



FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Reportable:
NO
Of Interest to other
Judges: NO
Circulate to
Magistrates: NO

Case No: 5220/2022

In the matter between: -

PETRUS JOHANNES JOUBERT

Applicant

and

THE SOUTH AFRICAN LEGAL PRATICE COUNCIL

Respondent

In re: the matter between:

THE SOUTH AFRICAN LEGAL PRATICE COUNCIL

Applicant

and

PETRUS JOHANNES JOUBERT

First Respondent

KRAMER WEIHMANN INCORPORATED

Second Respondent

JOHANNES ANDREAS KRAMER

Third Respondent

JACOB LODEWYK WEIHMANN

Fourth Respondent

JAQCUES NORTJE

Fifth Respondent

CINDY LEE DICKENS

Sixth Respondent

ANDRIE LOUIS VISSER

Seventh Respondent

DANIEL MULLER

Eighth Respondent

CORAM: BOONZAAIER AJ

JUDGMENT BY: BOONZAAIER, AJ

HEARD ON: 16 FEBRUARY 2023

DELIVERED ON: 16 MARCH 2023

INTRODUCTION:

- [1] The Applicant in the interlocutory applications is the First Respondent in the main application. The Respondent, in these applications is the Applicant in the main application. For ease of reference, I refer further to the Applicant *in casu* as the First Respondent and the Respondent as the Applicant.
- [2] Applicant in the main application is seeking an order to suspend or to strike the First Respondent from the roll of Legal Practitioners in terms of the Legal Practice Act, No. 28 of 2014 ("the LPC Act").
- [3] The First Respondent is approaching this court-
- A. in terms of **Uniform Rule R30 A** for the following interlocutory orders:
- (i) That the Applicant be compelled to comply with the First Respondent's notice in terms of **Uniform Rule 7** which was served on **16 November 2022**;
 - (ii) Leave be granted to the First Respondent, should the Applicant fail to comply with the order in terms of prayer 1, to approach the Court on the same papers, amplified where necessary for an order in terms whereof Applicant's main application be struck off the roll.
- B. in terms of **Uniform Rule R30(1)** for the following interlocutory orders:

- (i) to have the Applicant's application stayed pending compliance, alternatively set aside due to the following irregularities:
 - (a) On **16 November 2022** the First Respondent delivered his notice in terms of **Uniform Rule R7** – which challenged the authority of Martus de Wet (“de Wet”)- the deponent to the Applicant’s founding affidavit and Attorneys’ Amade & Company (“Amade”) as follows:
 - (b) The Applicant failed to comply with the provisions of **Uniform Rule 7** within the prescribed time or at all. More specifically in that the Applicant failed to satisfy the court that the deponent to the Applicant’s founding affidavit, as well as the Applicant’s appointed attorney has the necessary authority to represent and act on behalf of the Applicant in the above application, and seeking the relief that is sought therein on behalf of the Applicant;
 - (c) The provisions of **Rule 7** provide that where a person’s authority is disputed, such person may no longer act unless he satisfies the Court that he is indeed so authorises to act.
 - (d) On **28 November 2022**, subsequent the filing of the **Rule 7** notice, the Applicant served and filed a notice of set down, purporting to set the matter down for **16 February 2023**.
 - (e) In the premises, the Applicant’s notice of set down constitutes an irregular step as contemplated in **Rule 30**.

THE FACTUAL BACKGROUND

- [4] The Applicant issued it’s main, application on **20 October 2022** against the First Respondent wherein the Applicant seeks *inter alia* that the First Respondent be suspended from the practice of legal practitioners

alternatively, that the First Respondent, be struck off the roll of legal practitioners.

- [5] It is common cause that on **26 October 2022** the First Respondent delivered a notice of appointment as attorney of record and a notice in terms of **Rule 30** relating to the time period afforded to the First Respondent to deliver a notice of intention to oppose as contained in the Applicant's notice of motion.
- [6] It is also undisputed that The First Respondent's **Rule 7** notice was served on Applicant on **16 November 2022** and Applicant required to establish their authority to the satisfaction of the court by **30 November 2022**.

