IN THE HIGH COURT, OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 55075/2014

REPORTABLE: YES/NO
OF INTEREST TO OTHERS JUDGES: YES/NO
REVISED

....
DATE SIGNATURE

In the EX PARTE application by: DATE: 15/10/2014

Q[…] R[…] E[…] **FIRST APPLICANT**

and

L[…] E[…] **SECOND APPLICANT**

:

JUDGMENT

BERTELSMANN J:

1. The applicants, married in community of property, apply for the voluntary surrender of their joint estate. There has been a proper compliance with all statutory and formal requirements. They are represented by Mr Philip Markgraaf of the firm Phillip Markgraaf Attorneys. This firm attends to numerous similar applications.

2. The problems arising in this application can by no stretch of the imagination be described as novel. Our courts, including this Division, have repeatedly expressed their disapproval of these unacceptable practices. It is disconcerting that repeated admonishments by our courts decrying unacceptable features of voluntary surrender applications are falling on deaf ears. The time has come that more drastic steps are taken against practitioners who do not heed the courts' repeated criticism and warnings.
3. With the passage of time, and especially as a result of the economic downturn which affects all levels of society, the value of privately owned assets has declined, and so has the value of estates that desperate debtors are offering to surrender voluntarily. Thus it has become more difficult to find unencumbered assets of sufficient value in such estates to ensure a free residue of not less than 20 cents in the Rand. More and more debtors rely on their furniture and other household goods to scrape together assets of sufficient value to meet this test at a public auction.
4. The probability that second hand furniture of uncertain age and quality will set an auction on fire is obviously slim. This has negative implications for any intended surrender of a small estate, because the proceeds of meagre possessions must cover the administration costs before the claims of preferred and secured creditors can be considered. Only then can concurrent creditors' claims be considered, see generally Bertelsmann et al Mars, The Law of Insolvency, 9th ed., p 48. (In practice second hand furniture is seldom offered for sale at a public auction after the voluntary surrender has been accepted. The trustee often sells the furniture to the applicant by way of an instalment sale for a price equal to the value put on it in the application for voluntary surrender).
5. The administration costs include the attorney's fees and those of a correspondent – where applicable – as well as the auctioneer's commission, the trustee's remuneration and the valuator's fees, who must place a value upon the estate assets. Only if the realistic value of the assets, calculated upon the basis of a forced sale, is sufficient to render a return of 20 cents in the Rand of all concurrent claims, after deduction of the administration costs and the claims of secured and preferent creditors, will the application for surrender be accepted.

6. Applications of voluntary surrender are usually launched *ex parte*. Unless any creditor decides to intervene, only one party approaches the court for relief. The indisputable duty therefore rests upon the shoulders of every applicant, and upon the shoulders of his or her legal representative, to act openly and honestly toward the court in every respect.
7. This duty was described as follows by Gorven J in *Ex parte Arntzen* 2013 (1) SA 49 (KZP):

'5. Courts have long required an applicant in voluntary surrender applications to make a full and frank disclosure.[3] This arises at least in part from the stringent test referred to above. It is quite clear that without a full and frank disclosure, the court cannot be 'satisfied' as to the above two criteria in particular. The required high level of disclosure is also affected, in no small measure, by the fact that the application is ordinarily brought on an ex parte basis as is the present one. There is ample authority that applications brought on that basis require the utmost good faith.[4] The principles were succinctly stated by Le Roux J in Schlesinger v Schlesinger[5] in a rescission application as follows:

'(1) in ex parte applications all material facts must be disclosed which might influence a Court in coming to a decision;

2. the non-disclosure or suppression of facts need not be wilful or mala fide to incur the penalty of rescission; and

3. the court, apprised of the true facts, has a discretion to set aside the formal order or to preserve it.

……..

11. Voluntary surrender applications have begun to proliferate in this division. A fledgling cottage industry has reared its head. As was the situation with 'friendly' sequestrations in Mthimkhulu, many of these take a standard form with almost identical averments and are drafted by a small set of attorneys who have chosen to specialise in such applications. In most cases the estate is small, as is the case in the present application. In many of them, confronted by the requirement that all the costs of sequestration must be defrayed from the estate and it must still be shown that sequestration would be to the advantage of creditors, a formula has arisen to reduce these costs. The applicant states that a friend or relative has undertaken to pay the costs of the applicant's attorney and that the attorney concerned will not look to the estate for his or her costs. Just such an averment is made in the present application.

