IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 25979/2014

(1) REPORTABLE: YES / NO

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

(3) REVISED.

....

DATE SIGNATURE

In the matter between:

PIKWANE DIAMONDS (PTY) LTD **APPLICANT**

and

ANRO PLANT HIRE (PTY) LTD **RESPONDENT**

JUDGMENT

DAVIES AJ:

[1] This is a rescission application brought by the applicant Pikwane Diamonds (Pty) Ltd against the judgment creditor Anro Plant Hire (Pty) Ltd, the respondent in these rescission proceedings.

[2] The applicant seeks the rescission of a default judgment handed down at the calling of the trial roll by His Lordship Mr Justice Ledwaba DJP on 2 March 2017, in which the learned Judge ordered payment of the amount of R 250 000,00 plus interest and costs, as well as an order dismissing the applicant's claim in the sum of R 100 000,00.

[3] The cause of action relates to the purchase of heavy earthmoving equipment. In the founding affidavit for rescission deposed to by Trevor Pikwane, he alleges that on or about 7 May 2010, the applicant for rescission entered into an oral agreement in terms of which it would pay a deposit of R100 000.00 in respect of the purchase of a 2009 Komatsu D375A-5 for a purchase price of R5 600 000.00. It is alleged that the respondent failed to deliver the appropriate bulldozer, and moreover despite demand refused to return the refundable deposit in the amount of R100 000.00. Consequently, the applicant instituted action in the Springs Magistrate's Court. The respondent counterclaimed for the amount of R250 000.00, being alleged damages in respect of loss of profit, and the matter was thereafter transferred to the High Court, Pretoria.

THE ORIGINAL DISPUTE BETWEEN THE PARTIES

[4] It is effectively common cause that the applicant and the respondent concluded an oral agreement on or about 7 May 2010, for the purchase of a

2009 Komatsu D375A-5 bulldozer, for a purchase price of R5 600 000.00. In this regard the applicant paid the respondent a deposit of R100 000.00 on 14 May 2010.

[5] It is alleged by Mr Pikwane that the respondent failed to deliver the relevant bulldozer, and that the agreement was cancelled some three years later on 7 January 2013, and the applicant demanded a refund of the refundable deposit paid by it.

[6] It is common cause between the parties that the pleadings in the matter erroneously refer to a verbal agreement concluded on the 5th of March 2010. It is this alleged first agreement of 5 March 2010 that formed the basis of the respondent's counterclaim of R250 000.00 for loss of profit suffered as a consequence of the alleged repudiation by the applicant of the agreement of 5 March 2010. As pointed out by Mr Pikwane, the pleadings filed in the High Court perpetuate the mistaken reliance on an oral agreement of 5 March 2010. Mr Pikwane points out that the *res vendita* of the first March agreement was in fact a different bulldozer.

[7] I mention that it is similarly not unambiguously disputed by the respondent that the applicant undertook to pay to it a refundable deposit of R100 000.00 as security to reserve the bulldozer pending finance of the purchase price. This allegation is supported by the applicant's reference to the e-mail annexed as annexure 'TP6', wherein Craig Howie of the respondent e-mailed Noel Leisigang of the supplier Earthquip Ltd, confirming that "*[they] [Pikwane] are prepared to pay a deposit of R100k to secure…*".

[8] Mr Pikwane continues to assert that on the pleadings the respondent contended that the deposit of R100 000.00 was non-refundable and served

to defray the costs incidental to the performance of its obligations. However, as pointed out above the respondent's answering affidavit at paragraph 46 concedes that the R100 000.00 deposit was indeed refundable. The Honourable Justice Ledwaba cannot have been aware of the fact that, contrary to what is indicated on the pleadings, the respondent would indeed concede that this amount was refundable. Nevertheless, he would have been entitled to grant default judgment, simply because of the default of the applicant to answer at trial to a seemingly cogent case that had been brought in a procedurally correct manner.

[9] Pikwane goes on to explain that the applicant's mistake relating to the date of the agreement came about as a result of disgruntled employees erasing or deleting electronically stored documentation, as well as (at paragraph 9.4) the departure of a certain Frank Crossley who had been intimately involved in the transactions.

[10] Pikwane alleges that the applicant declined to accept the defective bulldozer procured in terms of the March agreement. It is later explained that the Bulldozer that could be procured was the correct make, but a 2008 model instead of a 2009 model as agreed.

