



IN THE NORTH GAUTENG HIGH COURT, PRETORIA /ES
(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED. ✓	
DATE 12/9/12	SIGNATURE <i>Dumiso</i>

DATE: 21/09/2012

IN THE MATTER BETWEEN

DUMISA M DLAMINI
GEELSPRUIT BOERE (PTY) LTD
RICHTERSHOEK BOERDERY (PTY) LTD
KLEINDOORNKOP BOERDERY CC 1987/080/27/23
AND
TIM DU TOIT ATTORNEYS
RIAAN DU RANDT
P J BOTHA
ABSA BANK LTD
BARRY JOHAN VOS RECOVERY MANAGER ABSA BANK

CASE NO: 24593/11

1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT

IN THE MATTER BETWEEN

ABSA BANK LTD
AND
KLEINDOORNKOP BOERDERY CC 1987/080/27/23
DUMISA M DLAMINI

CASE NO: 18836/98

PLAINTIFF

1ST DEFENDANT
2ND DEFENDANT

IN RE:	
KLEINDOORNKOP BOERDERY CC 1987/080/27/23	1 ST APPLICANT
DUMISA M DLAMINI	2 ND APPLICANT
AND	
SHERIFF PRETORIA CENTRAL	
THAKA SEBOKA	1 ST RESPONDENT
THE DEPUTY SHERIFF PRETORIA CENTRAL	
CHRISTO JULYAN	2 ND RESPONDENT
ABSA BANK LTD	3 RD RESPONDENT
MARIA RAMOS CEO ABSA BANK	4 TH RESPONDENT
MARTHINUS VAN RENSBURG LEGAL DIVISION	5 TH RESPONDENT
LOUIS VON ZEUIER CHIEF FINANCIAL OFFICER	6 TH RESPONDENT

<u>IN THE MATTER BETWEEN</u>	CASE NO: 18225/98
ABSA BANK LTD	APPLICANT
AND	
KLEINDOORNKOP BOERDERY CC 1987/080/27/23	RESPONDENT
IN RE:	
KLEINDOORNKOP BOERDERY CC 1987/080/27/23	1 ST APPLICANT
DUMISA M DLAMINI	2 ND APPLICANT
AND	
SHERIFF PRETORIA CENTRAL	
THAKA SEBOKA	1 ST RESPONDENT
THE DEPUTY SHERIFF PRETORIAL CENTRAL	
CHRISTO JULYAN	2 ND RESPONDENT

<u>IN THE COUNTER-APPLICATION</u>	CASE NO: 18225/1998, 18836/1998, 24593/2011
ABSA BANK LTD	COUNTER APPLICANT
AND	
DUMISA MBUSI DLAMINI	1 ST COUNTER RESPONDENT
MINISTER OF CORRECTIONAL SERVICES	2 ND COUNTER RESPONDENT
MINISTER OF SAFETY & SECURITY	3 RD COUNTER RESPONDENT

MINISTER OF JUSTICE & CONSTITUTIONAL
DEVELOPMENT

4TH COUNTER RESPONDENT

MINISTER OF HOME AFFAIRS

5TH COUNTER RESPONDENT

TIVENI NKOSI DLAMINI

6TH COUNTER RESPONDENT

JUDGMENT

PRINSLOO, J

[1] The four matters described in the above heading came before me between 30 July and 1 August 2012. The four cases were heard together by direction of the honourable deputy judge-president. The record runs into some 1790 pages.

[2] Mr Amm appeared for Absa Bank Ltd ("Absa"). Mr Goodes appeared for the Sheriff of Pretoria Central and his Deputy who feature as respondents in case no 18836/98 and case no 18225/98. Mr Cavanagh appeared for the second, third, fourth and fifth counter-respondents in the counter-application, and the sixth counter-respondent, Mr Tiveni Nkosi Dlamini appeared in person. With his blessing, and without meaning to offend him, and to avoid confusion, I will refer to him throughout as "Tiveni".

Mr Dumisa Mbusi Dlamini ("Dlamini"), the first applicant in the main application (case no 24593/2011) and the driving force behind all the litigation featuring in this case, did not attend the proceedings. He is the father of Tiveni. At the commencement of the proceedings I asked Tiveni about the whereabouts of Dlamini, and I was told that Tiveni did not know where his father was. As will appear more fully hereunder, Dlamini was incarcerated twice, at the instance of

Absa, for contempt of court because of his repeated disobedience of court orders issued by a number of judges in this court over many years in matters mainly connected with the litigation which again now came before me. I was informed by Tiveni that his father was released early, in June 2012, after his last incarceration, but his absence during the proceedings before me remains unexplained.

Some introductory remarks

- [3] Dlamini has been flooding this court for approximately fifteen years with a large number of applications, normally litigating in his personal capacity and operating from an internet café address in Sunnyside, Pretoria. On his own evidence, Tiveni has been "assisting" his father in this litigation for about five years. Tiveni is not legally qualified but he told me that he was busy with his law studies.

- [4] Dlamini has pursued this litigation in his own name, and purportedly also on behalf of Kleindoornkop Boerdery CC (registration no 1987/080/27/23) ("Kleindoornkop 1987") and other entities.

