IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 67591/2013

(1)	**REPORTABLE: NO**
(2)	**Of INTEREST TO OTHER JUDGES: NO**
(3)	**DATE HEARD: 19/02/19**
(4)	**DELIVERED: 18 /04/19**
(5)	**SIGNATURE:**

In the matter between:

K[....] J[....]	Applicant
and	
O[....] A[....] J[....]	First Respondent
CITY OF TSHWANE MUNICIPALITY	Second Respondent

JUDGMENT

MAKHUVELE J

Introduction

[1] This is an application, brought by the first respondent, who I shall henceforth refer to as Mr J[....] or first respondent, for reconsideration of the order that was granted against him in his absence.

[2] The order was issued pursuant to an urgent application that was issued on 13 December 2018. The matter came before Van der Schyff AJ on 14 December 2018 .

The order reads as follows;

> *" HAVING HEARD Counsel for the applicant and having read the documents filed:*
>
> *IT IS ORDERED*
>
> *1. THAT it is declared that the respondent is in contempt of the court orders dated 15 dated 15 May 2015, 24 May 2018 and 10 December 2018.*
>
> *2. THAT the first respondent is ordered to immediately , and within a period of no more than 6 hours, restore and/or reconnect the electricity supply to the immovable property known as [….] Pretoria by whatsoever means necessary altenatively provide the applicant with an alternative means of complete electricity supply as is contemplated in paragraph 10 of the order of Kollapen J dated 15 May 2015.*
>
> *3. THAT in the event that the first respondent fails to restore the electricity supply to the immovable property immediately, and within a period of no more than 6 hours, the Second Respondent is ordered to take whatever steps as may be necessary to ensure that the electricity supply to the immovable property known as [….], Pretoria is srestored and reconnected immediately.*
>
> 4. *THAT in the event of the first and/or second Respondents failing to immediately restore and/or reconnect the electricity supply to the property known as 174 Balmoral Avenue, Lisdogen Park, Arcadia, Pretoria, that the Applicant is authorized to instruct and be assisted by the Sheriff to effect the reconnection and/or to restore the electricity supply,* ***cost hereof to be paid by the First respondent & 2nd Respondent , jointly & severally by the one paying the other to be absolved*** (the highlighted portions are handwritten and initialed. Save for this part, the order mirrors the relief sought in the Notice of Motion)
>
> *5. THAT the first Respondent is ordered to immediately, and within a period of no more than 6 hours, comply with payment in full of his obligations as set out in the order of 15 May 2015, which payment shall include the payment of all amounts due and owing as from April 2018 to date.*
>
> *6. THAT service of this order is to take place as follows:*
>
> > *6.1 on the Facebook page of the first Respondent's wife, Chandre J[....] (previously Goosen) via Facebook Messengre;*

6.2 via email on the email addresses of the first Respondent's attorney of record, on the first respondent at brendanw@bwattorneys.co.za on the first respondent at O[....]J[....]@icloud.com and on his wife at her email address at chandreg@icloud.com;

6.3 via facsmile transmission at the office of the first respondent's attorneys offices in Pretoria at 012 329 8967 and 012 7084 and on the facsmile numbers indicated on his letterhead;

6.4 via email in the email address at the office of the first respondent's attorneys offices in Pretoria at oj@ojlaw.co.za indicated in his letterhead;

6.5 via whatsapp on the cellular telephone number of the first respondent's wife at 071 104 2583 and 082 533 33705.

7. A copy of this application may be served on the first respondent's attorney of record, BRENDAN WELDRICK in the manner indicated above, and on the office of the first respondent in Pretoria by hand.

8. THAT the First Respondent is ordered to pay the costs of PART A of this application on an attorney and own client scale such costs to include the costs of two counsel.

9. THAT part B of the application is postponed sine die.

[3] The relief sought in Part B was for committal of the first respondent *'to prison for a period of 30 days for contempt of court'.*

[4] There are no written reasons for the order.

[5] There is no order on the issue of urgency. None of the parties has raised this in their affidavits, however, it remains relevant, particularly because it forms the essence of Rule 6(12)(c).

The background facts

[6] The applicant and Mr J[....] were married out of community of property with the inclusion of the accrual system. During 2013 Mr J[....] instituted divorce proceedings against the applicant.

[7] Mr J[....] applied for separation of the granting of a final divorce decree from issues pertaining to the determination of the accrual of their respective estates as well as the applicant's maintennce claim. The order of separation was granted by Phatudi J on 15 December 2015.