[11] The applicant contends that it was represented by Frank Crossley, and the respondent by Craig Howie when the second agreement was concluded. Mr Pikwane continues to point out that the respondent complied with the oral agreement by paying the R100 000.00 deposit on 14 May 2010, and thereafter by obtaining conditional approval for the financing of the purchase price in the sum of R5 600 000.00.

[12] Mr Pikwane goes on to complain of a misrepresentation made by the respondent to the applicant that the purchase price of the relevant bulldozer was R5 600 000.00 (or US$ 736 452.00 at a rate of exchange of R7.60 per US$) whereas the supplier Earthquip in fact intended to purchase the second bulldozer for a purchase price of US$ 640 000,00 and then on-sell it to the respondent. It is alleged that by means of misrepresenting the purchase price, "*with the secret knowledge respondent purported to secure a secret profit for itself in addition to the 2.5% profit contemplated in the second agreement*." (At paragraph 30). Although the claim is formulated as one in respect of a secret profit, it also described as a breach of fiduciary obligation, or a simple misrepresentation. However, if one examines annexure 'TP13', it is clear that Earthquip would purchase the relevant bulldozer for US$640 000.00 which is described as a "*buy price*". The clear implication is that the selling price of Earthquip to the respondent would be higher. It does however seem to require explanation what would happen to the difference between the purchase price payable to the middle eastern dealer Galadari Trucks & Heavy Equipment Co. Limited and the price ultimately to be paid by the applicant, a difference of US$101 452.00 or about R771 035.20.

[13] Furthermore, Mr Pikwane points out that the subject of the sale was supposed to be a 2009 model bulldozer, whereas that obtained from Galadari Trucks & Heavy Equipment Co. Limited, as evidenced by 'TP15', reveals that it is in fact a 2008 model. According to Pikwane, the applicant therefore communicated that it would not accept the earlier model bulldozer and cancelled the transaction. Thus, at first blush the applicant's version is

supported to an extent by some objective evidence. I point out that annexure 'TP11', an e-mail from a certain Gerda at Anro, wherein she explicitly states that the profit of Anro is 2.5%. This at least is common cause. However, Anro's claim is not for 2.5% commission, which would amount to approximately R144 400.00, but rather for a loss of profit in the amount of R250 000.00.

[14] Craig Howie on behalf of the respondent did not deal at length with the allegations regarding the merits. Instead, he contented himself with a withering attack on the manner in which the application for rescission had been brought, relying *inter alia* on the applicant's former attorney, Mr Steven Addinall.

[15] Mr Howie quotes extensively from the pleadings, in order to illustrate the fact that in essence the parties were in agreement that the subject of the matter in dispute was the May 2010 agreement, and the terms thereof. I have already referred to the admission at paragraph 46, to the effect that the deposit was refundable. This admission is contradicted by the plea and counterclaim which are incorporated into the answering affidavit by reference.

[16] Mr Howie does however claim to have sourced a 2009 model bulldozer for the price of R5 600 000.00 (at paragraph 53.5.9), which he refers to as the second bulldozer which was the subject of the May 2010 transaction. He refers throughout to that bulldozer as a "*2009 model*", but does not deal with annexure 'TP15', which indicates that the supplier in Dubai had a Komatsu D375A-5 bulldozer, but a 2008 model for sale.

[17] Regarding paragraphs 27 – 41 of the founding affidavit, which deal with *inter alia* the allegations of a secret profit and malperformance or misrepresentation, the respondent merely states that the contents are denied in so far as they are in contrast with the respondent's pleadings. These are however serious allegations which, as Mr Howie concedes, constitute the applicant's defence to the counterclaim. Confronted with these explicit allegations, the respondent elected to refer only to the pleadings, which for instance do not deal with the issue of the year model of the bulldozer under consideration nor do they deal in a satisfactory manner with the quantification of the plaintiff's loss of profit.

[18] Given the difference of approximately R700 000.00 between the buying price of the relevant bulldozer, and the price at which it would have been on-sold to the applicant, as well as the common cause provision for 2.5% commission, a clear response from the respondent on these issues would have assisted the Honourable Court in evaluating the *bona fides* of the applicant's defence. Seen in conjunction with the contradictory assertions as to whether the deposit was refundable or not, I cannot find that the applicant's claim or its defence to the counterclaim are lacking in good faith or without merit.

