

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 46528/2022

(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED: NO	
<u>05/02/2024</u>	
Date	Signature

In the matter between:

ST. JANES DE CHANTAL HOME
JOSEPHINE SMITH
HANNAH KITELE

First Applicant
Second Applicant
Third Applicant

and

SAVAGE JOOSTE & ADAMS INC
Stephen Christopher Leinberger

First Respondent
Second Respondent*

Tatum-Jean Cooper A.K.A Tatum Odendaal**Third Respondent*****Florette Storm****Fourth Respondent*****Marius Van Staden****Fifth Respondent***

Any legal practitioner instructed and/or acting in the name
of First Respondent (In All Pending Matters Between
Applicants and the relevant parties)

Sixth Respondent*¹**JUDGMENT**

¹ *The inclusion of the 2nd to 6th Respondents in the headnote is for sake of reference and does not mean this Court deems them to have been validly joined as parties. It does however, correctly, denote that this matter will be, at the very least, complicated.

K STRYDOM, AJ

Introduction

In ancient Greece, in Lake Lerna of Argolid had there lived the seven-headed Hydra, a water-snake that ravaged the countryside. No doubt aware of the importance of placating a populace with easy access to fire and pitchforks, the ruler, King Eurystheus, summoned an up-and-coming new hero named Hercules. Eager to add a second win to his repertoire of trials, Hercules aimed his mighty sword and, in one sweeping movement, cut the head off the hydra...

Only for two more to appear in its place....

How does one kill a Hydra?

The relief sought under case number 46528/2022 (“the present matter”)

1. The second and third Applicants, acting in tandem and in person, on behalf of the first (hereafter collectively referred to as “St Janes”) had initially brought this application against only Savage Jooste and Adams, a law firm, (“SJA”). However, in January 2023, their amended notice of motion now included the 2nd to 6th Respondents. BThe second to fifth Respondents are all either attorneys or advocates who have been employed by SJA. As indicated, a finding on the validity of the joinder is outside the scope of the judgment.
2. On the 27th of October 2023, according to the Applicants’ practice note, this Court was confronted with an application described as follows:

“5.1. This is an application seeking to interdict, prohibit and restrain the Respondents from dealing with any aspect of proceedings under case numbers 67234/2011, 15660/2012, 75314/2013, 26433/2014, 20924/2015, 62167/2015 and 51679/2014 of this Honourable Court and 14254/2014 of the Gauteng Local Division, because they are not attorneys of record and therefore cannot purport to be lawfully representing the other parties and/or demanding or requesting the furnishing of security of costs from the Applicants in the matters.

5.2. Findings and declarations of the Respondents’ conduct and/or misconduct in the matters between the Applicants and other parties/ “
3. This description however proved to be as deceptive as the calm surface of Lake Lerna, for, St Janes in fact, under the guise of a new case number wanted this Court to embrace all the heads of the hydra and feed the Respondents to it. As will be seen from the chronology below, this modus operandi by St Janes, in true Greek tragedy form, is not new.

The origin of the Hydra and its various heads

4. The mental arithmetic required to fully contextualise this matter, is in itself of Herculean proportion. Judges are humans, not Greek heroes and it is therefore beyond the scope of this judgment to with surgical precision lay bare each of the heads of the hydra, now so plentiful and intertwined that they form a mass of litigious eyes, teeth and verbiage.
5. In 2011, Claassen J, sitting in chambers in Pritchard street Johannesburg, would have had now idea that the judgment he was penning in case number 04730/2010, was the first cut of the head of the hydra. He granted an application, brought by Jane's Haven Children's Village and Andrew William Simaan, who were represented on a *pro bono* basis by Webber Wentzel, to evict H Kitele (the second applicant *in casu*) and P Kitele, from a property on which they had been operating a children's home. In granting the eviction, Claassen J noted a letter from the *"...Department of Social Development's Community Planning and Development section written to the Operation Manager of the City of Johannesburg concerning a request to issue a certificate of closure of the St Jane's De Chantelle Childcare Centre situated on the aforesaid properties. It states:*
*"Based on the recurrence of illegal placement of children and the fact that the owners want to institute an eviction, we request your unit to withdraw the environmental health certificate and issue a certificate of closure."*²
6. The wounded snake of litigiousness slithered across the murky waters of the Jukskei and found its way to the shores of the Pretoria High Court, where it, in rapid succession, sprouted the following applications:
 - 6.1. In 2011, St Janes brought an urgent application against W Simaan and others to obtain transfer of the property from which they had been evicted, alleging the deed of transfer was fraudulent. (Case Number: 67234/11: urgent application)
 - 6.2. In 2012, St Janes brought an action for damages against W Simaan for defamation. Case number: 15660/12 (action for damages).
 - 6.3. In 2013, St Janes brought an action for compensation for fraudulently sold properties and for the transfer of the properties against W Simaan and the registrar of deeds. (Case Number: 75314/2013: action for transfer of immovable property). They also brought an urgent application, under the same case number, to interdict W Simaan from disposing of any properties registered in his name. (Case Number: 75314/2013: urgent application interdicting disposal of property).