[8] The final decree of divorce was granted on 17 March 2016.

[9] Before the final decree of divorce was granted the applicant had obtained an interim order of maintenance in terms of Rule 43 of the Uniform Rules of Court. The order issued by Kollapen J and dated 15 May 2015 reads as follows;

> *" 1. Pendente lite the Respondent is ordered to pay an amount of R20 000.00 (Twenty Thousand Rand) per month commencing on 28 May 2015 and thereafter on or before the 28th Day of each and every month directly into the bank account nominated by the Applicant.*
>
> *2. Pendente lite the Respondent is ordered to pay the medical aid monthly subscription and Gap cover directly to the service provider and all excess medical expenses not paid by the medical aid.*
>
> *3. Pendente lite the Respondent shall be liable to pay that portion of asset retainer's CC's over daft facility which relates to the common home presently occupied by the applicant.*
>
> *4. Pendente lite the Respondent shall pay directly R9 500.00 (Nine and half thousand rand) to the municipality of Tshwane per month with regard to rates and taxes, water and electricity.*
>
> *5. Pendente lite payment shall be made by the Respondent to the Applicant in the amount of R2500.00 (Two and a Half Thousand Rand) as a petrol allowance per month payable simultaneously with the amount in paragraph 1 above.*
>
> *6. Pendente lite the Respondent is ordered to pay the monthly instalments for the applicant's BMW motor vehicle in the amount of R9 258.07 (Nine Thousand Two Hundred and fifty Eight Rand and Seven Cents) .*
>
> *7. Pendente lite the Respondent is ordered to pay the monthly premiums to insure the BMW motor vehicle referred to above and on a comprehensive basis.*

8. Pendente lite the Respondent is to pay the following directly to the service providers:

8.1 MWED

8.2 ADT

8.3 ADSL AND TELKOM

9. Pendente lite the restritions stated in Rule 43(7) and Rule 43(8) are waived.

10. Pendente lite respondent is ordered to ensure that suitable arrangements are made or a payment plan is put into place to pay the arrears that have built up in respect of the utilizes bill with the Tshwane Municipality so that no interruption under any circumstances occurs in respect of the continual supply of electricity to the matrimonial home'

[10] The parties have been embroiled in acrimonious litigation against each other since the granting of the final divorce order with regard to the continued existence of the Rule 43 maintenance order.

[11] The issue of interim maintenance order was not addressed in the final divorce order, however, Mr J[....] continued to pay in terms of the order granted by Kollapen J for about two years, until April 2018 when he (through his current attorneys of record) gave the applicant notice that he had no legal duty to continue with the payments because the enforcement of the order was extinguished on the date of the final decree of divorce. He claimed a refund of the payments that he had made subsequent to the divorce order.

[12] The applicant's contention with regard to the basis for continuance of the Rule 43 order is that the obligations were not extinguished by the divorce decree, particularly because Mr J[....] had made an undertaking under oath that the Rule 43 order would continue to be operative and that her rights in terms of Rule 43 would be protected. It is common cause that indeed Mr J[....] did make these statements in the affidavit filed when he applied for separation of issues which served before Phatudi J.

[13] The dispute about the continuance of the Rule 43 maintenance order culminated in an urgent application that was launched by the applicant to seek

declaratory orders that the Rule 43 order remains operative in respect of the separated issue, pending the final determination of such issues and that she had a right to approach the court for relief in terms of Rule 43.

[14] On 22 May 2018 Opperman J ruled against Mr J[....] and made amongst others the following order;

> *' 36.2 The rule 43 order granted on 15 May 2015 by Kollapen J remains in force and effect until the final determination of the applicant's mainteance.*
>
> *36.3 The applicant's rights to approach the court for a contribution towards costs as contemplated in Rule 43, pending determination of the two separated issues relating to the applicant's maintenance and for accrual sharing, are not affected.*
>
> *36.4 The respondent is ordered to comply with the rule 43 order granted on 15 May 2015 within 24 hours from the granting of this order.'*

[15] Mr J[....] applied for leave to appeal Opperman J's judgment and order. The applicant in turn filed an application in terms of Section 18(3) of the Superior Courts Act, Act 10 of 2013 to put into operation the order of Opperman J pending the outcome of the appliation for leave to appeal and or appeal.