[19] On the contrary, and with due regard to the principles outlined in ***Stellenbosch Farmers Winery Ltd v Martell et Cie SA*** concerning disputes of fact relating to oral agreements, there are various external indicators that provide a measure of support to the applicant's version.

[20] The applicant's replying affidavit was woefully out of time. Surprisingly, although deposed to on the 30th of April 2019, it was only filed together with

the applicant's heads of argument, practice note and on 13 May 2019, a week before the matter was due to be heard. Alarmingly, and notwithstanding the services of an experienced firm of attorneys, the applicant once again fails to take this court into its confidence by explaining the reason for the late filing of the reply and heads of argument. No case for condonation is made out in this regard. Once again, the court is left with the distinct impression that the applicant harbours a total disregard for legal processes, since it would have been advised that condonation would constitute an important part of the replying affidavit especially in the circumstances of this case where the application was instituted substantially out of time in the first place. Nor was any explanation tendered from the bar.

RESCISSION IN TERMS OF RULE 42

[21] The application for rescission does not expressly state whether it was founded upon Rule 31, Rule 42 or the common law. However, from the structure and content of the founding affidavit, the application appears to be framed as one falling under Rule 42(1)(c) or alternatively under the common law. This is confirmed in the replying affidavit. At the hearing of the matter, counsel for the applicant (who had not drafted the heads of argument) also enjoined me to consider the provisions of Rule 42 (1)(a), pointing out that I can do so *mero motu*.

[22] In my view there is no merit in the application based upon Rule 42 (1) (a) *alternatively* 42(1)(c) which was based essentially on the premise that the 'common mistake' of the parties in relying upon a previous agreement in March 2010 as opposed to the true agreement of May 2010 somehow

rendered the default judgment objectionable. It was also contended that the notice of withdrawal was defective, vitiating the default judgment. Rescission under the common law was but faintly argued at the hearing, but is nevertheless dealt with below.

[23] Mr Barnardt for the respondent argued persuasively that the precise date of the agreement was a minor detail, considering that the parties were *ad idem* that all the elements of a valid contract of sale were present. The shared mistake in the pleadings as to the date of the oral agreement was certainly not fundamental to the default judgment and would certainly not have been "*at the forefront of the court's reasoning when default judgment was granted*" as postulated in ***Tshivase Royal Council v Tshivase*** **1992 (4) SA 852 (A**) at 862-863.

[24] As pointed out by Mr Barnardt, there was no causative link between the 'common mistake' and the default judgment, as required in ***Tshivase* (*supra*)**. I consider that the same logic applies when assessing whether the judgment was erroneously sought or granted. Be that as it may, the manner in which the dispute was procedurally before the court granting default judgment cannot be impugned, as contemplated by ***National Pride Trading 452 (Pty) Ltd v Media 24 Ltd*** **2010 (6) SA 587 (ECP)**. The default judgement was properly sought, and properly granted.

[25] Regarding the notice of withdrawal, it was pointed out that there was indeed proof of postage (at p34) of the notice of withdrawal. Further Mr Barnardt referred to ***De Wet and Others v Western Bank Ltd*** **1979 (2) SA 1031**, in which the erstwhile Appellate Division held that "*The fact that the appellants had not been advised timeously of the withdrawal of their attorney is, of*

course, a factor to be taken into account on considering whether good cause has been shown for the rescission of the judgments under the common law, but it is not a circumstance on which the appellants can rely effectively for the purpose of an application under Rule 42(1) (a)". (At p1038)

[26] It is trite law that an application under Rule 42 ought to be brought within a reasonable time. On the facts before me, the applicant has been culpably remiss in this regard.

RESCISSION AT COMMON LAW

[27] The application for rescission of the judgment of 2 March 2017 was launched in September 2018. Strictly speaking, the issue of condonation would arise first for decision. However, the good cause adjudication that is central to condonation requires an analysis of the prospects of success as a central facet of good cause.

[28] Generally speaking the applicant for rescission at common law is expected to show "*good cause*" for the rescission which includes (a) giving a reasonable explanation for his default; (b) showing that his application was made *bona fide*; and (c) showing that he had a *bona fide* defence to the respondent's claim which *prima facie* has some prospects of success.