The Applicants case:

- [7] de Wet is the Chairperson of the Free State provincial constituent ("PC") of the South African Legal Practice Council ("LPC "). He was the deponent to the founding affidavit in the main proceedings and has the necessary authority to act on behalf of the LPC. Amade was appointed in terms of a resolution taken by the PC of the LPC.
- [8] The facts contained in the opposing affidavit falls within de Wet's knowledge and are to his best knowledge true and correct.
- [9] The **Rule 30(1)** should fail for the following reasons:
 - (i) The application of First Respondent was not preceded by a mandatory notice envisaged in **Rule 30(2)(b)**, notifying the Applicant that the application constitutes an irregular step and affording the Applicant an opportunity to correct it.
 - (a) **Rule 30(2) (b)** affords the Applicant the opportunity within 10 days to remove the cause of compliant.

(b) Rather, on **2 December 2022** the First Respondent elected to give the Applicant a notice wherein he complained that the notice of set down served on him by the Applicant constitutes an irregular step;

(c) The First Respondent does not seek to have the said notice of set down set aside as an irregular step but instead apply to have the entire application set aside.

(ii) neither the Applicant's main application nor its notice of set down dated **28 November 2022** constitutes an irregular step;

Firstly:

(a) No valid and timeous challenge to de Wet and Amede's authority has being filed by first Respondent;

(b) **Rule 7** Provides as follows:

"Power of attorney subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application." (own emphasis)

(c) The First Respondent was served with the main application on **20 October 2022**. His attorneys of record filed their notice of appointment on **26 October 2022**, hence became aware that Amade was acting in this matter on 20 October 2022. No dispute to authority was filed.

(d) First Respondent's notice was served on Applicant on **16 November 2022**, which was outside the 10 -day prescribed period.

(e) The 10-day period time to object was running from **20 October 2022** in terms of the Rules.

- (f) On **18 November 2022** the First Respondent was made aware by Amade that the **Rule 7** was out of time. No application for condonation was applied for since then. Only three days before the hearing of this application on **16 February 2022** was the First Respondent's application for condonation filed.
- (g) therefore, there is no procedural impediment to the setting down of the main application.
- (iii) The First Respondent is in no way prejudice by the LPC's application itself nor by the notice of set down.
- (a) No prejudice has been caused to the First Respondent by either the main application or the notice of set down.
- (b) The Applicant relies on the case of **Janse van Rensburg v Obiang and Another**¹, where Binns- Ward J said the following pertaining to the promptitude with which a challenge to authority should be made:

"Challenges to the authority of an attorney to represent a litigant, if they are to be raised at all, should be raised promptly at the earliest opportunity, and once raised, taken to a determination without delay. Indeed, that, no doubt, is why there is a 10 -day time limit in terms of the rule 7(1)."

- (c) The Applicant also submitted that in **Kaap – Vaal Trust (Pty) Ltd v Speedy Brick & Sand CC**², the court aptly held:

"The ten-day time period within which the authority of another can be challenge, is not merely superfluous. The time period is set, so as to bring certainty to the litigants that no challenge will be mounted against their authority, and where this challenge is mounted outside the 10- day period on notice, that this challenge can only be mounted with leave of the Court on good cause shown. The rule this gives direction and permission that a challenge can still be mounted outside of this 10-day period but only

¹ [2014] ZAWCHC 53 at para 17

² [2021] ZAGPPHC 668 at para 17-20

with leave of the Court on good cause shown. In the present instance, no leave was also sought by the applicant. This is not an insignificant point merely be ignored by a Court, as it would mean that on a mere whim of an opponent, the mandate of an attorney concerned may be challenged. Where a litigant fails to adhere to any time limit provided for in any rule of court, R 27(3) specifically permits such litigant to seek condonation."

Secondly:

[10] **Rule 7** is unnecessary and an abuse of the Courts time.

In this matter the PC resolved to bring the main application as is evident from a resolution appended to the founding affidavit in the main application as "FA1".

[11] In terms of the resolution Amade was authorised to act on behalf of the LPC in the main application. Consequently, there is no need that de Wet ought to have been additionally authorised to act in the main application.

[12] The Applicant contents that a resolution taken by a juristic entity which entails that these proceedings have been properly authorised.

