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Republic of South Africa

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

Case No.: 18799/2018

Before: The Hon. Mr Justice Binns-Ward

Hearing: 20 February 2020

Judgment: 21 February 2020

In the matter between:

**MARC MANNATT
LOUSE MANNATT**
Applicant

First Applicant
Second

and

PIERRE DE KOCK
Executor of the Estate of E. K. de Kock – 28082/2014 + 025544/2014
and Trustee of the Lady Mcepa Trust – IT3609/2005
and Trustee of the MM de Kock Trust – MT/3871/1987
**DECEASED ESTATE OF EMMERENTIA KATHARINA DE KOCK
(DE VILLIERS) – 28082/2014 + 025544/2014**
MYTTHYS DE KOCK

First Respondent

Second Respondent
Third Respondent

Trustee of the Lady Mcepa Trust – IT3609/2005
and Trustee of the MM de Kock Trust – MT/3871/1987
and Director of Dumaresq (Pvt) Ltd Reg. No. 1967/009619/07
CHARL DE KOCK
(Also known as RUDOLPHUS DE CHATILLION DE KOCK)
Trustee of the Lady Mcepa Trust – IT3609/2005
and Trustee of the MM de Kock Trust – MT/3871/1987
and Director of Dumaresq (Pvt) Ltd Reg. No. 1967/009619/07
LADY MCEPA TRUST – IT3609/2005
MYTTHYS MICHAEL DE KOCK TRUST – MT/3871/1987

Fourth Respondent

Fifth Respondent
Sixth

Respondent

JOHANN FRANCOIS VOS

Seventh

Respondent

(Curator Bonis of Emmerentia Slabbert senior “the Patient”)

and Trustee of the Lady Mcepa Trust - IT3609/2005

ESTATE EMMERENTIA SLABBERT SENIOR

Eighth Respondent

CR 171/2017

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

Ninth Respondent

MASTER OF THE HIGH COURT CAPE TOWN

Tenth Respondent

L. P. LE ROUX (MAGISTRATE, HERMANUS)

Eleventh Respondent

NEIL SLABBERT

Twelve

Respondent

EMMERENTIA SLABBERT JUNIOR

Thirteenth

Respondent

EMILY VAN DER MERWE

Fourteenth Respondent

KEITH MATTHEE

Fifteenth Respondent

LUCAS STEYN

Sixteenth Respondent

COENRAAD BIERMAN

Seventeenth Respondent

DUMARESZ (PTY) LTD – Reg. No. 1967/009619/07

Eighteenth Respondent

LORAIN DE KOCK

Nineteenth

Respondent

MATTHYS DE KOCK JUNIOR

Twentieth Respondent

STEPHANUS DE KOCK

Twenty First

Respondent

ALDALENE BRAND (Née DE KOCK)

Twenty Second Respondent

TREVOR EDWARD EYDEN

Twenty Third Respondent

DECEASED ESTATE OF STANLEY WESLEY EYDEN

13864/2007

Twenty Fourth

Respondent

THE SHERIFF OF HERMANUS

Twenty Fifth

Respondent

THE SHERIFF OF BELLVILLE

Twenty Sixth

Respondent

JUDGMENT

BINNS-WARD J:

[1] In this matter the applicants, who are unrepresented and act in person, applied, as a matter of alleged urgency, for the suspension of the execution of a costs order made against

them by Rogers J in the principal case on 12 September 2018. The order by Rogers J attended a 77-page written judgment by the learned judge in which, save in respect of one aspect which need not be described, he dismissed four separate applications that he had heard together over three days at the end of August 2018. Except for certain costs associated with a postponement application that had been brought by certain of the respondents in May 2018, the applicants were ordered to pay the costs of all of the respondents who had opposed one or more of the four applications. Costs were awarded to those respondents on the scale as between attorney and client, including the costs of two counsel.

[2] The judgment in the principal case speaks for itself, but it bears mention that the punitive costs order made against the applicants was a mark of what Rogers J described as ‘the court’s extreme displeasure’ at the manner in which the applicants had conducted the proceedings. He remarked that the applicants had ‘abused the court process as a platform for making the most vexatious and scandalous allegations against their family, lawyers, accountants, State bodies and judiciary’. The learned judge considered *prima facie* that ‘the scurrilous allegations made by the applicants concerning the judges of this court, the Hermanus magistrate and the MHC [Master of the High Court] amount to criminal defamation and contempt of court’. He consequently directed the registrar to forward a copy of the judgment for consideration by the Director of Public Prosecutions.