***Colyn v Tiger Food Industries t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA)**.

[29] It has frequently been held that in order to show good cause, the defendant must at least furnish an explanation of his default sufficiently fully so as to enable the court to understand how it really came about, and to assess his

conduct and motive. ***Silber v Ozen Wholesalers (Pty) Ltd*** **1954 (2) SA 345 (AD)**. In this regard, the applicant has been woefully remiss.

[30] An application for rescission of judgment is not an inquiry about whether or not to penalise a party for the failure to follow the rules and procedures of this Honourable Court. The question always is whether or not the explanation for the default gives rise to a probable inference that there is no *bona fide* defence. The court has a wide discretion, which must always be exercised judicially and is primarily designed to enable the court to do justice between the parties. ***Riddles v Standard Bank of SA 2*****009 (2) AII SA 407 (T)**.

[31] While wilful default is normally fatal, gross negligence may be condoned. The majority of decisions on the subject suggest that the concept of wilful default implies subjective knowledge or deliberate conduct on the part of the defaulting party. ***Neuman (Pvt) Ltd v Marks*** **1960 (2) SA 170 SR**; ***Maujaen t/a Audio Video Agencies v Standard Bank of SA Ltd*** **1994 (3) SA 801 (C) at 803H-I**.

[32] As stated by Moseneke J (as he then was) in ***Harris(supra)***, before for an applicant in a rescission of judgment application can be said to be in "*wilful default*" he or she must bear knowledge of the action brought against him or her and of the steps required to avoid the default. Such an applicant must deliberately, being free to do so, fail or omit to take the steps which would avoid the default and must appreciate the legal consequences of his or her actions. Moreover, an applicant is not necessarily barred once found to be in wilful default, and the enquiry whether sufficient cause has been established must not be unduly restricted.

De Witts Auto Body Repairs (Pty) Ltd v Fedgen Insurance Co. Ltd **1994 (4) SA 705 (E) at 708G**; ***HDS Construction (Pty) Ltd v Wait*** **1979 (2) SA 298 (E) at 300G – 301E**.

[33] As stated by Jones J in ***De Witts Auto Body Repairs*** **(*supra*)**, and endorsed by Moseneke J in ***Harris***, an application for rescission is never simply an enquiry whether or not to penalise a party for failure to follow the rules and procedures laid down for civil proceeding in our courts. The question is, rather, whether or not the explanation for the default and any accompanying conduct by the defaulter be it wilful or negligent or otherwise, gives rise to the probable inference that there is no *bona fide* defence and hence that the application for rescission is not *bona fide*. The decision to rescind the judgment of this court is therefore primarily designed to enable him to do justice between the parties. He should exercise that discretion by balancing the interests of the parties…he should also do his best to advance the good administration of justice".

[34] The Full Court in ***Harris*** proceeded to find that "*even in the face of a finding of wilful default, in my view, the court is enjoined to examine whether the defence raised by the person who seeks the relief shows the existence of an issue which is fit for trial*". ***Harris v ABSA Bank*** **(*supra)*** at par 18); ***Sanderson Techni Tool (Pty) Ltd v Inermenua (Pty) Ltd*** **1980 (4) SA 573 at 576A-C**; ***Revelas and Another v Tobias*** **1992 (2) SA 440**.

[35] It is also settled law that a good defence can compensate for a poor explanation and *vice versa*:

Zealand v Milborough **1991 (4) SA 836 (SE) at 838 C-E**; ***Carolus and Another v Saambou Bank Ltd*** **2002 (6) SA 346 SE at 349B-E**.

WILFUL DEFAULT OF APPEARANCE

[36] The applicant provides a short explanation for his default, saying simply that his attorneys posted a notice of withdrawal which did not reach him timeously. The notice of withdrawal under consideration bears the court stamp of 14 February 2017, being some two weeks before the trial, but there is no indication on the papers when it was actually posted, as no proof of postage is attached.

[37] While I have grave doubts that: "*The notice did not come to applicant's attention timeously consequent upon which the trial hearing proceeded in applicant's absence*" as stated at paragraph 6.10, the explanation is very sparse, and leaves open the question whether the applicant knew of the court date in the first place, bearing in mind that the matter had been postponed in mid-2016.