[16] The orders with respect of these applications were issued on 09 July 2018 .

[17] Mr J[....]'s application for leave to appeal was granted to the Full Court of the Gauteng Division.

[18] The applicant's application for enforcement of the order pending appeal was granted, effectively putting into operation the order issued on 22 May 2018 which declared that the Rule 43 order of Kollapen J was not extinguished by the granting of the final decree of divorce.

[19] Opperman J also issued an order that the amount that Mr J[....] would pay in terms of her order and the Rule 43 order *'shall be deducted from the amount of accrual payable to Mrs J[....] at the final determination of the separated issues as contained in Judge Phatudi's order dated 15 December 2015, in the event that Mr J[....]'s appeal is upheld'*

[20] Mr J[....] launched an appeal against Opperman J's 18(3) order. This was heard by the Full Court constituted by Judges Tolmay, Janse van Nieuwenhuizen and Acting Judge Swanepoel on 10 December 2018. The appeal was dismissed. Reasons were provided on 14 December 2018.

The urgent contempt of court proceedings before Van der Schyff AJ

[21] It appears from the record before me that the applicant filed the urgent application to declare Mr J[....] in contempt of various court orders referred to in the preceding paragraphs about three days after the judgment of the Full Court, and before written reasons were handed down. In her affidavit, the applicant stated that *'reasons for the order will be handed down in due course'*.

[22] With regard to the relief sought in Part A, the respondents were given until 14:00 on Thursday,13 December 2018 to indicate their intention to oppose the application, and failing which the application would be heard on Friday,December 2018 at 10:00.They were not called upon to file any opposing or answering affidavits.

[24] Paragraph 8 of the Notice of Motion states amongst other things, that the application *"may be served on the first respondent's attorney of record…".*

There is an email transmission on record from applicant's attorney directed at Mr J[....] , his attorney and wife dated 13 December 2018 at 11:02. A copy of the application is indicated as having been attached to this email. There is no indication that this was received.

[25] Paragraph 7 of the Notice of Motion makes provision for service of the court order that was being sought on the first respondent's wife via Facebook and email , his attorney's email and facsimile.

[26] The respondents were given until 25 January 2019 to indicate their intention to oppose Part B of the application and to file their opposing affidavits fifteen (15) days thereafter, failing which the application would be heard on a date to be arranged with the Registrar.

Rule 6(12) (C)of the Uniform Rules

[27] The rule reads as follows;

> *‘ A person against whom an order was granted in his absence in an urgent application may by notice set down the matter for reconsideration of the order. ‘*

[28] Mr J[....] has raised an issue with regard to the right of the applicant to file a replying affidavit. Having looked at the authorities, there is no merit in this objection.

[29] However, the trite principles regarding the content of the replying affidavit are relevant here too. The objection would stand only to the extent that any new matters were raised in reply.

Whether the applicant has satisfied the jurisdictional factors for reconsideration of the order of Van der Schyff AJ

[30] It is common cause that the order was granted in an urgent application. I have indicated that the order is silent on whether the Judge has condoned the abridgement of time periods and form of service.

[31] Mr J[....] contends that the order was obtained in his absence under circumstances where he was not served with the application at all. The application was effectively made on an *ex parte* basis.

[32] The applicant was that he was on holiday with his wife at Maritius at the time the order was sought and granted. He only became aware that she had filed the application when he received the court order via email on 14 December 2018.

[33] On the merits, his submission is that he was not in contempt of the indicated court orders and he could not have been in contempt before the Full Court judgment in any event.

[34] In her replying affidavit, the applicant's response with regard to whether Mr J[....] was aware of the proceedings or not is that her attorneys advised his attorney of record by email.

[35] The emails attached in both parties' affidavits are dated 11 and 12 December 2018 and the main discussion is compliance with the court order of the Full Court. Mr J[....]'s attorneys of record indicated that their offices were closed but that they had forwarded the documents to him . It was further indicated that he (Mr J[....]) was out of the country and telephone communication was difficult due to poor telephone lines.

[36] The other contentious issue discussed in the email correspondence related to the timeline for compliance with the order of the Full Court. The applicant's attorneys were of the view that it should have been complied with 24 hours after it was granted. On the other hand Mr J[....]'s attorneys disagreed because the court order did not indicate a date for compliance.

[37] Having considered the correspondence exchanged, I am satisfied that Mr J[....] has given a satisfactory explanation for his absence on 14 December 2018 when the order was granted.

