Not Reportable

The Labour Court of South Africa,

Held at CAPE TOWN

Case no: C349/2020

In the matter between:

MICHELE SCANLON AND 13 OTHERS	First to Fourteenth Applicants
and	
ECHO INTERNATIONAL MANAGEMENT SERVICES (PTY) LTD (IN LIQUIDATION)	First Respondent
ANGELENE POOLE N.O.	Second Respondent
MARLENE ELIZABETH RETIEF N.O.	Third Respondent
AFRICA ONLINE OPERATIONS (MAURITIUS) LIMITED	Fourth Respondent
ECHOTEL PROPRIETARY LIMITED	Fifth Respondent
ECHOTEL INTERNATIONAL PROPRIETARY LIMITED	Sixth Respondent
ECHOTEL SP SA PROPRIETARY LIMITED	Seventh Respondent

Heard: 29 June 2021

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 27 July 2021

Summary: Rule 7(7)(b) application to refer dispute to oral evidence – Court having a wide discretion and a matter of convenience to the Court – factual disputes in motion proceedings and timeous application to refer dispute or portion thereof to oral evidence – application granted with directives

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JUDGMENT

DE KOCK, AJ

Introduction

[1] This matter comes before me as an interlocutory application in terms of which the applicants are seeking condonation for the late filing of their replying affidavit in the main application, as well as an order for the referral of a portion of the dispute between the parties, in the main application, to oral evidence in terms of Rule 7(7)(b) of the Labour Court Rules.

[2] It is necessary, before I deal with the interlocutory application, to provide a very brief background of the events that led to the applicants filing the main application, to briefly deal with the nature of the main application and with the relief sought by the applicants in the main application.

The background to the main application

[3] The first respondent ('EIMS'), with effect from 31 October 2019, acquired the assets and liabilities of iWay Management Services Proprietary Limited ('IMS') as a going concern. The applicants worked for IMS at the time that IMS was so acquired, and it was agreed that the applicants would transfer to EIMS in terms of section 197 of the LRA.

[4] The EIMS board of directors initially resolved in a meeting of directors held on 28 February 2020 to enter EIMS into voluntary liquidation proceedings. The applicants only became aware that this decision had been taken when they received notices of suspension of their employment contracts on 12 March 2020. A special resolution was then signed on 6 March 2020 by the EIMS board to formalise the liquidation process.

[5] The applicants formed the view, *inter alia* based on the continued requirement for 'Shared Services', which services the applicants claim they performed prior to EIMS being placed in liquidation, that their contracts of employment were transferred to the fourth, sixth and/or seventh respondents in terms of section 197A(2) with effect from 1 March 2020.

[6] On 18 May 2020 the applicants instructed their attorneys, Fairbridges Wertheim Becker ('FWB') to correspond with the first and fourth to seventh respondents ('referred to as a collective as the Echotel Group') to obtain clarity, *inter alia*, on the status of the services performed by EIMS and which were now allegedly performed by another company or other companies within the Echotel Group. No response was forthcoming.

[7] On 19 May 2020 FWB received correspondence from the second respondent ('Poole') informing it of the appointment of the second and third respondents as joint provisional liquidators of EIMS. Poole specifically requested FWB to provide further information concerning the applicants' allegation that there had been effectively a transfer of services to enable Poole to investigate the matter.

[8] FWB responded on 4 June 2020 and set out the applicants' concerns considering the possible application of section 197A of the LRA. FWB

informed Poole that for obvious reasons the applicants potentially had insufficient information at their disposal to make a determination of the issue and for this reason FWB posed a number of questions to Poole concerning the business of EIMS and the services that had continued uninterrupted post the suspension of the applicants' employment.

[9] No response was forthcoming and FWB again corresponded with Poole on 19 June 2020 requesting that she answers the questions that had been raised. Poole, on 23 June 2020, responded and expressed her disagreement with the view that a transfer of services had taken place.

[10] The applicants thereafter, on 25 September 2020, filed the notice of motion in the main application, wherein they sought as relief *inter alia* that it be declared that, with effect from 1 March 2020, the contracts of employment of the applicants transferred, under section 197A(2) of the LRA, to the fourth, sixth and/or seventh respondents and that the said respondents instate the applicants forthwith, will full backpay and without loss of benefits from 1 March 2020 until the date of the Labour Court order.