12. I take the view that there is an even greater risk of abuse and a risk that the interests of creditors will be undermined in voluntary surrender applications than in 'friendly' sequestration applications. Therefore the need for full and frank disclosure and well founded evidence concerning the debtor's estate is even more pronounced. There are a number of reasons for this, some of which have been foreshadowed in the discussion above. I shall mention only some. First, the applicant tends to focus on the formal requirements of s 4 of the Act and does not seem to appreciate the need to satisfy a more rigorous test than for sequestration applications at both provisional and final stages as regards advantage to creditors. Secondly the court must perforce, in most instances, rely on the founding papers. This brings into play the peculiar characteristics mentioned above of voluntary surrenders being brought as ex parte applications. Thirdly, no collusion between friendly creditor and debtor is necessary since it is the debtor who is the applicant and has a more direct interest in the application succeeding and understanding of the genuine position than the friendliest of creditors. Voluntary surrender applications therefore require an even higher level of disclosure than do 'friendly' sequestrations

if the court is to be placed in a position where it can arrive at the findings and exercise the discretion set out in s 6(1) of the Act.'

8. In *Ex Parte Cloete*, case no 1097/2013 [2013] ZAFSHC 45 .Daffue J. emphasised that valuators are obliged to act honestly and conscientiously when furnishing their expert opinion of the value of assets that fall into an estate that is ought to be surrendered voluntarily:

'*[15] In these applications, "friendly sequestrations" included, there is often doubt, or an uneasiness, as to the relationship between the attorney and valuator or between the debtor and the valuator. In casu the valuator's business is located in Simontown, the attorney is from Pretoria and the debtor is resident in between in the Goldfields town of Virginia. Such factors should raise the eyebrows, especially where the valuator's fee is alleged to be R500,00 only and his report is of no assistance to the court.*

[16] I am in full agreement with the dicta of Gorven J in ***Ex Parte Arentzen****loc cit at paras [12] and [13] to the effect that voluntary surrender applications require an even higher level of disclosure than "friendly sequestrations" and that it is appropriate at the very least to require compliance with those guidelines set out in* ***Mthimkhulu v Rampersad****(BOE Bank Ltd, Intervening Creditor)* ***[2000] 3 All SA 512*** *at 517b-h. Although the court in Mthimkhulu dealt with a "friendly sequestration", the guidelines can be applied in voluntary surrender applications as well, but also bearing in mind what is stated infra.*

[17] In Craggs v Dedekind and three similar applications, ***1996 (1) SA 935*** *(C) at 936 H, Conradie J referred with approval to the following remarks of Curlewis JP in Kerbel v Chames* ***1925 WLD 72*** *at 76-77:*

> *"… and one has a strong suspicion that in a very large number of sequestrations in this court, these sequestration proceedings are not for the benefit of the creditors, but are entirely for the benefit of the insolvent and are very often instituted by a friend to help the debtor out of his difficulties."*

Conradie J went on at 936J to 937A to refer to the fact that courts have warned over many years ***against neglecting the interests of creditors, but notwithstanding that, even then (in 1995) it was still a*** *legitimate concern which should continue to engage the attention of the courts. Although the court dealt with" friendly sequestrations", the concerns pertaining to voluntary surrender applications are exactly the same.*

[18] In ***Ex Parte Anthony en 'n Ander en 6 soortelyke aansoeke*** ***2000 (4) SA 116*** *(C) Blignaut J dealt with seven separate applications for voluntary surrender. In all seven cases each estate consisted of one mortgaged immovable property and a few movables. The court's main concern was the advantage to creditors and Blignaut J, writing for the full bench, found that notwithstanding valuations obtained by the applicants in each case, they failed to prove that the valuations would be achieved in the event of forced sales. The court relied on the judgment of Leveson J in* ***Nel v Lubbe*** ***1999 (3) SA 109*** *(W) where the learned Judge was also confronted with a valuation which was nothing more but "a bold assertion of value".*

*[19] In **Nel v Lubbe**loc cit, Leveson J made it clear that a court will look to the guidance of an expert when it is satisfied that it is incapable of forming an opinion without it, but that the court is not a rubber stamp for the acceptance of the expert's opinion. It is important that evidence must be placed before the court of the facts relied upon by the expert for his opinion as well as the reasons upon which it is based. The learned Judge went further:*