² *Jane's Haven Children's Village and Another v Kitele and Others* (04730/2010) [2010] ZAGPJHC 150 (26 November 2010 para 12

- 6.4. In 2014, St Janes applied to have W Simaan and others declared to be in contempt of Court. (The context is not clear of from the papers) Presumably the order was obtained as an application for rescission of the order granted by Jansen J on the 4th of July 2014 was brought by W Simaan and others under the same case number. (Case Number: 26433/14: urgent application for contempt of Court). The founding affidavit in the rescission application was deposed to by Ms T Phala, an attorney employed by Webber Wentzel.
- 6.5. In 2014 they brought an action for damages arising from the eviction against the Sherriff, Webber Wentzel and certain employees of that law firm. (Case Number: 2912/14: action for damages arising from eviction by sheriff)
- 6.6. St Janes then brought an application to interdict the firm, Webber Wentzel and Ms Phala from acting on behalf of W Simaan, alleging that their representation was unlawful as it does not comply with Rule 40. Case number: 51679/14 (application to stop appointed attorneys from acting)
- 6.7. The original lake of litigation, the Johannesburg High Court, made a brief appearance again in 2014, when St Janes also brought an application for a permanent stay of execution and rescission of court orders made by Hellens AJ, Satchwell J and Claassens J, as well as an order for the eviction of Simaan from the properties. The content of the orders of Hellens AJ and Satchwell J, is not known to this court. (Case no 14254/2014: stay and rescission application)
- 6.8. Returning to the pools of Pretoria, St Janes turned their ire against the legal representatives and in 2015 brought an action for damages arising from eviction and incarceration for contempt against Ms Phala and Adv Pullinger (who presumably was briefed as counsel in these matters.) (Case Number: 20924/15: action for damages arising from eviction and incarceration for contempt). They also, on an *ex parte* basis, brought an application to interdict auctioneers from selling the properties. (Case number 62767/15: *ex parte* auction interdict application).
- 6.9. The peace of 2016 was, invariably, the quiet before the storm. In March 2017, St Janes brought an application in terms of Rules 6(5)(g) and R35(13) seeking leave to subpoena any person and to invoke the provisions of Rule 35. The application was brought against W Simaan and 10 others, who included legal representatives, the sheriff, the Law Society, the registrar of deeds and the Johannesburg Municipality. (Case number 9211/2017)
- 6.10. Two days after St Janes application was served,, W Simaan, Jane's Haven Children's Home NPC, Webber Wentzel Attorneys, Ms Phala, Adv Pullinger, Ms Van Ingen and Ms Van Rensburg, brought an application to have St Janes (being Mr and Mrs Kitele, Ms Smith and St Janes de Chantal) declared as vexatious litigants. The also sought security for costs for

all the applications listed (save for case no 9211/2017) from St Janes. (Case number 92105/2017)

Attempts to stop the Hydra from sprouting more heads

7. The entirety of the aforementioned litigation between the various parties was sent by Deputy Judge President (DJP) Ledwaba to be case managed before Judge Kubushi. The DJP's involvement in the matters is clear from the letters written between the parties up until the 2nd of June 2017, when Savage Jooste & Adams informed St Janes that their application and set down in terms of 9211/2017 was defective and that same would be brought to the attention of DJP Ledwaba.
8. At the hearing of 9211/2017, on the 6th of June 2017 Khumalo J ordered that the matter be referred to the DJP Ledwaba and Kubushi J *"for finalisation."* St Janes alleges that the referral of 9211/2017 was obtained fraudulently as SJA had informed Khumalo J that it was subject to case management, when they had *".... never brought the applications under case number 9211/2017 or 19506/2017 to the attention of the Hon. DJP"*³
9. A case management meeting was held with Kubushi J on the 8th of June 2017, with SJA in attendance and on the 23rd of June 2017, Judge Kubushi issued a directive, stating that:

'no old or new matters involving the relevant parties may be advanced or set down except for those, that have already been set-down for hearing pending the case management process introduced by Judge Kubushi.'
10. On the 10th of October 2017, in response to numerous letters and affidavits, Judge Kubushi informed the parties, in respect of the *'Case management of various cases'*, the decision that the cases will be case managed has already been taken by DJP Ledwaba. She notes that her directives still stand and urged the parties to refrain from filing any further pleadings in the cases subject to case management.
11. St Janes' allegations that 9211/2017 was not subject to case management due to SJA's alleged misrepresentation in Court (discussed above), were dealt a definitive blow on the 24th of June 2019, when Kubushi J issued a further directive, which stated:

"8. Save for the above, the directives of the case manager in the letters dated 23 June 2017 and 22 September 2017 still stand and also apply to the matter under case number 9211/2017."

[Underlining my own]

³ St Janes founding affidavit under case 2022-046528 Case Lines: page 03-141

12. In clear contravention of Kubushi J's directives, St Janes:

12.1. Set down the action for transfer of the properties under case nr 75314/2013 for the 31st of October 2019. On that day Collis J ordered that the matter is removed from the roll; for case management.

12.2. Set down the contempt of court application against W Simaan under case number 26433/2014 for the 11th of November 2019. The matter was also removed from the roll in the basis that it is subject to case management.⁴

13. Judge Kubushi, on the 5th of March 2020 also made an order under case number 19506/2017, (in what appears to be an interlocutory application under that case number) ("Kubushi J's 2020 order"). For present purposes it is relevant to note that:

13.1. She ruled that SJA are duly authorised to act on behalf of the Applicants in case number 19506/2017,

13.2. St Janes was ordered to under oath explain why their Rule 30 applications launched in terms of case numbers 75314/2013 and 26433/2014 were not contraventions of her directives,

13.3. St Janes was given leave to follow the relevant Rule 7 procedure insofar as the authority to act on behalf of the fourth Respondent in case 19506/2017,

13.4. *"In the interest of the administration of justice, all matters relevant to the main application (and identified in the notice of motion of the main application under case number 19506/2017) are to be enrolled for hearing on the same day."*

14. I pause this chronology here for a moment to deal with St Janes' most recent line of attack on the directives and the order of Kubushi J.

14.1. In the present matter, they have filed a supplementary affidavit alleging that SJA had *"....fraudulently prepared and/or caused to be prepared a purported Court order/directive dated 05 March 2020 and purported it to be an order/directive by the Hon. Madam Kubushi Jalternatively obtained the purported order/directive through misrepresentations and fraudulently, in that; the under case no.19506/2017 was under Judicial Case Management before Honourable Madam Kubushi J and therefore are in contempt of Court committed an offence."*⁵ A similar allegation is made regarding the directives of 23 June 2017, 22 September 2017 and 24 June 2019.

⁴ St Janes supplementary affidavit in present matter para 7.7 Case Lines page 01-382

⁵ St Janes supplementary affidavit in present matter para 7.2

14.2. The implication, that it was SJA, and not Kubushi J, who had issued the directives and the court order, is rejected out of hand with the contempt it deserves. The alternative, that SJA add misrepresented to Kubushi J in court that case no.19506/2017 was not being case managed by Kubushi J, is absurd. The honorable Judge would be the one who was fully aware of which cases were and were not for before her for case management. The fact that 19506/2017 was subject to case management is not just evidenced by the content of the 2020 order but by the fact that from the very first case management meeting, SJA was involved (SJA having only become involved in the litigation by virtue of their instruction in terms of 19506/2017). Whether or not they had prior to the first case management meeting informed DJP the existence of the matter is irrelevant. As from the 8th of June 2017, 19506/2017 formed part of the bundle of cases to be managed before Kubushi J.

15. In spite of the case management directives and the 2020 order stating pertinently that “*..all matters relevant to the main application (and identified in the notice of motion of the main application under case number 19506/2017) are to be enrolled for hearing on the same day*” St Janes launched at least two interlocutory applications under case number 19506/2017.

15.1. They first launched an “interlocutory” application in terms of Rule 30, Rule 42 and Rule 47(3) of the Uniform Rules in February 2020. The application was set down for 3 May 2021 and 7 November 2022, but was removed from the roll on both occasions. However, on 6 December 2022, St Janes launched a further interlocutory application seeking default judgment premised on this application. This application would eventually come before De Vos AJ. In her judgment she sets out the chronology pertaining to this application (under 19506/20217), which I repeat verbatim and incorporate into this chronology:

“In a third breach, on 6 December 2022, the applicants launched a further interlocutory application seeking default judgment premised on the present application (“the default judgment application”). On 16 January 2023, the applicants set down the default judgment application on the opposed motion roll of 20 February 2023.

On 30 January 2023, the Deputy Judge President advised that the matter was being case-managed by Judge Kubushi and she could be contacted. At this stage, Justice Kubushi J had ordered, directed and communicated clearly to the applicants to desist in their proliferation of matters, and the Deputy Judge President had communicated the position to the applicants.