The First Respondent:

[13] The First Respondent argued that he is severely prejudiced by the Applicant's non-compliance. Applicant is trying to bring the main application to finality without establishing the disputed authority without the First Respondent having had the opportunity of delivering his answering affidavit and accordingly oppose the relief sought by the Applicant in the main application.

[14] This would have as a result dire financial and reputation damage, given the relief sought.

[15] I intend, hereunder, to deal first with the application for condonation in respect of Rule 7, for if I find that the First Respondent has not made out a case for such condonation, it can be argued that I will not be necessary to decide the

Rule 7 application.

The First Respondent`s case for condonation

[16] The First Respondent's case for condonation is stated as follows in its founding papers:

- (i) First Respondent seeks the Court (only to the extent necessary-) to condone and indulge the late service of the First Respondent`s notice in terms of uniform **Rule 7**.
- (ii) First Respondent explains his delay as follows:
 - (a) Applicant issued the main application on **20 October 2022**.
 - (b) First Respondent`s notice to oppose was electronically served on **4 November 2022**;
 - (c) Given the fact that the First Respondent`s notice of opposition was served on Friday, **4 November 2022**, the first available opportunity to consult with counsel was Monday, **7 November 2022**.
 - (d) Following the consultation and consideration of the position, instructions were given for the preparation of the First Respondent`s notice in terms of **Rule R7**.
 - (e) The 10 -days provided for in terms of **Rule 7** pertains to the date which a party becomes aware that the authority of a party to act is disputed. Hence the 10 day- period only to commence on **7 November 2022** and the **R 7** Notice was not out of time.
 - (f) There was no prejudice for the Applicant, it was informed as far back as **22 August 2019** about the alleged possible misappropriation of the trust monies and applicant did not issue the main application until **20 October 2022**.

[17] I find it necessary to mention that the the Applicant did not have time to give arguments in opposition of the condonation except to argue that it was very late to apply for condonation at the last minute.

FOR THE COURT TO DECIDE:

[18] It is for the court to decide:

- (a) If the **Rule 7** notice was given timeously.
- (b) If, it was out of time should condonation be sought.
- (c) Did the First Respondent shown good cause for condonation to be granted at the time they sought condonation.
- (d) Did the set down of the main application constitutes an irregular step in terms of **R 30(1)**.
- (e) Was Applicant compelled in terms of **Rule 30 A** to respond to the **Rule** filed out of the 10- day period.
- (f) Was the **Rule 7** raised promptly at the earliest stage.
- (g) Was the **R 7** necessary, taking into account that an authorisation/ (resolution) was presented.

THE APPLICABLE LEGAL FRAMEWORK:

For purposes of this judgment, I find it necessary to visit the powers and functions of the SALPC and the PCLPC.

[19] The PC is empowered under **section 40(3)(a)(iv)** read with **section 44(1)** and **section 43** of the **Legal Practice Act** ("PA") to launch an application for the striking off the roll or suspension from practice of a legal practitioner. If the court is satisfied that the legal practitioner is not a fit and proper person to continue to practice, the provisions of the Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.

"Section 40(3) (a)(iv) of the LPA: Advise the Council to apply to the high Court for-

- (aa) an order striking his or her name from the Roll;
- (bb) an order suspending him or her from practice;

(cc) an interdict prohibiting him or her from dealing with trust monies; or
 (dd) any other appropriate relief."

"Section 43 of the LPA: Urgent Legal proceedings-

Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the council thereof with the view to the Council instituting urgent legal proceedings in the High Court to suspend the legal practitioner from practice and to obtain alternative interim relief." (own emphasis)

[20] The PC of the LPC has the following powers and functions in terms of the LPA:

"Regulation 5(2)(o) to institute urgent legal proceedings in the High Court in order to suspend a legal practitioner from practice and to obtain alternative interim relief, as contemplated **in section 43 of the Act;** "

[21] It is trite that an application of this nature in the main action constitutes a disciplinary inquiry by the court into the conduct of the practitioner concerned. These proceedings do not constitute ordinary civil proceedings but are in their nature *sui generis* with the LPC fulfilling the role of *amicus curiae*. Accordingly, the LPC is not an ordinary litigant in this application. As *custos morum* of the profession, the LPC places the facts and its views for this court to take appropriate action in the exercise of its discretion using its disciplinary powers. Significantly, the court's power is inherent in nature over and above the provisions of the Act.³

[22] The LPA came into operation in stages on 1 February 2015, 31 October 2018 and 1 November 2018.⁴ The entire Act is now in operation. The Act, 2014 introduced an entirely new regime for the legal profession in South Africa. In addition, the Act introduced significant changes for persons who wish to apply be admitted and authorized to be enrolled or to be suspended or struck off the roll by the court.