[11] The application was opposed by the fourth, sixth and seventh respondents and an answering affidavit was filed on 27 October 2020. The applicants filed a replying affidavit on 9 December 2020.

<u>The Rule 7(7)(b) application</u>

[12] On 22 January 2021 the applicants filed the application for a referral of a portion of the dispute to oral evidence. On 5 February 2021 the fourth, sixth and seventh respondents filed an answering affidavit to the application for referral to oral evidence, as well as a conditional counter

application. The applicants, on 20 February 2021, filed a replying affidavit, as well as an answering affidavit to the counter application.

[13] It is this application in terms of Rule 7(7)(b) that came before me on 29 June 2021, as well as an application for condonation for the late filing of the applicants' replying affidavit in the main application.

[14] I will now proceed to determine the relief sought in the interlocutory application.

Condonation

[15] The fourth, sixth and seventh respondents were required, in the main application, to file their answering affidavit on or before 9 October 2019. The respondents' attorneys were not able to do so and approached the applicants' attorneys to request an indulgence to 19 October 2020. This request was granted. The answering affidavit could again not be filed on the date as agreed between the attorneys, and the respondents' attorney advised that the answering affidavit will be filed the next day, 20 October 2020, which was done. The applicants' attorneys did not take issue with the late filing of the answering affidavit and did not request that the respondents file an application for condonation.

[16] The applicants were required to file their replying affidavit, based on an agreement reached with the respondents' attorneys, on or before 27 November 2019. They failed to file the replying affidavit on or before the due date of 27 November 2019 and was only able to file the replying affidavit on 2 December 2020.

[17] Surprisingly, given the indulgence previously sought by the respondents' attorneys and given to them in filing the answering affidavit, the

respondents' attorneys took issue with the late filing of the replying affidavit and advised the applicants' attorneys that they will have to seek condonation for the late filing of the replying affidavit. This application for condonation was duly filed as part of this interlocutory application.

[18] The applicants' attorney, Ms Gaul, dealt with the reasons for the late filing of the replying affidavit in the founding affidavit of this interlocutory application, as well as with the degree of lateness, the prospects of success and whether there was any prejudice to the other party. I do not intend to repeat what has been stated in the founding affidavit in this regard, save to conclude that I am satisfied that Ms Gaul provided an acceptable explanation for the delay, that the delay was not unacceptable given the issues which the applicants had to deal with in their replying affidavit and that there was no prejudice to the respondents.

[19] Surprisingly again, the respondents did not oppose the application for condonation in their answering affidavit filed in the interlocutory application. I say surprisingly given the fact that the respondents insisted that the applicants must apply for condonation. Instead, the respondents simply made certain remarks in response to the application and left the decision whether to grant condonation in the hands of this Court.

[20] Mr Bosch, in the heads of argument filed in respect of the interlocutory application, conceded that the respondents have put up nothing to contradict the applicants' version in respect of the application for condonation. The respondents' insistence that the applicants must apply for condonation was, in my view unreasonable given that they too sought and were granted indulgence in the late filing of their answering affidavit. The need for an application for condonation to be filed could have been avoided had the respondent not unreasonably insisted that the applicants must apply for condonation and this Court would not have been required to exercise its discretion in whether to grant condonation or not.

[21] Be that as it may, due to the respondents' insistence, this Court is required to determine whether the applicants have shown good cause for the late filing of the replying affidavit to be condoned. I have already stated that I am satisfied that the applicant advanced an acceptable explanation for the delay, that the delay was not long and that there was no prejudice to the respondents. I will regard the prospects of success as a neutral factor in exercising my discretion to determine whether the late filing of the replying affidavit should be condoned.

[22] I am satisfied that the applicants have shown sufficient good cause for the late filing of the replying affidavit in the main application to be condoned and I therefore condone the said late filing in line with the order I already made on 29 June 2021 when the interlocutory application was heard.

[23] I will now turn to the application in terms of Rule 7(7)(b) to refer a portion of the dispute in the main application to oral evidence.