This did not halt the applicants. The applicants persisted with the default application. On 20 February 2023 served before Justice Janse van Nieuwenhuizen. Judge Janse van Nieuwenhuizen granted an order removing the matter from the roll and ordered the applicants

to comply with Kubushi J's directives.

On 23 March 2023, Judge Kubushi advised that all matters should be referred back to the Deputy Judge President to be allocated to another Judge for case management.

Despite this communication, on 28 March 2023, the applicants set down the present application for hearing on 2 May 2023. On 12 April 2023, the respondents filed their Rule 30A application to the set down of the present application. On 17 April 2023, the parties received correspondence from the offices of the Deputy Judge President advising that the matter would be discussed with Judge President Mlambo and dates for a meeting would be communicated thereafter.⁶

15.2. Their second interlocutory application, launched on 6 July 2020, was the first glimpse of the *fraus legus* modus operandi they would employ to side-step Kubushi J's orders and directives. This "interlocutory" was set down on the opposed roll of the 31st of May 2021. In terms thereof they, astonishingly, sought:

- 15.2.1. Security for costs from the applicants who launched the application for security for costs from St Janes and declaration of their vexatiousness, under case number 19506/2017
- 15.2.2. Payment of unpaid taxed costs under case number 75314/2013, or the finalisation of the Respondents' application to set aside the Masters allocatur under case number 75314/2013.
- 15.2.3. Finalisation of the Respondents' application for rescission of contempt of Court order granted under case number 26433/2014, or purging of the contempt as was ordered by Court.
- 15.2.4. Finalisation of the St Jane's application in terms of Rule 35(13) and Rule 6(5)(g) brought under case number 9211/2017.
- 15.2.5. De Vos AJ's judgment also brought to my attention that, as a result of this application "[20].....On 24 and 25 February 2021, Kubushi J reiterated her directives in email correspondence.
- 15.2.6. It appears as if this interlocutory was removed from the roll on the 31st of May 2021.

16. The present application, launched in 2022, was set down before Barrit AJ on the 17th of April 2023. SJA filed a notice of intention to oppose and written submissions containing similar objections to those presented now: the matter should not have been enrolled as it is subject to case management. Judge Barrit agreed and removed the matter from the roll.

⁶ St. Janes De Chantal Home and Others v Simaan and Others (19506/2017) [2023] ZAGPPHC 2021 (5 December 2023) paras 19-22

17. Subsequent to the removal of this matter from the roll, during May 2023, the parties met with DJP Ledwaba, who indicated that he would address correspondence to the parties regarding the allocation of a new case manager, given Judge Kubushi's unavailability to act as a case manager.
18. On the 17th of August 2023 De Vos AJ heard the first interlocutory under 19506/2017 and removed the matter from the roll and granted an order that the Deputy Judge President's office appoint a new case manager. (St Janes subsequently sought leave to appeal against the removal of the matter from the roll and the referral of the matter for the appointment of a case manager, which was eventually dismissed).⁷
19. Astonishingly, less than a week later, whilst (again) arguing against SJA's objection, that the application brought by St Janes under case number 018061/2023⁸ is also subject to case management, before Judge Lenyai, on 23 August 2023, St Janes made the following averments relating to the proceedings before De Vos AJ:

*"And last week again we appeared before Honourable Judge de Vos and the same contention was given that the matters must not go on because there is case management. The matter had to be stood down and Honourable Judge went to Honourable DJP and Honourable DJP the matter has to be heard. and we are awaiting judgment..... So this matter is not under case management. It is a new case, it is under a new case number"*⁹

*"MS SMITH: Honourable Judge that is why we are saying, last week we were in Court. So she [De Vos AJ] did go to DJP and she said to us when she came back the matter is stood down. And she said to us, and she said to the Counsel for the Respondent stop waiting for the letter it is not coming. That is what the DJP told Honourable Judge de Vos to say, case management has obviously not worked in our case. And the way forward is for the matters that are ready for hearing they must be heard and that is why she was then given the instructions that that matter has to be heard, has to be heard. And that is why that matter was heard."*¹⁰

⁷ *St. Janes De Chantal Home and Others v Simaan and Others* (19506/2017) [2023] ZAGPPHC 2021 (5 December 2023) para 1: "On 17 August 2023, I removed a matter from the roll and granted an order that the Deputy Judge President's office appoint a case manager"

The leave to appeal was set down for 1 December 2023 - after hearing of this matter – and judgment was handed down dismissing the leave to appeal on the 23rd of December 2023

⁸ At some point in 2023, St Janes also issued and set down a new application under case number 018061/2023. The nature of that application is not evident from the papers, however, per the transcript of proceedings before Lenyai J (below), St Janes brought an application for the issuing of warrants of arrest relating to case numbers 2633/2014 and 67234/2014.