[38] The question of urgency is also relevant, both in the proceedings before Van der Schyff AJ and before me. As I have indicated above, the order of Van der Schyff AJ has left this issue open. Other than making statements about a need for immediate implementation of the order of the Full Court, the applicant did not give reasons why the matter had to be heard on extreme urgency, and under circumstances where she was aware that the applicant was outside the country, and having afforded him (acording to the email dated 13 December 2018 which I have referred to above), less than 2 hours to indicate his intention to oppose.

[39] Under those circumstances, there was no justification for the matter to have been heard in that urgent court.

[40] Consequently, my ruling is that Mr J[....] has made a case for reconsideration of the order granted by Van der Schyff AJ on 14 December 2018.

The appropriate order in reconsideration

[41] The next question to be considered is the appropriate order that I should make under the circumstances. In line with the legal principles, the parties are now before me, and I must consider the application filed by the applicant afresh.

[42] On behalf of Mr J[....] , Advocate RGL Stelzner SC (with him Advocate JR Whitaker), urged me to grant a limited order of reconsideration, meaning that I should only restore the status quo and not consider the merits of the application for contempt of the indicated court orders.

[43] The reasons advanced for this approach is that there are pending appeals between the parties with regard to the same issues, firstly, with regard to the declaratory order issued by Opperman J on the continuance of the Rule 43 order of Kollapen J, and secondly, on the application to appeal the Full Court judgment of 10 December 2018 which the first respondent contends he has an automatic right to. Another reason advanced is that the first respondent intends to challenge the constitutionality of Section 16(3) of the Superior Courts Act which prohibits appeals of interim maintenance orders. This is the declaratory order issued by Opperman J. The fact that she has granted leave to appeal is also of significance.

[44] The first respondent's Counsel's submission on whether Mr J[....] is in contempt of any court order is that prior to 10 December 2018 there was no order that was operational due to the provisions of Section 18(1) and the pending appeals against Opperman's orders, the main one regarding the continuance of Kollapen J's order and the one enforcing it pending the appeal that she had granted.

[45] On behalf of the applicant, Advocate S Stadler submitted that the main (declaratory order) appeal has lapsed as it was filed outside the prescribed period without a condonation application and that Mr J[....] does not have a

further right to appeal the enforcement order of Opperman J that was dismissed by the Full Court on 10 December 2018.

[46] Whilst these legal arguments about the right of appeal are important, the issue before me is whether the first respondent is in contempt of the orders dated 15 May 2015, 24 May 2018 and 10 December 2018 as prayed for in paragraph 2 of the Notice of Motion dated 13 December 2018. The further prayers that I must consider relate to restoration of the electricity supply to the immovable property that is occupied by the applicant.

[47] The applicant has a right to file an application to declare that the filed appeal has lapsed, if that is what she believes. The proceedings before me are not the correct forum for that. Furthermore, having been provided with proof of filing of a further appeal to the SCA, it is not within my competency to decide whether that appeal is competent or not. Issues pertaining to the validity or right of appeals belong to the forum where they have been filed. Similarly, the applicant has a right to raise objections in that forum.

[48] Accordingly, the only issue before me that requires my adjudication is whether the first respondent is in contempt of the indicated orders or not, and whether that issue can properly be decided when the appeals are pending as counsel for the first respondent has submitted.

Urgency of the reconsideration application

[49] The applicant opposed the application for reconsideration on two main grounds, the absence of a right of further appeal and lapsed appeal as well as lack of urgency.

[50] I have already disposed of the right of appeal and lapsed appeal objections.

[51] On urgency, it was argued on behalf of the applicant that Rule 6(12)(c) does not entitle a party to launch the proceedings on an urgent basis. Her counsel referred to cases where it was held that reconsideration is not automatically urgent because the initial order was granted in an urgent court. The applicant for reconsideration must make out a case for urgency.

[52] I ruled that the matter was urgent, hence I proceeded to hear the merits of the application, both reconsideration and the initial application.

[53] In terms of the order issued by Van der Schyff AJ, the first respondent has already been declared in contempt of the indicated court orders, in his absence, and under circumstances where the declaration is final. The order makes provision for determination of the period of imprisonmnet. Taking into account the attitude adopted by the applicant, it would be unwise for the first respondent not to take action with regard to the declaration of contempt of court orders.