- [5] Dlamini has done so notwithstanding the fact that he is an unrehabilitated insolvent and that Kleindoornkop 1987 has been finally wound-up. Two of the other entities purportedly represented by the insolvent Dlamini, like Richtershoek Boerdery (Pty) Ltd and Geelspruit Boere (Pty) Ltd (the second and third applicants in the main application 24593/2011) have also been finally deregistered

by the Registrar of Companies. This happened as long ago as July 2010. For good measure, Kleindoornekop 1987 was also deregistered by the Registrar in July 2010 even though it was already liquidated long before that, in February 2004.

[6] In response to such harassment and in order to protect itself, Absa (like other targets of Dlamini's litigation such as Standard Bank and the liquidators of Kleindoornekop) have sought and obtained court orders. These orders were aimed at interdicting and restraining Dlamini's vexatious litigation. Undeterred, and with full knowledge of such orders, Dlamini has regularly breached such interdictory orders. He continued to flood Absa (and others) with litigation.

[7] Consequently, Absa sought and obtained contempt orders against Dlamini. Dlamini remained undeterred and unblushingly continued to litigate.

[8] In due course, his ongoing contempt resulted in two (separate) orders for his committal to imprisonment. His subsequent incarceration (twice) has not dampened his resolve. He continued to litigate from prison. It is clear from the evidence before me that Tiveni has played a major part in ensuring the ongoing processing of vexatious litigation during his father's temporary absence from open society for the reasons mentioned. Dlamini's continued contempt is also apparent from the details of these cases which came before me, and which represent pending or outstanding applications involving mainly Absa and Dlamini. These pending applications have been delayed and frustrated by Dlamini.

Despite Absa having given notice of its intention to oppose Dlamini's applications, Dlamini, on the overwhelming probabilities assisted by Tiveni, continued to litigate from prison. He enrolled a number of his applications on the unopposed motion court roll.

[9] Absa approached the honourable deputy judge-president with its predicament, and the deputy judge-president directed that all the outstanding matters should come before me on the dates mentioned.

[10] Dlamini's conduct over the years, also in respect of some of the matters which now again came before me for consideration, was well documented in a comprehensive judgment handed down in this division by RABIE, J and reported as *Absa Bank Ltd v Dlamini* 2008 2 SA 262 (TPD). The order of the learned judge is recorded at 300A-302F. The interim relief granted by the learned judge was made final by HARTZENBERG, J in case no 52225/2007 on 7 December 2007. The learned judge directed that his orders would operate for a period to be determined by this court during which period "the respondent shall not institute any legal proceedings against the applicant in any court or inferior court without the written leave of such court or any judge thereof or presiding officer of such inferior court, as the case may be". BASSON, J, on 28 November 2008, and pursuant to the aforesaid order of HARTZENBERG, J, directed that the latter

order would remain in operation for three years from December 2007, so that it lapsed in December 2010. Nothing turns on this for present purposes.

[11] I do not intend embarking upon unnecessary repetition of the comprehensive and detailed remarks made by RABIE, J in his reported judgment.

[12] I add that there are other judgments, dealing with the conduct of Dlamini and some of the same subjects now again raised before me, which form part of the record.

[13] Finally, during the proceedings before me, I gave a judgment *ex tempore*, dealing with a rule 30 application by Tiveni in which he claims that the counter-application is an irregular proceeding, as well as the application by the counter-applicant (Absa) to join Tiveni as a sixth counter-respondent and to amend the relief sought in the counter-application by including interdictory relief against Tiveni. I dismissed the rule 30 application and granted the joinder and the amendment. The text of that judgment has not yet been transcribed and I hope to avoid unnecessary overlapping therewith when dealing with the present judgment.

[14] I now turn to the various applications which came before me.

The main application (case no 24593/2011)

[15] The full citation of the parties appears from the heading of this judgment.

[16] The relief sought in the notice of motion by Dlamini and the three entities he purports to represent, namely Geelspruit Boere (Pty) Ltd ("Geelspruit"), Richtershoek Boerdery (Pty) Ltd ("Richtershoek") and Kleindoomkop 1987, is short and sweet. Paragraph 1 of the notice of motion reads as follows:

"Directing and ordering that the first to the fifth respondents return the original title deeds held in name of Geelspruit Boere (Pty) Ltd under title T21166/1973, the title T21165/73 in the name of Richtershoek Boerdery (Pty) Ltd, the titles under T4484/1986 held in the name of Armstrong Properties and titles T41442/1987 held in the name of Kleindoomkop Boerdery 1987/080/27/23 as per schedule A by the fifth respondent under case 18836/98."

[17] Quite apart from the merits of the application, which the respondents, namely Absa's erstwhile attorneys, Absa and an Absa official strenuously opposed, a number of points *in limine* was also offered in opposition to the application. These are the following:

- (i) Dlamini is an unrehabilitated insolvent. He lacks any *locus standi* in this main application as well as the two interlocutory applications to which I will refer hereafter – see, generally, Herbststein and Van Winsen *The Civil Practice of the High Courts of South Africa* 5th ed vol 1 p171 and further, and the provisions of sections 20 and 23 of the Insolvency Act 24 of 1936.

- [18] Dlamini's estate was sequestrated by an order of this court on 14 August 2003. His personal estate has been in the hands of trustees since 25 June 2003, the date of the provisional sequestration order.

Dlamini has made various attempts to set aside the sequestration order but these have failed. The unsuccessful attempts are also detailed by RABIE, J in *Absa Bank v Dlamini, supra*, at 281E onwards (paragraphs [68] to [75]).