⁹ Transcript of proceedings 23 August 2023 under case nr 018061/2023 Case Lines 04-93

¹⁰ Transcript of proceedings 23 August 2023 under case nr 018061/2023 Case Lines 04-107

20. In the present proceedings, St Janes had made similar averments regarding what had transpired before De Vos AJ. Fortunately, De Vos AJ's leave to appeal judgment came to my attention whilst preparing this judgment. It clearly indicates that she did not "hear" the application, nor reserve judgment on the issue of case management, but that she had, in fact, on the 17th of August 2023 already affirmed that the matter (as with all the related matters) is subject to case management.
21. It was just as fortuitous that Lenyai J, wisely, decided to confer with the Deputy Judge President, as her order made subsequently, succinctly described the correct position pertaining to all the matters referred to in the present judgment:

*"COURT: Calling matter number 33, Case 018061. Sorry for the time it took. DJP was still in Court. You may have a seat. I have discussed the matter with him and DJP says to me all these matters must be removed from the roll and he has appointed a judge who will attend to all these matters. And the judge who has been appointed will contact you. soon and this matter must also form part of the other matters that are going to be case managed. So this matter therefore is going to be removed. Is going to be taken to case management and the one judge who has been appointed but it is not my privy to tell you who it is. The office of the DJP will advise you shortly. And all those other matters including this one must be part of that case management. So I am removing this matter from the roll and costs will be reserved."*¹¹

Present day: Case no 46528/2022 heard on 27 October 2023

22. In complete disregard of the removal of the present matter from the roll by Barrit AJ, the subsequent meeting with DJP Ledwaba, the order of De Vos AJ and the order of Lenyai J, St Janes deemed it fit to re-enrol the present matter on the unopposed roll of the 27th of October 2023.
23. Despite my direct query, St Janes could not, on the papers, indicate what had changed since this matter had previously been removed by Barrit AJ in April of 2023.
- 23.1. In argument St Janes submitted that they, on the 12th of October 2023, had applied for leave to appeal against De Vos AJ's order of removal. Bearing in mind that I had not had sight of De Vos AJ's judgment, I was led to believe that that appeal would effectively upset the entire apple cart as far as case management is concerned. I was led to understand that St Janes believed that it would have the effect of rescinding Kubushi J's 2020 order and/or as the initial order in terms of which all the matters were referred for case management.

¹¹ Transcript of proceedings 23 August 2023 under case nr 018061/2023 Case Lines 04-109

- 23.2. In Court, it was pointed out to St Janes, in my opinion, firstly, that a removal is not generally appealable and secondly, that if the issue is subject to appeal, the present application can in any event not be decided. They submitted that, if so, I should remove the matter as premature and make no order as to costs.
- 23.3. In any event, the filed pleadings in this matter showed that there is a directive that prohibits this matter from being instituted in this fashion. If the argument was that the working of that directive and/or order has been suspended given appeal proceedings, it was incumbent on St Janes to present and substantiate such an argument.
24. St Janes argued that, as SJA had not pursued the Rule 30 notice filed in objection to the supplementary affidavit file on the 28th of April 2023 (in which they raised their objection to the enrolment given the case management), the enrolment of the matter, despite the directives of Kubushi J, was accepted by SJA as regular. This argument cannot stand. Once the Court has made a directive and a party acts contra that directive, it is irregular *ab initio*. As the irregularity is *vis-à-vis* the Court and not between the parties. It is not for one party to condone an irregularity committed by another party.
25. St Janes then submitted that this application is not subject to case management as it is a “new case”: In their practice note they stated that: *“9.23. This application under the above case number is a substantive application, and is not being case managed by the Hon. Judge Kubushi. The Respondents make this allegation in order to circumvent delivering an answering affidavit and further the hearing of this matter.”*
- 25.1. They made similar arguments before Lenyai J. In dismissing this argument, I can do no better than to repeat Lenyai J’s astute findings (per the transcript):
- MS SMITH:So this matter is not under case management. It is a new case, it is under a new case number....*¹²
- COURT: Let me stop you, because when I was reading the document and I did see your practice note. From my reading of the documents this case is under case management and there is an order to that effect. You might have brought this application under a new case but the main supplication is subject to case management.”* [Underlining my own]
26. When they were confronted with the fact Kubushi J had in 2020 ordered that SJA may act in terms of 15906/2017 (which in turn requests security for costs in the matters that form the subject matter of the current application), St Janes submitted that they had not asked for an interdict prohibiting SJA from acting in terms of case number 15906/2017. In argument they also

¹² Transcript page 4 Case lines 04-93

pertinently admitted that SJA were, per Kubushi J's order, the attorneys of record for the applicants in case no 15906/2017.