[3] The current application is the third in a succession of applications since August 2019 in which the applicants have sought to stay or set aside the execution of the costs order. The first application, also brought as a matter of urgency, so I was informed from the bar, was dismissed by Myburgh AJ in terms of an *ex tempore* judgment that has not been available to me. The second application, essentially for the same relief, was dismissed by Bozalek J on 5 September 2019. Bozalek J’s judgment was also given *ex tempore*, but a signed transcript of it and also a copy of the learned judge’s judgment, dated 22 October 2019, dismissing a subsequent application for leave to appeal from it were put before me as part of the respondents’ answering papers. The applications before Myburgh AJ and Bozalek J, respectively, were both dismissed with costs on a punitive scale. It is evident that Bozalek J considered the application before him to have been vexatious, and it may reasonably be inferred, I think, that Myburgh AJ was similarly minded when he made a punitive costs order.

[4] The previous two applications for a stay of execution concerned the execution of a warrant of execution issued by the registrar on 1 July 2019. The application for the issue of the warrant was supported by a taxed bill of costs in the principal proceedings before

Rogers J. The costs for which the applicants had been held liable in those proceedings had been taxed and allocated in the amount of R1 984 759, 24. The sale in execution, on 6 September 2019, of the goods attached under that writ failed to realise sufficient proceeds to redeem the judgment debt. A second warrant directed at obtaining payment of the balance of R844 236,70 was issued on 20 December 2019. It was executed on 6 February 2020.

[5] According to the sheriff's return (a copy of which was attached to the applicants' founding papers as annexure MM1(2)), the following property was attached by the Sheriff of Bellville at 17 Koring Crescent, Onze Molen, Durbanville (which is the applicants residential address):

- 1 x City Golf Reg. no. CY[...]6
- 1 x Silver Nissan Reg no. CY [...]4
- 2 x HP Black printer
- 1 x Black Epsom Printer
- 1 x Toshiba Silver laptop + [?] standard box
- 8 x Camping chairs
- 1 x Toyota Prado Reg. no. CY [...]3
- 2 x gazebos

[6] The attached goods were removed from the applicants' premises by the Sheriff pursuant to written instructions furnished to the Sheriff by the attorneys of the judgment creditors. The instructions were given by email, dated 6 February 2020, by Mr D Viljoen of Attorneys Visagie Vos. It read as follows in material part:

We have been informed by your Deputy Sheriff, Jannie Bezuidenhout, that he is currently busy executing the Warrant of Execution under case number 4023/2018.

We hereby instruct your offices to remove all the goods under attachment to a place of safekeeping and arrange for a sale and execution.

We confirm that our security in terms of Rule 45 has already been provided and is possession of Deputy Bezuidenhout.

You are specifically authorised to arrange whatever transport is necessary in order to effect the removal.

We also request that you bring this email to the attention of Deputy Bezuidenhout **as soon as possible** so that he may proceed with the necessary.

We trust that you find the above in order.

[7] The current application would appear to have been brought in terms of Rule 45A (although SCA Rules 6 and 7 and sections 32-34 and 38-39 of the Constitution are also mentioned in the header to the notice of motion). The first applicant's supporting affidavit, which contains extensive argumentative matter and much material the relevance of which is by no means clear, purports to advance 33 numbered grounds for the relief sought. Their presentation was not altogether coherent, but in essence the applicants case, as it was advanced in argument by the first applicant, appears to be that the writ should be suspended because they intend to appeal against the judgment of Rogers J and because the warrant of execution was unlawfully executed when the attached goods, which included the vehicles they need for personal transport and the printers that they need to be able to prosecute the litigation in which they are involved or intend to embark, were removed from their premises by the Sheriff.

[8] Unsurprisingly, having regard to the history, the respondents placed urgency in issue. And if they had not done so, I would have raised the question *mero motu*. Where urgency is an issue, it is appropriate to determine that matter as a preliminary question before entering into the merits of the matter. If a matter is not of sufficient urgency to be entertained exceptionally in terms of rule 6(12), it should be struck from the roll without the court making any determination on the merits of the case; see *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others* [2006] ZASCA 51 (31 March 2006); 2006 (4) SA 292 (SCA) ; [2006] 2 All SA 565. At the commencement of the hearing before me, which proceeded in the court designated for the hearing of urgent matters (the so-called 'fast track'), I therefore required the applicants to address me on why their application should be entertained as a matter of urgency.

[9] The time for applying for leave to appeal from the judgment of Rogers J has long passed and the applicants have been aware of the fact since at least October 2018. An application for leave to appeal (or at least one brought timeously) would in the ordinary course bring about the automatic suspension of the impugned judgment and order. If an application of that nature had been brought - as the applicants maintain it has always been their intention to bring - an application of the nature currently before me, and also those previously brought before Myburgh AJ and Bozalek J, would have been quite unnecessary. The applicants were in correspondence with the registrar to Rogers J in September and October 2018 about the date for a hearing of an application for leave to appeal to be heard. It

is apparent from that correspondence that the judge fixed the date of 11 October 2018 for the purpose, and also that he had arranged (whilst under no obligation to have done so) for them to be provided with a transcript,¹ but the first applicant reported that he was in poor health and could not bring the application on that date. Through his registrar, the learned judge thereafter confirmed his earlier advice to the parties that if they were unable to arrange for an application for leave to appeal to be heard before his departure to sit temporarily in the Supreme Court of Appeal in the last term of 2018, he would be unable to hear the matter before December 2018, and that an application brought then would have to be accompanied by an application for condonation for non-compliance by the applicants with the applicable time limits in terms of the rules of court. To date, no such application has been brought. If the admonishment given by Rogers J were not good enough to alert the applicants to their obligations and responsibilities should they wish to pursue an appeal, the advice to similar effect given by Bozalek J also appears to have had no effect.