[38] The withdrawal of his former attorneys of record was preceded by two e-mailed letters dated 4 January 2017 and 9 February 2017 respectively. The former refers to the trial date while the latter points to: "*numerous letters as well as numerous telephonic conversations between writer and Mr Pikwane*" and gives notice that a formal notice of withdrawal will be furnished in due course. While I am cognizant of the fact that the applicant's former attorney Mr Addinall has filed a confirmatory affidavit for the respondent, he does not in express terms say that the contents of the letter are correct, or that he

indeed discussed the trial date with Mr Pikwane personally. However, a litigant is not entitled to sit back indefinitely without proactively enquiring as to progress in the matter or preparation for trial. On Mr Pikwane's version, he made no attempt to speak to his former attorney of record or any other attorney, until he realized for the first time that default judgment had been granted against him when a draft order was served on him on 22 March 2018, as alleged in paragraph 7.4 of his reply.

[39] Mr Pikwane denies that the applicant received the e-mails referred to above, pointing out that they were not sent to himself, but to two employees. The employee Philip states that he did not receive the mail and Sibongile had left the employ of the applicant about a year earlier. I am mindful of the fact that at this stage of the inquiry I am dealing only with the reasons for the applicant's default on the trial date of 2 March 2017.

[40] I therefore accept for the purpose of argument that the applicant was not in willful default. On the face of it, the applicant demonstrated a *prima facie* claim and defence, and it would ordinarily be entitled to rescission of the relevant judgment.

CONDONATION

[41] In terms of the notice of motion, the applicant seeks condonation for the late filing of its rescission application in so far as it is necessary to do so. However, while the application provides a terse explanation for default of appearance, it does not explain at all why the application was instituted in September 2018 in respect of a judgment handed down on 2 March 2017.

[42] Similarly, the applicant's reply filed some four months out of time fails to put forward any grounds why such late filing should be condoned. The reply does however advance a terse response to the respondent's assertion that the rescission application was not brought within a reasonable time. In view of the fact that the respondent's answering affidavit is susceptible to similar criticism, I will nonetheless admit the replying affidavit, so as to properly evaluate the factors relevant to the exercise of this court's broad discretion to grant condonation or not. It is necessary to examine certain procedural aspects of this case after the granting of default judgment.

[43] Warrants were issued against movable property on 10 and 11 April 2017 in respect of the R250 000.00 plus interest, and in respect of the taxed costs a day later. There is no Sherriff's return in respect of these warrants. The first incontrovertible proof of actual service of a warrant of execution appears from the *nulla bona* return dated 16 December 2017 attached as annexure 'CH10'.

[44] About this Mr Pikwane states (at the second paragraph 7.4) that: "*The Sheriff only affected the attachment on the 22nd of March 2018. I did not understand from annexure 'CH10' nor from 'CH11'* [the latter being the *nulla bona* return] *that a judgment had been taken by default. It was only when the return of service of the draft order was served on Mrs Louw that I understood a judgment had been taken by default. At that stage Mr Schmulian was instructed*." I find the above explanation to be highly implausible.

[45] In any event Mr Pikwane was under a positive duty to ascertain the nature and exigency of the legal process that had been served on him in December 2017. One wonders what he was thinking about regarding the progress in a

matter which had been postponed in mid-2016. He does not take the court into his confidence and explain his thought processes over this extended period of time. According to Mr Pikwane, he only realized that a judgment taken by default on 22 March 2018. Even if that were true, the rescission application was only served on 18 September 2018. The applicant makes absolutely no attempt to provide an explanation for this delay of almost six months.

[46] On or about 9 April 2018, the applicant's attorney advised his counterpart that he had received instructions. On 7 May 2018, the applicant's attorney advised that he had been instructed to apply for a rescission of judgment and undertook to serve papers during the following week. This would have been approximately ten months after default judgment had originally been granted, and no doubt the applicant's attorney would have been keenly aware of the fact that an explanation would be required for this delay.

[47] However, on 20 July 2018 the applicant's attorneys addressed correspondence to their counterparts, repeating that they have instructions to apply for a rescission of judgment which they undertook to institute before the sale in execution, which was scheduled for 27 July 2018.