As an unrehabilitated insolvent, Dlamini has at all material times been, and remains, divested of all of the assets which he may at one time or another have held. Moreover, he cannot litigate in respect of his estate or on behalf of incorporated entities such as the second to fourth applicant in the main application. In the latter regard, see, generally, *Manong and Associates (Pty) Ltd v Minister of Public Works & Another* 2010 2 SA 167 (SCA), at 170F-175D. The leave which may, in a proper case, be sought by a lay litigant to represent a company or corporation was not applied for as prescribed in *Manong* at 174C-E.

- [19] As an unrehabilitated insolvent, Dlamini is also disqualified from being appointed or acting as a director of a company or from being concerned or taking part, directly or indirectly, in the management of a company – see section 218(1)(d)(i) of the previous Companies Act 61 of 1973 and section 69(8)(b)(i) of the new Companies Act 71 of 2008.

[20] Moreover, Dlamini has furthermore not cited, in any of his various applications, either the trustees of his personal insolvent estate or the liquidators of Kleindoornekop 1987. In the result, each of his applications suffers from a fatal non-joinder.

It is, in this regard, convenient to quote from a relatively recent (31 March 2011) affidavit deposed to in yet another application featuring Dlamini, case no 18759/2011, by one of the trustees of the insolvent Dlamini estate, Marthinus Jacobus Dewald Breytenbach:

- "1. I am an adult male insolvency practitioner practising as such under the name and style of Breytenbach Business Management (Pty) Ltd ...
3. The estate of Dumisa Mbusi Dlamini was provisionally sequestrated 25 June 2003 which order was made final on 14 August 2003 ...
4. I was appointed joint provisional trustee with J H Janse van Rensburg ... B St C Cooper ... and S L Magardie ... on 2 July 2003. This appointment was made final by the Master of the High Court on 9 February 2004. The copies of the relevant certificates of appointment are attached.

5. Mr D M Dlamini has to date not applied for rehabilitation and is therefore still an unrehabilitated insolvent in terms of the Insolvency Act.

The joint trustees of Mr Dlamini have not consented to or are not assisting him in any court applications.

6. I confirm that Mr Dlamini has brought various court applications against different parties, all of which were either dismissed or not proceeded with, at great expense of the various respondents.

It should be noticed that orders of costs were issued against Mr Dlamini in some of these actions, none of which have been satisfied yet."

- (ii) Kleindoornekop 1987 has been finally wound-up.

[21] The provisional winding-up order issued by this court was dated 3 December 2003 and the final order was made on 3 February 2004. This subject was also dealt with in *Absa Bank Ltd v Dlamini, supra*, at 280H-J.

As a consequence of its winding-up, the rights and assets (if any) of Kleindoornekop 1987 fall into the hands of its liquidators. The liquidators are not cited as parties in any of Dlamini's applications.

Dlamini has no authority or legal standing to pursue litigation on behalf of Kleindoornekop 1987 without the permission of the duly authorised liquidators. The liquidators have also not given any permission to Dlamini and in fact the liquidators have obtained an order interdicting Dlamini from litigating on behalf of Kleindoornekop 1987. In this regard, the liquidators, Messrs Botha N O, Wouda N O and Langa N O obtained, in case no 19693/07 the following order from this court on 30 October 2007:

- "1. The respondent is interdicted and restrained from initiating any proceedings on behalf of Kleindoornekop Boerdery CC (1987/008027/23) (in liquidation).
2. The respondent is directed to pay the costs of the application on the scale as between attorney and client."

This order is still in force. The mere issue of the main application and also the two interlocutory applications which I will shortly deal with, case no 18836/1998 and 18225/1998, constitutes contempt of the order quoted above and other court orders to which I will refer. This contempt, *inter alia*, forms the subject of the counter-application which I will shortly refer to, in which Absa seeks further periods of imprisonment of Dlamini because of his unrelenting contraventions of orders of this court.

[22] Dlamini has also from time to time offered spurious arguments challenging the validity of his sequestration as well as the liquidation of Kleindoornekop 1987. Tiveni sought to do the same during the proceedings before me. Of course, Tiveni had no *locus standi* to make the submissions on behalf of Dlamini but I nevertheless allowed him to speak his mind. The validity of the sequestration and the liquidation has been conclusively pronounced upon by judgments of this court through RABIE, J, *supra*, LEGODI, J (whose judgment forms part of the record) and FOURIE, AJ, whose judgment also forms part of the record.

In addition, HARTZENBERG, DJP, as he then was, wrote a lengthy letter to Dlamini dated 29 February 2008 in which he cautioned him against his conduct of litigating in such a vexatious fashion. I only quote part of the letter:

"I have studied all these documents and have to advise you as follows:

1. You are an unrehabilitated insolvent. You are not entitled to initiate any proceedings in the Transvaal Provincial Division of the High Court without the assistance of your curator. It means that you may not litigate in your own name or in the name of any other entity like Geelspruit Boere (Pty) Ltd, Richtershoek Boerdery (Pty) Ltd or Marina Lodge (Pty) Ltd. These are only examples. You are not entitled to act unassisted in the name of any entity."

(iii) Geelspruit and Richtershoek have been deregistered by the Registrar of Companies.