> *"The court will not blindly accept the assertion of the expert without full explanation. If it does so its function will have been usurped." (at 111G)*

*The manner in which expert evidence must be placed before the court is nothing new. Wessels JA put it as follows in **Coopers (SA) (Pty) Ltd v Deutsche Gesellschaft** 1976 **(3)** SA 352 (A**)** at 371G-H:*

> *"As I see it, an expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert."*

*[20] In **Ex parta Ogunlaja and others** **[2011] JOL 27029** (GNP), Bertelsmann J endorsed the approach by Levenson J in **Nel v Lubbe**and went further to explain the applicable requirements regarding expert testimony in paras [15] and [16]. It is apposite to emphasise the following warnings in paras [35] to [39]:*

> *"[35] It is necessary to add that the nature of the valuation report is such that, in the absence of a reliable method of calculation of the value of the immovable properties, the court is left with the uncomfortable impression that the valuator and the applicants, or the applicants' legal representatives, are too close to one another to allow the preparation of an independent expert's report. The thought is difficult to dismiss in these applications, and in many others the court has seen over the past two to three years, that the valuator is fully aware of the value that needs to be certified for assets in every individual insolvent estate to ensure that the papers reflect the conclusion that an advantage to creditors is assured if the surrender is accepted …*
>
> *[36] If this impression is correct, it is clear that the process of voluntary surrenders is being abused. …*
>
> *[37] If the suggestion is allowed to take hold that certain valuators manipulate the true value of assets upward to persuade the court to accept applications such as the matters under consideration, the result must be a deep suspicion on the part of the court of any valuation report prepared by the valuators concerned.*
>
> *[38] To prevent such an uncomfortable situation from arising, valuators should certify under oath that they prepared every valuation without any knowledge of the facts of the relevant application. In addition, proof of physical inspections of immovable properties ought to be provided by way of photographs and a detailed description of the physical condition in which each property was found, as well as*

> *the effect that the physical appearance of the property has upon the valuation thereof.*
>
> *[39] The applicants themselves and the attorney acting for them should likewise confirm that the valuator was not made privy to the value that the assets in the estate must realise in order to constitute an advantage to creditors."*

Although the learned Judge referred to valuation of immovable properties only, I am of the view that photographs and a detailed description of the physical condition of movable property and motor vehicles in particular, property that are used on a daily basis, should be obtained as well.

[21] In ***Smit v Absa Bank Ltd*** *[2011] JOL 27973 (GNP), Southwood, J also found that the applicants' valuation was completely defective as it did not comply with the requirements laid down in the case law. In para [7] the court also frowned upon the allegation that the applicants' estate consisted of one immovable property only and mentioned the following:*

> *"It is also difficult to believe that the applicants own no other assets. The overall impression is that the applicants have not taken the court into their confidence."*

Southwood, J in ***Ex Parte Mattysen ed uxor*** *2003 (2) SA 308 (T) adjudicated upon an application for voluntary surrender and made two relevant observations, one pertaining to the valuation of the immovable property and the other pertaining to the failure to make full disclosure pertaining to the sale of that property. Regarding the valuation the court foundat p 316A that the affidavit of the valuator did not contain relevant facts or reasons, did not assist the court in any way and was nothing but "an exercise in futility". With reference to the failure to make full disclosure the court stated the following at 316E:*

> *"Here it appears that there has been a deliberate misrepresentation of the facts. The probability is overwhelming that this was done with the assistance of the applicants' attorney. By the time the applicants' affidavit was made on 3 July the applicants would have been served with the summons, the warrant of execution/notice of attachment would have been served on them and the notice of sale in execution would have been published. Without an explanation it is highly improbable that they would not have known about this and informed their attorney accordingly."*

