

REPUBLIC OF SOUTH AFRICA



**IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)**

CASE NO 16108/2009

- (1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

3 November 2010

.....
SIGNATURE

In the matter between

SLIP KNOT INVESTMENTS 777 (PTY) LIMITED

APPLICANT

and

CORONADO TRADING 150 CC

FIRST RESPONDENT

QUENTIN BROWN

SECOND RESPONDENT

CRESTLEIGH TRADING (PTY) LIMITED

THIRD RESPONDENT

EUGENE BOSHOF

FOURTH RESPONDENT

NATIONAL CREDIT REGULATOR

FIFTH RESPONDENT

MINISTER OF TRADE AND INDUSTRY

SIXTH RESPONDENT

J U D G M E N T

VAN OOSTEN J

[1] This is an application in which the applicant seeks payment by the first, second and third respondents of the sum of R24 051 493.03 together with interest thereon as well as an order that a certain immovable property, registered in the first respondent's name, be declared executable.

[2] The applicant's claim is based on a written loan agreement concluded on 25 January 2008 between the applicant, as the lender, the first respondent (Coronado) as the borrower, and the deed of suretyship signed pursuant thereto by the second respondent (Brown), the third respondent (Crestleigh Trading) and the fourth respondent (Boshoff).

[3] Brown and Boshoff are the only members of Coronado. Brown is a director of Crestleigh Trading.

[4] The application was initially opposed by Coronado, Brown and Crestleigh Trading. The only defence they rely on consists of a constitutional challenge of certain of the provisions of the National Credit Act 34 of 2005 (the NCA). This prompted the joinder (by agreement between the parties) of the National Credit Regulator (the NCR) as the fifth respondent and the Minister of Trade and Industry as the sixth respondent. Their participation in these proceedings is limited to the constitutional challenge to which I will refer in more detail, later in the judgment.

[5] No relief is sought against Boshoff, who was joined in the application merely because of the interest he as a member of Coronado, might have in the outcome thereof. He did however enter the fray albeit at a much later stage. As this aspect will assume importance later in the judgment it is necessary to briefly refer to Boshoff's explanation for the belated opposition to the application. The application papers were served on Boshoff's erstwhile attorneys, TG Bosch-Badenhorst, on 24 April 2009. Boshoff states in the affidavit I will presently deal with, that he "had not read the application at the time" and that he was advised by his attorneys "that it was not necessary for me, in my capacity as the fourth respondent, to oppose the application". He further states that he accepted the advice in good faith. He accordingly did not oppose the application. Some 13 months later, during May 2010, he casually mentioned the application to a friend who advised him there and then to obtain a copy of the papers from the attorneys. He then instructed his present

attorneys of record and a copy of the application was obtained. On reading the application, he, for the first time, discovered that the loan transaction, which is the subject matter of this application, was tainted with fraud which he maintains was perpetrated by Brown. On 16 July 2010 Boshoff launched an application in terms of s 36 of the Close Corporations Act 69 of 1984 (the s 36 application) against Brown, seeking the cessation of Brown's membership in Coronado. Boshoff's attorneys then sought a postponement of the present application in order to first finalise the s 36 application. This was refused. This prompted Boshoff to launch an urgent application to this court on 29 July 2010 seeking a stay of the present proceedings. The application was however, struck from the roll for want of urgency.

[6] On 2 August 2010 Boshoff filed an answering affidavit in the present application.. It was accompanied by a Notice of Application in terms of s 64 of Act 69 of 1984, in which he seeks relief to the effect that Brown be held personally liable for any debt or liability of Coronado that this court may find in the present application (the s 64 application).

[7] Both Boshoff's answering affidavit and the accompanying s 64 application were served well out of time. No formal application for condonation has been lodged. The procedural status of the s of the s 64 application is shrouded in uncertainty: it stands on its own and has not been introduced as a counter-application. The applicant as well as the first, second and third respondents have filed answering affidavits to the s 64 application. It to a large extent overlaps with and duplicates the s 36 application in which a full set of affidavits has by now been filed. Notwithstanding these difficulties I decided in order to reach finality and in the interests of justice to proceed with the hearing of the matter. At the commencement of the hearing I was requested in view of the irresolvable factual disputes existing on the papers and as agreed between the parties, to refer the s 36 application for trial. I accordingly in that matter granted an order for its referral to trial in terms of a draft order agreed upon between the parties.

[8] To revert to the present application, it came up for hearing before Bailey AJ on 25 August 2010. The learned Judge granted an order by consent between the parties in terms of which the matter was postponed *sine die*, the fifth and sixth respondents were joined in this application and the filing of further affidavits by the parties was authorised. As to costs, Boshoff was ordered to pay the applicant's wasted costs occasioned by the postponement whilst the wasted costs of the first,

second, third and fifth respondents were reserved. This is one of the issues I am now required to determine and to which I will return in due course.

[9] Against this background I now turn to the merits of the present application. A number of issues arise for consideration. The first is the sustainability of the first, second and third respondents' constitutional challenge of certain provisions of the NCA. The fourth respondent disassociated himself from this issue and abides the decision of this court. The second is whether the fourth respondent has raised sustainable defences on behalf of Coronado, against the applicant's claim. The third issue concerns the fourth respondent's s 64 application and the fourth, a portion of the interest component of the applicant's claim in particular having regard to the provisions of the Conventional Penalties Act 15 of 1962. The fifth and final issue relates to the liability for the costs of this application, as well as the costs relating to the constitutional challenge, the costs of the s 64 application and as mentioned earlier, the costs reserved by Bailey AJ on 25 August 2010. I consider these issues in turn.

THE CONSTITUTIONAL CHALLENGE

[10] It is not in dispute that the first, second and third respondents (referred to under this heading as "the respondents") are, by virtue of certain provisions of the NCA, excluded from the protection afforded by the NCA.¹ It is their contention, in a nutshell, that their exclusion from the NCA protection is unjustified and unreasonable and therefore unconstitutional. In support of the contention the respondents rely on the right to equality before the law provided for in s 9(1) of the Constitution. The order sought accordingly is for this court to declare that all the provisions contained in ss 1, 4, 6, 7, 8, 9 and 78(1) of the NCA having the effect of excluding or limiting the right to equal protection and/or benefit afforded by the NCA are inconsistent with the Constitution and therefore invalid.

[11] At the outset I raised with counsel for the respondents my concern whether it was competent for this court to decide the constitutional challenge concerning certain provisions of the NCA in view of the common cause fact that the NCA is not applicable to the facts of this matter. Counsel however, was unable to offer any

¹ Section 4(1)(a): the first respondent as the lender (consumer) is a juristic person as defined in s 1 of the NCA having an asset value or annual turnover exceeding the threshold determined by the Minister in terms of the NCA (R1m); and s 4(2)(c): the second and third respondents being sureties in respect of the credit transaction to which the Act does not apply.

meaningful contribution on this aspect. In the absence of full argument on this aspect I have decided to accept (without deciding) in favour of the respondents that the constitutional issue is properly before me for determination. But, counsel for the respondents then had to cross another hurdle: almost identical challenges have already been rejected not only by the High Court (twice), but also by the Supreme Court of Appeal as well as the Constitutional Court. First, the High Court cases. In *Standard Bank of South Africa Ltd v Hunkydory Investments 194 (Pty) Ltd and Another (No 1)* 2010 (1) SA 627 (C) an identical challenge² was raised but dismissed by Steyn AJ (as she then was) for the following reasons:³

‘There can be no doubt that there is a rational connection between the differentiation created by the relevant provisions of section 4 of the National Credit Act and the legitimate governmental purpose behind its enactment. I have not been persuaded, on a balance of probabilities, by the defendants, who bear the onus in this regard, that any differentiation or discrimination, even if it exists, is unfair. I have not been persuaded that the first defendant’s⁴ exclusion from the protection of the relevant sections of the Act has any negative effect on it.’

An application for leave to appeal by the defendants in that matter was unsuccessful as was the further petition for leave to appeal to the Supreme Court of Appeal. The defendants then applied for leave to appeal to the Constitutional Court which again was dismissed with costs on 7 May 2009.⁵ In a subsequent separate case,⁶ a different company (also called *Hunkydory Investments*) sought to raise the same constitutional challenge. Rogers AJ with reference to the first *Hunkydory* matter and its fate thereafter in the highest courts of our land, held that the constitutional challenge was bad in law and dismissed it with costs.

[12] I respectfully associate myself with the reasoning as well as the conclusion reached in both the High Court cases I have referred to. The Constitutional Court having considered the application for leave to appeal dismissed it on the basis of it bearing no prospects of success. Counsel for the respondents attempted to distinguish *Hunkydory* from the present matter in submitting that Steyn AJ did not specifically deal with the constitutionality of the NCA’s exclusion of private individuals

² That challenge was also that sections 4(1)(a) and (b) of the NCA violated section 9(1) of the Constitution because they excluded juristic persons.

³ Para [25] of the judgment.

⁴ The first defendant was the principal debtor and the second defendant the surety.

⁵ As can be gleaned from para [3] of the judgment of Rogers AJ in the matter referred to in fn 6.

⁶ Reported *sub nom Standard Bank of South Africa Ltd v Hunkydory Investments 188 (Pty) Ltd and Others (No 2)* 2010 (1) SA 634 (C).

from its protection. The argument resulted from a misreading of the judgment in *Hunkydory* as this aspect was specifically addressed by the learned Judge in relation to the second defendant in that matter. The circumstances and principles applicable in both matters are identical. Counsel was ultimately constrained to concede that the constitutionality of the NCA exclusion of at least a juristic person has now finally been resolved and is therefore binding on this court, but then proceeded to direct the focus of his argument to the exclusion of natural persons having bound themselves as sureties to entities, from the protection of the NCA. The constitutional issue was fully argued before me and I think it prudent to briefly add my own reasoning for having arrived at the same conclusion than in the other matters.

[13] The respondents' constitutional challenge as I have mentioned, rests on a single section of the Constitution (s 9(1)) which guarantees equality before the law. The test for whether a statute violates section 9(1) has been stated by the Constitutional Court⁷ as follows⁸:

'The test for determining whether s 9(1) is violated was set out by the court in *Prinsloo v Van der Linde and Harksen v Lane*.⁹ A law may differentiate between classes of persons if the differentiation is rationally linked to the achievement of a legitimate government purpose. The question is not whether the government could have achieved its purpose in a manner the court feels is better or more effective or more closely connected to that purpose. The question is whether the means the government chose are rationally connected to the purpose, as opposed to being arbitrary or capricious.'

Accordingly, for the constitutional challenge to succeed, it must be shown that there is no rational basis for differentiating between natural persons and juristic persons under the NCA. In this regard it is important to bear in mind that the requirement of *rationality* is not the same as a requirement of *reasonableness*. Rationality is a lower standard than reasonableness. It is not the function of the courts to review laws for reasonableness.¹⁰ As correctly pointed out by counsel for the NCR and the Minister the requirement of rationality is an extremely low one that virtually all legislation will overcome.

⁷ *Weare and Another v Ndebele NO and Others* 2009 (1) SA 600 (CC) where the court unanimously dismissed a challenge (also under s 9(1)) to a provision which barred juristic persons from holding gambling licences.

⁸ At para [46].

⁹ 1997 (3) SA 1012 (CC) paras [24]-[26].

¹⁰ *Bel Porto School Governing Body and Others v Premier, Western Cape, and Another* 2002 (3) SA 265 (CC) paras [45] – [46]; *New National Party of South Africa v Government of the Republic of South Africa and Others* 1999 (3) SA 191 (CC) para [24].

[14] There has thus far only been one case in which a rationality challenge to a certain section of legislation has succeeded in the Constitutional Court. The matter¹¹ concerned a challenge to certain distinctions drawn in the Matrimonial Property Act. There however, the Minister of Justice, who was responsible for the administration of the Act, explicitly conceded that the distinctions drawn were out-dated and irrational and himself supported a declaration of invalidity.

[15] By contrast, the Constitutional Court has dismissed the challenge in each and every other case challenging legislation or regulations on the grounds of irrationality, whether relying on sections 1(c), 9(1) or 22 of the Constitution.¹²

[16] Turning now to the impugned provisions of the NCA. In terms of s 4, the NCA applies to all credit agreements where the consumer is a natural person but not to any credit agreement where the consumer is a juristic person whose asset value or annual turnover is more than R1 million (s 4(1)(a)); or any large credit agreements where the consumer is a juristic person whose value or annual turnover is less than R1 million (section 4(1)(b)) and any credit guarantee (suretyship) in respect of a credit agreement to which the Act does not apply. The question is whether the exclusion of agreements by juristic persons is rationally connected to a legitimate governmental purpose. In this regard, the following extract from the affidavit filed on behalf of the NCR, is instructive:

‘The dual purpose was therefore to protect individual consumers against abuse but not to impose regulatory burdens which may limit the availability of credit to small businesses. The evaluation of the ability of an individual consumer to bear the burden of a credit agreement is entirely different from the assessment of business risks relating to proposed business opportunities that a small business wishes to pursue. It is in the interests of the individual consumer that there is consistent, easy to understand documentation and limits on costs, interest rates and enforcement processes. On the other hand, in order to allow entrepreneurship to flourish among small businesses, flexibility is needed in lending money to establish such flourishing businesses.

¹¹*Van der Merwe v Road Accident Fund & Another (Women's Legal Centre Trust as Amicus Curiae)* 2006 (4) SA 230 (CC) para [10].

¹²*Cf Weare and Another v Ndebele NO and Others* 2009 (1) SA 600 (CC); *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC) para 115; *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para [100]; *United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae)* (No 2) 2003 (1) SA 495 (CC) paras [69], [70] and [74]; *New National Party of South Africa v Government of the Republic of South Africa and Others* 1999 (3) SA 191 (CC) paras [26] to [27] and [31] - [33]; *Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour Intervening)* 1999 (2) SA 1 (CC) para [17]; *S v Lawrence S v Negal S v Solberg* 1997 (4) SA 1176 (CC) para [70] and *Prinsloo v Van der Linde and Another* 1997 (3) SA 1012 (CC) paras [39] to [40].

The thresholds for juristic persons were put in place in order to promote that particular policy. It would not be appropriate for a person who has the sophistication, means and specific intention to plan their affairs to gain various advantages of being a juristic person, simultaneously to gain access to the redress mechanisms created under the National Credit Act for the benefit of natural persons. A consumer is given the very choice that the Act intends. The consumer can enter into the credit agreement in his or her personal capacity as a natural person and gain the protection of the National Credit Act. Alternatively the consumer can set up corporate structures in order to gain asset protection afforded by the fact that the purchaser is a juristic person...”

The limited exclusion of agreements by juristic persons is therefore an attempt to further the object of protecting individual consumers against abuse, while avoiding the imposition of regulatory burdens which may limit the availability of credit to small businesses. This is plainly a legitimate governmental purpose and the limited exclusions provided for in the NCA in my view, are rationally connected to this purpose.

[17] The respondents’ constitutional challenge is accordingly dismissed.

[18] It remains to deal with the costs relating to the constitutional challenge. Counsel for the NCR and the Minister submitted that the respondents’ persistence in the constitutional challenge in the face of the rejection thereof by the courts I have referred to, is manifestly unreasonable which counsel contended justifies a punitive costs order against them. The general approach in constitutional litigation is that a party will not be mulcted in costs where it unsuccessfully raises a constitutional challenge.¹³ However, this approach does not apply where “an application is frivolous or vexatious, or in any other way manifestly inappropriate”.¹⁴ The respondents’ optimism albeit misplaced, regarding the prospects of successfully raising the constitutional challenge in my view does not justify a punitive costs order. It follows that a normal costs order will be appropriate.

THE FOURTH RESPONDENT’S “DEFENCES” RAISED ON BEHALF OF CORONADO

[19] Boshoff in his answering affidavit has in essence raised one defence on behalf of Coronado. It concerns an interpretation of certain clauses of the loan agreement

¹³ Cf *Koyabe v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* 2010 (4) SA 327 (CC) para [87].

¹⁴ *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC) paras [23] – [24].

on which the applicant's claim is based. The conclusion of the loan agreement is not in dispute. It is moreover common cause between the parties that subsequent to the conclusion of the loan agreement, Brown in an e-mail to Coronado dated 8 February 2008, requested payment of the balance of the loan amount of R16m into the bank account of Crestleigh Trading, of which it will be recalled, he was the director. The request was honoured. Boshoff now contends that the payment did not meet with the requirements set out in clause 3.1.7 of the loan agreement and that it therefore was made "aliunde" its terms. Clause 3.1.7 of the loan agreement provides as follows:

'3.1.7 the balance of the loan amount, (being the loan amount less the payments in terms of 3.1.1, 3.1.2, 3.1.3 and 3.1.6) or a portion thereof, may at the written request of the borrower be advanced by the lender to the borrower on 1 February 2008, or such later date agreed to by and between the parties (sic), and will be paid into such bank account as nominated by the borrower in writing.'

The payment of the balance of the loan amount, as I have indicated, occurred after 1 February 2008. Therefore, so the argument went, the "parties" within the meaning of the clause quoted, were required to agree on the later date of payment. "Parties" in terms of clause 1.16 of the loan agreement means "the lender, the borrower, Brown, Boshoff and Crestleigh, either collectively or individually as the context may require", The absence of an agreement by those parties on the later date for payment counsel concluded, resulted in an unauthorised payment extraneous the provisions of the loan agreement. The argument is short-lived: the definition of "parties" in the definition clause must be read subject to the opening sentence of the clause which reads as follows:

'In this agreement unless the context clearly indicates a contrary intention the following expressions shall bear corresponding meanings:...'

There can be no doubt that "parties" within the context of clause 3.1.7 plainly cannot have the extended meaning as defined in the definition clause. Clause 3.1.7 deals with payment to the borrower of the loan amount and the reference to "parties" in the clause is clearly to the parties directly involved in the making of the payment. But counsel for Boshoff had another string to his bow: the payment according to the e-mail I have referred to, was requested by Brown and therefore not the "borrower" (Coronado) which again counsel submitted, falls foul of the express provisions of clause 3.7.1 requiring payment to the borrower. This argument suffers the same fate than the first one: Brown was in terms of a resolution of the members of Coronado (annexed to the loan agreement and signed by Boshoff) expressly authorised to act on behalf of Coronado in concluding the agreement and in particular "to generally do

everything that may be necessary for the implementation of the abovementioned agreement". That indisputably included the nomination of a bank account for payment of the loan amount.

[20] The final submission advanced by counsel for Boshoff is this: on Boshoff's version concerning the alleged fraudulent conduct of Brown to which I will presently refer, Brown was not authorised to agree to the payment as provided for in the loan agreement, to one Neethling of the sum of R185 000-00 as an "introduction fee". In the event of the applicant succeeding in this application, the amount of its claim so the argument went, should be reduced with the amount of the introduction fee. There is no merit in the argument. The loan agreement was duly signed and executed: there is nothing (except for the *ipse dixit* of Boshoff) to show that the payment to Neethling was an unauthorised payment.

[21] For these reasons I have come to the conclusion that Boshoff has not made out any sustainable defence to the claim of the applicant on behalf of Coronado.

THE FOURTH RESPONDENT'S S 64 APPLICATION

[22] As mentioned the s 64 application is based on the alleged fraud committed by Brown and Brown's consequent failure to protect the interests of Coronado. The s 64 application as I have alluded to, was served concurrently with Boshoff's answering affidavit on 2 August 2010¹, some 15 months after the main application was served on his erstwhile attorneys. Boshoff's explanation for the revival of his interest in the matter is anything but satisfactory. I have difficulty in accepting that he, assuming that the fraud he now relies upon had been perpetrated, would not when the application was served, at least have read the papers or enquired from his erstwhile attorneys about the nature of the application.

[23] But it does not end there: Boshoff's version leaves me with the inescapable impression of a carefully crafted afterthought in a transparent attempt to avoid liability for the inevitable. He now claims that Brown fraudulently transacted for the loan of R18,5m reflected in the loan agreement on terms markedly different from what he and Brown had agreed upon. The verbal agreements the two of them had reached prior to the conclusion of the loan agreement, he states, were to the effect that a loan would be secured from the applicant for R1m, which was the amount required by Brown to be paid as part of the purchase price of the property they had

acquired for purposes of a proposed development in partnership. Brown was to repay the R1m over a period of 36 months. Boshoff by then had already paid his share of the purchase price in the sum of R1m. The property was purchased, registered in the name of Coronado and a mortgage bond was registered in favour of the applicant over the property as security for the loan granted in terms of the loan agreement. Boshoff goes on to state that they had further agreed that the loan would be obtained for a further “potential R16m” which was to be earmarked for purposes of the proposed development of the property “if and when that was proceeded with”.

[24] Boshoff admits that he signed and initialled the loan agreement where he was required to do so, on 25 January 2008. He called in his son and one of his other employees to sign as witnesses. At the meeting he “instructed” Brown to take the witnesses through the loan agreement and to explain to them the nature and import thereof, which Brown “duly did”. Boshoff’s version rests on shaky foundations. Nothing short of disingenuous is his allegation that clause 3.1.6 of the loan agreement was blank at the time of signature. The clause provides for the payment on the signature date of an amount of R1m by the applicant “for and on behalf of the borrower”. The name and details of the bank account (of Crestleigh Trading) for payment of the amount of R1m have been entered in manuscript and initialled next to it by all the parties and witnesses to the agreement, including Boshoff. Those details Boshoff states had not been filled in at the time of signature of the loan agreement but thereafter, presumably by Brown who he asserts was not authorised to do so. Boshoff further states that he clearly recalls that pencil lines had been drawn diagonally through the lines where the information was to be inserted. The original loan agreement was made available at the hearing of this application for all to scrutinize for any signs of such pencil lines. It manifestly does not require the eye of an expert to observe and I should add, no contention to the contrary was advanced, that pencil lines or imprints of erased pencil lines are nothing but imaginary.

[25] What is seemingly lacking from Boshoff’s version is an answer to the obvious question prompted by his own version which is whether he had read the loan agreement prior to appending his signature thereto. He evidently was concerned about the contents of the agreement which is the precise reason for instructing Brown to explain to the witnesses the contents of the loan agreement. The notion of

Boshoff not having read the agreement prior to signature or for that matter, that he was unaware of the true terms thereof, is so farfetched and improbable that the mere mentioning thereof warrants its rejection. His version finally, is difficult if not wholly impossible, to reconcile with his inexplicable silence and inaction from the time of service of the application until the filing of his answering affidavit in August 2010.

[26] For these reasons I conclude that the version of Boshoff is patently untruthful and it is accordingly rejected as such. This finding of course decides the fate of the s 64 application.

THE INTEREST CLAIMED BY THE APPLICANT

[27] The applicant claims interest on the amount claimed (R24 051 493.03) at the rate of 1,5 % per week, calculated daily from 25 July 2008 (the date for re-payment of the loan amount stipulated in the loan agreement) to date of payment. The loan agreement and mortgage bond provide for a rate of interest of 1,25% per week (in effect 65% per annum) and for the recovery of penalty interest becoming effective from 25 July 2008 but then at an increased rate of 1,5% per week (in effect 78% per annum). The respondents take issue with the “manifestly usurious” rates of interest which they allege offend public policy. I agree. These rates in my view indeed are nothing but exorbitant. It is in any event conceded on behalf of the applicant that the increased rate of 1,5% per week “constitutes a factor which could potentially persuade a borrower to settle the amount outstanding sooner than later”. The increased rate of interest the applicant states, “is merely designed to cover the increases in the applicant’s costs”. But, so the applicant further concedes, there were no increased costs incurred resulting from the non-payment. I am accordingly satisfied that the increased interest rate is a penalty clause which falls to be reduced within my discretion, in terms of the provisions of the s 1(1) of the Conventional Penalties Act 15 of 1995¹⁵ to the normal mora rate of interest.

COSTS

[28] The costs of the application are to be paid on the scale as between attorney and own client as provided for in the loan agreement. As for the earlier costs reserved I am of the view that the first, second and third respondents’ wasted costs occasioned by the postponement should follow the event.

¹⁵ *Wille’s Principles of South African Law* 9th Ed 886.

[29] It remains to deal with the costs of the fourth respondent's s 64 application. A punitive costs order was sought by the applicant which in my view is justified having regard to the findings I have made concerning his credibility.

[30] In the result I make the following order:

1. The first, second and third respondents are ordered to pay to the applicant jointly and severally, the one paying the other to be absolved:
 - 1.1 The sum of R 24 051 493.03.
 - 1.2 Interest on the amount in 1.1 above at the rate of 15,5% per annum, calculated from 25 July 2008 to date of payment.
 - 1.3 Costs of the application (including the costs reserved on 25 August 2010 but excluding the costs referred to in 4 below) on the scale as between attorney and own client.
2. The immovable property known as Portion 141 of the Farm Doornkuil 369, Registration Division IQ, Province of Gauteng, (measuring 113,4082 hectares) held under Deed of Transfer T134498/07 is declared specially executable.
3. The fourth respondent's application in terms of s 64 of Act 69 of 1984 is dismissed.
4. The fourth respondent is ordered to pay the costs occasioned by the applicant's opposition to the fourth respondent's application in terms of s 64 of Act 69 of 1984 on the scale as between attorney and own client.
5. The first, second and third respondents are ordered to pay jointly and severally the one paying the other to be absolved, the costs occasioned by the fifth and sixth respondents' opposition to the constitutional challenge.

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ADV S BUDLENDER

**FIFTH & SIXTH RESPONDENTS'
ATTORNEYS**

DENEYS REITZ

DATE OF HEARING

20 SEPTEMBER 2010

DATE OF JUDGMENT

3 NOVEMBER 2010