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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

CASE NO.: 2022-042316

Case Heard: 24 October 2023

Judgment Delivered: 12 January 2024

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: YES.

(3) REVISED.

DATE: 12 January 2024

SIGNATURE

In the application between:

ANDREW SETHONGA

1st Applicant

MAPHULA ANNAH SETHONGA

2nd Applicant

and

WEHMEYERS ATTORNEYS

Respondent

JUDGMENT

VAN DEN BOGERT (AJ):

1. This judgment turns mainly on the question whether it is possible for this court to declare an agreement to be a “contingency agreement” which declaration will

have the effect of converting an existing “valid” agreement into an “invalid” contingency fee agreement. The second issue to be addressed is whether a specific written agreement, which is concededly signed by the applicants, and which prima facie is openly in variance with the applicants’ version, can be rejected against the probable version of the respondent.

2. As an ancillary subject this judgment rejects the notion that an opposing attorney should be held liable for the costs of her or his adversary, when bringing an “ill-considered” application for and on the instruction of his or her client.
3. Prayer 1 of the relief is coached as follows, and I quote:

“Declaring that the Applicants and the Respondent entered into a contingency fee agreement at the inception of the Respondent’s handling of personal injury claims on behalf of the Applicants against the Road Accident Fund (RAF) under Court case numbers 888/2020 (First Applicant’s claim) and 83291/2019 (Second Applicant’s claim) both instituted in the High Court of South Africa, Gauteng Division of the High Court, Pretoria.”

4. The remainder of the relief is ancillary to that prayer and dependent on that prayer being successful.
5. As the relief implicates, the applicants were successful plaintiffs against the Road Accident Fund (herein “the RAF”) and, in their claims against the RAF, were represented by the respondent, which is a firm of attorneys that specializes in personal injury claims.
6. To put the historical events in perspective, I list the common cause features of this case. The respondent has with diligence, and in detail, set out the history of the case both in respect of the first applicant as well as the second applicant. Both applicants were treated in a similar fashion, and it is not necessary to deal to its full extent in the judgment with what transpired in respect of each applicant. The facts are mostly similar. I deal with the salient facts.

7. Prior to me doing so, I make the following remark. The applicants allege that they were under the impression, notwithstanding them having concededly concluded attorney and client agreements with the respondent, that they had in fact agreed that the case would be conducted on a contingency fee basis. As such, in setting out their case in the founding affidavit the applicants accuse the respondent, who assisted them throughout their cases, of irregular conduct which they tell this court was done with the intention to deceive the applicants about the true nature of the agreements. After the respondent diligently set out its case in the answering affidavit, providing a probable version, the respondent version is labelled in the replying affidavit, as a “*cover up*”.
8. I agree with Mr. Grobler SC, who argued the case for the respondent that that kind of language and innuendo used in affidavits and levelled against a party’s erstwhile attorney, without a proper foundation, is unacceptable. Legal practitioners, who draft papers for their clients, ought to refrain from allowing their clients to “play the man instead of the ball” and to desist from labelling other legal practitioners as being dishonest in circumstances where no factual basis for such innuendo exists. The allegation of impropriety consists of pure speculation and must be rejected.
9. Even if there had been a factual basis in support of some impropriety, which does not exist in this case, a finding in that respect is something that a court must establish. The exception taken by the respondent to such averments is therefore well taken and recorded. This, however, does not, premised on what is set out in the last paragraphs of this judgment, warrant a costs order *de bonis propriis* against the applicants’ attorney.
10. The attorney who previously assisted the applicants in their claim against the Road Accident Fund, Mr. WTN Agrela, is employed with the respondent. He confirms in his affidavit that he has empathy with the age, educational and socio-economic circumstances of the applicants; he has always treated the applicants with the utmost of respect and with the special attention that they deserve, and due to their mother language not being English, he has always

consulted with the applicants in the presence of and with the assistance of two ladies in his office who can communicate with the applicants in their home language, being Sepedi.

11. Nothing of the conduct and diligent way Mr. Agrela conducted himself when dealing with the applicants is in dispute. The common cause facts are that the first applicant only completed Standard 2 in school and the second applicant passed Standard 5. Save for this, the first and second applicants have no further formal schooling and are not acquainted with legal intricacies.
12. Against that backdrop the facts are:
 - 12.1. the first and second applicants were involved in a motor vehicle accident on 20 August 2016. The first applicant consulted with Mr Agrela of the respondent in July 2018 and the second applicant consulted with him in August 2018. Ms Baloyi, employed by the respondent, acted as the interpreter.
 - 12.2. the applicants signed a “mandate and agreement of fees as between attorney and own client” (“***the fee agreements***”) at the first consultation with Mr Agrela. The interpreter co-signed the agreement.
 - 12.3. the fee agreements were carefully explained to the applicants, prior to them signing the fee agreements.
 - 12.4. Ms Baloyi confirms that the fee agreements were thoroughly explained to the applicants prior to them signing the fee agreements. Paragraph 13 of the fee agreements itself confirms that the fee agreements were explained to the applicants by the interpreter.
13. The written fee agreements provide *inter alia* for the following:

- 13.1. the applicants shall be liable for payment of the attorney's fees, expenses, costs, and disbursements, together with value added tax thereon.
- 13.2. invoices may be delivered from time to time, and a comprehensive account is to be delivered at the conclusion of the matter and all accounts are payable on receipt thereof.
- 13.3. the applicants shall be liable, on demand, to pay a deposit.
- 13.4. the applicants shall pay, in respect of expenses, costs and disbursements incurred, the actual amount of such expenses, costs and disbursements.
- 13.5. if action is instituted in the High Court, the first applicant shall be liable to pay a rate equal to double the normal party and party tariff in respect of professional services delivered as provided for in Rule 70 of the Uniform Rules and the second applicant liable to pay triple the party and party tariff. The reason for this differentiation is unexplained.
- 13.6. the applicants confirm that they understand that the party and party tariffs do not provide for all the attorney and own client fees for which they will be liable.
- 13.7. High Court appearances and consultations by an attorney/s, at the respondent's office, are payable at the rate of R3 000.00 per hour, which rate is not subject to the 100% surcharge that is charged on the party and party tariff referred to in the agreements.
14. Paragraph 7 of the fee agreements stipulates that the attorney must proceed to recover all costs orders granted in favor of the applicants and must account to the applicants in respect thereof. The applicants specifically agreed that the proceeds of any costs order may be used by the attorney on condition that such costs are to be taken in account when accounting to the client.

15. Mr. Agrela confirms that paragraph 7 did not find application in respect of the claims.
16. In terms of clause 10.1 of the fee agreements, the applicants instruct the attorney to receive all capital amounts of their claims plus costs taxed against the adversary into the trust account of the respondent and to account to the applicants as soon as possible after the matter has been finalized.
17. The respondent submits that the fee agreements do not represent a contingency fee agreement and do not provide for payment of fees on a no win no fee basis. It further does not provide for a success fee, which is higher than the normal attorney and client fee. There are several further grounds raised upon which it is stated that this is not a contingency fee agreement.
18. The applicants advised the respondent at their first consultation that they would not be able to pay the respondent before finalization of the claims. Mr. Agrela then tells that it is in such circumstances standard procedure in the office of the respondent to let the client sign a statement in confirmation of the inability to pay before the finalization of the claim. Each of the applicants signed such a statement and the statement of the first applicant, which is like that of the second applicant, for example, reads as follows:

"I the undersigned:

NAME AND SURNAME: ANDREW SETHONGA

ID Number: 5[...]

confirm that I do not have the financial means to pay WEHMEYERS ATTORNEYS account until finalisation of this claim..."

19. That document is then signed by each of the applicants.

20. The applicants' claims were investigated, lodged, and prepared for hearing. The applicants' claims were enrolled for hearing on 3 November 2021. The applicants were prepared for trial and requested to come to the offices of the respondent on the date of the hearing to be available for consultation and court proceedings, if necessary.
21. On the date of the hearing, the attorney consulted with the applicants at the offices of the respondent. Everything that transpired was interpreted for the applicants and conveyed to them by Ms. Baloyi, the interpreter presumably in Sepedi.
22. It was specifically explained to the applicants that, should an offer be made by the Road Accident Fund, there may be a delay of 12 to 24 months in obtaining payment of the capital from the Road Accident Fund and that two separate payments will be made to the applicants, the first being a payment of the capital amount and the second payment after receipt of the party and party costs.
23. The cases became settled and each of the applicants signed, what is called, an acceptance of judgment. The first respondent's acceptance, for example, reads as follows:

"I, the undersigned:

SETHONGA, ANDREW

ID No: 5[...]

I confirm that the award in the amount of R649 120.40 in respect of Capital by the High Court of South Africa Gauteng Division, Pretoria 3 NOVEMBER 2021, had been explained to me and I hereby accept this amount as per the Court order.

I further confirm that it had been explained by my attorney that payments from the Road Accident Fund will be made as follows:

1. *capital amount from which all fees and disbursements will firstly be deducted and the balance, if any, paid to myself;*
2. *costs will be paid at a later stage when a final statement of account will be provided for myself;*
3. *although payments from the Road Accident Fund are to be made within 180 days, it is being done on a national wide (oldest matter first) basis.*

I also confirm that I had been offered the opportunity to pose any questions with regards to the above explanations, which I accepted, and which were then again explained to me to my satisfaction OR which I declined and indicated that I fully understood the attorney's explanation of the above offer and payment system.

I further confirm that I did not sign a Contingency Fee Agreement with Wehmeyers Attorneys. I confirm that my attorney meticulously explained the meaning of a contingency fee agreement to me."

24. These acceptances, which had different quantum of damages amounts, were then signed by the applicants.
25. The office files in respect of the applicants' matters were then sent to the respondent's cost consultant after all invoices for disbursements had been received. Payment of the capital amount in respect of the applicants' claims was received on 24 March 2022. The Road Accident Fund makes bulk payments to the respondent which is alleged to take some time.
26. The respondent explains that it is standard procedure in its office that the cost consultant is notified as soon as the capital amount has been allocated to a specific matter and who then in return employs the best endeavors to finalize an attorney and client bill.

27. Once the attorney and client bill has been received, usually a consultation will be scheduled with the client to explain the bill.
28. The applicants prior to such intended consultation, however, established with the Road Accident Fund that the capital amount had been paid over to the trust account of Wehmeyers Attorneys and, on 1 June 2022, confronted the respondent with the fact that the respondent had already received payment.
29. Mr. Agrela tells this court that he was at that stage unable to account to the applicants due to not being in possession of attorney and client bills. Notwithstanding this, the applicants were invited to come for a consultation on 2 June 2022 and the costs consultant was urged to provide bills by that time.
30. The bills were received on 2 June 2022. A preliminary statement of account was then prepared for the applicants. In the first applicant's case, for example, the attorney and client cost bill of R458 839.20 was deducted from the capital amount of R649 120.40 and an amount of R190 280.00 was consequently payable to the first applicant.
31. A similar process was performed in respect of the second applicant.
32. On 2 June 2022 in the presence of Ms. Baloyi, the interpreter, it was explained that two payments would be made to the applicants, namely an initial payment of the difference between the capital amount and the attorney and client bill and a second payment once the party and party bills have been taxed, in which case the said party and party bill will be paid out to the applicants.
33. Both applicants signed another document which is titled "*Acceptance*". It deals with receipt of the first payment on 2 June 2022. It confirms in each case:
 - 33.1. that the payment is based only on the capital received.
 - 33.2. that payment of the party and party costs is awaited.

- 33.3. the attorney and client bill as well as the party and party bill of costs were obtained.
 - 33.4. the applicants confirm that they understood the explanations and that they did not sign contingency fee agreements.
 - 33.5. the meaning of contingency fee agreements was again explained to the applicants; and
 - 33.6. the applicants expressed their satisfaction with what is stated in the acceptance documents.
34. Thereafter, payment of the first amounts were made.
35. The second applicants' party and party bill has been taxed and payment thereof is awaited. Payment of the taxed bill, according to the erstwhile attorney will be made to the applicant once it is received. I assumed (apparently wrongly so) that it will be payment of the taxed costs and will exclude payment of the drawing fee due to the cost consultant. The first applicant's bill has not been taxed and I was informed from the bar that that will happen early this year, whereafter the same process will follow.
36. On enquiry by myself, the respondent's legal team in court confirmed that the respondent intends to pay over the full amount of the taxed party and party bill to the applicants, once received, and does not even deduct the cost consultant's fees.
37. The respondent further explains in the answering affidavit why the respondent firm of attorneys does not enter into contingency fee agreements, which in essence entails that it renders specialized services; it is a small boutique firm specializing in the field of personal injury claims and has an experienced team that assists it. As such, it can ascertain (I presume the likelihood of) whether a claim has merit, or not, and pursues only claims that have a measure of certainty of success. It does not charge its double normal fee, because that

