

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: Yes	(2) OF INTEREST TO OTHER JUDGES: Yes
29/11/2021	
DATE	SIGNATURE

Case No.: 35962/2020

In the matter between:

CHONGQING QINGXING INDUSTRY SA (PTY) LIMITED

Applicant

and

MINGYING YE

First Respondent

PROSPERITY PLASTIC PRODUCTS (PTY) LIMITED

Second Respondent

ALL OCCUPIERS OF 41 BIRD ROAD AND
81 DUNCAN ROAD, LILANTON, BOKSBURG

Third Respondent

LINE METALS (PTY) LIMITED

Fourth Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email and is deemed to be handed down about such circulation.

Gilbert AJ:

1. On 25 January 2021 this matter came before me as an opposed motion application. I furnished the parties an opportunity to make submissions why the matter should not be struck from the roll as not being ripe for hearing. Having heard those submissions, the matter was struck from the roll. I indicated that my reasons would follow, as would my order in relation to the incidence of costs arising from the striking. These are those reasons.
2. The worldwide Covid-19 pandemic has dramatically affected nearly every aspect of our lives. The justice system is not immune and has had to adapt to the 'new normal'. This has necessitated the increased use of electronic solutions to facilitate the dispensing of justice, not only by way of virtual court hearings on electronic platforms so as to respect the necessity for appropriate social distancing but also an accelerated use of digital / electronic case management and litigations systems. Whilst the need for virtual court hearings may diminish as the concerted effort to defeat the Covid-19 pandemic progresses, the continued use of the electronic case management and litigations systems is likely to stay. A regression to a increasing archaic paper-based court file system would be unfortunate.
3. Fortuitously the Gauteng Division, Pretoria and this Division had a head-start. In the second half of 2019 the electronic case management and

litigations system, as part of the Office of the Chief Justice's Court Online Project, was piloted in these Divisions, with certain matters, such as opposed motions, being conducted on the system. With effect from 27 January 2020, the full implementation of this electronic system took effect.¹

4. At the stage, January 2020, it could not have been imagined how the world would change within three months. The on-set of the Covid-19 pandemic, and the 'hard lockdown' that would follow in March 2021 compelled an accelerated embracing of the electronic system.
5. What would follow were various Practice Directives in these Divisions to advance the effective use of the electronic system. These Practice Directives, with the input from various professional bodies and role-players, would be refined to enhance the efficiencies of the electronic system and to address shortcomings.
6. The present prevailing position is as set out in the Judge President's Consolidated Directive of 18 September 2020. This refined or 'consolidated' directive was a product of the experiences of the preceding six month's extensive use of the electronic system.
7. The September Consolidated Directive cannot be read in isolation. It is supplementary to and must be applied together with the Uniform Rules, the Practice Manuals of the Divisions² and such other directives as may

¹ Judge President's Practice Directive 1 of 2020.

² The most recent version of the Practice Manual for the Gauteng Local Division is dated October 2018.

be issued from time to time. A holistic and sensible reading of these documents, aimed at advancing the efficacy of the electronic system, is required. Legal practitioners are to embrace the spirit of these procedures. Many legal practitioners have done so, working with the judiciary and Registrar's staff to iron out teething problems and towards 'making the system work'. Other legal practitioners unfortunately view the procedures as a series of obstacles, which they with varying degrees of ingenuity seek to skirt or simply ignore.

8. Repeated appeals have been made by the judiciary to adhere to these procedures.³ The September Consolidated Directive also warns of punitive costs orders for non-compliance.
9. One of the more important objects of these procedures is to ensure that a matter is ripe for hearing by the court. Self-evidently this prevents judicial resources, legal practitioner's efforts and litigant's monies being expended on matters that turn out not to be ready and so are struck off or removed from the court roll.
10. Over the years, the procedure has evolved in seeking to ensure that a matter is ripe for hearing. This included in relation to opposed motion applications in what are justifiably considered as the two busiest High Court Divisions in the country. Some years ago, once the usual three sets of affidavits had been delivered, the opposed motion could be enrolled by

³ See, for example, the urgent notice issued to attorneys by the Office of the Judge President on 27 November 2020 headed "In re: non-compliance with 18 September 2020 Consolidated Directive" setting out the large-scale non-compliance with the September Consolidated Directive, and calling for compliance.

the litigants, typically on a date of their choosing and with little regard to the convenience of the court, such as a consideration of how many matters had already been set down for the day. To address this, a limited number of matters was then permitted to be enrolled on each opposed roll.

11. But the problem remained that the opposed roll ended up with many matters that would not be argued as they would not be ripe for hearing by the time the hearing date arrived. One reason was the then practice only required heads of argument to be delivered a few days before the hearing, typically in the preceding week. If heads were not filed by the parties, which often happened, then the matter was in danger of not proceeding. But by then the court and the opposing legal practitioners may have had read the papers only to find at roll call that the matter did not proceed.
12. To address this, the Practice Manual evolved to its present formulation, requiring *inter alia* that it was only after practice notes and heads of argument⁴ had been delivered by the parties⁵ in a properly indexed and paginated file⁶ that an application could be made by the legal practitioners for a date on the opposed roll. This considerably increased the likelihood of the matter being ripe for hearing as by and large all the documents necessary for a determination of the matter were available in the court file, and so to some extent assisted in reducing the length of the opposed roll.

⁴ With list of authorities and a cross-referenced chronology table: paragraphs 16 and 17 of Chapter 9.8.2 of the Practice Manual.

⁵ Or failing the delivery of heads of argument by a party, the non-defaulting party bringing simultaneously an application to compel the defaulting party to file heads, and which interlocutory compelling application was to be heard expeditiously on a court roll specifically catering for such applications. See paragraphs 1 and 6 to 13 of Chapter 9.8.2 of the Practice Manual.

⁶ See paragraphs 1 to 5 of Chapter 9.8.2 of the Practice Manual.

13. That was before the introduction of the electronic system and the practice directives relating to that system. The practice directives do not detract from the laudable objective of the Practice Manual in seeking to achieve case-readiness. To the contrary, there are a number of directives in the September Consolidated Directive that reinforce the requirement that the matter be case-ready before becoming deserving for allocation on what remains a busy opposed motion roll. For example, paragraph 94 of the September Consolidated Directive provides that “[m]atters in which an opposed motion date hearing is sought must contain a full set of all relevant pleadings and documents in the uploaded case file”. It is clear from the Practice Manual that those documents would include heads of argument, practice notes and the like.
14. Before the introduction of the electronic system, the fact that a paper file existed made it more difficult for legal practitioners who had missed the deadlines for filing documents to ‘slip in’ documents, as those files may have been locked away separately at a certain stage by the Registrar to minimise such malfeasances. The Court file may even have been with the allocated Judge in his or her chambers, which made the file particularly inaccessible, depending upon the diligence of his or her secretary in acting as a gatekeeper to the file. That a paper file existed reduced, in that instance, the chance of a matter not being ready for hearing because a document had been ‘slipped’ in late. The flipside, of course, was if that if something did need to be filed, and which would not jeopardise the case-readiness of the matter, the file was inaccessible.

15. The introduction of the electronic system, being digitally-based, necessitated access being given to legal practitioners to upload documents to the electronic court file as it would be a woefully self-defeating system if the Registrar's office was required to upload the documents. This increased the opportunity for legal practitioners to upload documents that were out of time and so increased the prospects of the matter not being ready for hearing. It is common that until a few minutes before the hearing, and even during the hearing, legal practitioners, uninvited, upload and effect large-scale changes to the electronic court file, something that was unlikely to happen with a paper court file in the possession of the presiding judge. It is not at all unusual for the allocated judge (and the legal practitioners preparing for the matter) to work up the matter in advance, only to find on the hearing day that the court file is different. The electronic court file is at risk of being a continually evolving file. This often is more of a regression, rather a progressive evolution, as it renders the matter difficult for a court to get a grip on in preparation for the hearing. Indeed, as in this matter, the court file continued to evolve even after judgment was reserved.
16. Obviously, electronic court files cannot be jettisoned but must be advanced. Legal practitioners must play their part. Various directives have developed to address this difficulty. These include the implementation of a 'freeze date'⁷, after which no further documents can be uploaded without the presiding judge's consent. For example, paragraph 96 of the

⁷ See, for example, paragraph 96 of the Consolidated September Directive.

September Consolidated Directive provides for example, that “[w]here a Judge establishes from the [electronic] audit trail that a practitioner uploaded documents out of time without condonation having been granted for such late filing, the matter may be struck from the roll and a costs order *de bonis propriis* made be may against the errant practitioner”.

17. As described above, at least of the objects of these practice directives and procedures is to ensure that the opposed motion is ripe for hearing and that judicial resources can be directed at determining those matters.
18. It is the context of this background that I can give my reasons why I struck the present opposed application from the roll.
19. The application started out on 3 November 2020 as an urgent application for final relief which included a final interdict interdicting certain respondents from removing assets from premises situated in Boksburg and for the “*commercial eviction*” of the first and third respondents from the property. Notably, at least one of the respondents is a natural person, namely the first respondent.
20. The applicant had set itself a formidable task: to persuade the urgent court in the one of the busiest Divisions not only to grant it urgent relief but to do so on an final basis.
21. The urgent application for final relief was enrolled for hearing for some five court days later, on 10 November 2020. Although significantly truncated periods for the delivery of affidavits was provided for in the notice of

motion, the opposing respondents managed to deliver and upload answering affidavits by 9 November 2020. The applicant delivered and uploaded its replying affidavits on 11 November 2020. The respondents also managed to upload heads of argument by 11 November 2020 and the applicant did likewise on 12 November 2020.

22. Although full sets of affidavits had been delivered, the urgent court on 12 November 2020 declined to hear the matter. Although there appears to be some confusion as to whether the urgent application, to use the words of the applicant in its practice note, was “*removed from the urgent roll for lack of compliance with the practice directive for urgent matters being heard on Tuesday*” or whether, as contended for by the respondents, the matter was rather struck from the roll for lack of urgency with costs, it is common cause that the application did not proceed on its merits that day.
23. Notwithstanding its lack of success in the urgent court, what the applicant had managed to achieve, within a period of some two weeks, was the delivery and uploading into the electronic court file of the all three sets of affidavits and heads of argument by the parties. Ordinarily this would take some months.
24. On 17 November 2020, anxious for its day in court, the applicant applied for a date on the ordinary opposed roll. I assume in favour of the applicant that as full sets of affidavits had been filed in the application, with heads of argument, that the matter was sufficiently ripe to enable the applicant to make application to the registrar for a date on the opposed roll. I

emphasise this because both the Practice Manual and September Consolidated Directive require this of an applicant, as described above.

25. Having so applied for the opposed date, the applicant represented that the matter was ripe for hearing. As discussed above, the whole purpose of the procedures is to ensure that as far as practically possible a matter was ripe for hearing before becoming deserving of allocation on the busy opposed motion court roll.
26. Having made that representation, the applicant must insofar as practically feasible ensure that the application remains ripe for hearing. Should the application become no longer ripe for hearing, then the application should be removed from the roll. Understandably there may be instances where recalcitrant respondents may conduct themselves, with varying degrees of ingenuity, in an attempt to render an allocated matter no longer ripe for hearing and so seek to avoid a hearing. The court will be alive to these attempts. But where the applicant itself takes steps that renders its own matter no longer ready for hearing, it can hardly complain that its opposed application is struck from the roll.
27. This is such an instance.
28. On 18 November 2020 the registrar of the opposed motion court allocated 25 January 2021 as the opposed hearing date in this main application. The applicant's attorney was not able to inform me when the applicant learnt from the Registrar that this date had been allocated, although it appears from the practice notes that this may have been on 8 December 2020.

What is concerning is a 'widely shared' note had already been placed on the electronic file by the Registrar of the opposed motion court on 18 November 2020. Legal practitioners are required to look for and have recourse to these notes.⁸

29. Paragraph 109 of the September Consolidated Directive provides that *"[t]he Applicant remains dominus litis and is ultimately responsible for the efficient disposal of the application."*
30. The applicant, apparently unaware that a date had already been allocated for the hearing of the application on the ordinary opposed roll, launched a second urgent application under the same case number on 30 November 2020, for hearing in the urgent court on 15 December 2020. The respondents filed their opposing papers in the second urgent application on 7 December 2020.
31. In the second urgent application, the applicant sought *inter alia* interim access to the premises and an order authorising the statutory notice required in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 ("PIE") in respect of natural persons on the premises. Presumably, this latter relief was brought about by the awareness on the part of the applicant that it would now have to comply with PIE before it could secure an eviction order against natural persons who may be residing on the premises. The respondents had in their answering affidavits filed on 9 November 2020 pointed out that the

⁸ Paragraph 1.8 of the Judge President's urgent notice records the failure of attorneys to read these CaseLine notes as an instance of large-scale non-compliance.

natural persons were residing on the premises, including the first respondent.