- 26.1. In full consideration of the fact that they were lay persons and with a view to giving them a chance to fully ventilate their case, considerable time was spent in discussing the implications of granting an interdict under the various case numbers vis- a-vis the order already granted in terms of 15906/2017. In short, in Court, I indicated that to interdict SJA from dealing with any aspects of the cases listed in this application, would effectively mean interdicting them from even acting on behalf of the applicants under 15906/2017. Protracted argument followed ranging from issues such as the constitutionality of depriving a juristic person of legal representation (Webber Wentzel) to whether or not the natural persons listed in that application were still represented by Webber Wentzel.
- 26.2. The merits of their submissions in this regard, however, need not be even considered further, considering the fact that they were blatantly untrue. Whilst making the submission, St Janes was fully aware that they had amended their notice of motion, as far back as 10 January 2023, to include, inter alia, the following prayer:

“3. Finding and declaring that the respondents and/or their agents, not being attorneys of record or not entitled to:

3.1 launch the applications under case no. 19506/2017 in terms of Rule 47(3) and/or request from the applicants the furnishing of security for costs in respect of any of the matters stated in paragraph one above.”

27. Further perusal of the amended notice of motion revealed a repetition of the *fraus legis modus operandi* they had sought to employ in June 2020 when they launched the second interlocutory application under 19506/2017: if the heads of the hydra are muzzled by directives and orders that pertinently reference the heads' case numbers, obtain the same relief by simply hiding the heads under a new case number. The amended notice reveals that St Janes, apart from what they indicated in their practice note, also sought orders to the following effect:

- 27.1. Under 9211/2017: to prohibit SJA from defending St Janes application for costs against them.
- 27.2. A finding that the 2nd to 5th Respondent had fraudulently drafted/ obtained the 2020 court order of Kubishi J – in other words that that order should be rescinded.
- 27.3. Similarly, a finding that the 2017 and 2019 directives of Kubushi J were fraudulently obtained and, as a result, none of the matters were subject to case management.

- 27.4. Findings that where any of the applications were removed from the roll for case management, that it was due to the misdirection of a combination of the 2nd to 5th Respondents (depending on who was the attorney or counsel on the day).
- 27.5. Findings that the Respondents have hindered Janes' claims for the transfer of the properties to St Janes, damages due to defamation and eviction and payment of taxed costs.
- 27.6. Several findings directed as proving that the Respondents have committed criminal or other acts of misconduct and therefore referring them to the NPA or the Law Society for prosecution
- 27.7. Findings that the Respondents have hindered Janes' claims for the transfer of the properties to St Janes, damages due to defamation and eviction and payment of taxed costs.
- 28. I do not intend to regurgitate the entire notice of motion, however, a quick comparative reference to the chronology of applications brought by St Janes (above) makes it crystal clear, that they, under the present case number, sought orders relating to all the application they have brought.
- 29. The fact that they had tried the same tactic before and were as a result, in 2021, admonished by Kubushi J to abide by her directives, makes the disparity between their submission in court and per the practice notes versus their true intention per the amended notice of motion, even more egregious.

How to kill a Hydra

- 30. The purpose of regaling any such lengthy odyssey is to, at the end, reveal the lesson learnt through these trials and tribulations. In the story of Hercules and the Hydra, the lesson was to not just cut off each head, but to simultaneously and thoroughly cauterise it with a burning sword.
- 31. The referral of the matters to case management in 2017 was meant to kill the Hydra, but it seems as if Kubushi J's directives and 2020 order, as well as the subsequent plethora of orders and pronouncements by this Court, failed to simultaneously cut and cauterise. I will attempt to collate the efforts of this Court thus far, in order to clarify simultaneously all the cuts and cauterisations of my brothers and sisters over the past 6 years.
- 32. On one aspect, however, I will not follow in their venerable footsteps, namely that of costs. To date, each time one of these applications has been brought before Court (and invariably removed for case management), the order has been that costs were reserved. For purposes of the current head sprouted, a much warmer sword is needed.