[23] Official CIPRO documentation, forming part of the record, demonstrate that Geelspruit as well as Richtershoek were finally deregistered on 16 July 2010. As such, they are legally non-existent and cannot be represented by Dlamini, quite apart from the other impediments Dlamini suffers from as described above. Indeed, it also appears from the record and official CIPRO documentation that Kleindoornekop 1987, for good measure, was also finally deregistered on the same date.

[24] Against this background, I am of the view that all the arguments offered *in limine* are sound, and ought to be upheld, so that the main application, for those reasons cannot succeed.

[25] Moreover, as to the merits of the application, the respondents have denied on oath that they are in possession of the original title deeds mentioned in the notice of motion. The respondents do not know, according to their affidavits, whether the original title deeds in issue still exist and, if so, where they are. A diligent and extensive search of all the files, records, documents and archives of the first respondent's offices and also those of Absa has been done. The title deeds cannot be located. It was submitted on behalf of the first respondent that the original title deeds should, in any event, be in the possession of Dlamini's former conveyancing attorneys, alternatively the relevant trustees of Dlamini's personal estate and/or the liquidators of the various entities. Dlamini has proceeded against the wrong

respondents. The second respondent, who is a senior partner in the first respondent, states on oath that as far as he understands the position the title deeds in issue pertain to properties which have subsequently been sold and transferred with the result that the title deeds would have been replaced.

Dlamini has not filed a replying affidavit. He seeks final relief on motion. The version of the respondents remains unchallenged and should be accepted. In the circumstances, the main application also falls to be dismissed on its merits, quite apart from the arguments *in limine, supra*. The costs should follow the result. Given the manner in which Dlamini has launched this application, in flagrant breach of existing court orders, he should be ordered to pay the costs *de bonis propriis* on a punitive scale. I will make an appropriate order at the end of this judgment.

[26] Finally, and before turning to the next application, it was submitted on behalf of Absa that this main application is an abuse in every respect. It was also brought in breach of, *inter alia*, the order of HARTZENBERG, J of 30 October 2007, the contents of which I have quoted. The founding papers run to some 380 pages consisting of a number of documents and affidavits submitted in an illogical and inconsequential order. The founding affidavit in certain instances is incomprehensible. A large number of the annexures are irrelevant. This conduct, *inter alia*, inspired Absa to launch the counter-application in which further relief

is sought against Dlamini as a result of his ongoing actions which constitute contempt of court, as illustrated.

[27] I now turn to the next application.

Case no 18836/1998

[28] The full citation of the parties appears in the heading of this judgment.

[29] Dlamini (citing himself as second applicant and Kleindoornekop 1987 as first applicant) issued two applications, conveniently to be described as interlocutory applications, in the course of the trial action featuring Absa as plaintiff and Kleindoornekop 1987 and Dlamini as first and second defendants respectively.

As will be seen from the heading cited above, Dlamini, in the two interlocutory applications, saw fit to cite the Sheriff of Pretoria Central and his Deputy as first and second respondents with Absa as third respondent and, for good measure, three high ranking Absa officials, including the CEO Ms Ramos, as fourth, fifth and sixth respondents.

[30] Both notices of motion are dated 27 May 2011 and they were both issued and signed by Dlamini in his personal capacity. They both bear the Registrar's stamp of the previous day, 26 May 2011. They both feature the same parties.

[31] The relief sought in the two applications is the following:

- In the first notice of motion the first paragraph reads as follows:

"Directing and ordering that the first respondent to the second respondent Sheriff Pretoria Court and his Deputy to comply, execute the writs of execution under the above case 18836/98 to attach and cause to be realised the amount owing together with interest being the sum of R6 666 161,68 together with interest at 15%."

The writ of execution which is attached to the notice of motion and in respect of which the execution is sought is dated 19 March 2007 and also date stamped on the same day by the Registrar. It was also issued by Dlamini in his personal capacity. It goes under the same case number with the heading featuring Absa as plaintiff and Kleindoornekop 1987 as first defendant and Dlamini as second defendant. The amount in the writ of execution which Dlamini seeks to realise is the same as the one mentioned in the notice of motion, *supra*, namely R6 666 161,68.

- Paragraph 1 of the second notice of motion issued on the same day, as I have pointed out, reads as follows:

"Directing and ordering that the first respondent to the second respondent Sheriff Pretoria Court and his Deputy to comply, execute the writs of execution under the above case 18836/98 to

attach and cause to be realised the amount owing together with interest being the sum of R2 975 585,00 together with interest at 15%."

The writ of execution attached to the notice of motion and in respect of which the relief is sought, is dated 19 March 2007 and bears the same date stamp of the Registrar. The amount reflected therein is the same namely R2 975 585,00. The writ was also issued by Dlamini in his personal capacity c/o the Sunnyside internet café to which I have referred.

[32] On 22 May 2007, this court, through HARTZENBERG, J, in case no 12429/2007, featuring the three liquidators of Kleindoornkop 187 as the first three applicants, Absa as the fourth applicant and Dlamini as the respondent, made the following order:

- "1. The writs of execution issued by the Registrar of this honourable court on 19 March 2007 under case no 18836/98 and case no 18225/98 is (*sic*) declared invalid and set aside.
2. The respondent is interdicted and restrained from causing the issue of writs of execution on behalf of Kleindoornkop Boerdery CC (in liquidation) (registration no 1987/008027/23).
3. The respondent is ordered to pay the costs of this application on the scale as between attorney and client."