Referral to oral evidence

[24] The applicants, in the founding affidavit in the interlocutory application, is seeking an order that the question as to whether their services and functions which they performed before the liquidation of the EIMS continued to be performed by the fourth, sixth and/or seventh respondents. Ms Tolmay, in the applicants heads of argument, expanded on the issues which she believes need to be referred to oral evidence. I will return to the issues as raised by her in the heads of argument and contained in the founding affidavit hereunder.

[25] Before doing so, it is necessary to refer to the principles applicable to the determination of factual disputes in motion proceedings. Snyman AJ, in *Jonsson Workwear (Pty) Ltd v Williamson and Another*1 was required to determine the principle and approach on how factual disputes in motion proceedings should be determined in dealing with a restraint application.

[26] Snyman AJ referred to *Reddy v Siemens Telecommunications (Pty) Ltd*2 where the Court said that:

> '… The application was launched as a matter of urgency at the end of February 2006. Since the restraint was for a limited period of 12 months the court a quo correctly treated the matter as being substantially an application for final relief. A final order can only be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant's affidavits justify the order, and this applies irrespective of where the onus lies.'

[27] The Court in *Reddy* went further and said:3

> '… For in the present case the facts concerning the reasonableness or otherwise of the restraint have been fully explored in the evidence, and to the extent that any of those facts are in dispute that must be resolved in favour of Reddy (these being motion proceedings for final relief). If the facts disclosed in the affidavits, assessed in the manner that I have described, disclose that the restraint is reasonable, then Siemens must

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1 (2014) 35 ILJ 712 (LC).

2 (2007) 28 ILJ 317 (SCA) at para 4.

3 Id at para 14.

> succeed: if, on the other hand, those facts disclose that the restraint is unreasonable then Reddy must succeed. What that calls for is a value judgment, rather than a determination of what facts have been proved, and the incidence of the onus accordingly plays no role.'

[28] The normal principles to resolve factual disputes in motion proceedings where final relief is sought was enunciated in the now regularly quoted judgment of *Plascon Evans Paints v Van Riebeeck Paints*.4 In *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another5* this test was most aptly described where the Court said:

> 'The applicants seek final relief in motion proceedings. Insofar as the disputes of fact are concerned, the time-honoured rules …. Are to be followed. These are that where an applicant in motion proceedings seeks final relief, and there is no referral to oral evidence, it is the facts as stated by the respondent together with the admitted or undenied facts in the applicants' founding affidavit which provide the factual basis for the determination, unless the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected.'

[29] The only other basis upon which factual disputes in motion proceedings can be resolved is to apply for the matter to be referred to oral evidence.

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4 1984 (3) SA 623 (A) at 634E-635C.

5 2009 (3) SA 187 (W) at para 19.

Rule 7(7)(b) of the Rules for the Conduct of Proceedings in the Labour Court makes provision for this where it is provided that:

> 'The court must deal with an application in any manner it deems fit, which may include - …. (b) referring a dispute for the hearing of oral evidence.'

[30] It is also necessary to refer to Rule 6(5)(g) of the High Court Rules which provides as follows:

> 'Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the aforegoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.'

[31] In *SA Football Association v Mangope*[6] the Court said that in applying Rule 7(7)(b) of the Labour Court Rules, this Rule, being *in pari material* with Rule 6(5)(g), should be construed similarly to that effect. I will therefore decide this Rule 7(7)(b) application in the context of and based on the principles applicable to Rule 6(5)(g) of the High Court Rules as well.

6 (2013) 34 ILJ 311 (LAC) at para 10.

[32] The general principles with regard to applications to refer motion proceedings to oral evidence was set out in *Kalil v Decotex (Pty) Ltd and Another7* where the Court said the following:

> 'The applicant may, however, apply for an order referring the matter for the hearing of oral evidence in order to try to establish a balance of probabilities in his favour. It seems to me that in these circumstances the Court should have a discretion to allow the hearing of oral evidence in an appropriate case. …. Naturally, in exercising this discretion the Court should be guided to a large extent by the prospects of *viva voce* evidence tipping the balance in favour of the applicant. Thus, if on the affidavits the probabilities are evenly balanced, the Court would be more inclined to allow the hearing for oral evidence than if the balance were against the applicant. And the more the scales are depressed against the applicant the less likely the Court would be to exercise the discretion in his favour. Indeed, I think that only in rare cases would the Court order the hearing of oral evidence where the preponderance of probabilities on the affidavits favoured the respondent.'