[54] In any event, as I have stated above, the application issued by the applicant did not deserve a hearing on extreme urgency under such circumstances where the first respondent was not afforded an opportunity to be heard.

[55] This should be the end of the enquiry before me.

[56] However, because I have already ruled that the application before me is urgent, it is necessary to make a ruling on the submission made by counsel for the respondent with regard to the limited reconsideration that entails only restoration of the status quo.

[57] The suggested approach is in my view not desirable under the circumstances, not because it would not be legally unsound, but because of the acrimonious litigation between the parties and the adverse remarks that have been made against them with regard to the manner in which they have conducted their divorce proceedings.

[58] The first respondent is an attorney and has been severely criticized by both Opperman J and the Full Court recently for what they believe is an abuse of court processes on his part. In response to that, he holds the view that he has a right to exercise his right to access to legal protection based on legal advice that he receives from time to time. I do not intend to express a view on the criticisms levelled against him because those issues are still on appeal.

[59] On the other hand, there are at least two judgments attached in the papers before me where the applicant has been criticised for delaying the finalization of the remaining separated issue in their divorce action. I also do not intend to express a further view as to the issues pertaining to who may or may not be wrong in the manner in which the parties are conducting their litigation.

[60] It appears from the record that the animosity between the parties has rubbed off on their respective attorneys. The first respondent has attached documents that indicate that he has apparently filed a complaint against the attorney of record representing the applicant on the basis of allegations of harrassment. It also appears from the email exchanges that the first respondent has taken a view that he should not be contacted directly. He also gave reasons why he does not give out his physical address. The judgment of Mavundla J urged the parties to move on, but it is clear that their emotions continue to cloud their actions.

[61] Although she has not complained (at least on affidavit), there is no reason why the first respondent's current wife should be dragged into this dispute by having her details splashed out in court orders. The next thing she will be accused of contempt of court for not passing the documents over to her husband. Although Facebook is a public social media platform, the Messenger part of it is a private space. Now the wife receives court documents that she must pass over to her husband. Although she has not filed any affidavit in the matter before me, she did reply to one email attached to the documents and indicated that she received the email but did not read it and has passed it to the attorneys.

[62] The issues pertaining to whether the applicant is entitled to maintennace until finalization of the separated issue (determination of accrual) are a subject of an appeal , leave having been granted by Opperman J.

Similarly, whether the applicant is entitled to enforcement of the order issued by Opperman J pending finalization of the appeal is a subject of an appeal that the first respondent says he is entitled to, and whether this is correct or not is not for me to decide, at least in the current application. The applicant

does have a remedy though to object to the appeals that have been filed, but that must happen on a proper application, directed at the relevant proceedings.

Whether first respondent is in contempt of the court orders of

[63] The correct procedure is to consider whether the first respondent is in contempt of the court orders or not and not to start at the end side by declaring him as such before hearing his explanation for non-complaince with the court orders as it happened when the order of Van der Schyff AJ was obtained.

[64] The procedure and applicable legal principles, citing previous authorities were discussed in the Constitutional Court judgment of Nkabinde ADCJ in the matter of Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Shadrack Shivumba Homu Mkhonto and Others v Compensation Solutions (pty) Limited [2017] ZACC 35

[65] In most cases, courts only consider the first three requirements, which are (a) the existence of the order, (b) that it was duly served or brought to the attention of that person and (c) non-compliance.

[66] What neccessitated the ADCJ to restate the procedure and legal principles is because in many cases persons are found to be in contempt of court orders under circumstances where the fourth requirement, wilfulness and mala fide was not considered.

[67] In the matter before me, it is clear that the first respondent was aware of the orders of 15 May 2015 (oKollapen J) and 24 May 2018 (issued by Opperman J on 22 May 2018 according to the first page of the judgment).

[68] It is arguable whether he was aware of the order of Van der Schyff AJ when the application for contempt was issued on 13 December 2018. The applicant's argument (in the email exchanges) is that he was represented in court when the order was given. His argument is that the reasons were only provided later, after the order of contempt or on the same day.

[69] Accepting that he was aware of the three court orders, it is common cause between the parties that the reasons for non-compliance with the Kollapen and Opperman JJ orders at least until 10 December 2018 was because those orders were being challenged, lawfully, as there were proceedings pending.

[70] The order of the full court was issued on 10 December 2018 and reasons provided on 14 December 2018. It would be stretching things too far if one were to rule that he was in contempt of this order within three days of it being issued,whilst he was out of the country and with no time frame for compliance and furthermore, when reasons were only provided on 14 December 2018.