THE COSTS OF SEQUESTRATION AND ADVANTAGE TO CREDITORS

[22] For several years it has been accepted as a rule of practice in the Free State High Court that sequestration and administration costs as a general rule be accepted in the amount of R20 000,00 in order to calculate the concurrent dividend payable to concurrent creditors. This has to be reconsidered as I have recently established from the Registrar that taxed sequestration costs in unopposed sequestration applications vary between R18 000 and R21 000,00. Further enquiries indicated that it can be as high as R25 000.00 and that the costs of voluntary surrender applications are in line with these costs. Obviously if more than one firm of attorneys is involved, which is often the case, the costs are higher. In order to establish the total costs to be paid out of the free residue of an insolvent estate, (that is including the costs of administration of the insolvent estate), the trustee's and Master's fees, advertising costs, security costs, the auctioneer's fees and expenses, postage and diverse

items must be added. The administration costs of a small estate with unencumbered movable assets of R200 000.00 can be as high as R35 000.00 to R40 000.00 if the trustee's fees of 10% on R200 000.00 plus VAT and the other costs referred to above are added. Iftaxed sequestration costs of R22 000.00 only is added, the total costs to be paid from the free residue may be as high as R62 000.00 in this example which is much higher that the amount accepted as a general rule in this division. Obviously, this will have a huge effect on the dividend payable.

[23] There has been a further long standing practice in this division pertaining to advantage to creditors. Once it is established that a dividend of 10 cents in the Rand will be payable to concurrent creditors in so-called "friendly sequestrations" or applications for voluntary surrender, an advantage to creditors has been proven. If the position in the North Gauteng High Court is considered it appears as if a dividend of 10 cents in the Rand is too negligible a dividend. I am fortified in my view if applications for rehabilitation are considered. It is too frequently evident from these applications that no or much smaller dividends than anticipated were paid out to concurrent creditors notwithstanding the fact that many concurrent creditors often do not even prove claims against insolvent estates. I am of the view that this division should follow the guidelines in North Gauteng where the court has laid down that advantage to creditors requires a dividend of at least 20 cents in the Rand. See ***Smit v Absa Bank Ltd*** *loc cit para [3] and* ***Ex Parte Ogunlaja and others*** *loc cit at para [9]. In the last mentioned judgment the minimum dividend of 10 cents in the Rand has been regarded as insufficient and a dividend of 20 cents in the Rand was regarded as the minimum benefit that would have to be established before an application for surrender of an estate or compulsory sequestration will be granted.'*

In *Ex parte Snooke* Case No 752/2014 (FSB), (unreported), Daffue J expanded upon the theme of misleading applications for voluntary surrender as follows:

[23] In my view the correct approach to follow is that of the Gauteng North Division of the High Court. Southwood, J's judgment, writing for the full bench in ***Ex parte Kelly*** *2008 (4) SA 615 (T), is with respect laudable. In view of the importance of the matter I quote extensively from paragraphs 7 to 13: "[7] ….. The total fees claimed amounted to R37 742,21 and the total expenses claimed amounted to R30 987,21: grand total R68 729,42 (instead of the R9550 alleged in the application). At the taxation the trustee appointed in the insolvent estate objected to the amounts claimed in the two bills of costs on the ground that they exceeded the amount of the legal costs stated in the application for surrender. The attorneys contended that the figures alleged in the application merely provided an indication of the legal costs. After hearing argument the taxing master allowed the amount alleged in the application together with VAT: ie R10 887. This decision gave rise to this review of taxation.*

[8] The applicant's notice of review in terms of rule 48 requests the taxing master to prepare a stated case relating to the two bills of costs. The notice alleges that the taxing master erred -

(a) By not taxing the bills but simply fixing a global amount for both accounts; and

(b) by not taxing the accounts in the normal course.

[9] On 10 March 2006 the taxing master provided his stated case in which he concedes that he erred in not taxing the bills and only allowing the fixed amount. He states that the bills of costs should be subject to normal taxation in terms of rule 70 of the Uniform Rules of Court. Understandably, the applicant agrees.

[10] In his report in terms of rule 48(5)(b) the taxing master expands on his stated case. He refers to the principal contentions of the parties at the taxation which have been referred to. His view now is that the correct approach is that the taxing master must consider each item of the bill presented to him and decide whether the amount claimed is reasonable subject to an order by the court limiting the fees which the attorney can claim from the insolvent estate. Even in that case the taxing master will consider the individual items in the bill. If the total of the fees

and expenses is less than those alleged in the application then that is what the taxing master will allow. If the total is greater than the fees and expenses alleged in the application then only the amounts alleged will be allowed.

[11] Where the applicant's attorney presents to the court an application for voluntary surrender or sequestration in which allegations are made that the costs of the sequestration will amount to a stated figure, and the court grants that application, it does so in the belief that those figures are correct and that the dividend will be paid. Even though the court does not make an order that the attorneys' fees and expenses are to be limited that is the clear assumption on which the order is made. It is therefore essential that all funds received by the attorney from the applicant and all funds held by the attorney on behalf of the applicant and all expenses incurred in connection with the application must be disclosed.

