



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

CASE NO: A 276/2017

In the matter between:

FREDERICK WESTERHUIS

First Appellant

CATHERINE WESTERHUIS

Second Appellant

and

JAN LAMBERTUS WESTERHUIS

First Respondent

JAN LAMBERTUS WESTERHUIS N.O.

(In his capacity as the Executor in the

Estate of the late John Westerhuis)

Second Respondent

DERICK ALEXANDER WESTERHUIS N.O.

(In his capacity as the Executor in the

Estate of the late John Westerhuis)

Third Respondent

JAN LAMBERTUS WESTERHUIS N.O.

(In his capacity as the Executor in the

Estate of the late Hendrikus Westerhuis)

Fourth Respondent

PATRICIA WESTERHUIS

Fifth Respondent

MARELIZE VAN DER MESCHT

Sixth Respondent

VARIATION OF ORDER OF 27 JUNE 2018 IN TERMS OF RULE 42(1)(b)

GAMBLE, J:

[1] After handing down judgment in this matter on behalf of the Full Bench on Wednesday 27 June 2018 it appeared to me that there are 2 omissions in the order which occurred as a consequence of an oversight.

[2] Firstly, the order failed to formally deal with the first, second, fifth and sixth respondents' cross appeal lodged on 4 July 2017. While the Full Bench order, in setting aside the order of the trial court and replacing it with the relief sought in the declaration, implicitly upholds the cross appeal, it is preferable to deal therewith expressly as there may be costs implications for the parties.

[3] Secondly, in ordering the appellants to bear the costs in the trial court, the Full Bench order failed to expressly grant the qualifying expenses of the handwriting expert who testified on behalf of the plaintiffs, Dr Rosa, and whose evidence this court has found to be convincing and material. The cross appeal expressly sought such costs and insofar as they might not be recoverable before the Taxing Master without an express direction in that regard (South African Forestry Co. Ltd v York Timbers Ltd 2001 (4) SA 884 (T) at 888B-H), it is necessary to correct para 5 of the order which this court substituted in place of the order of the trial court.

[4] In so varying the order, this court *mero motu* exercises its powers under Rule 42(1)(b) of the Uniform Rules.

ORDER OF COURT

IN THE CIRCUMSTANCES, THE ORDER OF THIS COURT HANDED DOWN ON 27 JUNE 2018 IS VARIED AS FOLLOWS:

- A. By the insertion in para A thereof of the phrase “*and the cross appeal is granted with costs,*” after the first reference to the word “costs” therein.
- B. By the addition of the phrase “*as well as the qualifying expenses of Dr.C.Rosa*” after the word “*declaration*” at the end of para 5 of the order made in substitution of the order of the trial court

GAMBLE, J

I AGREE.

IT IS SO ORDERED.

ERASMUS, J

I AGREE

PARKER, J