[48] On 26 July 2018, the High Court granted an interim interdict preventing the sale in execution, pending the outcome of the rescission application to be brought within six weeks of the date of the interim order, being 30 August 2018. Once again, the applicant's attorneys failed to act timeously, and it was only after the respondent's attorneys gave instructions to arrange a second sale in execution, that the present application for rescission was eventually served and filed on 18 September 2018.

[49] In this context, it must be mentioned that although the notice of motion seeks an order "*to condone in so far as may be necessary the filing of this application outside the prescribed limits*", there are no facts or arguments expressly directed at condonation. It is accordingly unclear upon what factual basis this Honourable Court would be expected to exercise a favourable discretion.

[50] In view of the fact that the answering affidavit complains vociferously of the failure to set out a factual basis upon which condonation should be granted, the court is left to speculate as to why such facts peculiarly within the knowledge of the applicant are not placed before the court. Needless to say, the failure to adduce such evidence justifies the drawing of an adverse inference. Accordingly, I hold that the absence of an explanation for the inordinate delay in filing and prosecuting the rescission application justifies the finding that there is no such justification available, and that the true facts pertaining to the delay would be adverse to the applicant's case for condonation.

***Blue Lion Manufacturing v National Brands Ltd* 2001 (3) SA 884 (SCA) at 891A-C; *S v Teixeira* 1980 (3) SA 755 (A) at 764**.

[51] I have referred above to the understandably benevolent approach of the court in respect of default of appearance, as *inter alia* addressed by the Full Court in ***Harris v ABSA*** (*supra*). However, such benevolence does not extend to a flagrant disregard for the rules and procedures of the judicial process, when condonation is sought.

[52] In cases of flagrant breaches of the rules, and especially where there is no acceptable explanation therefore, the indulgence of condonation may be refused regardless of the merits of the main dispute. This principle is applied rigorously, and even where the blame lies solely with the attorney. ***Tshivhase Royal Council and Another v Tshivhase and Another*** **1992 (4) SA 852 A at 859E-F**. See *also* ***Blumenthal and Another v Thompson N.O and Another*** **1994 (2) SA 118 (A)**.

[53] In cases of a flagrant disregard, it may be unnecessary to make an assessment of the prospects of success in the main action, since the cumulative effect of other relevant factors including the respondent's interest in the finality of its judgment and the proper administration of legal processes render the application for condonation unworthy for serious consideration. The applicant is unwilling or unable to explain its utterly supine stance regarding the action from August 2016 when the matter was postponed, until March 2018 when he supposedly realised that default judgment had been granted. The interests of justice do not militate in his favour.

[54] In this regard, it is trite that where condonation is sought for an extended period, a full explanation should be provided by the applicant for the entire period under consideration. This principle was applied by the Constitutional Court in ***Laerskool Generaal Hendrik Schoeman v Bastian Financial Services (Pty) Ltd*** **2009 (10) BCLR 1040 (CC)**.

[55] While I am mindful of the fact that Section 34 of the Constitution (Act 108 of 1996) guarantees a right of access to a court or an impartial tribunal, the right is not absolute. Moreover, the right is given effect to by legislation as well as the Uniform Rules of Court, which have been disregarded. Even

accepting for the purposes of argument that the applicant has a *prima facie* case for the repayment of its deposit, as well as a *prima facie* defence to the counterclaim based on loss of profit, it has declined to explain the circumstances of its default at all. The conduct of the applicant smacks of precisely the insouciance that the courts caution against when warning that condonation is 'not there for the taking'.

[56] By its own recalcitrance and refusal to explain its delay in instituting proceedings or in filing its reply timeously, the applicant has demonstrated a flagrant disregard for the rules and processes of this Honourable Court, and consequently the doors of justice will be closed in his face. Moreover, thereis no reason why the respondent should be at all out of pocket for opposing the belated application. For the reasons set out above, I order as follows:

ORDER

1. The application for the rescission of the judgment granted by the Honourable Justice Ledwaba DJP is dismissed.
2. The applicant is directed to pay the respondent's costs on the scale as between attorney and client.

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S.W DAVIES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Heard on	:	20 May 2019
Judgment delivered on	:	20 September 2019

Appearances:

For the Applicant	:	Adv S.S Cohen
Instructed by	:	Thomson Wilks Attorneys
For the Respondent	:	Adv H.M Barnardt
Instructed by	:	Daan Beukes Attorneys