would be far too onerous on the victims of Road Accident Fund claims. On the other hand, it also does not limit itself to 25% of the fees, because that would *inter alia* exclude people who have claims with a lower quantum.

38. In my view, the reason why the respondent does not want to conclude contingency fee agreements is mostly irrelevant for the purposes of the adjudication of this application.
39. This brings me back to the relief that the applicants seek.
40. Although it is a bit difficult to discern exactly on what basis the applicants claim this, their case seems to be premised on the notion that the parties had, as from inception of their relationship, agreed that the RAF matters would be conducted based on a contingency fee agreement. With reference to the undisputed documents that I have already dealt with in this judgment, the applicants argue that the agreement with the ancillary documents contain in fact all the *naturalia* of a contingency fee agreement. As such, it is claimed that the parties in fact concluded a contingency fee agreement at the inception of their respective cases.
41. Several other issues are raised but, in argument, counsel for the applicants relied mainly on the following two clauses in the fee agreement. Clause i) 6.1.1 which stipulates that the attorney is entitled to charge double the normal party and party fees and, ii) clause 7, which stipulates that there is a cession of costs to the attorney. These, so the argument went, indicate the conclusion of a contingency fee agreement.
42. In the founding affidavit, the applicants then also demonstrate that they would have largely benefited from a contingency fee agreement in that the claim for fees by the respondent would be limited to 25%. It eventually turned out that the attorney and client bill, insofar as it relates to the attorney's fees, exceeded 25% of the capital in each of the applicants' cases.

43. When confronted with the signed attorney and client fee agreements, the applicants did not dispute that they signed the agreements. Instead, they relied on legal technical issues, the essence thereof being that I was to disregard the written agreement and find that in fact a contingency fee agreement had been contemplated between the parties. Because of such a finding that I was requested to make, I could then issue a declaratory order that the parties had entered into a contingency fee agreement.
44. In my view, I need not concern myself with the question whether, on a contextual and purposeful interpretation of the agreements, it has the nature of a contingency fee agreement, or not. The reason therefore is that this court cannot issue the declarator as sought, namely that the agreements that were concluded between the parties are contingency fee agreements.
45. This is so, firstly because the objective evidence, as proffered by the respondent, militates against such a finding. Secondly, the declarator sought, if granted, will have the opposite effect, namely it will result in a finding that the agreements, concluded between the parties, will become invalid due to illegality. That is surely not the relief that the applicants had in mind.
46. If indeed contingency fee agreements were contemplated, then it would have been concluded without complying with Sections 2 and 3 of the Contingency Fees Act, No. 66 of 1997, read with *“Rules made by the Legal Practice Council in terms of Section 6 of the Act”*, published under General Notice 525 of 2019 in the Government Gazette 42739 of 4 October 2019, which section and rules require several formalities which, on the common cause facts, had not been complied with. Without complying with the formal requirements, a contingency fee agreement is invalid [see: *Mathimba and Others v Nonxuba and Others 2019 (1) SA 550 (ECG)*].
47. In *Mofokeng v Road Accident Fund and 2 other cases 2012 JDR 1450 (GSJ)* it was stated:

“The clear intention of the legislature is that the contingency fees be carefully controlled. The Act was enacted to legitimise contingency fees agreements between legal practitioners and their clients which would otherwise be prohibited by the common law. Any contingency fees agreement between such parties which is not covered by the Act is therefore illegal and unenforceable.”

48. In *Tjatji and Others v Road Accident Fund 2013 (2) SA 632 (GSJ)* at para 12 the court held:

“The phrase: ‘notwithstanding anything to the contrary in any law or the common law’, which appears in s 2(1), and the long title of the Act, make it plain that the Act was intended to be exhaustive of the rights of legal practitioners to conclude contingency fee agreements with their clients. There is no room whatever for a legal practitioner to enter into a contingency fee agreement with a client outside the parameters of the Act or under the common law ...

and at para 13:

“A contingency fee agreement which does not comply with the provisions of the Act is illegal.”

and at para 15:

Although the Act does not state in express terms that a failure to fulfil the statutory requirements will render the contingency fee agreement null and void, there are clear indications that this was indeed the legislature’s intention. ...”¹

49. It follows that the declaratory relief sought will have the result that there is no agreement between the parties, because to declare it a contingency fee agreement will make it automatically void due to non-compliance with the Act.

¹ see also: *South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development (Road Accident Fund Intervening Party) 2013 (2) SA 583 (GSJ).*

The relief sought, in the way it has been crafted, and with the purpose to declare the agreement to be an enforceable contingency fee agreement, is therefore incompetent. On this basis alone, the application cannot succeed.

50. I am mindful of the fact that payment of the agreed attorney and client fees was by agreement deferred to the finalisation of the case. I could make all sorts of inferences from the second agreement, concluded simultaneously with the main attorney and client fee agreement, namely that the applicants confirm that they did not have the means to pay. The applicants argue that one possible inference to be drawn is that payment would only be forthcoming if the applicants were successful and therefore the nature of the agreement is one of a common law contingency fee agreement. I am not allowed to draw such inferences against the undisputed evidence of the respondent that it only deferred payment and had no intention to forego fees.
51. There is no factual evidence before me as to what would transpire if the applicants were unsuccessful. It constitutes a bit of a lacuna in the evidence on papers before me.
52. In any event, I am not asked to declare the agreement as invalid, premised on it being a common law contingency fee agreement.
53. In respect of the absence of evidence, I am mindful of the recent judgment of the Supreme Court of Appeal of *Mucavele and Another v MEC for Health Mpumalanga Province, Case 889/2022 (2023) ZASCA 129 (11 October 2023)*, where the following was said:

“[15] A distinct feature of this appeal is that, despite its earlier misgivings, the high court ultimately had no difficulty with the fact that the merits had been settled or the quantum agreed upon. In *Fischer and Another v Ramahlele and Others (Fischer)*, this Court cautioned that it was for the parties to ‘define the nature of their dispute and it is for the court to adjudicate upon those issues.’

[16] *Fischer, emphasised that a court may mero motu raise a question of law if it emerges fully from the evidence and is necessary for a decision in the case. The legality of the contingency fee arrangement was not such a question...*

54. In this case, the applicants seek relief that they cannot obtain. They want this court in fact to declare the existing fee agreement to be a contingency fee agreement with the goal that they should pay less in legal fees, premised on the notion that the attorney would then only be entitled to 25% of the capital for his fees. The applicants do not want a declaration of invalidity. That is therefore not an issue for this court to decide upon.
55. In any event, my approach conforms with what the Supreme Court of Appeal confirmed, premised on numerous precedents, namely that where a contingency fee agreement is found to be invalid or illegal, the attorney is only entitled to charge his reasonable attorney and own client fees. This on the objective evidence is, in any event, what happened in this case. The respondent charged its attorney and client fees. In this regard, I refer to *Road Accident Fund v MKM obo KM and Another 2023 (4) SA 516 (SCA)*, at para. 36:

“[36] *It is trite that a contingency fee agreement that is not covered by the Contingency Fees Act, or which does not comply with its requirements, is invalid. Thus, the effect of non-compliance with s 4 of the Contingency Fees Act is that as between the legal practitioner and his or her client, the agreement is unenforceable. Thus, the legal practitioner would not be entitled to charge the client higher fees set out in the contingency fee agreement, but only his or her reasonable attorney and client fees. As explained in Tjatji and Others v Road Accident Fund and Two Similar Cases:*

‘As both the initial and new contingency fee agreements are invalid the common law will apply. Under the common law, the plaintiffs’ attorneys are only entitled to a reasonable fee in

relation to the work performed. Taxation of a bill of costs is the method whereby the reasonableness of a fee is assessed. The plaintiffs' attorneys are therefore only entitled to such fees as are taxed or assessed on an attorney and own client basis."