33. At this juncture, I have to point out that the fact that before Kubushi J St Janes submitted that De Vos AJ had heard their application and reserved judgment, whilst before me they admitted that it was removed on the day, is, to say the least, disturbing. However, regardless of my disdain of the approach before Lenyai J, my finding on costs is based on the conduct of St Janes in the present matter.
34. Before filing their practice note, they were aware of, inter alia, the following:
- 34.1. All of the orders or directives from Kubushi J (3 directives, an email and a court order) that all related matters should be case managed or heard together. She had pertinently also referenced case numbers 9211/2017 and 19506/2017 as being subject to her directives.
 - 34.2. Barrit AJ had removed the present matter from the roll in April 2023, for case management;
 - 34.3. Lenyai J had warned them that the use of a new case number does not remove a matter between the relevant parties from the case management directives;
 - 34.4. They had met with DJP Ledwaba in May 2023 (shortly after Barrit AJ's removal of the present matter) where he confirmed that a new case manager would be appointed;
 - 34.5. Lenyai J had in no uncertain terms indicated that DJP Ledwaba meant that all related matters between the parties should be removed from the roll for case management.
35. Despite all of this, a mere two months after Lenyai J had set the record straight, they proceeded to argue this matter before me. Their submissions regarding 19506/2017 and the effect of the leave to appeal were pertinently false. Their application was obviously an attempt to argue matters that this Court had on all the previous occasions already ruled on. The way their practice note was and written arguments were presented was a deliberate in underplaying the true nature of the application.
36. The conduct of St Janes in wasting, during a busy unopposed roll, the Court (and other litigants') time with the submission that they seek no order in terms of 19506/2017, well knowing that it is untrue, is reprehensible.
37. My view, regarding the deliberateness of St Janes, is strengthened when one notes the following procedural chronology contained in their practice note drafted for purposes of the present hearing and uploaded on the 26th of October 2023:
- "7.1 The Applicants delivered the application on the First Respondent 11" November 2022.*
-
- 7.12. On 13th January 2023 the 1" Respondent delivered a Notice in terms of Rule 30 8 30A against the Amended notice of motion delivered by the Applicant.*

7.13 The Applicants delivered a supplementary affidavit on 28th April 2023 to the Respondents.

7.14. The Respondents then delivered a further notice in terms of Rule 30 8 30A on 15th May 2023.

7.15. Thereafter the Applicants responded to their Notice in terms of Rule 30 8 30A on the 29th of May 2023

7.16. The Applicants then delivered a Notice of set down to the Respondents on 13th of October 2023.”

37.1. Notably, no reference to the alleged lodgement of the application for leave to appeal, the proceedings before Barit AJ in April 2023, the case management meeting with DJP Ledwaba in May 2023, the order of De Vos J or the pronouncements and order by Lenyai J in August 2023 is made.

37.2. St Janes’ failure to even refer to these events is even more incriminating when one considers that, a day before St Janes had even drafted their practice note, on the 25th of October 2023, SJA had already uploaded their practice note with their written submission pertinently raising these events and even attaching a transcript of the hearing before Lenyai J.

37.3. Even more blatantly is the obvious self-serving selective editing of their own documents: The April 2023 practice note and written submissions contain an identical procedural chronology to those uploaded on 27 October 2023. Both reflect the exact same wording and numbering from paragraphs 7.1 to 7.12 (as set out above). However, in April 2023, paragraph 7.13 had stated that: *“7.13 The Applicant delivered a notice of set down on the 29th of March 2023.”* (This clearly being a reference to 17 April 2023 set down before Barritt AJ). In October 2026, the chronology jumps from the reference in paragraph 7.12 to the Rule 30A notice of January 2023 to the new paragraph 7.13 which references the April 2023 supplementary affidavit. Whilst everything from the previous procedural chronology was “copied and pasted”, only that paragraph was deleted and not included when the chronology was updated. The only inference is that this was done purposefully to omit any reference to the proceedings before Barit AJ.

38. I have, in paragraph 14, supra, indicated that St Janes’ impugment of the legitimacy of a court order/ directive granted by a Judge is absurd. They ask this Court to find that SJA had drafted the order/directive and Kubushi J had merely signed it or to find that when she made the order in 19506/2017, Kubushi J had no idea which matters were being case managed by her. Regardless of which interpretation is followed, the gist of the submissions (and prayers sought in the amended notice of motion) is deplorable, disrespectful and distasteful.

39. In deciding this matter, I was at all times appreciative of the fact that the second and third applicants are, technically, lay persons. I emphasize the use of the word “technically” in view of

the fact that, between 2011 and 2017, they had collectively acted as attorney (in drafting pleadings) and/or counsel (in arguing the matters) in no less than 11 applications in the High Court. To put this into perspective, counsel for the first Respondent *in casu* was admitted as an advocate in 2018.¹³ Since then, from a cursory glance of the papers, they have been acting in those capacities in, at least, four other applications, including the present one (which has now been before Court on two occasions). The pleadings they have drafted (that I have had sight of) are replete with references to Rules, relevant caselaw and updated practice directives of this Court. The arguments they presented before this Court were likewise legally astute and technical of nature. By no stretch of imagination can it be found that they are lay persons as usually understood by this Court.

40. In fact, it is probably as a result of them appearing ‘in person,’ that they have not felt true sting of litigating on such a herculean scale in the High Court...