[33] The writs mentioned in paragraph 1 of the order, are those which I have detailed, and which Dlamini now seeks, in these two interlocutory applications, to have executed, almost exactly four years after the order was made declaring the writs invalid and setting them aside and interdicting Dlamini from issuing such writs of execution.

[34] The order of 22 May 2007 is still valid and in force.

[35] The writ referred to in paragraph 1 of the order, with case no 18225/98, forms the subject of the next application which came before me and, as I will point out, the same considerations will apply in that instance.

[36] In addition, I have already referred to the order of 30 October 2007, under yet another case number, 19693/07, featuring the liquidators of Kleindoornkop 1987 as the first three applicants and Dlamini as the respondent, which reads:

"The respondent is interdicted and restrained from initiating any proceedings on behalf of Kleindoornkop Boerdery CC (1987/008027/23) (in liquidation)."

In that case Dlamini was also ordered to pay the costs on the scale as between attorney and client. The order of 30 October 2007 is still in force.

[37] Quite apart from the foregoing, there is also the so-called "Standard Bank order", not featuring Absa but, instead, Standard Bank, in litigation against Dlamini. It was issued on 14 September 2010 by this court through PRELLER, J under case no 50732/2008.

In that case Dlamini was also ordered to pay the costs on the attorney and client scale including the costs of two counsel and part of the order reads as follows:

- "1. That save with the prior written permission of the judge-president or the deputy judge-president of the relevant High Court (which includes the relevant High Court with jurisdiction over the area where any inferior court is situated)
 - 1.1 all proceedings of whatsoever nature that have been instituted by Dumisa Mbusi Dlamini ('the counter-respondent') in his personal capacity or in any representative capacity of the High Court of South Africa (and in any inferior court) are stayed;
 - 1.2 the counter-respondent may not institute legal proceedings in his personal capacity or in any representative capacity in the High Court of South Africa, any inferior court or any other court."

[38] In my view this order is clearly wide enough also to apply to cases involving Absa and, in neither of the cases which came before me, including the main application

and the two interlocutory applications, which were all issued after the order of PRELLER, J, did Dlamini comply with that order by seeking prior written permission as therein stipulated before launching his applications.

- [39] Finally, it was argued before me by counsel for Absa, correctly in my view, that there is in any event no factual or legal basis for the writs which Dlamini sought to have executed under these circumstances. The subject was dealt with by RABIE, J in *Absa Bank Ltd v Dlamini, supra*, at paragraphs [77] to [86]. The learned judge found that the writs were issued in respect of an interim order (case no 18225/1998) which does not contain a judgment against Absa and which order had subsequently been supplanted by a settlement agreement which was made an order of court under case no 18836/1998 (the case now under discussion) and which order similarly does not contain a judgment against Absa in respect of which a warrant can be issued. The settlement agreement was made an order of this court by STAFFORD, DJP, as he then was, on 1 December 1999 and forms part of the record before me. It features this particular case now under consideration (18836/1998) with Absa as plaintiff and Kleindoomkop 1987 and Dlamini as first and second defendants. In the settlement it is recorded that the two defendants are liable, jointly and severally, to Absa in the amount of some R13,298 million with interest and they admit such indebtedness in a settlement agreement. The settlement makes provision for repayment of the debt and interest by means of 180 monthly instalments of some R243 000,00 each and the

settlement also provides for security to be furnished in the form of a series of mortgage bonds over certain property.

[40] In the result, the writs in issue in this matter, 18836/1998 (and also in case 18225/1998 which I will deal with hereunder) were issued:

1. on behalf of Kleindoornkop 1987 which has been finally liquidated;
2. at the instance of Dlamini who is an unrehabilitated insolvent;
3. without the permission of the duly appointed liquidators of Kleindoornkop and, for that matter, the trustees of Dlamini's estate;
4. in direct contravention of the orders of HARTZENBERG, J, *supra*, (and, for that matter, the aforementioned order of PRELLER, J); and
5. where there is no (money) judgment or debt that warrants and/or supports the issuing of the writs.

[41] In view of the above, these two interlocutory applications fall to be dismissed with costs to be paid by Dlamini *de bonis propriis* on a punitive scale. I will make an appropriate order at the end of this judgment.

Case no 18225/1998

[42] The heading of this case appears from the top of this judgment.

[43] This is also an interlocutory application featuring Kleindoomkop 1987 and Dlamini as first and second applicants with the Sheriff Pretoria Central and his Deputy as first and second respondents.

[44] As in the case of the two interlocutory applications issued by Dlamini in case no 18836/1998, the notice of motion in the present case is also dated 27 May 2011 and also bears the date stamp of 26 May 2011 of the Registrar. It was also issued by Dlamini in his personal capacity.

[45] The first two paragraphs of the notice of motion read as follows:

- "1. Directing and ordering that the first respondent to the second respondent's Sheriff Pretoria Court and his Deputy comply with the notice of attachment under rule 45(12) dated 8 January 2009 and pay to the first applicant the amounts as per the attachment made being R7 217 225,88.
2. Directing and ordering that the first respondent to second respondent the Sheriff Pretoria Central and his Deputy pay to the first applicant the interest incurred as from date of the attachment under rule 45(12) being the date of 8 January 2008."