³ Law Society of the Cape of Good Hope v C 1986 (1) SA 616 (A).

⁴ Section 120 of the Act , Proclamation No. R.2in Government Gazette 38412 on 23 January 2015.and Government Proclamation R.31in Government Gazette 42003 on 29 October 2018.

[23] The powers and functions of: the LPC and PC's and the Minister are clear from:

"**Section 3©** provides that one of the objects of the Act is to:

"[c]reate a single unified statutory body to regulate the affairs of all legal practitioners and all candidate legal practitioners in pursuit of the goal of an accountable, efficient and independent legal profession".

[24] That unified statutory body is the LPC. **Section 4** establishes the LPC as a body corporate with full legal capacity, and, provides that the LPC exercises jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in the Act.

[25] **Section 5(d)** provides that one of the objectives of the LPC is to regulate all legal practitioners and all candidate legal practitioners.

[26] **Section 6** provides the powers and functions of the LPC. Section 6(1)(a)(xx) is pertinent in this matter. It provides for the delegation of the LPC's powers to the PC's as follows: The LPC may-

"Delegate any of its powers and functions to its committees or Provincial Councils, subject to any conditions it may impose, which delegation does not—

(aa) divest the Council of the power or function so delegated; and

(bb) preclude the Council from varying or setting aside any decision made under a delegation;"

[27] **Section 21** provides for a general delegation (including to PC's) of powers and the assignment of functions of the LPC. In terms of **sub-section 21(1)(d)**, [a delegation or assignment in terms of subsection (1)] "...does not divest the Council of the responsibility for the exercise of the power or the performance of the duty or function."

[28] **Section 23(1)** provides as follows:

"The Council must establish Provincial Councils the areas of jurisdiction of which must correspond with the areas under the jurisdiction of the Divisions of the High Court of South Africa as determined by the Minister,

from time to time, in terms of section 6 (3) of the Superior Courts Act, 2013 (Act No. 10 of 2013), and may delegate to the Provincial Councils such powers and functions which, in the interests of the legal profession are better performed at provincial level.”

CONDONATION:

[29] The sub-rule authorises the court to, on “good cause shown”, condone any non-compliance with the Rules of Court. The court is said to be vested with a wide discretion in this respect, but with the added safeguard for the applicant to show good cause, for the court to exercise the discretion.⁵

[30] Courts have consistently refrained from attempting to formulate an exhaustive definition for what constitutes “good cause”. The Appellate Division (as it then was) in its judgment in **Melane v Santam Insurance Co Ltd**,⁶ had this to say in its explanation of the phrase “good cause shown”:

“In deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent’s

⁵ See Erasmus: Superior Court Practice 2^{ed} Volume 2 pD1-326.

⁶ 1962 (4) SA 531 (A) at 532B-E.

interest in finality must not be overlooked." (own emphasis)

- [31] In recent years the Constitutional Court in **Van Wyk v Unitas Hospital**,⁷ relying on a previous decision of the same court in **Brummer v Gorfil Brothers Investments (Pty) Ltd and Others**⁸ set a standard for the court's consideration of an application for condonation along the following lines:

"The Court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success." (my emphasis)

- [32] It follows, therefore, that in order to succeed in its application the Applicant for condonation must show that, it is in the interests of justice, that the application be granted. In proving the interests of justice, the applicant must prove "good cause". It is trite that "good cause" requires the applicant to furnish a full, reasonable and acceptable explanation, for the full period of delay including the cause of the delay.

- [33] The general principle is that the court has a wide discretion to grant condonation on good cause shown. Two requirements in this regard have crystallized, namely, firstly the requirement that the applicant should furnish a sufficient explanation for her or his default, to enable the court to understand how it really came about and to assess her or his conduct and motives. Secondly, the requirement that the applicant should satisfy the court

⁷ Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae) 2008 (2) SA 472 (CC).