[71] Even accepting that there was non-compliance with all three orders, the crucial question is whether the non-compliance was wlful and mala fide.

[72] It is common cause that the first respondent has filed an appeal against the declaratory order of Opperman J (and by extension the order of Kollapen J). This appeal is still pending, irrespective of its status, which I cannot determine because there is no application before me to declare it as having lapsed.

[73] The order of the Full Court is also being challenged.

[74] Under the circumstances, I cannot find that the first respondent has acted wilfully or with malice in not complying with the court orders of Kollapen J, Opperman J and Swanepoel AJ which are dated 15 May 2015, 24 May 2018 and 10 December 2018 respectively.

[75] With regard to the prayer pertaining to restoration of the electricity supply in the premises of the applicant or being occupied by the applicant, I wish to refer to an order that has already been made by Tuchten J on 08 December 2018. The judgement was attached to the applicant’s founding affidavit and all she said about it appears in paragraph 15.9 where she stated the following;

> *"What is of consequence is that on 7 November 2018 Tuchten J heard an urgent spoliation application launched by me in respect of the issue of the electricity that had been disconnected . He found that I had counter-spoliated and dismissed the application, but he reserved the question of costs for determination by the Full Court for the reasons set out in his judgment which I attach hereto as KJ12. It is noteworthy that the Full Court also awarded the costs of that application to me even though it was unsuccesful"*

[76] The basis for the claim for restoration of electricity and related prayers is that the Full Court has ruled against the first respondent with regard to the Section 18(3) enforcement ruling made by Opperman J.

[77] Taking into account what I have stated above, the issues in this regard are still pending.

[78] Consequently, there is no basis for the relief sought in prayers 3 and 4 of the Notice of Motion.

Costs

[79] The litigation between the parties is far from over. The main issue being whether the order of interim maintenance that was issued by Kollapen J on 15 May 2015 has survived the decree of divorce that was granted as a separated issue.

[80] Mavundla J as I have already indicated, dismissed the applicant's request for additional legal costs contribution from R200 000.00 to R600 000.00. The reasons given painted the applicant as a person who has no real need for an increased contribution but as someone who simply wants to drag the divorce proceedings longer whilst she benefits from the first respondent.

[81] The applicant has pleaded poverty and unemployment. The first respondent has questioned her alleged basis for unemployment as they separated six years ago. He called on the applicant to reveal her finances that enable her to mount all these legal challenges.

[82] Opperman J made a ruling that whatever maintenance the first respondent may pay as per her court order will be calculated from the accrual when that part is finalized.

[83] I symphasize with the applicant and although I am tempted to issue an order of costs against the first respondent, I am constrained by the fact that the issues between them are still under appeal. Unlike maintenance that would be recoverable as Opperman J has ordered, legal costs will not be recovered. Furthermore, the fact that Mavundla has declined an application for an increased contribution is indicative of the fact that part of the litigation is not necessary.

[84] Indeed, the first respondent is an attorney, but it does not mean that his rights of equality before the law is curtailed. As I have already indicated, the applicant has a right to file an application to declare the appeal that has been filed by the first respondent as having lapsed, or if the first respondent fails to set it down, to do so. Furthermore, it is common cause that the divorce was postponed at least twice at the instance of the applicant.

[85] When she filed this application, the applicant was aware of the status of the various orders as I have outlined above. Notwithstanding that, she went ahead and filed this application for contempt of court.

[86] Accordingly, there is no reason why costs should not follow the cause.

Order;

[87] Under the circumstances, I make the following order ;

[87.1] The order issued by Van Der Schyff AJ on 14 Dcember 2018 is set aside in its entirety, and on reconsideration;

[87.2] The application is dismissed with costs, which include the costs of two counsel.

TAN MAKHUVELE J

Judge of the High Court, Gauteng Division

APPEARANCES:

APPLICANT:	**ADVOCATE S STADLER**
Instructed by:	Adams & Adams
	Lynwood, PRETORIA
	Ref: DBS/SVN/ths/F306
FIRST RESPONDENT	**ADVOCATE RGL STELZNER SC**
	ADVOCATE JR WHITAKER
Instructed by	BRENDAN WELDRICK ATTORNEYS
	Sunnyside, PRETORIA
	Ref: C Van den Heever/COO12/002

Heard on: 19 February 2019