[33] In *Minister of Environmental Affairs and Tourism and Another v Scenematic Fourteen (Pty) Ltd8* the Court said the following:

> "In *Khumalo v Director-General of Co-operation and Development and Others* 1991 (1) SA 158 (A) at 167G – 168A the Court cited with approval the conclusions of Kumleben J in *Moosa Bros & Sons (Pty) Ltd v Rajah* 1975 (4) SA 87 (D) at 93E – H regarding

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7 1988 (1) SA 943 (A) 979F – I.

8 2005 (6) SA 182 (SCA) at para 29.

the approach to be adopted in applications to hear oral evidence in terms of Rule 6(5)(g). The passage is worth of repetition:

> '(a) As a matter of interpretation, there is nothing in the language of Rule 6(5)(g) which restricts the discretionary power of the Court to order the cross-examination of a deponent to cases in which a dispute of fact is shown to exist.
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> (b) The illustrations of "genuine" disputes of fact given in the *Room Hire* case at 1163 do not – and did not purport to – set out the circumstances in which cross-examination under the relevant Transvaal Rule of Court could be authorised. They *a fortiori* do not determine the circumstances in which such relief should be granted in terms of the present Rule 6(5)(g).
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> (c) Without attempting to lay down any precise rule, which may have the effect of limiting the wide discretion implicit in this Rule, in my view oral evidence in one or the other form envisaged by the Rule should be allowed if there are reasonable grounds for doubting the correctness of the allegations concerned.
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> (d) In reaching a decision in this regard, facts peculiarly within the knowledge of an applicant, which for that reason cannot be contradicted or refuted by the opposite party, are to be carefully scrutinised."

[34] Snyman AJ, after citing the above judgments, held as follows:9

9 Id para 16

> 'Based on the above, it is clear that as a general principle, the Court has a discretion to decide whether to refer motion proceedings to oral evidence where there is a dispute of fact that needs to be resolved. In exercising this discretion, a litigant applying for the matter to be referred to oral evidence should at least advance reasonable grounds to support this discretion being exercised in favour of the litigant. Proper and formal application must be made in this regard. It should at least be set out what evidence presented by the other litigating party in the affidavit is lacking in credibility and how the referral to oral evidence will resolve this. The Court should consider to what extent this referral to oral evidence could tip the scales in support of the litigant seeking the referral. The final issue to consider is convenience to the Court.'

[35] I will now briefly turn to the date on which the applicants filed the formal application in terms of Rule 7(7)(b).

Filing of Rule 7(7)(b) application

[36] I am mindful of the authorities, which I do not deem necessary to cite for purposes of this judgment, that applications to refer disputes in motion proceedings to oral evidence should be made timeously and certainly not during and/or after arguments in the motion proceedings have been heard.

[37] In this case before me, the applicants filed the application in terms of Rule 7(7)(b) after they filed a comprehensive replying affidavit in the main application. Insofar as the respondents took issue with the application being made after filing of the replying affidavit, I do not intend to take issue with this. The applicants were obliged to file its replying

affidavit within a prescribed time limit and cannot be penalised for first filing the replying affidavit before filing the Rule 7(7)(b) application.

[38] It is also important to state that the applicants, in part as least, formed the view to bring a Rule 7(7)(b) application when the respondents in their answering affidavit requested that the matter be referred to trial, or alternatively to oral evidence. Mr Bosch advised me during argument of the Rule 7(7)(b) application that this was an error made in the answering affidavit and that the respondents will file the necessary application to amend the answering affidavit in this regard.

[39] Mr Bosch's submission was not seriously disputed by Ms Tolmay, but this does not detract from the fact that the applicants, in reading the answering affidavit, formed the view that the respondents were seeking an order that the matter be referred to trial or to oral evidence. The applicants' attorneys responded to the relief so sought in the answering affidavit by approaching the respondents' attorneys to seek agreement on the referral of the matter to oral evidence. This request was denied and led to the filing of the Rule 7(7)(b) application.