⁸ 2000 (3) SA 837 (CC). See also Grootboom v National Prosecuting Authority and Another 2014 (2) SA 68 (CC C) para 23.

that she or he has a *bona fide* defense.⁹

[34] There is no comprehensive definition of what constitutes good or sufficient cause for the granting of the indulgence of an extension of time. The overriding consideration is that the matter rests in the judicial discretion of the court, to be exercised with regard to all the circumstances of the case.¹⁰

[35] The principles upon which the court exercises its discretion have been stated as follows:¹¹

"[2] The principles governing condonation applications and the factors which weigh with this Court are well-known and have been often restated. The main principles are succinctly formulated in **Federated Employers Fire & General Insurance Co Ltd and Another v McKenzie 1969 (3) SA 360 (A)** at 362F - H as follows:

"(T)he factors usually weighed by the Court include the degree of non-compliance, the explanation therefor, the importance of the case, the prospects of success, the respondent's interest in the finality of the judgment, the convenience of the Court and the avoidance of unnecessary delay in the administration of justice; . . ." (my emphasis)

ANALYSIS:

[36] An applicant for condonation must give a full explanation for the delay which must not only cover the entire period of delay but must also be reasonable.

[37] The condonation was sought three days prior to the hearing of the interlocutory applications. The Applicant could not even respond properly.

⁹ Mynhardt v Mynhardt 1986 (1) SA 456 (T) at 461 and Kritzing v Northern Natal Implement Co (Pty) Ltd 1973 (4) SA 542 (N) at 546.

¹⁰ Mynardt supra, as well as Jones & Buckle: The Civil Practice of the Magistrates Courts in South Africa 10ed vol. 1 p600.

¹¹ Byron v Duke Inc 2002 (5) SA 483 (SCA) para 2.

- [38] The most important period is that between the **16 November 2022** and the **13 February 2023** when the Applicant brought the Condonation Application. There was no reason given for the late filing of the condonation application.
- [39] The explanation tendered by the First Respondent, is far from satisfactory. It does not cover the whole period of the delay and is inadequate for purposes of this application. The result is that on the basis of the unexplained periods alone, the applicant has failed to set out good cause and the application should fail.
- [40] The First Respondent has, also, not bothered to set out other requirements to show good cause except an attempt to explain the requirement of delay. The court in *Van Aswegen v Kruger*¹², held that the requirement of a *bona fide* defence in **Rule 7** applications:
- "would be adequately satisfied where the defendant avers that he has a bona fide defence, and he makes averments which if proved would constitute a defence."
- [41] This, the First Respondent failed to do. He did not touch on a *bona fide* defence in the main action.
- [42] In addition, the First Respondent has failed to satisfy the requirement of *bona-fides*. Nothing is proffered about this requirement in the First Defendant's papers.
- [43] Uniform **Rule 7** provides a mechanism to establish the mandate of the attorney concerned and to prevent persons launching proceedings in the name of litigants who never authorised or are unaware of same and provides that the authority of anyone acting on behalf of a party may, within ten (10) days, be disputed where after such person may no longer act unless she/he satisfies the court that she/he is so authorized.

¹² 1974(3)SA204[OPD]

[44] First Respondent, in this instance, is challenging the authority of the attorney to act on behalf of the Applicant in the main action. The challenge as I understand relates to the authority to institute the present application. Ordinarily the authority of an attorney is challenged in respect of the action as a whole. It is not normally so that an attorney's authority would be challenged when an interlocutory application is launched.

[45] What, in this instance, makes the First Respondent want to challenge the authority of the Applicant's attorney, is because the founding affidavit to the application is deposed to by de Wet, who professes to be the chairperson of the PC on behalf of the Applicant in this application.

[46] It is trite that a notice of motion can be supported by any person who is in a position to provide the necessary material to support the claim, and any person who can lawfully be a witness can execute an affidavit.

[47] Therefore, it is not necessary that the person who is to depose to the founding affidavit should be authorised to do so. The First Respondent's argument that because the applicant is the LPC, the person who deposes to the founding affidavit must also be authorized to represent the National LPC, is without merit, because, any person who professes to have personal knowledge of the facts deposed to in that affidavit, can depose to such affidavit.