[46] The writ on which this application is based is attached to the founding papers and was issued on 19 March 2007 for the amount of R2 956 737,00 together with interest. This is the writ referred to in the order of HARTZENBERG, J of 22 May

2005, quoted above which was declared invalid and set aside. In that order, the learned judge specifically referred to the writs issued on 19 March 2007 in this case and in case 18836/1998 as appears from the contents of the order which I quoted.

The vastly increased amount from R2 956 737,00 to some R7,2 million quoted in the notice of motion appears to be representative of an escalation of interest on the original amount. This is evident from a schedule attached to the writ by Dlamini. The writ and schedule are to be found on pp1308 and 1309 of the record.

[47] As to the reference in the notice of motion to the notice of attachment under rule 45(12) dated 8 January 2009, I was furnished with an affidavit by the first respondent, the Sheriff of Pretoria Central, Mr Thaka Seboka, in which he *inter alia* states the following:

- "2. The notice of attachment under rule 45(12) dated 8 January 2009, attached hereto marked annexure TS1, is incorrect.
3. I further state that no property was attached by myself against Absa Bank under the abovementioned case number and further no property is in my possession. Once we advised Absa Bank Ltd of the applicant's intentions to prosecute the writs of execution, we were advised by Absa Bank's legal representatives that all writs of execution have been set aside.

4. Accordingly no attachment was ever effected and we have no assets in our possession."

Attached to this affidavit is the notice of attachment under rule 45(12) dated 8 January 2009. This clearly reflects the warrant amount as being R2 956 737,00 which is unquestionably the writ which was set aside by HARTZENBERG, J, *supra*, on 22 May 2007.

[48] As to Dlamini's lack of *locus standi*, the fact that the writ has been set aside and declared invalid, the contemptuous contravention of court orders by Dlamini and the fact that there is in any event no legal basis for a writ to have been issued in the first place, the same remarks apply as those I attempted to detail when referring to case 18836/1998. I do not intend repeating those remarks.

[49] It follows, from the foregoing, that this interlocutory application falls to be dismissed with Dlamini ordered to pay the costs *de bonis propriis* on a punitive scale.

Under this case number an order was also made, this time by LEGODI, J, on 31 October 2011 granting Absa leave to intervene in the particular application and reserving the costs of those proceedings. When making the appropriate order at the end of this judgment, I will also order Dlamini to pay those reserved costs.

The counter-application launched by Absa collectively under case no 24593/2011, 18836/1998 and 18225/1998

[50] As a result of Dlamini's continued litigation against Absa Bank, in breach of various orders of this court, the counter-application was brought by Absa in an effort to obtain some protection against this ongoing harassment. It also appears from the record that Absa has spent upwards of R3 million in legal fees to counter and resist this flood of vexatious and unwarranted litigation launched by Dlamini over the years.

[51] The heading of the counter-application appears from the top of this judgment. I have already mentioned that, during the hearing before me, I handed down an *ex tempore* judgment joining Tiveni as a sixth counter-respondent and dismissing his rule 30 application. As already mentioned, I also granted an amendment of the relief sought in the counter-application by introducing provision for interdictory relief sought against Tiveni after his joinder. I also granted a costs order against Tiveni *de bonis propriis* with regard to his abortive rule 30 application and his opposition to the joinder and the amendment.

[52] The relief now sought against Tiveni in the counter-application as a result of the joinder and the amendment is the following:

"11A The sixth counter-respondent is interdicted and restrained from assisting the first counter-respondent (my note: this, of course, is Dlamini) (be it directly and/or indirectly) in breaching, and/or

acting in contempt of (be it directly and/or indirectly), any order of court.

11B The sixth counter-respondent is interdicted and restrained from threatening, intimidating and/or harassing (be it directly and/or indirectly) the representatives of Absa Bank Ltd."

[53] There is clear evidence, with reference to the relief sought against Tiveni, that, over at least five years, he has been aiding and abetting his father, Dlamini, in pursuing this campaign of unbridled contemptuous and vexatious litigation. There is clear evidence on oath, which I accept on the probabilities, that Tiveni has been enrolling applications on the unopposed roll despite the fact that Absa had earlier entered an appearance to oppose those applications. Moreover, there are indications that he has on occasion removed court files and issued threats against legal representatives, including, for example, Mr Cavanagh who appeared as counsel for the four ministers cited as second to fifth counter-respondents in this counter-application. Mr Cavanagh filed a verifying affidavit in this regard.

Tiveni filed a lengthy affidavit running into more than 70 pages, and, with annexures, into some 246 pages. In the affidavit, which is largely difficult to understand given the grammatical shortcomings and the language used, Tiveni makes derogatory statements about all and sundry, often accusing them of being liars, and describing court orders and liquidation proceedings as flowing from fraudulent conduct.

Tiveni says the following in paragraph 14.7 of his affidavit:

"I never act in abuse of court process, simply because I am never subject to any order and accordingly am not violating same. Accordingly I have no business dealing with the counter-applicant or engaged them in any manner to cause them to launch such an action against me."

It is clear that he adopts the attitude that, because he is never cited as a party, he cannot be accused of acting in contempt of any orders. In my view this remark, in itself, justifies the joinder of Tiveni given his clear history of assisting his father in this unlawful and contemptuous conduct.

- [54] The joinder of the ministers of state as second to fifth counter-respondents, was inspired by the fact that Absa experienced a great deal of difficulty in securing Dlamini's committal to prison (on two occasions) after this court ordered such committal. There is evidence of magistrates and prosecutors refusing to give their co-operation and there is evidence of Dlamini being released prematurely without apparent good cause for such release. In the counter-application, relief is sought against these ministers to ensure that their co-operation will be forthcoming in future in the event of Dlamini being committed to prison again. I add that the ministers are not opposing the counter-application.

[55] As to the existing orders sentencing Dlamini to imprisonment, they are the following:

1. On 20 July 2009, under four different case numbers involving the Kleindoornekop 1987 liquidators and Absa as applicants and Dlamini as respondent, PRELLER, J made the following order:

- "1. That the respondent is sentenced to 120 days imprisonment for contempt of court.
2. That the suspended sentence imposed in case no 51375/2007 on 19/11/2007 is brought into operation.
3. That the respondent is committed to prison for a further period of twelve months, which is suspended for a period of three years on condition that the respondent is not found to be in contempt of an order of the High Court which contempt is committed during the period of suspension."

Dlamini was also ordered to pay the costs on a punitive scale.

2. On 14 October 2009 KEMP, AJ made the following order (only the relevant portions are quoted):

- "2. That the order suspending the order committing the first respondent to prison and as provided for in the order of his Lordship Mr Justice Preller, under case no 52225/2007, dated 29 July 2008 ... be uplifted and that the first respondent be committed to imprisonment for a period of twelve months.

3. That the first respondent be committed to imprisonment for a further and additional period of twenty four months plus 3 suspended for five years on condition that the first respondent does not commit contempt of court again (my note: the handwritten phrase 'plus 3' clearly refers to a three year period. I was asked to make such a finding and I hereby do so.)
4. That the periods for which the first respondent is committed to imprisonment be ordered to run consecutively.
5. That the third respondent (and his representatives) (my note: this is the Minister of Safety and Security), pursuant to any order granted by the above honourable court in respect of paragraphs 2 and 3 above be ordered forthwith to take the first respondent into custody wherever he may be found and thereafter to deliver the first respondent to the second respondent (or his representatives) (my note: this is the Minister of Correctional Services) as soon as reasonably possible.
6. That the second respondent (and his representatives) be ordered to forthwith take the first respondent into custody and commit and detain the first respondent in such prison as the second respondent may direct and in accordance with

any orders which may be granted in terms of paragraphs 2, 3 and 4 above.

7. That the first respondent be detained by the second respondent (and his representatives) for the period provided for in terms of paragraphs 2 and 3 (as read with paragraph 4) above.
8. That the first and second respondents are directed and authorised to do all things necessary in order to give effect to any orders granted in terms of paragraphs 2 to 7 above and additionally, and if necessary, to procure the fingerprinting of the first respondent, by the use of appropriate force if required, alternatively that the second respondent be ordered to commit and detain the first respondent in such prison as the second respondent may direct, without the necessity of having his fingerprints taken."

[56] As already indicated, Dlamini was committed on two occasions but, through lack of co-operation by the ministries and their officials, was released prematurely in both instances. The relief sought in a proposed draft order which I will deal with when handing down my order at the end of this judgment, is aimed at preventing a recurrence of this state of affairs.

[57] I add that there are clear indications on the papers that Dlamini may not be lawfully in the country but may be an illegal visitor. In the proposed draft Absa also asks for relief in the form of directives to the ministry of Home Affairs and relevant officials to investigate this issue.

[58] I also point out, without dwelling on the details, that there are comprehensive submissions made in the affidavits filed on behalf of Absa that Dlamini's vexatious conduct extends to other divisions of the High Court of South Africa. The uncontested details are spelt out in pp482 to 485 of the record. Copies of court orders made in those jurisdictions are attached. It is not necessary to repeat the details. In the proposed order provision is made for directives to the Registrar to notify the Registrars in other courts of the details of the order which I am about to make.

[59] I am satisfied that a proper case has been made out for the relief sought in the counter-application (subject to certain qualifications which I propose incorporating in the order that follows hereunder).

The orders

[60] I make the following orders:

1. In case no 24593/2011:

1.1 The application is dismissed.

- 1.2 The first applicant, D M Dlamini, is ordered to pay the costs *de bonis propriis*, on a scale as between attorney and client.
2. In case 18836/1998:
 - 2.1 The two interlocutory applications are dismissed.
 - 2.2 The second applicant, D M Dlamini, is ordered to pay the costs *de bonis propriis* on the scale as between attorney and client.
3. In case no 18225/1998:
 - 3.1 The interlocutory application is dismissed.
 - 3.2 The second applicant, D M Dlamini, is ordered to pay the costs *de bonis propriis* on the scale as between attorney and client, which costs will include the costs reserved in terms of the order dated 31 October 2011.
4. In the counter-application under cases 24593/2011, 18836/1998 and 18225/1998:
 - 4.1 The second, third, fourth and fifth respondents are joined in the counter-application as parties to the proceedings.
 - 4.2 It is declared that the first respondent in the counter-application (Dumisa Mbusi Dlamini) is in breach of and contempt of the following orders issued by this court:
 - 4.2.1 the order under case no 12429/2007 of 22 May 2007;
 - 4.2.2 the order in case no 19693/2007 on 30 October 2007; and
 - 4.2.3 the order in case no 50732/2008 on 14 September 2010.

- 4.3 In respect of the order under case no 41607/2009 dated 14 October 2009:
 - 4.3.1 it is declared that the reference to number "3" in the manuscript portion of paragraph 3 of such order is reference to a period of "3 (three) years";
 - 4.3.2 the order suspending the order committing the first respondent in the counter-application ("Dlamini") to prison, and as provided for in paragraph 3 of the said order of 14 October 2009 is uplifted and Dlamini is hereby committed to imprisonment for a period of three years.
- 4.4 Dlamini is committed to imprisonment for a further period of 5 (five) years.
- 4.5 The periods of committal referred to in the preceding two subparagraphs are to run consecutively.
- 4.6 Dlamini is committed to imprisonment for an additional period of 5 (five) years suspended for a period of 10 (ten) years on condition that he is not again found to be in contempt of court during the period of suspension.
- 4.7 The second respondent in the counter-application (and his representatives) are directed and ordered to take all and any steps as may be necessary and/or required:
 - 4.7.1 to take Dlamini into custody and to commit and detain him in such prison as the second respondent in the counter-

application may direct and in accordance with the orders granted in 4.3.2 and 4.4 above (as read with 4.5 above);

4.7.2 to ensure that Dlamini remains in prison for the full periods stated above, subject to any orders to the contrary which may be made by parole authorities or other authorised officials or bodies.

4.8 The third respondent in the counter-application (and his or her representatives) are directed and ordered to take Dlamini into custody wherever he may be found and thereafter to immediately deliver him to the second respondent in the counter-application.

4.9 The fourth respondent in the counter-application (and his or her representatives) are interdicted and restrained from interfering with, and/or frustrating, any orders of court in respect of the committal of Dlamini to imprisonment for contempt of court.

4.10 In respect of the fifth respondent in the counter-application:

4.10.1 the fifth respondent in the counter-application is directed and ordered to forthwith investigate and establish the status and legality of the presence and/or residence of Dlamini in the Republic of South Africa, and in so doing to have regard to, *inter alia*, Dlamini's contempt of various orders of this court;

4.10.2 the fifth respondent in the counter-application is directed and ordered to deliver a written report to this court within

sixty days of the granting of this order detailing all investigations undertaken and findings made;

4.10.3 in the event of Dlamini being found to be illegally in the Republic of South Africa the fifth respondent in the counter-application is directed and ordered to take appropriate steps following such finding.

4.11 Save with the written permission and/or directives to the contrary, of the Judge-President, or Deputy Judge-President of the relevant High Court of South Africa (and which includes the relevant High Court with jurisdiction over the area where any inferior court is situated):

4.11.1 all and any proceedings of whatsoever nature instituted by the first respondent in the counter-application against whomsoever, be it in his personal and/or representative capacity (and/or directly and/or indirectly) in any division of the High Court of South Africa and/or in any inferior court, be stayed and which proceedings include, but are not limited in any respect to:

- (a) the application under case no 24593/2011; and
- (b) all and any interlocutory applications under case no 18836/1998 and 18225/1998;

4.11.2 Dlamini shall not take any further steps whatsoever in respect of any proceedings referred to in 4.11.1 above

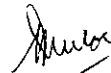
(including but not limited to the issuing or causing to be issued of any notices, writs, subpoenas and the execution of such writs and subpoenas) without the necessary permission as described in 4.11 above;

4.11.3 Dlamini shall not institute and/or pursue in any manner whatsoever any proceedings against anyone whomsoever, be it in his personal and/or representative capacity (and/or directly and/or indirectly) in any division of the High Court of South Africa and/or any inferior court without the required permission as described in 4.11 above.

4.12 Any process issued by the Registrar and/or such office at the instance, request and/or on behalf of Dlamini (and/or any entity who he purports to represent) and/or any order and/or writ of execution granted and/or issued against the applicant (Absa) in the counter-application in favour of Dlamini (and/or any entity who he purports to represent) will not be of any force and effect and/or will not be executable unless signed by the Judge-President, or Deputy Judge-President of this division.

4.13 The sixth counter-respondent is interdicted and restrained from assisting Dlamini (be it directly and/or indirectly) in breaching, and/or acting in contempt of (be it directly and/or indirectly), any order of court.

- 4.14 The sixth counter-respondent is interdicted and restrained from threatening, intimidating and/or harassing (be it directly and/or indirectly) the representatives of Absa Bank Ltd.
- 4.15 Dlamini and the sixth respondent in the counter-application, jointly and severally, are ordered to pay the costs of this counter-application, including the costs flowing from the employment of two counsel where applicable, *de bonis propriis*, on the scale as between attorney and client.
- 4.16 The Registrar of this court is requested to dispatch copies of this order to all the Registrars of all the divisions of the High Court of South Africa.



W R C PRINSLOO
JUDGE OF THE NORTH GAUTENG HIGH COURT

24593-2011

HEARD ON: 30 JULY TO 1 AUGUST 2012
FOR ABSA: G W AMM
INSTRUCTED BY: LOWNDES DLAMINI ATTORNEYS
FOR THE 2ND TO 5TH RESPONDENTS: MR CAVANAGH
INSTRUCTED BY: STATE ATTORNEY
FOR THE 1ST AND 2ND RESPONDENTS IN INTERLOCUTORY APPLICATIONS:
G S GOODES
INSTRUCTED BY: DE JAGER INC