that the delay

was orchestrated to impose a postponement of the return date on Cell C is not far-fetched. The tone of their letter of 17 September 2020 to Cell C as well as their Practice Note also suggest so.

[15] Very serious allegations of failure to exercise the duty of care by Adamjee towards his erstwhile employer, as well as the fraudulent exaggeration of invoices which caused Cell C a loss of R61, 625, 713.30 has been made against the respondents. So are allegations of evading accountability by resigning from Cell C. Adamjee did so with immediate effect when he was confronted with these serious allegations and placed on precautionary suspension. Pillay resigned while disciplinary proceedings against him were pending.

[16] Further, Pillay is alleged to have interfered with the process of executing the rule nisi granted in the second matter by deleting 3GB of data from his email account, prompting Cell C to seek an extension of the order. The latter application served before Twala J on 21 August 2020. He granted it with a punitive cost order against Pillay.

[17] The respondents had 5 weeks to answer to these serious allegations, but failed to do so. They have not bothered to show cause why their failure to file answering affidavits should be condoned. Their dilatory and evasive tactics in these proceedings is consistent with their response to Cell C since it discovered the alleged collusion.

## **LEAVE TO ACCESS THE EVIDENCE**

[18] On the return date, Cell C sought, in addition to confirmation of the rules nisi, permission to access the evidence in the custody of the sheriff. It requires the evidence to institute legal proceedings against the respondents.

[19] Given the respondents' dilatory and evasive conduct, it would be highly prejudicial to cause Cell C to wait longer to pursue its cause of action. Any prejudice which the respondents stand to suffer as a result of the orders granted on 28 September 2020 is self-created.

## **CONCLUSION**

[20] For the reasons set out above, I refused the respondents leave to file answering affidavits and granted the aforesaid orders in the three applications on 28 September 2020.

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**MADAM JUSTICE L T MODIBA**  
JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG

## **APPEARANCES**

Counsel for applicant:

Mr Hellens SC

Attorney for applicant:	BDK Attorneys
Counsel 1 <sup>st</sup> and 2 <sup>nd</sup> respondents:	Mr Manilla
Attorney for 1 <sup>st</sup> and 2 <sup>nd</sup> respondents:	HS Patel Attorneys
Date of hearing:	28 September 2020
Date reasons for judgment were requested:	6 October 2020
Date reasons for judgment were furnished:	16 October 2020

Mode of delivery: handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time for hand-down is deemed to be 12:00pm on 16 October 2020.