Evaluation of the Rule 7(7)(b) application

[40] A crucial issue for determination is whether the applicants, accepting for the purposes of this judgment that they could or should reasonably have foreseen that there would be a material dispute of facts, ought to have instituted action proceedings instead of motion proceedings.

[41] The parties were *ad idem* that declaratory relief can and is sought by way of motion proceedings. Neither Mr Bosch nor Ms Tolmay could refer me to any matter in the Labour Court where a declarator was sought by way of action proceedings and neither could I find any such case law. It

appears therefore that, had the applicants chosen to follow the route of action proceedings, it would have been the first declarator sought in such a manner at least in the Labour Court.

[42] The relevance of this is that the applicants, having decided to bring the application for a declarator as motion proceedings, now faces the hurdle to overcome in terms of convincing this Court why the matter should be referred to oral evidence. The fact that there are many factual disputes on the affidavits in the main application cannot be disputed. Whether all these factual disputes are relevant to the issue that is required to be determined in the main application is another issue, which I will address hereunder.

[43] I have already summarised the relevant case law above applicable to Rule 7(7)(b) applications and it is clear this Court has a very wide discretionary power in determining whether a matter should be referred to oral evidence. I am mindful that the Labour Court is a court of law and equity and that the purpose of the Labour Relations Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of the Act, which are *inter alia* to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution, which specifically provides that every person shall have the right to fair labour practices.

[44] It appears unduly harsh and overly formalistic to deny an applicant the right to refer a dispute, or at least a portion thereof, to oral evidence and as such to deny an applicant the right to have his/her dispute fully ventilated only because the legal representatives decided to approach the Labour Court on motion rather than action proceedings. It is further clear that the full extent of material disputes of fact, in the main application, would only have surfaced for the first time once the respondents filed an answering affidavit. This is especially so given the fact that Poole decided not to fully respond to the applicants' questions

posed to her. It cannot further be disputed that there was an element of urgency in seeking the declarator, even though this urgency appears to have gotten lost somehow in processing the main application and the filing of this Rule 7(7)(b) application.

[45] I am also mindful of the consequences to the applicants should I refuse the application in terms of Rule 7(7)(b). The applicants would lose their right to have their matter fully and properly ventilated by way of oral evidence on relevant disputed facts and will be subjected to the *Plascon Evans*-test in circumstances where they have properly applied for the matter to be referred to oral evidence at an appropriate time.

[46] The only prejudice that the respondents will suffer, should I allow the application in terms of Rule 7(7)(b), is a potential delay in finalising the matter and having to incur further legal costs in respect of the hearing of oral evidence. The prejudice that may be suffered by the respondents' can be cured in two ways. The hearing of oral evidence can be fast-tracked to run simultaneously with the hearing of the main application, hence ensuring the speedy resolution of the dispute. The prejudice of having to incur extra legal costs can be cured by seeking an appropriate order for costs not only for this application in terms of Rule 7(7)(b), but also in the main application should the applicants be unsuccessful in the relief they are seeking. These costs will include any further costs that were incurred due to the matter being referred to oral evidence.

[47] It therefore appears to be, based on the aforesaid, that there are more than sufficient reasons for me to exercise my discretion in favour of referring the dispute to oral evidence. I am also of the view that it is more convenient for this Court to hear oral evidence on the disputed facts, as they arise from the affidavits, in order to make a just and fair decision as to whether the applicants' services were indeed transferred in terms of section 197A(2), as alleged by the applicants.

[48] I am also mindful that Ms Tolmay was not able to convince me, during argument, which are those material disputes of facts in specific, which will tip the scale in favour of the applicants should the matter be referred to oral evidence. I do not believe that the applicants' failure to do so in their affidavits must lead to the refusal of the application and must override the wide discretion that I have in deciding whether to refer a dispute, or a portion thereof, to oral evidence.

[49] In this regard Rule 6(5)(g) of the High Court Rules provides that a Court may make such order as it seems meet with a view to ensuring a just and expeditious decision, which includes that a Court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact. This Rule, read with Rule 7(7)(b) of the Labour Court Rules, clearly provide for the wide discretion that I have alluded to above. I am also guided in this regard by what was stated in *Minister of Environmental Affairs and Tourism and Another*[10] that there is nothing in the language of Rule 6(5)(g) which restricts the discretionary power of the Court to order the cross-examination of a deponent to cases in which a dispute of fact is shown to exist.

[50] This then brings me to deal with the issue(s) that are to be referred to oral evidence. The applicants have, in their founding affidavit, listed a wide range of issues that they believe must be referred to oral evidence. Most of the issues are, in my view, not directly relevant to the issue that must be determined in the main application and insofar as they are deemed not to be relevant, the said issues will not be entertained when the matter is set down for oral evidence.

[10] *Supra.*

[51] The respondents, in their counterapplication which are to be considered only in the event of the matter being referred to oral evidence, want the evidence to be led to be restricted to what is essentially a legal question. It will not suffice nor assist the Court to narrow the referral of the dispute to oral evidence on such a narrow and in fact a legal ground. The legal issues can and will be argued at the conclusion of the proceedings.

[52] The issue to be determined in the main application is whether the contracts of employment of the applicants transferred, within the meaning of section 197A(2) of the LRA, to the fourth, sixth and/or seventh respondents. If any portion of the dispute is to be referred to oral evidence, it has to be directly relevant to whether there was indeed a transfer of services as envisaged in section 197A(2). The portion of the dispute that I will therefore refer to oral evidence will be restricted to evidence directly related to the services and functions that were performed by the applicants prior to 1 March 2020, which have been identified as 'the Shared Services' in the affidavits, and whether these 'Shared Services' continued to be performed by either the fourth, sixth and/or seventh respondents after 1 March 2020 to the extent that it would constitute a transfer within the meaning of section 197A(2).

[53] This Court will not entertain any oral evidence unless it is directly relevant to the issue as outlined in paragraph 52 above. Insofar as the respondents argued that the applicants are on a fishing expedition, I agree that some of the issues which the applicants state will arise by referring the dispute to oral evidence would indeed constitute a fishing expedition and are irrelevant to the issue that must be determined in the main application. I therefore specifically exclude the following issues in referring the matter to oral evidence:

a) Whether the respondent companies were 'closely held' and effectively operate as one entity.

b) The events leading to the liquidation process and the liquidation process.

c) The respondents' alleged attempts to evade its obligations to the applicants.

d) That the applicants were side-lined in anticipation of the liquidation.

e) Whether the first applicant simultaneously held the position of managing director for the fourth respondent.

f) The section 189 consultation process.

[54] The applicants, in the main application, bears the onus of proving that the applicants' contracts of employment transferred to the respondents in terms of section 197A(2). In discharging this onus, the applicants will be entitled to call Michele Scanlon and any of the other applicants as witnesses. In the event of the applicants wishing to call any further witnesses to testify when oral evidence is heard, the applicants will be required to request this Court to issue a subpoena with full motivation why it will be necessary for such witness(es) to be called and why such evidence will assist the Court in deciding the issue in the main application.

[55] The respondents are to ensure that the deponent of the answering affidavit in the main application, Mr Jacques Rautenbach, is available for cross-examination when oral evidence will be heard. Should the respondents wish to call any further witnesses, the respondents are to motivate and provide reasons why such further witness(es) are required to give evidence within the context of the issue that is being referred to oral evidence. Should the respondents deem it necessary for any further witnesses to be called in respect of the issue to be determined in the main dispute, the respondents are required to issue a subpoena with full motivation why it will be necessary for such witness(es) to be called.

[56] Both parties will be entitled to file an appropriate notice for the discovery of any further documents they deem necessary, and the applicants are to ensure that the Court file is properly indexed and paginated for purposes of the oral hearing at least 7 days before the matter is to be heard for oral evidence. The parties are further to ensure that they are ready to argue the matter immediately after oral evidence was heard.

[57] In the premises, I make the following order:

Order

1. The application in terms of Rule 7(7)(b) is granted.
2. The Registrar is directed to schedule the matter for the hearing of both the oral evidence and for the hearing of arguments in the main application, as supported by the oral evidence, as soon as possible for 3 days.
3. Costs are to stand over for determination in the main application.

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C de Kock

Acting Judge of the Labour Court of South Africa

Representatives:

For the Applicant: Adv. E Tolmay

For the Third Respondent: Adv. CS Bosch