

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 49241/12

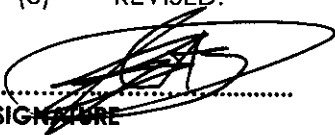
CASE NO: 49239/12

CASE NO: 49240/12

CASE NO: 49241/12

CASE NO: 29884/12

CASE NO: 64888/12

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
	
SIGNATURE	DATE 21/10/16

20/10/2016

In the matter between:

DALHOUSIE LAND CORPORATION (PTY) LTD

CASE NO: 49241/12

1<sup>ST</sup> APPLICANT

DALHOUSIE FORESTS CC

2<sup>ND</sup> APPLICANT

MOGWELE TRADING 154 (PTY) LTD

3<sup>RD</sup> APPLICANT

and

ABSA BANK LTD

1<sup>ST</sup> RESPONDENT

ETIENNE NAUDE N. O.

2<sup>ND</sup> RESPONDENT

In the matter between:

**ABSA BANK LTD**

and

**DALHOUSIE LAND CORPORATION (PTY) LTD**

**CASE NO: 49239/12**

**APPLICANT**

**RESPONDENT**

In the matter between:

**ABSA BANK LTD**

and

**DALHOUSIE FORESTS CC**

**CASE NO: 49240/12**

**APPLICANT**

**RESPONDENT**

In the matter between:

**ABSA BANK LTD**

and

**DALHOUSIE MOGWELE TRADING 154 (PTY) LTD**

**CASE NO: 49241/12**

**APPLICANT**

**RESPONDENT**

In the matter between:

**GLYNIS MERELE RAMSAY**

**CASE NO: 29884/12**

**1<sup>ST</sup> APPLICANT**

<b>GEOFFREY GRANT RAMSAY</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>GRANT HUGH RAMSAY</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>GLYNIS MERLE RAMSAY N. O.</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>GEOFFREY GRANT RAMSAY N. O.</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>IVAN JAMES EMMETT N. O.</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>GRANADA BUSINESS SOLUTIONS (PTY) LTD</b>	<b>7<sup>TH</sup> APPLICANT</b>

and

<b>ETIENNE NAUDE N. O.</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>ETIENNE NAUDE</b>	<b>2<sup>ND</sup> RESPONDENT</b>

In the matter between:

**CASE NO: 64888/12**

<b>GLYNIS MERELE RAMSAY</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>GEOFFREY GRANT RAMSAY</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>GRANT HUGH RAMSAY</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>GLYNIS MERLE RAMSAY N. O.</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>GEOFFREY GRANT RAMSAY N. O.</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>IVAN JAMES EMMETT N. O.</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>GRANADA BUSINESS SOLUTIONS (PTY) LTD</b>	<b>7<sup>TH</sup> APPLICANT</b>

and

<b>ETIENNE NAUDE N. O.</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>ETIENNE NAUDE</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>RAMDALE STUD (PTY) LTD</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>DALHOUSIE LAND CORPORATION (PTY) LTD</b>	<b>4<sup>TH</sup> RESPONDENT</b>
<b>MOGWELE TRADING 154 (PTY) LTD</b>	<b>5<sup>TH</sup> RESPONDENT</b>
<b>DALHOUSIE FORESTS CC</b>	<b>6<sup>TH</sup> RESPONDENT</b>

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## **J U D G M E N T**

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**SWARTZ AJ**

[1] This is an application for the variation of an interlocutory order handed down by Hughes J in this court on 28 November 2013. The issue for determination is whether this court has the authority to vary the order of 28 November 2013. Counsel for the applicant argued that this can be done under the common law. Counsel for the respondent disagreed and argued that also the provisions of rule 42 (1)(a)(b) or (c) do not find application. It was argued that this was a veiled attempt to appeal the decision of Hughes J.

[2] The background facts relating to this application are briefly as follows:  
The respondents are companies and a close corporation controlled by

the Ramsey family. During August 2011 the companies resolved to voluntarily begin business rescue proceedings and one Naude was appointed as business rescue practitioner for these entities. The business rescue proceedings did not proceed and a falling out between the Ramsey's and Naude gave rise to litigation. The parties were *ad idem* that the business rescue plan had become *null and void*. The applicant, ABSA, as a creditor launched applications, with the consent of Naude, for the winding-up of the respondents. These applications were issued in August 2012. In November 2012 the Ramsey's launched an application to remove Naude as business rescue practitioner. The winding-up applications together with the removal application were set down to be heard in November 2013. Naude, separately sought an order that the removal application be stayed for various reasons. This order was granted by Nkosi AJ on 21 November 2013. As a result thereof, an application was launched before Hughes J to postpone and stay the applications for winding-up pending an application for leave to appeal against the order of Nkosi AJ. Hughes J granted the order. To date, the application for leave to appeal the decision of Nkosi AJ had not been heard. ABSA was not a litigant in the proceedings before Nkosi AJ and has no *locus standi* to expedite the finalization of the appeal proceedings. It is now almost three years later and there appears to be no attempt to prosecute the main relief expeditiously. Having read the papers filed of record and after hearing submissions by counsel, it is evident that there is no serious effort to prosecute the application for leave to appeal with any haste.

- [3] The complaint by ABSA, the applicant, is that it is now almost four years after the liquidation applications were launched; that the respondents are unable to pay its debts (in fact, Dalsiehouse Land Corporation (Pty) Ltd has since been wound up in the Gauteng Local Division on 20 April 2016); the Ramsey's have been as dilatory as possible, and ABSA is suffering prejudice. The Ramsey's continue to conduct business as if there is no pending liquidation or business rescue.
- [4] In my view, the order of Hughes J can be amended as it merely dealt with the postponement of the matter. The order was interlocutory in nature. It was never meant to dispose of any issue and having a final and definitive effect on the main action. In fact, the order does not determine any of the issues in the main action. Stated differently, if the intention was that the order had a final effect, it means that the applicant's winding up application would never be finalized should they be subjected to the tardy attitude of the Ramsey's and Naude in the finalization of the appeal process. This is not in the interests of justice. The applicants are denied justice. The sole purpose of the applicant in bringing this application is to have the issue surrounding the winding-up application heard and finalized, irrespective of the outcome of those proceedings. The suggestion therefore that this is veiled appeal proceedings is incorrect

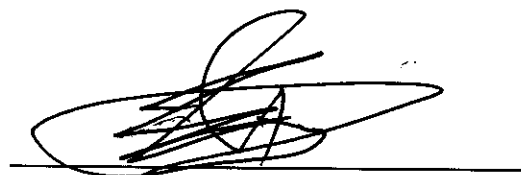
See: **Erasmus, rule 42, Commentary on Superior Court Practice**  
at B1-306 H:

'At common law an interlocutory order may at any time before final judgment in the suit be varied or set aside by the judge who made it or by any other judge sitting in the same court and exercising the same jurisdiction. While the courts are generally reluctant to grant such a variation, they will do so where the variation sought is purely procedural or incidental, where fresh facts have arisen since the granting of the order, where the order does not reflect the intention of the applicant or serve the object for which it was sought, and where variation will not affect the final judgment'..

[5] As stated above, the order of Hughes J was merely incidental to the main dispute. I am satisfied that the applicant is entitled to the relief sought.

[6] In the result the following order is made;

- 6.1 Paragraph 2 of the order of 28 November 2013 is set aside.
- 6.2 The applicant is entitled to set down the liquidation applications under case numbers; 49239/12; 49240/12 and 49241/12 for hearing on the opposed roll.
- 6.3 The respondents is ordered to pay the costs of the application.

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

**E. SWARTZ**

**ACTING JUDGE OF THE HIGH COURT**

Date of hearing:

17 October 2016

Date of Judgment:

<sup>20</sup>  
~~21~~ October 2016