[12] In the light of the allegations in the application regarding the attorneys' costs, and the necessity for limiting these costs to arrive at the dividend alleged, the order must be understood to contain such a limitation - see Firestone South Africa (Pty) Ltd v Genticuro AG 1977 (4) SA 298 (A) at 304D - H; Administrator, Cape, and Another v Ntshwaqela and Others1990 (1) SA 705 (A) at 715F - I. In addition the application must be understood to contain an undertaking by the attorney to limit his fees and expenses to those stated in the application. The attorney makes a representation to the court that his fees and expenses in the application will be limited to those alleged. On the strength of that representation the court grants the order. It would make a mockery of the whole procedure if the attorney could then claim other fees and expenses far exceeding those alleged. The present case is a good example. The two attorneys now claim, as the costs of sequestration, almost seven times the fees and expenses alleged in the application. The trustee points out that if the full amount of the bills of costs is allowed concurrent creditors will not receive any dividend and may have to pay a contribution. It also seems to be unprofessional conduct on the part of the attorney to do this. However it is not necessary for present purposes to make a final finding in this regard.

[13] Obviously it will lend certainty if the court granting a sequestration order where the attorneys' fees are stated to be a fixed figure orders that they be so limited for purposes of taxation. But that does not detract from the finding that even in the absence of such an order they are to be limited as set out in the application.

[14] The application to review the taxation of the bill of costs is dismissed and the allocatur is confirmed in the figure of R10 887." (emphasis added.)

*[24] Bertelsmann, J, in relying on the **Kelly** judgment supra severely criticised the approach of legal representatives in voluntary surrender and sequestration applications of relying on an estimate of costs to be taxed in future and suggested that it was unacceptable and should no longer be allowed. See: **Ex parte Ogunlaja** [2011] JOL 27029 (GNP). The learned judge continued as follows at paragraph 42 and 43 with which dicta I agree fully: "[42] By making provision for a later taxation, the attorney introduces an element of uncertainty into the process of calculating the advantage to creditors. Empirical studies have shown that bills of costs are presented for taxation that reflect a multiple of the amount that was provided for in the application under oath, and that was factored into the calculation of the existence of an advantage to creditors. This represents another abuse of the process of voluntary surrenders and unopposed sequestration applications. Attorneys who prepare applications of this nature are bound by the estimate presented in the papers as a realistic expectation of the costs involved in the process, subject of course to the court's power to limit the legal representative's costs to a lower figure in order to ensure a true advantage to creditors. [43] If the procedure laid down in **Kelly**, supra, is ignored in future, the court may be compelled to issue punitive costs orders." (emphasis added.)*

*[25] Bertelsmann et al, **Mars, The Law of Insolvency in South Africa**, 9th ed. at 64 are of the view that it is a lacuna in our present legislation that no provision is made for judicial oversight of the actual results of the liquidation process. Judges are not informed whether the dividend that was held up to creditors in the application was in fact realised. I decided some time ago, when having to consider rehabilitation applications, to arrange for perusal of the applicable applications for voluntary surrender or sequestration to obtain personal knowledge of the allegations made under oath and have no hesitation to state that the averments under oath in so-called friendly sequestration and voluntary surrender applications in order to prove advantage to creditors are far from the truth in many instances. My own experience that sequestration in the majority of cases eventually turns out not to be to the advantage of creditors is no surprise at all. This much is apparent from a survey conducted more than three decades earlier. See: South African Law Commission Review of the Law of Insolvency: Prerequisites for and Alternatives to Sequestration (Working Paper 29 Project 63 (1989) and **Hillhouse v Stott** 1990 (4) SA 580 (W). Information obtained from the Pretoria office of the Master revealed that concurrent creditors received dividends in only 28.6% of the cases included in the survey, while creditors were liable to pay contributions in 40.6% of the cases. There is no reason to believe that the position in the Free State is remarkably different.'*

