IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 1845/2021

In the matter between:

PRICEWATERHOUSE COOPERS INC	**Applicant**
and	
DEON JOHANN PIENAAR	**First Respondent**
LINDA MACPHAIL	**Second Respondent**
LOUIS STRYDOM	**Third Respondent**
TJART HAMMAN	**Fourth Respondent**
THE SOUTH AFRICAN RESERVE BANK	**Fifth Respondent**
THE PRUDENTIAL AUTHORITY	**Sixth Respondent**

JUDGMENT DELIVERED ELECTRONICALLY: FRIDAY, 10 SEPTEMBER 2021

NZIWENI AJ

Introduction

[1] This matter has its genesis in the litigation history involving some of the cited parties. In this strenuously opposed motion, the applicant seeks an order in terms of section 2 (1) (b) of the Vexatious Proceedings Act 3 of 1956 ("the Act"), only against

Mr Deon Johann Pienaar ("the first respondent"). The second to the sixth respondent are cited only as interested parties. The fifth and sixth respondents filed an affidavit in support of the motion sought by the applicant.

[2] The applicant is essentially seeking a declaratory relief, which will sound a death knell for unrestricted litigation between itself and the first respondent. Only the first respondent is opposing the application. The first respondent, in his opposition to the application also raised several preliminary points, which I will address hereunder. I shall however, consider the main application first, as I hold the view that, the eight preliminary points raised by the first respondent are without merit.

[3] The relief sought by the applicant is fully set out in the notice of motion as follows:

> *"1. Declaring the first respondent as a vexatious litigant, as contemplated in the Act.*
>
> *2. Directing that:*
>
> *2.1 The first respondent must obtain the written consent of the Judge-President or Deputy Judge-President of the Western Cape High Court . . . or of any other relevant division of the High Court, before issuing any further legal proceedings concerning the applicant and/or any of its current and/or former representatives, including, but not limited to, the second respondent, the third respondent and the fourth respondent, relating to its /their appointment to provide services to either the fifth respondent or the sixth respondent, generally but more particularly relating to and/or concerning any Property Syndication scheme in South Africa; and*

2.2 In the event that written permission is granted the first respondent to institute new, or to proceed with any existing litigation, and including any interlocutory applications or any applications already pending, and including seeking leave to appeal or to pursue any appeals to the full bench of this honourable court, and/or to the Supreme Court of Appeal and/or the Constitutional Court in respect of any of the pending applications, he shall be required to provide security for the costs to the applicant and/or any of its representatives, employees or erstwhile employees, including but not limited to the second to fourth respondents, in the amount to be determined by the Registrar of the court in question.

3. Directing that the first respondent is to pay the costs of this application only in the event of his opposing same . . . "

[4] In the founding affidavit, it is averred that, given the fact that the applicant relies on the Act, it does not seek an order in this matter directing the discontinuance of the pending proceedings.

[5] The relief sought by the applicant is a very drastic measure, which will in essence, curtail the constitutional right of the first respondent, if it is granted.

Litigation History

[6] Given the fact that this court is called upon to declare the first respondent as a vexatious litigant, it is convenient to refer to the history involving the parties that has led to the present application. Drawing from this history, it appears that the applicant and the first respondent have been at loggerheads since 2014.

Finalised matters before this court

[7] It is clear from the pleadings that there are two applications already finalised which involved amongst others, the applicant and the first respondent.

[8] The first application ("the 2013 application") was instituted by the first respondent with a Mr Van Zyl against the applicant. On 7 October 2014, Saldanha J dismissed the 2013 application with costs. It is quite apparent from the pleadings that Saldanha J refused leave to appeal with costs. Subsequently, on the 3rd of September 2015, the Supreme Court of Appeal ("the SCA"), also refused special leave to appeal the Saldanha J order, with costs.

[9] The second finalised application ("the 2015 application") was launched on the 6th of October 2015, under case number WCHC 1928/ 2015. The 2015 application was instituted by the first respondent against the applicant and the registrar of banks. Gleaning from the extract of the judgment of the 2015 application, it is evident that the first respondent, in launching the 2015 application, sought a relief which would review the judgment of the 2013 application.

[10] The 2015 application was dismissed by Davis J and Dlodlo J on the 4th of December 2017, with a punitive cost order against the first respondent. On 29 October 2018, the first respondent lodged an application for leave to appeal the 2015 order. Davis J and Wille J dismissed the leave to appeal with costs.