[48] Uniform **Rule 7 (1)** is said to be only concerned with the mandate of an attorney to act in instituting or defending legal proceedings on behalf of a party and to act in matters incidental to such proceedings¹³, which would include interlocutory applications.

[49] Therefore, if an attorney provides proof that he has the authority to act on behalf of a client and an interlocutory application is launched in such proceedings, it would not be necessary for the applicant to provide a fresh

¹³ Eskom v Soweto City Council 1992(2) SA 703 (W).

mandate. The original mandate provided, authorises the attorney to act in all matters incidental to such proceedings which will be inclusive of all interlocutory applications that may be launched.

- [50] The sub-rule does not provide a hard and fast rule how to establish authority, where it is challenged. The sub-rule only requires such person to satisfy the court that she/he has been so authorised. Production of a power of attorney or a resolution of a company or close corporation is normally produced in order to establish the authority of the attorney so to act. *In casu* the resolution was attached as "FA1".

CONCLUSION:

- [51] The resolution suffices as proof that Mr Amade & Company Inc. had been authorised to act on behalf of the applicant.
- [52] I am, thus, satisfied that Amade as well as De Wet were authorised by the Applicant to defend the action and to act in matters incidental to such proceedings (interlocutory applications), on its behalf.
- [53] From the above and caselaw the following is clear:
- (a) The **Rule 7** notice was not given timeously.
 - (b) the **Rule 7** notice was out of time and condonation should have been sought.
 - (c) The overriding consideration in evaluating condonation is that the matter rests in the flexible judicial discretion of the court, to be exercised with regards to all the circumstances, even if the good cause was not shown. *In casu* it would be in the interest of justice to condone the non-compliance. It would also be essential to finalise the main action as soon as possible. (own emphasis)
 - (d) The set down of the main application does not constitutes an irregular step in terms of **R 30(1)**.

(e) Applicant was not at the time compelled in terms of **Rule 30 A** to respond to the **Rule 7** filed out of the 10- day period.

(f) The **Rule 7** was not raised promptly or at the earliest stage.

(g) It was not necessary for the First Respondent to launch the **Rule 7** application due to the fact that an authorisation (resolution) was presented.

COSTS:

[54] When the court considers costs, the court has a judicial unfettered discretion to bring about a fair result.

[55] The First Respondent was as far back as **18 November 2022** alerted by the Applicant that his notice was out of time. This, notwithstanding the First Respondents persisted in bringing the application. The condonation application for the Court's leave to allow the **Rule 7** application was brought very late, only 3 days before the hearing of this matter.

[56] Any litigant must refrain from embarking on a time -wasting route that may tie himself and the opponent up in litigation for months to come. This type of litigation does not take the main matter any further but to waste costs.

[57] The First Respondent's interlocutory applications have no merits. It should never have been brought.

[58] I do not know if the First Respondent, by taking a technical route, ever entered into this litigation with the firm belief in the justice of his cause. The Applicant should not be burdened with costs in having to deal with litigation of this nature.

[59] First Respondent's stance is ill conceived and clearly with the intention to

protract from the main matter intentionally.

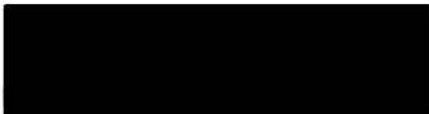
[60] It is not in the interest of Justice that the court entertain these type of cases where a party abuses the court rules like the defendant did in this case. It clogs the court rolls and is the cause that other deserving cases cannot be heard.

[61] In considering whether costs should be awarded on a punitive scale I am sensitise to the fact that such an order is not awarded lightly. If a party however acted in such a reprehensible manner, the court may show its displeasure with the Respondent's conduct in awarding a punitive cost order.

ORDER:

[62] The following order is made:

1. The condonation application is granted with no order as to costs.
2. Rule 30 (1) application is dismissed with costs on an attorney client scale.
3. The Rule 30 A application is dismissed with costs on an attorney client scale.


A.S. BOONZAAIER, A J

For the Applicant:

Adv Mazibuku
Chambers Bloemfontein
Amade & Company Inc.
BLOEMFONTEIN

Instructed by:

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