

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 33046/2019

DATE: 2023-05-02

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

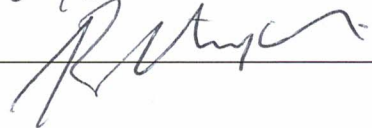
(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

16/05/2023



In the matter between

NDIITWANI GRACE NNDWAMMBI N.O.

DITLHARE CASTALIA MOLOI N.O.

SEWKUMAR ASHENDRA CHATHURY N.O.

ALEXANDRA JOHANNA RUSSELL N.O.

HOLGER MAUL N.O.

MARTIN SEBASTIAN SOLOMON N.O. BRENDA

BAIJNATH N.O.

LEBELO ISAAC LUKHELE N.O.

being the trustees for the time being of the SASOL

SIYAKHA ENTERPRISE AND SUPPLIER

DEVELOPMENT TRUST

Applicant

and

SERAJ TRANSPORT (PTY) LTD

First Respondent

WIMBLEDON TRANSPORT

Second Respondent

PKR TRANSPORT CC

Third Respondent

NATIONWIDE TRUCKS CC

Fourth Respondent

TANKER VALVE EQUIPMENTS CC

Fifth Respondent

TWO SHIPS TRADING 229 (PTY) LIMITED	Sixth Respondent
BLITZVINNIG TRADING CC	Seventh Respondent
FRANZ INVESTMENTS (PTY) LIMITED	Eighth Respondent
BIG STEVENS AUTO (PTY) LIMITED	Ninth Respondent
10 POMONA ROAD TRUCK SALES CC	Tenth Respondent
STANDARD BANK OF SOUTH AFRICA LIMITED	Eleventh Respondent
WESBANK, A DIVISION OF FIRST RAND LIMITED	Twelfth Respondent

Neutral Citation: *The Trustees of Sasol Siyakha Enterprise and Supplier Development Trust v Seraj Transport (Pty) Ltd and Others* (Case No. 33046/2019) [2023] ZAGPJHC 493 (16 May 2023)

STRYDOM, J: In this matter the Plaintiffs as Applicants in a case involving the return of motor vehicles brought an application to compel the 2nd, 4th, 5th and 6th defendants (respondents) to file heads of argument and a practice note. This application was ultimately heard and a Court order was granted by this Court on the 1st February 2023. In terms of this order these Respondents were ordered to file their heads of arguments and practise notes within three days of the
30 order. It was further ordered that should the opposing Respondents fail to comply with the order the Applicant would

be entitled to re-enrol this application on the same papers, duly supplemented if necessary, for an order striking out the Respondents defences.

It is common cause that the heads of arguments and the practice notes were not filed within this three-day period. There was correspondence between the parties in which the second and third Respondent ask the Applicant for an extension of time to file their documents on or before the 17th February 2023.

- 10 Such indulgence was not granted by the Applicants but the Applicants decided not to continue with the striking out application until after this date. Despite the fact that this was an elected date by the second and third respondents to file their heads of arguments nothing was forthcoming. This culminated in this current application for the striking out of the defences of the Respondents, including those of the second and third Respondents to be proceeded with.

- On the 30 March 2023 this application was uploaded onto CaseLines but according to the email correspondence on this
20 platform it appears that the striking out application was then only served on the second and third Respondent on the 11th April 2023. Now after that nothing transpired as far as opposing the application to strike up until today which is the 2nd May 2023.

What now appears on CaseLines is a notice to oppose the

striking out application. In effect it means that the second and third Respondents wanted to file an affidavit in which they would make out the case why they should not have filed there documents within the time period stipulated by the Court. Nothing is before the Court at this stage as far as this defence is concerned but from the bar it was indicated that the Respondents want to try and settle this matter.

Now, the mere fact that a party wants to settle the matter clearly is not an defence. I invited counsel appearing on
10 behalf of the second and third Respondents to inform this Court what possible defences can be raised against the order to file heads of argument. The counsel could not advance any defence apart from stating that settlement proposals need to be explored. The main matter has been set down for hearing on the opposed Court role for 7 August 2023.

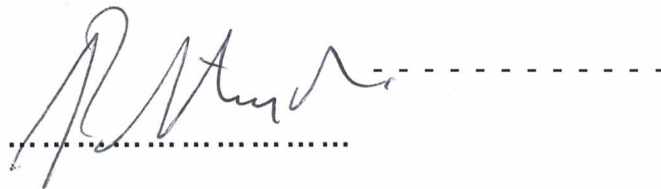
If this interlocutory matter now takes its normal course as an opposed application that date provided sometime ago already would no longer suffice as a date to hear the opposed application. Reason for that being this interlocutory opposed
20 application may take some time to finalise beyond the allocated date.

In my view the second and third Respondent is busy with dilatory tactics and are attempting to delay the outcome of this matter. If the second and third Respondent are of the view that they would be prejudice by striking of their

defences, they clearly should have filed their heads of arguments and practice note earlier, or at least, their application to oppose this interlocutory application and not on the date of the hearing.

Considering all the factors the Court is not going to grant the second and third Respondent an indulgence at this stage to file further papers in this matter to avoid the striking out application. Accordingly, the Court makes an order in terms of a draft order which have been handed to the Court to the
10 effect that the second, fourth, fifth and sixth Respondents' defences against the Applicants claim are struck out.

The opposing Respondents are to pay the cost of this application on a joint and several basis. This Court order will be marked with an X.

A handwritten signature in black ink, appearing to read 'J. Strydom', is written over a horizontal dotted line. A dashed line extends to the right from the end of the signature.

STRYDOM, J

JUDGE OF THE HIGH COURT

20 **DATE: 16 MAY 2023**

For the Applicant: Mr. T. Chavalala
Instructed by: Cliffe Dekker Hofmeyr Inc

For the Respondents: Unknown
10 Instructed by: Unknown

Date of Hearing: 02 May 2023
Date of Judgment: 16 May 2023