[11] Pursuant to the dismissal of the 2015 application, on the 12th of April 2018, the first respondent then approached the Constitutional Court, seeking special leave to appeal the Saldanha J order together with the order of Davis J and Dlodlo J. On the 4th of November 2018, the Constitutional Court dismissed the application for special leave to appeal with costs.

[12] The first respondent, having been refused leave to appeal the 2015 order, approached the SCA for special leave to appeal. The SCA dismissed the application for special leave to appeal with costs on the 1st of November 2019.

[13] On the 4th of December 2019, undeterred by the previous failures and setbacks, the first respondent once again proceeded to apply to the Constitutional Court for leave to appeal the following orders:

- The decision of Davis J and Dlodlo J in the 2015 application.
- The subsequent refusal by Davis J and Wille J to grant leave to appeal the 2015 order.
- The refusal by the SCA on 1 November 2019 to grant special leave to appeal.

[14] As adumbrated herein before, the Constitutional Court on the 5th of February 2020 dismissed the applications, with a cost order.

Pending litigation, Rescission application before this court

under case numbers (WCHC 12511/2013; 19282/2015 and A277/2019

[15] Following the failures in the Constitutional Court, in December of the same year, the first respondent instituted proceedings in this Court against the applicant; the Registrar of Banks; the Governor of the South African Reserve Bank; the Registrar of the Prudential Authority and Michael Sidney Blackbeard.

[16] In the pending application, the respondent is seeking a rescission of all the orders granted against him, by this Court, the Constitutional Court and the SCA.

The so-called Property Syndicate schemes

[17] The pleadings further reveal that there is an application instituted by the first respondent in the Eastern Cape High Court where the applicant is joined as an interested party.

[18] In order to appreciate the controversies involved in this matter, I consider it necessary to relay the essential matrix of facts as alleged by both the applicant and the first respondent.

The applicant's submissions

[19] In the founding affidavit, it is asserted that the 2020 rescission application brought by the first respondent is fraught with immense difficulties. For instance, the non-joinder of necessary parties; relief sought is incompetent; no proper case has been made out for the relief sought; no *bona fide* case made out for the rescission of orders handed down by the Constitutional Court and SCA; allegations of fraud, dishonesty, impropriety are made against the applicant, SARB, Prudential Authority, legal representatives and the legal fraternity.

[20] It is further the applicant's contention that the first respondent is burdening the court with meritless claims. The claims of the first respondent, so the contention goes, should never have been brought. Moreover, the contention continues; the current proceedings instituted by the first respondent are a clear abuse of process; vexatious; dishonest; an abuse of court process and advanced *mala fides.*

[21] In the heads of argument filed, it is contended on behalf of the applicant that the first respondent's litigation is directed towards, not having any live or real dispute determined. The applicant further contends that, the first respondent is perpetually rehashing disputes, which have already been finally determined by the highest courts.

[22] It is stated in the founding affidavit that the applicant has incurred over R12,5 million in legal costs since 2014, including thousands of hours of its employees' time in dealing with the first respondent's litigation. The applicant is of the view that the first respondent is resolved in mulcting the applicant and others with costs without any ability on his part to meet the cost orders. The applicant's view therefore is that the court should intervene otherwise the first respondent will continue to litigate vexatiously.

[23] The deponent to the founding affidavit verily believes that the first respondent has funded much of the costs of litigation through "donations" or other contributions received from investors of various property syndications forming the subject matter of the litigation.

The Respondent's submission

[24] It is the first respondent's view that the relief sought by the applicant is not sustainable and riddled with errors. The first respondent also takes issue with the fact that the notice of motion refers to section 2 (b) of the Vexatious Proceedings Act 3 of 1956. The stance of the first respondent is that the erroneous incorrect citation of the applicable statutory provision should not be overlooked by the court, as his mistakes previously were not overlooked by the courts. According to the first respondent, the application should merely be dismissed based on the mistake.

[25] It is the contention of the respondent that the applicant is *mala fide* in bringing this application and has sinister intentions. According to the first respondent, this application is nothing else but a ruse to avoid answering the averments in the rescission application and to cover up the merits of the rescission application. The

first respondent holds the view that this application is meant to supress the adjudication of merits in the rescission application.