32. It is unclear how the applicant intended ensuring that the requirements of section 4(2) of PIE were going to be satisfied in good time so that the eviction application was ready for hearing on the opposed roll. Perhaps this informed the need to obtain urgent relief in the second application in relation to compliance with PIE.
33. It is questionable how advisable it was for the applicant to again be approaching the urgent court for some form of relief in circumstances where the main application in any event would be heard early in the new year. Had the applicant undertaken the elementary task of checking the electronic court file, it would have seen the Registrar's annotation that an opposed date had already been allocated.
34. The applicant having launched a second urgent application must have realised that it may be jeopardising the hearing of the main application on 25 January 2021 in that such application may end up rendering the main application no longer ripe for hearing. That second urgent application, which has been described in the papers as an interlocutory application, carried with it the inevitability that further papers would be uploaded into the electronic court file that should have already been complete and ready for hearing by 17 November 2020 when the date was applied for.
35. To the extent that the relief sought in the second urgent 'interlocutory' application was intended to ensure that the main application would be ripe

for hearing (as perhaps seeking urgent relief in relation to section 4(2) of PIE), this was belied when the applicant elected, upon discovering on 8 December 2020 that an opposed date had been allocated for 25 January 2021, to then remove that second urgent application from the urgent roll.

36. But by then the seeds had been planted by the applicant that would rapidly grow into a tangle that prevented the main application from remaining ripe for hearing. Perhaps the applicant could have saved the day and withdrawn that second urgent application, so that it had no prospects of getting in the way of the main application. But the applicant did not do so, perhaps because the respondents may insist on costs as they had already delivered their answering affidavits in that second urgent application.
37. Again, it is unclear to me why the applicant elected to remove its second urgent application from the roll, particularly as in doing so it should have been readily apparent to the applicant that there was no prospect that the relief sought in the main application could be granted, at least insofar as the natural persons were concerned as there had been no compliance with section 4(2) of PIE. It will be recalled that the urgent relief being sought in the second urgent application was in relation to section 4(2) of PIE.⁹
38. Upon me making enquiries during the course of the hearing as to the next development in the procedural chronology of the matter, the parties referred to a letter addressed by the applicant's attorneys to the respondents' attorneys on 7 January 2021. This letter was only made

⁹ A separate question was whether it was advisable for the applicant to enrol the matter on the opposed roll as early as 25 January 2021 as that did not appear to afford it sufficient time to comply with section 4(2) of PIE.

available to the court during or after the course of the hearing on 25 January 2021, and therefore the court did not have the benefit of insight into this letter when reading the court file and preparing for the matter. I shall return to this letter later.

39. When I read the papers in preparation for the matter, it was unclear to me what relief the applicant would be seeking of the court when the matter was called on 25 January 2021.
40. The applicant had on 18 January 2021 delivered a further practice note recording *inter alia* that:

“In light of the Respondents’ averment in paragraph 48 of their answering affidavit that there are people residing in the premises, and to the extent that it is found that PIE applies, the applicant intends presenting an amended notice of motion for the Court’s consideration, seeking, as an alternative to the eviction of all concerned, an interim interdict confirming the Applicant’s access to the premises and preventing the respondents from interfering with the applicant’s business, pending the eviction of those persons affected in terms of PIE (as addressed in the Applicant’s replying affidavit). Amended Practice Note and concise Heads of Argument to this end will be available at the hearing or for unload or email distribution prior thereto with the Court’s leave / directive.”

41. It should have been evident to the applicant that in light of this recordal that the matter was in danger of being found not to be ripe for hearing. The applicant, by its own admission, was no longer seeking the relief as sought in its notice of motion. But neither had the applicant delivered any amended notice of motion or application to amend setting out what relief

it would be seeking. And the applicant intended delivering further practice notes and heads of argument, and which would presumably deal with the substantially different relief that would only be moved for on the date of the hearing, and then only in the alternative depending on whether PIE applied. But the applicant on its own showing in launching the second urgent application seeking relief in order to comply with section 4(2) of PIE had already created the expectation that PIE would be complied with.

42. Applicant's attorney submitted that it was open to a party to move for an oral amendment during a hearing, without complying with Uniform Rule 28. Whilst there are circumstances where it would be permissible for a litigant to do so and the usual rule 28 procedure requiring such amendment on notice is not obligatory,¹⁰ a party does not have invariable procedural right to do, especially where, as in this instance, the applicant foresaw the need for such an amendment by at least 7 January 2021. It had in any event been informed by the respondents as long as ago as 9 November 2020 that there were natural persons residing on the premises, and had it been advisable to carve out and persist with such relief that did not require compliance with PIE, then it should have gone about doing so then already. It did not do so before it applied for the opposed date on 17 November 2020, when it represented the matter was ripe for hearing. It most certainly should not have waited until the hearing date to move for such an amendment. And even then, the applicant was in two minds when

¹⁰ Uniform Rule 28(10) provides that "[t]he court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit."

the hearing started as to what relief it was seeking and whether an amendment would be moved.

43. Applicant's attorney referred to a decision in the Gauteng Division, Pretoria in 2013¹¹ where an oral amendment was permitted on the day of the hearing of an opposed eviction application to exclude relief against those respondents who fell within the purview of PIE. But it does not appear that any prejudice was contended for in that case. In contrast, in the present instance, the respondent objected to the uncertainty that had been created by the applicant, which is dealt with below. I have also dealt with the inconvenience of the court brought about by the uncertainty surrounding the intended relief. And the matter must now be viewed in the context of the procedural requirements of the Practice Manual and Consolidated September Directive, which presents a different procedural landscape to that in 2013.
44. The applicant may have been alive to the real possibility that had it delivered a notice to amend or an amended notice of motion before the hearing, this would have made it obvious that the matter was not ripe for hearing (especially if it engendered a flurry of documents from the respondents such as objections to the intended amendment) and that by laying low and seeing which way the wind blew on the day of the hearing it could introduce the proposed amendment, if necessary, at an opportune moment.

¹¹ Unreported decision of Cambanis AJ in *Phayane v MC Denneboom Service Station CC* (case number 51724/2012), 20 November 2013. See para 3 and 4.

45. In my view, it should have been clear to the applicant that the matter was not ripe for hearing on the relief sought in the main application. At the very least the section 4(2) issue needed to be addressed and which precluded on order encompassing the eviction of the natural persons from the respondent. And should the applicant have wished to curtail or adapt its relief that it was seeking to overcome the section 4(2) issue, it was incumbent to do so as soon as possible and not leave it up in the air as to what relief it would be seeking of the court.
46. This also informs why the applicant had not uploaded any draft orders of the relief that it would be seeking of the court by the time the hearing commenced, this being another procedural requirement flouted by the applicant.¹² The applicant itself was uncertain as to what relief it would be seeking.
47. It was during the course of argument that my attention was drawn by the parties to a letter addressed by the applicant's attorneys to the respondents' attorneys on 7 January 2021 in which the applicant informed the respondents (but not the court) that it did not intend persisting with the eviction, at this stage, of the natural persons and that instead it would seek amended relief by way of a draft amended notice of motion, which was attached to that letter. As stated, the court was not provided with that draft amended notice of motion, save during the course of or shortly after the hearing, and then only as an attachment to the letter of 7 January 2021.

¹² See paragraph 97 of the September Consolidated Directive.

48. The respondents, justifiably, also took issue with the manner in which the applicants had conducted their case insofar as they too were uncertain as to what case they had to meet on 25 January 2021. The respondents' counsel pointed out that she had to prepare to argue the matter on the basis that the applicant may be persisting in seeking the relief in the main application (as the applicant had not delivered any notice of amendment), and/or may be seeking some or all the relief in the second urgent application (which had been removed from the roll but was still hanging in the air), or may be seeking relief by way of its proposed amended notice of motion furnished to the respondents' attorneys on 7 January 2021 but which had not manifested itself before the court in the form of any application for amendment. Whilst it would appear that the respondents' counsel may have been ready to proceed to oppose whatever variant of relief that the applicant sought to move on 25 January 2021, the court remained uncertain what relief was being sought, what was to be made of the second urgent application that was still hanging in the air and part of the papers in the electronic court file, and what documents would still be uploaded.
49. A further perplexing development at the instance of the applicant was that it also in its attorney's letter of 7 January 2021 recorded that the applicant would not object to the respondents filing any supplementary answering affidavit over the course of the next ten days in opposition to the relief sought, and that it intended serving updated heads of argument. It remains unclear as to why the applicant would be affording the respondents such an opportunity, but the applicant nonetheless did so. The applicant must

have realised in doing so that it placed in jeopardy the ripeness of the matter to be heard on 25 January 2021. After all, both the Practice Manual and Consolidated September Directives required all the affidavits and heads of argument to have been delivered before application was made for an opposed date. It was not open to the applicant to be inviting the respondents to file further affidavits up until the week preceding the hearing of the application.

50. Perhaps a final opportunity for the applicant to redeem itself would have been if it was able to bring sense to the tangle of a court file by way of a compliant and informative joint practice note. But what should have been the product of constructive interaction between the parties' respective legal practitioners for the convenience of the court in limiting the issues¹³ proved to be no more than a further skirmishing ground for the parties, with the applicant filing its version of a practice note on 18 January 2021, to which the respondent commented on 18 January 2021. Each party's legal representatives blamed the other for the inability to prepare a joint practice note, and the court file was burdened in the days leading up to the hearing with correspondence between the respective attorneys on the issue.

51. In the circumstances, the matter clearly was not ripe for hearing.

52. The applicant, having represented to the registrar that the matter was ready for hearing on 17 November 2020 when it applied for the opposed

¹³ Paragraph 104 of the September Consolidated Directive deals with the requirement of a joint practice note.

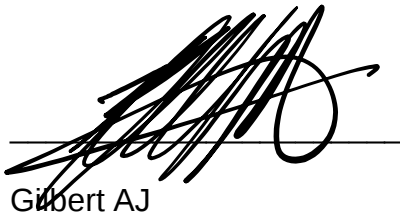
date, went about after that with disregard, whether inadvertent or otherwise, of the requirements of the Practice Manual and Consolidated September Directives aimed at ensuring that an application was ripe for hearing when called.

53. The applicant is the author of its own misfortune in the matter not being ripe for hearing. As expressed in the September Consolidated Directives, the applicant is *dominus litis* and is to take responsibility for efficient disposal of its matter. The applicant should therefore pay the wasted costs arising from the hearing on 25 January 2021.
54. After I struck the matter from the roll and reserved my judgment on costs, a flurry of activity took place on the part of the parties' attorneys in uploading various documents to the electronic file. I do not comment on the propriety of doing so, particularly as I did grant the parties leave to upload the relevant correspondence that had been referred to during argument, such as the letter of 7 January 2021 as well as the respondents' chronology.
55. The applicant nonetheless also chose to upload:
 - 55.1. a notice of withdrawal of the relief sought in prayers 2 to 5 of its second urgent application, which is effectively all the substantive relief sought in that application including authorising the relevant order in terms of section 4(2) of PIE;

- 55.2. a notice in terms of rule 28(1) seeking to amend the relief in the main application;
- 55.3. what appears to be a further application to the Registrar for an opposed hearing date.
56. As these documents were placed before me whilst I was to the knowledge of the applicant still seized with the matter, presumably it is open for me to consider these documents.
57. The first two documents are illuminating. The third is perturbing.
58. That the applicant delivered a notice to amend and sought to now deal, at least to some extent, with the hanging second urgent application reinforces my view that self-evidently the matter was not ripe for hearing. This is particularly so as the applicant did not even wait for those reasons before doing so.
59. What is perturbing is that the applicant has now again applied for an opposed date when it may well be that the matter is still not ripe for hearing. The audit trail on the electronic file system shows that application was made for new opposed date at 12h58 on 25 January 2021. The applicant's reaction to my striking the matter from the roll was to almost immediately apply for a hearing. The applicant did so without even waiting for this reasons. As set out above, I have indicated why the matter was not ripe for hearing and so why the opposed application was struck from the roll on 25 January 2021. The amendment, which the applicant now

formally seeks on notice and to which the respondents have ten days to object, has not been finalised. It may well elicit an objection from the respondents. And given all the developments that have taken place since heads of argument were filed on 11 and 12 November 2020 and which continue to take place, it is reasonably anticipated that further heads of argument and practice notes would be required. Both the Practice Manual and the Consolidated September Directives require these to be in the court file before an opposed date is applied for.

60. During the course of preparation of the reasons I noted from the electronic case file that the registrar uploaded a further note, enquiring of the applicant if it was applying for a new date as the matter had been set down for 25 January 2021. The registrar's uncertainty is understandable as the motion week in which the matter had been enrolled had not yet even ended when the applicant's attorney applied for a new date. Indeed, the court file, so to speak, is still with me.
61. Whether the applicant has again embarked on a precipitous course of action is for the next court to decide.
62. I have already struck the matter from the roll. Insofar as costs are concerned, the applicant is ordered to pay the wasted costs relating to the hearing of the application on the opposed roll for 25 January 2021.



Gilbert AJ

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Date of hearing: 25 January 2021

Date of judgment: 29 January 2021

For the Applicant: B van Tonder (Attorney)
Burrows Attorneys

Counsel for the First,
Second and Third Respondents: Ms C Jacobs
Instructed by: Edward Sithole and Associates