9. I have quoted *ad nauseam* from the above decisions to emphasize the remarks made in the introductory paragraph. Practitioners who launch applications for voluntary surrenders have been warned repeatedly against dubious practices, which warnings have clearly fallen on deaf ears. In this application it appeared *prime facie* from the valuator's report that he presented a valuation of second hand furniture without ever inspecting the assets. The matter was postponed to give him the opportunity to explain his conduct. His laconic answer under oath reads (in translation) "I confirm that the valuation was prepared after all relevant information had been obtained from the applicant for purposes of the valuation, which information included a list of assets, condition of the assets, age and photographs thereof… (t)he assets were not inspected physically".
10. It is self-evident that this 'valuation' is completely unacceptable.
11. **It lacks, in the first instance, any semblance of an independent confirmation that the assets do in fact exist. No professional assessment of the assets' alleged value has taken place. It has been emphasized over and over again that a valuator's contribution to an application for voluntary surrender – and indeed to any forensic exercise – depends for its admissibility as opinion evidence upon the indisputable independence of the expert. Whatever information the so-called 'expert' valuator used to perform his function was neither obtained nor assessed or analysed by the witness.** The applicant who purportedly provided the list of the assets and other information is no expert

and hardly able to provide information regarding the age and condition of the assets for purposes of valuation thereof. Photos can easily be misleading and are in any event capable of being manipulated electronically, a fact of which a court can take judicial notice. There is, in addition, no affidavit by the applicant to confirm or to explain his role in this “valuation”.

12. As a result of the fact that assets that are available for purposes of ensuring a free residue in sequestrations and voluntary surrenders have steadily become more meagre, it has apparently become standard practice among valuators tp perform ‘valuations’ in this fashion to limit the valuator’s’ expenses and travelling costs and to increase their turnover. In the same motion court week in which this application was heard, there were seven similar applications on the roll which had earlier been postponed by a colleague to enable the applicants to obtain acceptable valuations, after the colleague had been confronted with similar ‘drive-by’ valuations. These latter valuations had been prepared by another valuator in the same fashion as that followed by Mr Styger in this case. The other valuator has still failed to do his or her duty to physically inspect the assets that had to be valued, but has done no more than to add a meaningless paragraph to each ‘valuation’ that the relevant applicant waived the protection afforded by section 82(6) of the Insolvency Act 24 of 1936 to debtors against the sale in execution of personal effects and household goods.

13. This practice is a clear abuse of the process that must immediately be nipped in the bud. It has always been an obvious principle – albeit unwritten - that the valuator must personally inspect assets that must be valued. With the approval of the Hon Deputy Judge President of this Division it is now laid down as a formal rule of practice that a valuator in applications of this nature must confirm under oath that he or she personally inspected the assets that are referred to in the valuation. In such affidavit the date upon which, and the time and locality at which the assets were inspected must be set out and the applicant or his or her proxy must confirm in his or her affidavit that he or she was present when the assets were viewed and that he or she pointed out the assets to the valuator.

14. Lastly it must be pointed out that it is exceptionally worrisome that the conduct of both Mr Markgraaf and Mr Styger was described as unprofessional, and in

Mr Styger's case even as perjurious in a recent decision of the Western Cape High Court: *Ex Parte Crafford & 'n Ander; Ex parte Napier*, Case Nrs 19421/2013 and 19422/2013 (WCC) (unreported). The valuations that were prepared in these two matters followed the same *modus operandi* that was followed in this application.

15. In addition Mr Markgraaf describes his fees in this application as "taxed". This is, as has been pointed out repeatedly, totally unacceptable. In an explanatory affidavit he describes the statement as a "typing error". In the light of the above considerations this allegation requires further investigation .
16. This application is therefore referred to the Law Society of the Northern Provinces with the request to investigate Mr Markgraaf's conduct.
17. In the similar applications on the same roll exhibiting the same malpractice on the valuator's part as that of Mr Styger, the applications were refused and the attorney of record was ordered to repay all fees he or his correspondent received from his client. This case must be dealt with in the same fashion.

The following is order is issued:

1. The application is dismissed.
2. Mr Markgraaf is ordered to repay all fees and other moneys received by him or his correspondent, if any, from or on behalf of his clients, immediately to his clients; proof of such repayment to be presented to the Registrar of this Court within five days of date hereof;
3. That the application is hereby referred to the Law Society of the Northern Provinces with the request to investigate Mr Markgraaf's conduct.
4. Mr Styger is hereby ordered to repay all fees and moneys received in this application from the applicant or Mr Markgraaf or any other source to the applicant and to provide proof of such repayment within 5 days of this order to the Registrar of this court.

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BERTELSMANN J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA