IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: **3957/2023**

In the matter between:

J[…] P[…] V[…] S[…]	**APPLICANT**
and	
M[…] M[…] V[…] S[…]	**1st RESPONDENT**
EXILITE 385 CC	**2nd RESPONDENT**
SERVILOR 83 CC	**3rd RESPONDENT**
BDO BUSINESS RESTRUCTURING (PTY) LTD	**4th RESPONDENT**

JUDGMENT

NAUDE-ODENDAAL J:

[1] The Applicant brought an urgent application in terms whereof the Applicant applied that the First to Third Respondents be interdicted and restrained from

alienating, disposing or encumbering in any way or manner any of the assets (movable, immovable or incorporeal) of the Second and Third Respondents, apart from the property situated at 101 Divot Drive, Pinnacle Point Golf Estate, without the prior obtained written consent of the Applicant pending the outcome of Part B of the application.

[2] Further, that the First and Second Respondents be interdicted and restrained from proceeding with the sale of the immovable property of the Second Respondent situated at 101 Divot Drive, Pinnacle Point Golf Estate, Mossel Bay on 10 May 2023 and that they be ordered to take all steps necessary to cancel such auction.

[3] The court on 9 May 2023, by agreement between the parties, made the following order:

> 1. The First and Second Respondents are authorized to proceed with the sale of the immovable property of the Second Respondent, situated at 101 Divot Drive, Pinnacle Point Golf Estate, Mosselbay on 10 May 2023.
>
> 2. The proceeds of the sale (purchase price) is to be paid into the trust account of the Applicant's attorneys of record and is to be held in an interest bearing account pending the hearing and outcome of the main application set down for hearing on 23 May 2023.
>
> 3. Costs are reserved for adjudication on 23 May 2023 together with the main application.

[4] On 23 May 2023 the Applicant applied under Part B of the Application that the settlement agreement concluded between the Applicant and the First Respondent on

23 August 2021 at Lephalale, Limpopo Province be declared void and unenforceable, alternatively duly cancelled by the Applicant.

[5] Further, that the order granted by Judge President Makgoba (as he then was) on 13 August 2019 under case number 4298/2019 be declared to be of full force and effect and that the Respondents opposing Part B of the application be ordered to pay the costs thereof.

[6] The Applicant submitted that he is married to the First Respondent, out of community of property. The First Respondent instituted divorce action against the Applicant, which action is presently still pending.

[7] The Applicant purchased the Second Respondent as a shelf corporation on 4 May 2011 and conducted business therein as its sole member until 4 September 2017 when 50% members' interest in the Second Respondent was transferred to the First Respondent.

[8] The Applicant and First Respondent became embroiled in numerous disputes and numerous applications and actions were instituted against each other. Amongst one of these applications was an urgent application instituted by the Applicant against the First Respondent under case number 4298/2019 in the Limpopo Division of the High Court, Polokwane, in which application the following order was made on 13 August 2019 by Judge President Makgoba (as he then was):-

> *"1. That the First Respondent* is *ordered to allow and grant* access *to the Applicant to exercise all the rights of* a *member of the Second Respondent in terms of the* Close *Corporation Act.*

2. That the First Respondent must immediately return the keys to the relevant Land Cruiser with Registration Number CHM […] and residence of the Applicant within 3 days of this order.

3. That the First Respondent is not allowed to have access to the Farm Middelboomspunt 4[…], Lephalale, being the place of residence of the Applicant.

4. The orders in 1 to 3 above shall be in force until finalization of Part

B of this Application.

5. Neither party shall sell, alienate or encumber any of the assets of the Second Respondent, which is *to include the game listed in Annexure "MM13" to the First and Second Respondent's answering affidavit.*

6. The Applicant shall not interfere with the business of the Second Respondent by issuing threats and/or instructions to the employees of the Second Respondent, and refusing the employees of the Second Respondent access to the farm, the animals and equipment on the farm at Middelsboomspunt 4[…], Lephalale.

7. Each party shall pay its own costs *regarding the postponements of the urgent application on 18 July 2019 and 25 July 2019.*

8. The costs *of the urgent application of the Applicant, and that of the First and Second Respondent's Counter-Application are reserved for determination by the Court hearing the main application."*

[9] Part B of the application under case number 4298/2019 was enrolled for hearing on 10 December 2019, however before Part B could be entertained, the First Respondent launched an application for the winding up of the Second Respondent on 7 November 2019 under case number 19880/19 in the Western Cape Division of the High Court, Cape Town. A provisional order was granted by the Western Cape High Court, Cape Town on 28 November 2019, which order was made final on 7 January 2020, having the effect that the Second Respondent was placed in final liquidation.

[10] Several actions were further instituted between the parties during the year 2019 against one or more of the other parties. The Applicant and First Respondent entered into a written settlement agreement on 23 August 2021 at Lephalale. It is this settlement agreement that is the subject matter of this current application before me.

[11] From the onset it is of importance to state that the Settlement Agreement states as follows:-

> *"NADEMAAL die partye in onderskeie hofgedinge betrokke is teen*
>
> *mekaar;*
>
> *EN NADEMAAL die partye al hierdie dispute wil skik; NOU DERHALWE kom die party as volg ooreen:"*
>
> And further at paragraaf 1 of the Settlement Agreement, as follows:-

"1. Onderskeie Hofaksies

1.1 Die partye kom hiermee ooreen om *die onderskeie hofgedinge waarby hul/e betrokke is, hetsy as Eiser, hetsy as Verweerder, oar en weer terug te trek as Eiser van sodanige hofgeding en op die basis dat elke party hul eie regskostes betaal.*

1.2 Waar die onderskeie partye 'n regsaksie ingestel het namens 'n Regsentiteit (exilite en servilor), onderneem sodanige party om *daardie aksie terug te trek namens die regsentiteit, a/ternatiewelik die terugtrekking van 'n aksie deur die ander party op die basis soos hierbo uiteengesit, te aanvaar.*

1.3 Egskeiding gaan voort"

[12] The further salient express terms of the settlement agreement are to the following effect:-

12.1 The Applicant sold his 100% members' interest in the Third Respondent (Servilor) to the First Respondent for an amount of R3900 000.00 (Three Million Nine Hundred Thousand Rand), and which amount was payable as follows:-

12.1.1 The amount of R300 000.00 (Three Hundred Thousand Rand) has already been paid.

12.1.2 The amount of R2000 000.00 (Two Million Rand) on date of

fulfillment of the suspensive conditions, subject thereto that the Applicant signs the necessary CK2-forms and resolutions in order to transfer the membership interest to the First Respondent.

12.1.3 The First Respondent is aware thereof that at date of transfer of the membership interest to her, a bond in the amount of R6000 000.00 (Six Million Rand) will be registered over the farm Middelboomspunt and that there is an existing outstanding Eskom account in the approximate amount of R300 000.00 (Three Hundred Thousand Rand).

12.1.4 The First Respondent will on the date of fulfillment of the suspensive conditions purchase a vehicle of his choice for the Applicant in the amount of R400 000.00 (Four Hundred Thousand Rand). The vehicle will be bought through financing and will only be transferred into the Applicant's name once the bank has been paid in full.

12.1.5 In the event that the First Respondent defaults on payments towards the financing of the vehicle and the vehicle is attached and removed by the bank, the First Respondent shall be liable to pay the Applicant an amount of R600 000.00 within 30 days, failing which, interest at 5% per month will be accrued to the amount.

12.1.6 Delivery of the vehicle is to be made within two weeks, after the date on which financing was approved.

12.1.7 The First Respondent indemnifies the Applicant from

payment of maintenance towards the three minor children born from the marriage relationship between the parties up to the end of 2024 as part of the purchase price of the farm.

12.1.8 The Applicant abandons any claim to the game present on the farm Middelboomspunt as at date of the settlement agreement.

12.1.9 The Applicant will have daily access to the farm Mlddelboomspunt until such time as the suspensive conditions in the settlement agreement have been fulfilled. Further, no game may be sold or alienated without the Applicant's written permission until the suspensive conditions in the settlement agreement has been fulfilled.

12.1.10 The First Respondent has to give the Applicant furniture for his 3 bedroom house.

12.1.11 The Eskom account with outstanding amounts will be transferred to the Third Respondent (Servilor) and the First Respondent will be liable for payment of the outstanding account.

12.1.12 The First Respondent would retain the 100% members' interest in the Second Respondent (Exilite) and would be entitled to encumber any property of the Second Respondent as security for the fulfillment of the suspensive conditions of the settlement agreement.

[13] The settlement agreement in its entirety is subject to the following suspensive conditions:-

13.1 The First Respondent is entitled to conclude in her sole discretion settlement agreements with the creditors and liquidators of the Second Respondent (Exilite) in order to enable her to set aside the liquidation of the First Respondent.

13.2 The Applicant is to be released as surety and co-principal debtor of the First Respondent with Nedbank and Standard Bank.

13.3 Nedbank is not to proceed with any legal action against the Applicant or the attachment and alienation of the Rietspruit property.

13.4 FNB is to grant a loan in in the amount of R6000 000.00 (Six Million Rand), for which guarantees are to be issued, as follows:-

(a) to Nedbank for the payment of the full outstanding amount due and owing by Exilite;

(b) Two Million Rand to the Applicant;

13.5 Nedbank and Standard Bank must, before registration of the bond over the farm Middelboomspruit, in writing confirm that the Applicant is released as surety and co-principal debtor in respect of any amount Exilite may now or in future be owing to them.

13.6 In the event that the suspensive conditions are not fulfilled, the Applicant shall pay die amount of R300 000.00 (Three Hundred Thousand Rand) immediately to the First Respondent within 30 (thirty) days from date of confirmation that the suspensive conditions were not fulfilled.

13.7 In the event of any party breaching a term of the settlement agreement or failing to perform any required action in terms of the settlement agreement, the aggrieved party should give the defaulting party 7 (seven) days' notice to remedy the breach, failing which the aggrieved party may either cancel the settlement agreement or claim specific performance thereof, without affecting its right to claim damages from the defaulting party.

[14] The Applicant submitted that the suspensive conditions were fulfilled and the settlement agreement became unconditional. Further, that a compromise was reached between the Second Respondent's liquidators and its creditors on 27 October 2021 in terms of Section 155 of the Companies Act, 71 of 2008. The liquidators of the Second Respondent made application to the Western Cape Division of the High Court, Cape Town, under case number 20279/2021 for the Section 155 - arrangement to be sanctioned by the Court and for the final winding-up order to be set aside. The application was granted on 6 December 2021 and the Second Respondent was discharged from liquidation.

[15] The Applicant submitted that the First Respondent failed to perform her obligations in terms of the settlement agreement between them in that:-

15.1 She failed to pay the Applicant the amount of R1000 000.00 (One Million Rand) within 12 months from date of transfer of the members' interest in the Third Respondent (Servilor), which transfer occurred on 22 September 2021; and

15.2 She only paid R400 000.00 (Four Hundred Thousand Rand) on the vehicle (instead of R600 000.00 as required by clause 2.1.4 of the settlement

agreement, leaving a shortfall of R200 000.00 she still had to pay the Applicant.

[16] In addition, the Applicant submitted that the settlement agreement entered into with the First Respondent is void in that it is *contra bonos mores.* It was submitted that clause 2.1 of the settlement agreement indemnifies the Applicant against payment of maintenance for the three minor children born from the marriage relationship between the parties until the end of 2024 as part of the purchase price of the farm Middelboomspruit.

[17] The Applicant submitted that the above term of the settlement agreement is *contra bonos mores,* void and unenforceable as no parent may indemnify the other against a maintenance obligation towards a minor child. The Applicant submitted that the status *quo ante* must accordingly be restored to the position it was before conclusion of the settlement agreement.

[18] The Applicant submitted further that insofar as the court may find that the settlement agreement is not void and unenforceable, the Applicant submits that it was validly cancelled by him in consequence of material breach by the First Respondent, and which breach was not remedied as set out hereabove.

[19] The First Respondent submitted that the settlement agreement attached to the founding affidavit by the Applicant is not the settlement agreement reached by the parties. The settlement agreement attached to the First Respondent's answering affidavit is a true copy of the settlement agreement reached by the parties. (In this regard, it needs to be stated that the settlement agreement attached by the Applicant is not certified a true copy, whilst the copy attached by the First Respondent is certified a true copy of the original.)

[20] It was further submitted by the First Respondent that from a mere perusal of the true copy of the settlement agreement, compared to the agreement attached by the Applicant to his founding affidavit, it is evident that several terms, which the Applicant conveniently now relies on, have been inserted by way of handwriting.

[21] The First Respondent submitted that the true copy of the settlement agreement does not have the terms alleged by the Applicant in respect of clauses 4.5 and the term relating to non-compliance of a single suspensive condition by 25 December 2021 will lead to the cancellation of the agreement in its entirety, as well as the clause relating to non- compliance of a single provision which may lead to cancellation of the settlement agreement *in toto.*

[22] The First Respondent further submitted that importantly, are the provisions relating to the withdrawal of legal proceedings against each other. Both parties agreed that all legal proceedings (with the exception of the divorce action) would be withdrawn. The Applicant is not entitled to now allege that the proceedings have not been withdrawn or to, on a realistic and reasonable conspectus contend that non-compliance with a term of the settlement agreement has the effect of the legal proceedings being *"unwithdrawn".*

[23] The First Respondent submitted that she acted in accordance with the provisions of the settlement agreement and did not breach any term thereof as alleged by the Applicant. More importantly of all, is the breach the Applicant relies on, which apparently affords him the right to cancel the settlement agreement. The First Respondent submitted that the Applicant bases his averment on two separate alleged breaches, namely:-

(a) that the First Respondent failed to pay the amount of R1000 000.00 (One Million Rand) as required by clause 2.1.3 of the settlement agreement; and

(b) that the First Respondent only paid R400 000.00 (Four Hundred Thousand Rand) instead of R600 000.00 as required by clause 2.1.4 of the settlement agreement.

[24] In this regard, I am of the view that the Applicant's allegations are without merit. Not only on the agreement that the Applicant attached to his founding affidavit, but also on the copy of the settlement agreement attached to the First Respondent's answering affidavit, is it evident that the parties agreed that clause 2.1.3 dealing with the R1000 000.00 was not to be applicable and was the paragraph deleted and initialled by both parties.

[25] In addition, the amount of R600 000.00 in clause 2.1.4 was deleted and substituted with an amount of R400 000.00 on both agreements before me and the amendment was initialled seemingly by both parties. The First Respondent complied with clause 2.1.4 and purchased the vehicle in the amount of R400 000.00.

[26] It should further be noted that a clause 2.6 was entered by the parties which states that the Eskom account, with its arrears is to be transferred to Servilor and the First Respondent is liable for payment of the down- payment agreement thereof.

[27] On the face value of the agreement, it cannot be found that the First Respondent breached the agreement. In addition, the Applicant on his own version submitted that all the suspensive conditions have been complied with.

[28] In respect of the Applicant's submission that the agreement is *contra bonos* mores, the First Respondent in opposition submitted that to understand the maintenance clause, one has to understand the reasoning and negotiations prior to the conclusion of the agreement. At the time, it was agreed that the First Respondent would purchase the farm Middelboomspunt 4[…], Registration Division L.Q., Limpopo Province. To give effect to this, the Frist Respondent had to purchase Servilor 83 CC as the farm was and remains the largest asset in the Third Respondent. The farm is valued at approximately R13000 000.00 (Thirteen Million Rand). In payment of the purchase price for the farm, the First Respondent would have had to comply with certain demands made by the Applicant, most of which have been included in the settlement agreement. The demands included amongst others, payments of the Applicant's debt in respect of the Rietspruit Plot, Eskom accounts, the purchase of a car etc.

[29] The First Respondent submitted further that once the demands were complied with, the remaining amount to be paid to the Applicant amounted to R3900 000.00 - the amount reflected in clause 2.1 of the settlement agreement. The First Respondent submitted that she however approached the Applicant during the negotiation phase and explained to him that she was not able to afford to pay another R1000 000.00. It was agreed that the clause pertaining to the R1000 000.00 would be deleted from the agreement. This is clear even on the Applicant's version of the agreement attached to his founding affidavit.

[30] The First Respondent submitted that she made the following payments to the Applicant, alternatively paid the following amounts on behalf of the Applicant, further alternatively took over the following accounts of the Applicant:-

30.1 R300 000.00 to the Applicant in the form of cash;

30.2 R2000 000.00 to the Applicant in the form of cash after she obtained a loan from FNB;

30.3 R1200 000.00 to the Standard Bank in respect of the Pinnacle Point house to release the Applicant as surety;

30.4 R5800 000.00 to Nedbank in respect of the Rietspruit Plot over which a bond was registered for the due payment of an overdraft facility of the Second Respondent;

30.5 R372 745.33 in respect of Clause 2.1.4 (the actual amount will be R486 886.26 at the end of the term)

30.6 R300 000.00 towards the Eskom arrears (Clause 2.6)

[31] The First Respondent submitted that she thus paid an amount of R11960745.30 to the Applicant for the purchase of the farm. The remainder of the purchase price (approximately R1000 000.00) would then be in the form of maintenance, which would be the Applicant's contribution. In essence, she purchased the member's interest in the Third Respondent at a reduced price, which reduction amounted to the maintenance portion which the Applicant was liable for. The First Respondent submitted that the Applicant indirectly paid maintenance in advance and it is for this reason that the Applicant was indemnified from paying maintenance until 2024. It is for this reason that the specific words *"as dee/ van die koop prys [koopprys] van plaas"* were inserted at the end of clause 2.1.5 of the settlement agreement. The First Respondent submitted that the clause is therefore not *contra bonos mores* and an order declaring the settlement agreement null and

void should not be granted.

[32] From the wording of the agreement, it is clear that clause 2.1.5 states specifically that the First Respondent indemnifies the Applicant from paying maintenance towards the three minor children born from the marriage relationship between the parties until the end of 2024 as part of the purchase price of the farm.

[33] The Applicant argued that the First Respondent is missing the point. The claim for maintenance belongs to the minor children and it was not open to the First Respondent to settle such claim as part of a commercial transaction with the Applicant. Both the Applicant and the First Respondent have the responsibility to contribute towards the maintenance of the minor children in terms of the Children's Act, 38 of 2005. The collar of such a responsibility is the right of the minor children to be maintained by both of them.

[34] The Applicant further argued with reference to **Girdwood v Girdwood 1995 (4) SA 698 (C)** that a waiver of rights relating to aspects such as custody of, access to, and maintenance for minor children would inevitably be *contra bonos mores.* It was submitted that the Applicant is accordingly entitled to an order declaring the settlement agreement concluded between the parties void and unenforceable.

[35] It should however be borne in mind, that the present matter does not deal with the divorce proceedings between the parties. The outcome of the divorce and the orders to be made by the court hearing the divorce of the parties, alternatively the settlement agreement to be reached by the parties in the divorce, is still pending. There is no court order in respect of maintenance and the maintenance of the minor children were regulated by the parties *inter partes* pending the divorce in the settlement agreement.

[36] In the present matter, before any further observations are made, it might be advisable to refer to the relevant sections in the **Maintenance Act, 99 of 1998** and the **Divorce Act 70 of 1979.** The relevant portion of **Section 6(3) of the Divorce Act, 70 of 1979** reads as follows:-

> *"(3) A Court granting* a *decree of divorce may, in regard to the maintenance of* a *dependent child of the marriage ... , make any order which it may deem fit..."*

[37] Maintenance for a spouse may be provided for in a written agreement which the Court may incorporate in its order. This appears from **Section 7(1).** If no written agreement is concluded, **Section 7(2)** comes into play.

It reads as follows:-

> *"(2) In the absence of an order made in terms of* ss *(1) with regard to payment of maintenance by one party to the other, the Court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct insofar* as *it may be relevant to the breakdown of the marriage, an order in terms of* ss *(3) and any other factor which in the opinion of the Court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, which ever event may first occur."*

[38] The definition of **'maintenance order' in Section 1 of the Maintenance Act, 99 of 1998** is *"any order for the payment, including the periodical payment, of* sums *of money towards the maintenance of any person issued by any court in the Republic, and includes, except for the purposes of Section 31, any sentence suspended on condition that the convicted person make payments of* sums *of money towards the maintenance of any other person."*

[39] **Section 2 the Maintenance Act,** *supra,* states as follows:-

> *"2. (1) The provisions of this Act shall apply in respect of the legal duty of any person to maintain any other person, irrespective of the nature of the relationship between those persons giving rise to that duty. (2) This Act shall not be interpreted* so as *to derogate from the law relating to the liability of persons to maintain other persons.*"

[40] **Section 15 of the Maintenance Act, 99 of 1998** deals with maintenance for children. The Section stipulates as follows:-

> *"15. Duty of parents to support their children*
>
> *(1) Without derogating from the law relating to the liability of persons to support children who are unable to support themselves,* a *maintenance order for the maintenance of* a *child* is *directed at the enforcement of the common law duty of the child's parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue.*
>
> *(2) The duty extends to such support* as a *child reasonably requires for his*

or her proper living and upbringing, and includes the provision of food, clothing, accommodation, medical care and education.

(3) (a) Without derogating from the law relating to the support of children, the maintenance court shall, in determining the amount to be paid as *maintenance in respect of* a *child, take into consideration- (i) that the duty of supporting* a *child is an obligation w ich the parents have incurred jointly; (ii) that the parents' respective shares of such obligation are apportioned between them according to their respective means; and (iii) that the duty exists, irrespective of whether* a *child is born in or out of wedlock or is born of* a *first or subsequent marriage.*

(b) Any amount so *determined shall be such amount* as *the maintenance court may consider fair in all the circumstances of the case."*

(4) As from the commencement of this Act, no provision of any law to the effect that any obligation incurred by a *parent in respect of* a *child of* a *first marriage shall have priority over any obligation incurred by that parent in respect of any other child shall be of any force and effect."*

[41] A policy consideration which the Legislature undoubtedly considered was the need to protect the interest of dependent and minor children born from the marriage which the one or the other of the spouses was seeking to dissolve. This appears from **Section 6 of the Divorce Act, *supra.* Section 6(1)** contains a peremptory provision empowering a Court to grant a decree of divorce only if it is satisfied that the welfare of such dependants or children has been properly addressed. **Section 6(3) of the Divorce Act, *supra,*** in turn grants the Court a

discretion to *"make any order which it may deem fit"* in respect of matters affecting such children, including maintenance for them.

[42] It is further trite law that in the event a party cannot afford to pay maintenance a court may order that the assets be sold to satisfy the obligation to pay maintenance.

[43] Now, turning back to the present matter. The parties agreed that the Applicant will be indemnified from paying maintenance towards the minor children for a specified period until the end of the year 2024. In other words, approximately 3 years. This indemnification was negotiated and agreed upon as part of the purchase price of the farm. After 2024, the Applicant's full maintenance obligations come into force again.

[44] In the present matter, by having agreed to the above terms, the Applicant indirectly paid maintenance towards his minor children and maintained them. By having reached the specific agreement, the Applicant made it possible for the First Respondent and minor children to be provided with living circumstances and conditions reasonably required for their proper living and upbringing, which includes accommodation and which they were accustomed to. Not only did the Applicant make it possible for the minor children to be brought up in a familiar environment without changing their living conditions, but indirectly also provided food, clothing, medical care and education in that the First Respondent had an income to generate from the property.

[45] Had the property not been bought by the First Respondent, the property in all likelihood would have been sold to a third party and the income of the property would have been used as maintenance for the minor children. Instead of a third party, the

First Respondent bought the property and only a portion of the purchase price was deemed as maintenance in fulfilment of the Applicant's maintenance obligations towards the minor children. The Applicant has not been indemnified of his maintenance obligation *in toto.* In reality, the portion of the purchase price amounts to a substitution of maintenance and the Applicant's maintenance obligation was only suspended for a specified period until the end of 2024 as his maintenance obligation has already been fulfilled in advance.

[46] In my view, having considered the surrounding factors and circumstances, I deem it fit and in the best interest of the minor children that the parties agreed to the First Respondent rather purchasing the property and a lump sum payment in the form of value of the farm, be paid as maintenance in advance for a three year period. In my view, the Applicant was not absolved from paying maintenance and indirectly fulfilled his duty and responsibility to pay maintenance towards the minor children. The specific clause in the settlement agreement is not against public policy in this specific instance and having considered the surrounding factors at play and therefore not *contra bonos mores.* The application in respect of Part B of the Notice of Motion therefore stands to be dismissed. It further follows that the *rule nisi* issued and interim order made on 9 May 2023 is automatically discharged.

[47] The only issue remaining is the issue of costs. The general rule is that costs should follow the event. In the present matter there is no reason to deviate from the general rule, and in the result, the application stands to be dismissed with costs, which costs are to include the costs of the urgent application in respect of Part A of the Notice of Motion and appearances on 9 May 2023, as well as the Application in respect of Part B of the Notice of Motion and appearances on 23 May 2023.

[48] It is for the above reasons that the following order is made:-

1. The Application in respect of Part B of the Notice of Motion is dismissed.

2. The *rule nisi* issued by agreement between the parties on 9 May 2023 is discharged.

3. The Applicant is ordered to pay the costs of the First to Third Respondents, including the costs of the urgent application in respect of Part A of the Notice of Motion and appearance on 9 May 2023, as well as the costs in respect of Part B of the Notice of Motion and appearance on 23 May 2023.

M. NAUDE-ODENDAAL
JUDGE OF THE LIMPOPO DIVISION
OF THE HIGH COURT,
POLOKWANE

DATE OF HEARING:	**23 MAY 2023**
DATE OF JUDGMENT:	**28 AUGUST 2023**

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