[10] In the circumstances of their failure to have done anything effective to appeal the judgment of Rogers J it should have come as no surprise to the applicants that the costs order he made against them is been carried into execution. The urgency they seek to attach to the current application is entirely self-created. Moreover, the fact that they are now approaching the court for the third time on the same question, essentially on the same grounds as they did previously, and on each occasion as a matter of alleged urgency, is in my judgment indicative of a quite blatant degree of abuse of the court's process. The extent to which the applicants have been willing to injudiciously presume on the Court's availability out of the ordinary course was underscored by their initially seeking to set the current application down for hearing on a Saturday (before a different judge). There is no good reason in the circumstances of a peculiar mix of self-created urgency and flagrant abuse of process for the court to exercise its discretion in terms of rule 6(12)(a) in their favour.

[11] While I do not intend in the circumstances to enter into the substantive merits of the application in a determinative way, it does nevertheless weigh with me in refusing to entertain the application as one of urgency that the applicants' prospects of success in the application to stop or reverse the execution of the costs order made by Rogers J appear to be nugatory. The risk that they might suffer an injustice by not being given the opportunity of obtaining determinative relief as a matter of urgency accordingly seems to me remote in the extreme. The viewpoint that the applicants profess that they are unable to proceed with an

¹ The first applicant complained from the bar before me that the transcript that was provided was deficient.

application for leave to appeal without a transcript of the proceedings before Rogers J is misconceived. The proceedings before Rogers J were on motion. The evidence was already on paper and the hearing would have comprised of oral argument (possibly on written heads of argument). A transcript was not required; and if the applicants, for reasons known only to themselves, nevertheless felt unable to prosecute the matter further without obtaining one (or an improved one), they have, as Bozalek J has previously pointed out, had more than ample time to have done so. Indeed, their failure to have proceeded with an application for leave to appeal has by now been so prolonged that their prospects of even obtaining condonation for a failure to have done so within the prescribed period must have become ever poorer with the passage of time.

[12] The applicants' complaints about the taxation of the bill of costs in their absence have been dealt with in the judgment of Bozalek J, and to the extent that they apparently seek to reiterate them in the current application, I consider it most unlikely that, having already been disposed of, they will be entertained again.

[13] I was also unpersuaded by the arguments advanced that the prejudicial consequences of the removal of the attached property justified the hearing of the application as one of urgency. In this regard, the applicants intend to rely on the striking through of the words '*Endorsed for immediate removal*' above the signature of the registrar on the warrant of execution. I am not persuaded that any court that has to determine the point is likely to consider the striking through to be of any significance. The removal of attached property by the sheriff is a matter regulated by rule 45, and it is evident therefrom that the property '*unless the execution creditor shall have otherwise directed, ... shall be taken into the custody of the sheriff*'. The manner in which an execution debtor might avoid the removal of the attached property is to give a written undertaking and third party suretyship as provided in terms of rule 45(5).

[14] I had considered whether it might be appropriate for any order striking the matter from the roll for lack of urgency to be accompanied by an order directing the applicants to refrain from proceeding with the matter without first obtaining special leave to do so. My thoughts in this regard were triggered by my perception of the abusive character of the current application taken in the context of what other judges have similarly considered to be the character of the preceding related litigation. I asked both the first applicant and the respondents' counsel to address me in this regard. In the course of counsel's address I was informed that an application in terms of the Vexatious Proceedings Act 3 of 1956 by certain

of the respondents is in the course of preparation. It seems from what counsel told me that that application is to be supported by reference to a longer or wider history than I am apprised of. In the circumstances, I shall restrict the order to be made to the simple striking off order that is ordinarily made in cases lacking in sufficient urgency to be heard out of the ordinary course.

[15] The respondents sought costs on the scale as between attorney and client, including the fees of two counsel. In the context of my finding that the enlisting of application as a matter of urgency was not only misguided, but also an abuse of process, I consider that a punitive costs order is indeed appropriate.

[16] In the result the following order is made:

1. The application is struck from the roll with costs on the scale as between attorney and client, including the fees of two counsel.
2. The applicants' liability for payment of the respondents' costs of suit shall be joint and several.

A.G. BINNS-WARD
Judge of the High Court