[26] The first respondent contends that his applications were previously dismissed on procedural and technical grounds. It is also the contention of the first respondent that the previous orders and judgments were granted by the courts because the courts were fraudulently misrepresented to give the orders. It is further the submission of the first respondent that the courts have been misled by the applicant, together with the party he refers to as 'PwC Respondents'.

[27] The first respondent's assertion is that this application is premature, in light of the impending rescission application. He alleges that the rescission application should be determined first, before the court can question his motives for the various litigation cases.

[28] In attack of this application, the first respondent also raises a non-joinder of at least 45 parties who, according to him, have an interest in these proceedings. In so far as jurisdiction is concerned, the first respondent in his answering affidavit, asserts that this court does not have the necessary jurisdiction over matters which are adjudicated in other divisions.

[29] Additionally, the first respondent is also challenging the *locus standi* of the applicant.

[30] The first respondent denies that he has a track record of instituting vexatious applications. He denies that he has persistently, for no reason, instituted legal proceedings against the applicant. It is the view of the first respondent that his intention of approaching the courts is to have legal disputes to be adjudicated. He further asserts that it is in the interests of thousands of victims to know what caused their

losses when the PS industry collapsed. The first respondent further states in his answering affidavit that he intends to file two further cases against SARB, related to property syndication.

[31] He asserts that it will be unfair to restrict a person who has made various sacrifices to disclose sustainable merits, which will expose corruption and that he will not accept any decree as final. It is the contention of the first respondent that the court should not gag someone who is attempting to reveal the truth. According to the first respondent, the court cannot expect him just to roll over and pretend to be dead. It is the view of the first respondent that the court has made no attempt to adjudicate the merits and for this reason there is still a scope for much litigation if the applicant and SARB continue to present the court with diversions.

[32] According to the first respondent, the escalating legal cost the applicant is experiencing are occasioned by the mistakes they are committing in the applications. The first respondent further avers that the rescission application can be answered with minimum associated costs.

EVALUATION

[33] South Africa has a constitutional dispensation. At the outset, I would like to start by making an important point that access to justice is a bedrock to democracy. Section 34 of the Constitution provides that:

> *"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."*

[34] The courts do recognise that litigants may have unrestricted access to justice. To deprive a litigant access to justice may occasion injustice, unfairness and may

offend the constitutional right of access to justice. Section 2(1)(b) of the Act passed constitutional muster in the Constitutional Court case of *Beinash and Another v Ernst & Young and Others* 1999 (2) SA 116 (CC). The following was stated in the *Beinash* matter at paragraphs 19 and 20:

> *"[19] While such an order may well be far-reaching in relation to that person, it is not immutable. There is escape from the restriction as soon as a prima facie case is made in circumstances where the judge is satisfied that the proceedings so instituted will not constitute an abuse of the process of the court. When we measure the way in which this escape-hatch is opened, in relation to the purpose of the restriction, for the purposes of section 36(1)(d), it is clear that it is not as onerous as the applicants contend, nor unjustifiable in an open and democratic society which is committed to human dignity, equality and freedom. The applicant's right of access to courts is regulated and not prohibited.* (my own emphasis and underlining). *The more remote the proposed litigation is from the causes of action giving rise to the order or the persons or institutions in whose favour it was granted, the easier it will be to prove bona fides and the less chance there is of the public interest being harmed. The closer the proposed litigation is to the abovementioned causes of action, or persons, the more difficult it will be to prove bona fides, and rightly so, because the greater will be the possibility that the public interest may be harmed. The procedure which the section contemplates therefore allows for a flexible proportionality balancing to be done, which is in harmony with the analysis adopted by this Court, and ensures the achievement of the snuggest fit to protect the interests of both applicant and the public.*

Requiring the potential litigant under these circumstances to discharge this evidentiary burden is not unreasonable. It is justifiable when confronted by a person who has "used the procedure [ordinarily] permitted by the rules of the court to facilitate the pursuit of the truth for a purpose extraneous to that objective." Having demonstrated a propensity to abuse the process of the courts, it hardly lies in the mouth of a vexatious litigant to complain that he or she is required first to demonstrate his or her bona fides. In this respect, the restriction is precisely tailored to meet its legitimate purpose."

[35] In *Bisset and Others v Boland Bank Ltd and Others* 1991 (4) SA 603 (D) the following was stated:

"Vexatious in this context means 'frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant'. (Fisheries Development Corporation of SA Ltd v Jorgensen and Another,· Fisheries Development Corporation of SA Ltd v AWF Investments (Pty) Ltd and Others 1979 (3) SA 133 (W).) This power to strike out is one which must be exercised with very great caution, and only in a clear case. The reason is that the courts of law are open to all, and it is only in very exceptional circumstances that the doors will be closed upon anyone who desires to prosecute an action. (Western Assurance Co case supra at 273, Fisheries Development case supra at 1338G.) Whilst an action which is obviously unsustainable is vexatious, this must appear as a certainty and not merely on a preponderance of probability (Ravden v Beeten 1935 CPD 269 at 276; Burnham v Fakheer 1938 NPD 63; African Farms case supra at 565D E)."

[36] Clearly, the main purpose of the Act, which governs the process of declaring a person a vexatious litigant, is to prevent a person from instituting or continuance of vexatious proceedings consistently and without reasonable ground.

[37] It is relevant to quote the section, which governs this application. Section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 as amended by Act 3 of 1995 reads as follows:

> *"If, on application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings."*

[38] Obviously, this piece of legislation seeks to root out abuse of the courts. As stated in the case of *Beinash*, supra. The legislative purpose in enacting this particular statute is to regulate the access of litigants to courts as well as to protect the courts and the public from litigation which is perceived as wasteful.

[39] Bearing the above provisions in mind, the first question to be determined is, whether unrestricted access to justice has been abused by the first respondent. In this matter, much turns on the past conduct of the first respondent. Gleaning from the founding affidavit and the arguments by the counsel on behalf of the applicant, it seems that the launching of the 2020 rescission application by the first respondent, was ultimately the proverbial straw that broke the camel's back.

[40] The evidence in this matter clearly shows that the first respondent has repeatedly filed court cases against the applicant. This much is common cause.

[41] Clearly, the countless losing streak of the first respondent supports the view that he has been instituting cases against the applicant without probable and reasonable cause, full of malicious intent.

Given the litigation history between the parties, it is evident that the first respondent has kept amongst others, the bench of the Constitutional Court, SCA and Western Cape High Court quite busy. In essence, he has intentionally overburdened the courts. Saldanha J in refusing leave to appeal against the first respondent stated the following:

> *"I am of the view that the applicants [Pienaar and Van Zyl] have not met the threshold set by Section 17(1) (a) of the Superior Court Act that there is a reasonable prospects of another court coming to a different conclusion…"*

On 3 September 2015, the SCA dismissed the first respondent's leave to appeal and stated that there are no reasonable prospect of success in an appeal.

[42] On 4 December 2017, the Western Cape High Court dismissed the attempt of the first respondent to have the finding of Saldanha J set aside and the court opined as follows:

> *"This application is brought in terms of Section 6 of the Promotion of Administration of Justice Act 3 of 2000. . . whereafter Pienaar on 29 October 2015 … informed the parties, and therefore the court, that the application which is sought to bring for the relief which had initially been sought on the basis of the review was now being brought in terms of Rule 42 …having realised that there was no basis by which to seek an administrative review of the judgment of the High Court…Unfortunately* [Pienaar] filed voluminous heads dealing with *a range of constitutional questions which are not relevant to the Rule 42 dispute…. This case has a most unfortunate pedigree it has vexed the attention it appears of at least five counsel and certainly the two judges presiding. This matter, given the voluminous record that was produced on the basis of not a scintilla of legal foundation… At a very late stage [Pienaar] now can see that perhaps he was ill advised to pursue the matter under Rule 42."*
>
> *On the 4th November, the Constitutional Court in dismissing the leave to appeal of the first respondent indicated that the application for special leave to appeal was dismissed with costs on ground that the requirements for special leave to appeal were not satisfied.*

[43] Gleaning from most of the cases that the first respondent has filed against the applicant, it is evident that he has used farfetched legal processes to fight his adversaries. Moreover, a systematic walk through of the litigation process map,

involving only the applicant and the first respondent demonstrates that the applicant is being taken around a circuitous journey of litigation.

[44] I hold the firm view that the impending rescission application also bears the very same hallmarks. As evinced by the above extract of the proceedings, the first respondent did previously bring a Rule 42 application. It is also evident from the above extract that on the 4th of December 2017, already by then, Davis J and Dlodlo J specifically gave prominence to the question of whether any relief in terms of Rule 42 was competent. The court specifically mentioned that the first respondent was seeking rehearing of the entire case and the entire order to be reversed. In my opinion, the first respondent by filing the impending rescission application has clearly derided the remarks made by Davis J and Dlodlo J. From the assertions of the first respondent, it is evident that the impending rescission judgment promises a similar pattern as evinced by the Rule 42 application, which was finalised by Davis J and Dlodlo J.

[45] Regarding the pending rescission application, the first respondent in these proceedings pertinently states that he wants to prove that the courts were misrepresented. He contends in the answering affidavit that his rescission application is not based on the same merits and motivations, as the leave to appeal application were.

[46] In light of the above, it is clear that the first respondent has persistently tried to reopen the 2014 proceedings. The counsel on behalf of the applicant cannot be faulted for holding the view that that the first respondent is not busy with litigation but rehashing of disputes which have already been determined by the highest courts of the land. Obviously, the first respondent wants to bring the rescission application in a reformulated fashion. It is bizarre and mind boggling that the first respondent has

persistently tried to morph and mutate the proceedings finalised in 2014 by Saldanha J, into different applications, processes and dynamics, in various courts.

[47] Plainly, the punitive costs orders granted against the first respondent were not granted lightly by the various courts. The pleadings reveal that the first respondent was ordered to pay punitive costs because the courts were of the view that the motions filed by the first respondent were an abuse of the processes deserving censure.

[48] Demonstrably, the cost orders including the punitive ones awarded against the first respondent did not have any deterrent effect on him at all. Instead, the first respondent continued filing the unwarranted and meritless motions. On top of that and perhaps more importantly, according to the applicant, the first respondent to date, has failed to pay any of the cost orders awarded against him.

[49] It is asserted on behalf of the applicant that the litigation by the first respondent, since 2014 has mulcted the applicant with legal costs of over R12,5 million. Under the circumstances, the applicant's view that the first respondent is engaging parties to pointless litigation, which is very costly and time consuming, cannot be assailed. Clearly, the applicant is at the end of its tether with the persistent conduct of the first respondent. Unsurprisingly, the response of the first respondent to this is simply cynical. He claims that the courts are defrauded and convinced by misrepresented facts presented by the applicant hence he gets unfavourable judgments. This plays on the pervasive belief that the courts are successfully manipulated by the applicants together with some of the other respondents.

[50] It is clear from the answering affidavit that the first respondent views the courts with impunity. He further takes the courts as his playground.

[51] The repeated attempts by the first respondent to have findings against him set aside failed dismally, yet, he was barely fazed or deterred by that. The first respondent is showing no appetite for stopping the litigations against the applicants and SARB, even though he loses every case he throws against the applicant. Instead, the first respondent demonstrates determination in his quest. His assertion that he will continue until the cause of his action is recognised further demonstrates his unyielding determination.

[52] Another vexing aspect about the litigation of the first respondent is that it knows no boundaries, and he does not accept defeat. Interestingly, the first respondent states in paragraph 111.4 of his answering affidavit that it is time for the court to see how these Masters of manipulation misrepresent the Court. The following assertion by the respondent also plainly illustrates the point:

> *'The court cannot expect him just to roll over and pretend to be dead. It is the view of the first respondent that the court has made no attempt to adjudicate the merits and for this reason there is still a scope for **much litigation** if the applicant and SARB continue to misrepresent the court with diversions.'* (my own emphasis and underlining.)

[53] Under the circumstances, it is quite bizarre that the first respondent who has been unsuccessful with his applications in the past; keeps on filing further proceedings against the applicant. The persistence of the first respondent to litigate against the applicant is highly illuminating. I get the distinct impression that the first respondent harbours a strong view that in his quest of incessant litigation, he is only losing the battles but he will ultimately win the war because of his persistence. Accordingly, to the first respondent the ends justify the means. Unfortunately, when regard is had to

the history of litigation between the parties, this belief by the first respondent is deeply flawed and short-sighted and happens to be very costly.

[54] Gleaning from the papers, it appears that the first respondent has self-proclaimed himself as a champion for fighting the causes of other citizens' in the so-called Property Syndicate Schemes. I am however, not convinced that the litigation by the first respondent is motivated by just cause.

[55] In the founding affidavit, the first respondent is described as someone who is unemployed conducting litigation on his own behalf and/ or on behalf of others, on a "full time" basis. The first respondent did not deny this averment. It is evident that the first respondent has convinced the people he claims to be representing and his 'investors' that they need a representative like him albeit there is a plethora of lawyers out there. Given the quality of cases, the first respondent is taking to the courts, it is not in the least surprising that there seems to be no potential in retaining the services of legal representation.

[56] Despite the fact that the history of litigation between the applicant and the first respondent, for instance, has been marked by the first respondent losing against the applicant, it appears that he succeeded in enlisting support and his 'investors' are still fully behind him. This I say because on the day of the hearing of the matter, it was clear to everyone that there was a sizeable number of men who came with the first respondent to the hearing. The answering affidavit of the respondent also reveals that he is soliciting funds from his 'investors'. Though the first respondent denies that his 'investors are hapless. He however, admits that his investors support him by giving him donations.

[57] What is more, tragically the first respondent and his 'investors' assume that it is perfectly acceptable and normal for the first respondent to represent their cause in courts, even though he has no background in litigation. The irony of this is that at times the first respondent wants to use the lack of legal knowledge for his litigation woes. However, he is the one who has a penchant to file cases and inviting the applicants to the courts. I have no doubt that the conduct of the first respondent since 2014, and throughout, flies in the face of someone who is experiencing legal woes because of the lack of legal knowledge. Hence, it would be plainly disingenuous for the first respondent to claim lack of legal knowledge.

[58] As already alluded to, I believe that it is also highly important to mention that the pleadings reveal that the first respondent is not able to have payment made to the numerous cost orders, which were awarded against him. It is plain beyond doubt that if these legal battles continue the applicant will keep on incurring further costs. The applicant has already incurred costs that run in the millions of Rands, defending itself against meritless cases.

[59] Given the response in the first respondent's answering affidavit, it is evident that the first respondent is well aware of the outstanding costs. However, he simply takes a nonchalant and dismissive attitude that his financial position has never improved since he has been involved in 'fighting the property syndication injustices'. The first respondent's cynical view pertaining to the outstanding costs is palpable. For instance, he remarks in the answering affidavit that, the escalating legal cost the applicant is experiencing are occasioned by the mistakes they are committing in the applications. He also fleetingly suggests the following:

"they were aware of the costs at all times, so why only consider action now, when they are being accused of unlawful criminal conduct…. Could it be that these alleged costs can no longer be tolerated?"

[60] All of the above considered, I am satisfied that this court can deduce that, the conduct of the first respondent, amongst others, resulted in the following: cost orders being simply ignored; courts being treated with disdain; citizens financially backing a patently futile litigation; clogging of the system with meritless applications, thereby putting a severe burden on court rolls; harm to genuine litigants who are forced to wait for considerable periods of time.. On top of that, and perhaps more importantly, the first respondent has a clear and undeterred determination to persist to litigate against the applicant. I hasten to add that it is actually unbelievable how blatant his determination to litigate is. The first respondent could not be more eloquent in articulating his unstoppable determination when he stated the following:

"It will be unfair to restrict a person who has made various sacrifices to disclose sustainable merits which will expose corruption; that he will not accept any decree as final".

[61] The above-mentioned considerations strongly militate in favour of monitoring the litigation by the first respondent. This court can certainly not turn a blind eye to the calculated conduct of the first respondent. To safe guard the good administration of justice, and to protect innocent people, it is imperative that something be done. The courts also need some sort of protection against over-zealous litigants, who seek to impede the administration of justice with wasteful challenges.

[62] In the case of *Beinash* supra at para 17 Mokgoro J opined:

"Indeed, as the respondents argued, the court is under a constitutional duty to protect bona fide litigants, the processes of the courts and the administration of justice against vexatious proceedings. Section 165(3) of the Constitution requires that "[n]o person or organ of state may interfere with the functioning of the courts." The vexatious litigant is one who manipulates the functioning of the courts so as to achieve a purpose other than that for which the courts are designed. This limitation serves an important purpose relevant to section 36(1)(b). It would surely be difficult to anticipate the litigious strategies upon which a determined and inventive litigator might embark. Thus there is a requirement for special authorisation for any proposed litigation."

[63] Clearly, the proceedings by the first respondent are an abuse of the process of court. A pattern of frivolous litigation has developed here. In my mind, the first respondent perfectly fits the bill of a vexatious litigant. Litigation should never be used as a tool to harass others. Surely, there is no constitutional right to file frivolous litigation. The abuse of the legal system should always be discouraged.

[64] Furthermore, if a litigant is declared a vexatious litigant, this does not mean that the court doors are closed for him or her. The relief sought by the applicant does not mean that access to justice would be denied, but it means that because of his track record his matters need to be scanned, before he can litigate. Unmistakably, the conduct of the respondent needs to be monitored more closely.

Residual Issues

[65] I deliberately deferred dealing with the so-called eight points, which were raised by the first respondent as preliminary objections. Ordinarily, preliminary

objections are dealt with first, before the merits. However, in this matter it was difficult to do so because some of the preliminary points were interlinked with the merits.

[66] It is my view that all the objections raised by the first respondent, were technical objections, which were entirely without merit. For instance, the objection that pertains to Section 2 of the Vexatious Proceedings Act 3 of 1956. In this objection, the first respondent on his own version admits that the omission of sub-section "1" was an error. See paragraph 17.1 of the answering affidavit. According to him, he is merely raising it as an objection because the same was done to him. This assertion on its own is extremely telling about the way the first respondent handles litigation. Plainly, the mistake was a typographical one. The papers also reveal that the omission of the subsection was inadvertent. Generally, such clerical errors can and should be able to be easily remedied without any objection. Consequently, on the context of this matter, the assertion on behalf of the applicant that this objection by the first respondent, demonstrates his vexatious approach to all and any litigation, cannot be faulted.

[67] Hence, I am disposed to grant the amendment sought by the applicant.

[68] I simply cannot fathom on what basis the first respondent can under the circumstances of this case claim that the applicant does not have *locus standi* to bring this application. The facts stated herein above clearly evinces that the applicant does have *locus standi* to bring this application. It is not even clear from the papers of the first respondent as to why he says that the applicant lacks the necessary standing.

[69] Similarly, the objection of jurisdiction is misplaced. It is quite astonishing that the first respondent even considered including it as an objection. The objection is predicated on wrong assumption that the applicant seeks this court to make decision over matters in different courts. In this matter, it is common cause or not in dispute

that the first respondent is a resident of the Western Cape, which is an area of jurisdiction of this Court. Consequently, this Court, based on domicile has jurisdiction to adjudicate the application.

[70] By all accounts, the non-joinder objection is equally unsustainable. I also get the distinct impression that the respondent is also conflating unrelated issues. The first respondent maintains that it is necessary to join the parties that can deny the serious averments of criminal conduct he is making. Joinder of parties that can deny allegation made by the respondent, are not necessary in these proceedings.

[71] In so far as the remaining objections, it is difficult to pin point or decipher what the objections are all about. Equally, their relevance as preliminary points are also not clear. Having said that what is striking is that they are more linked to the merits of this application. It is thus, unnecessary to inundate this judgment by delving into them particularly, in light of the fact that they are linked to the main application.

Costs

[72] The applicant seeks an order directing the first respondent to pay costs on a punitive scale. Even though, I fully appreciate the frustration of the applicant, I am however, not inclined to award costs on a scale of attorney and client. This is so because the application was instituted by the applicant and the first respondent was justified in opposing it. Because, of its grave implications.

[73] I accordingly, make the following order:

It is ordered that:

1. The first respondent is declared to be a vexatious litigant as contemplated in section 2(1)(b) of the Vexatious Proceedings Act, 3 of 1956.
2. No legal proceedings may be instituted by the first respondent against:
   2.1 the applicant;
   2.2 or any of its employees or agents, particularly the second, third, and fourth respondents;

   relating to or concerning:

   2.3 generally any Property Syndication Scheme in South Africa; and
   2.4 particularly their appointment to provide services to either fifth or sixth respondents;

   without the leave of the court, or any judge thereof and such leave shall not be granted unless the court or judge, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is a prima facie ground for the proceedings.
3. The first respondent is ordered to pay the costs of this application, including the costs of two counsel.

CN NZIWENI
Acting Judge of the High Court

Appearances

Counsel for Applicant:	Adv G Walters
	Adv AJ Van Aswegen
Counsel for 1st Respondent	In Person
	Mr D Pienaar
Counsel for 2nd – 4th Respondents:	Adv G Walters
	Adv AJ Van Aswegen
Counsel for 5th & 6th Respondents:	Adv E Theron SC
	Adv A Minalovic