Conclusion

41. I have already indicated that this matter should not have been enrolled as it is subject to case management per the directives of Kubushi J, as clarified by DJP Ledwaba and ordered in the *ex tempore* judgment of Lenyai J.

42. To avoid any further confusion, I will for the sake of convenience include, by way of declarator the present position regarding matters subject to case management between the parties.

43. Despite the matter being set down on the unopposed roll, it was clearly opposed. Savage Jooste and Adams, by virtue of Kubushi’s directive could not file an answering affidavit (a further pleading) for fear of contravening same. They however prepared written arguments and obtained a transcript. Had they not done so, given St Janes’ redacted sequence of events contained in their submissions, this Court would not have been aware of Barrit AJ’s order, the meeting with DJP Ledwaba or the judgment by Lenyai J.

44. In the end, the present application constituted an abuse of process. *In Beinash v Wiley* 1997 (3) S A 721 (SCA) it was held that:

“What does constitute an abuse of the process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of ‘abuse of process’. It can be said in general terms, however, that an abuse of

¹³ In stating this, I by no means whatsoever intend to imply that the capabilities of the counsel are “junior” – quite to the contrary. I also trust that she will forgive my abuse of the Pretoria Society of Advocate’s seniority register in illustrating my point.

process takes place where the procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective”.

45. When having regard to just this present application, the applicants abused the fact that a matter that has been removed from the roll may be reenrolled. Although Barritt AJ in April 2023 simply ordered that the matter be removed from the roll, the applicants were well aware before argument in this Court that the subsequent meeting held in May 2023 with DJP Ledwaba necessarily referenced this application as one of those subject to case management. At least by August 2023, following Lenyai J’s judgment, they were aware that DJP Ledwaba confirmed that all matters concerning the parties (including this one) are subject to case management and should not be enrolled.
46. They were duly informed that the mere fact that an application is brought under a new case number, does not exempt it from case management as per the directives. Regardless of this finding, they persisted before this court with not only a similar argument but one which was based on, now proven falsehoods.
47. Even their amended notice of motion is an attempt to abuse the proceedings before this court, a court of first instance, by, under guise of the present case number, effectively applying for the setting aside of the directives and orders made by Kubushi J regarding cases 9211/2017 and 19506/2017
48. In awarding Savage Jooste & Adams their costs on an attorney-client scale, I intend to follow the rationale of Tindall JA in *Nel v Waterberg Landbouwers v Ko-operatiewe Vereeniging 1946 AD 597*:

‘[t]he true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special consideration arising either from the circumstances which give rise to the action or from the conduct of the losing party, the court in a particular case considers it just, by means of such an order, to ensure more effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation.’

ORDER

49. I accordingly order as follows:

1. It is declared that the following matters, and any interlocutory applications initiated in terms of such matters, per the referenced case number, are subject to case management: 67234/2011,

15660/2012, 75314/2013, 26433/2014, 2912/14, 51679/14, 20924/2015, 62167/2015, 9211/2017, 19506/2017, 46528/2022 and 018061/2023.

2. Any matters not listed in [1] that were referenced in this judgment, or any others matters instituted between any of the parties cited in any of the case numbers as a result of any issue relating to any of the matters, listed in [1], are also declared to be subject to case management.

3. None of the parties cited in the matters referred to in [1] and [2] may institute, proceed with or set down any proceedings, regardless of case number, against other parties cited in any of the matters referred to in [1] and [2] where the subject matter of the application bears any resemblance to or results from any of the subject matters of any of the cases as per [1] and [2], unless:

3.1 so authorised by the duly appointed case management Judge, or, if no Judge has yet been appointed to case manage the matters, so authorised by the Deputy Judge President, the Honourable Ledwaba J, or

3.2 the proceedings instituted relate to the recovery of the cost award made in terms of [5] below.

4. The present application, under case no 46528/2022, is removed from the roll and referred for case management.

5. The second and third applicants are ordered to pay the first Respondent's costs on an attorney-client scale, which costs shall include, but not be limited to, the costs of counsel appearing on an opposed motion basis and the costs of obtaining the transcript of proceedings before Lenyai AJ under case no 18061/2023 on the 16th of August 2023.

6. The first Respondent is ordered to, within 15 days of this order, provide every registrar of both the Johannesburg and the Pretoria courts of the High Court of South Africa, Gauteng division, who is responsible for enrolment, set downs or issuing of applications and actions, with a copy of this order, a list of the case numbers referred to and a collated list of all parties cited in those cases.


K STRYDOM
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA

Judgement delivered: 27 October 2023

Appearances: 05 February 2024

For the Plaintiff: In person

For the Defendant: N Mashall