56. Bearing this in mind, clause 10 of the written agreements that the applicants signed is important. It stipulates that the respondent is entitled to prepare a bill of costs in respect of attorney and own client fees, costs, disbursements and expenses and to have same taxed before a Taxing Master of any competent court, alternatively taxed or assessed on prior notice to the applicants by an assessment committee nominated and appointed by the Law Society with the proviso that the member of the assessment committee must have at least 10 years' experience in third party litigation.
57. The applicants do not complain of the unreasonableness of the fees. Should they however believe that any of the fees were unreasonable, they are surely entitled, premised on that clause, to insist on a taxation or assessment.
58. It follows that I cannot grant an order as requested and the application must fail.

The de bonis propriis costs request:

59. I was requested by the respondent's attorney to grant a costs order against the applicants' attorney *de bonis propriis* on an attorney and client scale. This is premised on the notion that the applicants are vulnerable individuals and have limited self-proclaimed illiteracy. As such, they have been acting on and are totally reliant on the advice of their attorney, so the argument went.
60. It was further argued that the applicants were recklessly advised to seek the relief that cannot be enforced in law or on the facts and it was further also unbecoming that the attorney who assisted the applicants allowed them to make allegations of dishonesty and "a cover-up" against another attorney without foundation.

61. This argument lacks evidence as to what transpired in the applicants' attorney's office and I cannot simply infer that the respondent is correct in this respect.
62. As a general proposition *de bonis propriis* costs orders (and specifically against legal representatives) are only granted in exceptional circumstances. The reason therefore seems to be obvious. Legal practitioners would be loath to assist their clients in litigation if they could face personal costs orders against them if some negligence in the running of the case can be imputed upon the practitioner.
63. In *Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd* 2014 (3) SA 265 (GP) at 289A – D, this court said:

“It is true that legal representatives sometimes make errors of law, omit to comply fully with the rules of court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are dishonesty, obstruction of the interests of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, gross incompetence and lack of care...”

64. I have no doubt that the applicants, as in all applications, acted on the strength of advice given by their legal representatives. In my view, it would be a bad day in the legal history of this country if attorneys, unless they act dishonest, *mala fide* or grossly negligent be personally mulcted with costs because they hold certain views about the litigation embarked upon, which then proves in court to be not quite correct.

65. This is worsened by the fact that courts generally simply have no knowledge about the facts that moved the attorney's client to litigate. There might be numerous "undisclosed" reasons.
66. In any event, and this is also a general occurrence, an attorney may have warned its client against the risks involved in the litigation the client wishes to embark upon, yet the client insists that the attorney carries out her or his mandate. That would fall under the attorney client privilege, and the court will simply not know what transpired in the consultation rooms of the legal team. No evidence in this respect is before this court, and I can surely not make inferences simply because I am adjudicating the case on the merits in favour of the respondent.
67. If one were to accept that legal practitioners are prohibited from embarking upon a meritless case, then in 50% of all cases adjudicated upon, the losing party's attorney must pick up the bill because of *prima facie* wrong advice given to his/her client in conducting a losing case. Such proposition is untenable and would make litigation impossible. It would seriously impede the client's right to access to court to have her/his/its factual or legal dispute adjudicated upon whether it has merit or not. This is so, because most attorneys and advocates would refuse to consider the case, unless they are fully convinced of a successful outcome.
68. If an attorney is somehow negligent, it is for the client to, if a cause of action can be sustained, claim damages from his/her attorney premised on such negligent conduct that may have led to damages (see in this regard: *Mouton v Die Mynwerkersunie 1977 (1) SA 119 (A)*). It is not for the adversary to get costs from the opposing attorneys. The attorney is not the litigant taking the risk of litigation.
69. In the premises, I refuse to grant a *de bonis propriis* costs order.
70. Having regard to all the above, I issue the following order:

70.1. The application is dismissed, with costs.

D VAN DEN BOGERT

Acting Judge

High Court of South Africa

Gauteng Division, Pretoria

Counsel for the Applicants:

R Baloyi

Instructed by:

Molebogeng Maake Attorneys Incorporated

Ref.: LM/S320

Counsel for the Respondent:

JF Grobler SC

Instructed by:

Wehmeyers Attorneys

Ref.: WTN Agrela/SE/WS.0357 and WS.0356