



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case Number 4662/2022

In the matter of:

VAMARA SOUTH AFRICA (PTY) LTD

FIRST APPLICANT

RE GROUNDNUTS (PTY) LTD

SECOND APPLICANT

and

WELTEVREDE BOERDERY (PTY) LTD

FIRST RESPONDENT

ABRAHAM JOHANNES VENTER

SECOND RESPONDENT

STERUMA TRUST

THIRD RESPONDENT

CORAM: NAIDOO, J

HEARD ON: 1 DECEMBER 2022

DELIVERED ON: 9 MAY 2023

JUDGMENT

[1] This matter came before this court as an urgent *ex parte* application where the applicants sought the issue of a *rule nisi* for relief in two parts – Part A and Part B. The order they sought urgently was in respect of Part A, and such order was granted on 23 September 2022. The application and order were served on the first respondent (Weltevrede), and second respondent (Venter). The Sheriff simultaneously attached a large number of assets of Weltevrede, which included motor vehicles, farming vehicles, equipment and other movable assets. Shortly thereafter an application was brought to join the third respondent Steruma Trust (the Trust), which application was not opposed. The joinder was granted by agreement between the parties on 27 October 2022, and a time frame set for the filing of Answering and Replying Affidavits. The matter was then postponed to the opposed Motion Roll. After the *rule nisi* was extended, the matter was scheduled for hearing on 1 December 2022. The Trust launched a counter-application which was set down for hearing simultaneously with the main application. The counter-application was opposed by the applicants. Adv JLC Morland represented the applicants, and Adv JE Kruger represented the Trust. Weltevrede and Venter were not represented and were not present at the hearing.

[2] The applicant sought orders in Part A and Part B in the main application following terms:

“PART A

1. That non-compliance with the ordinary rules and service be dispensed with to hear this matter as one of urgency in terms of Rule 6(12).
2. A *rule nisi* is issued calling upon the first and second respondents to show cause on Thursday 6 October 2022 at 9.30 or as soon thereafter as

counsel may be heard, to show cause why the following Orders should not be made final:

- 2.1 The assets described in the annexed “Annexure A: Asset List” forming part of Annexure “FA7” herein, be attached by the sheriff and an inventory of all such attached assets be produced by the Sheriff.
- 2.2 The aforesaid assets shall remain under attachment and the first and second respondents shall be interdicted and restrained from removing those attached assets from the premises known as The Farm Geduld, Remaining extent ERF 37 Wesselbron. Free State.
- 2.3 The aforesaid attachment and interdict against removal shall pend (sic) the finalisation hereof.
- 2.4 The first and second respondent be interdicted from selling crop (*Groundnuts*), which forms the subject matter of the crop purchase agreement, dated 15 November 2021, any third party (sic).
- 2.5 The first and second respondent be interdicted and restrained from obstructing, or in any manner impeding, the first and second applicant’s collection of the aforesaid Groundnut crop from the premises of the first and second respondent, situate at the Farm Geduld, Remaining extent ERF 37, Wesselsbron, Free State.
- 2.6 In the circumstances of the first respondent refusing or failing to attend to the harvest of the Groundnut crop, the applicants shall be entitled to attend to such harvest themselves. The right of the applicant’s to attend to the harvest shall include the following:
 - 2.6.1 access, to the premises situate at The Farm Geduld, Remaining extent ERF 37, Wesselsbron, Free State, for the purposes of attending to harvesting of the Groundnut crop.

2.6.2 Access for harvesting purposes shall be from 6am to 6pm, or such extended period as may be reasonably required to give effect to this Order.

2.6.3 The applicants shall attend to the harvest with their equipment at their own expense.

2.6.4 The first respondent shall provide such reasonable assistance to the applicants for the purposes of giving effect to this order.

2.6.5 The first and second respondents are interdicted and restrained from obstructing or impeding the applicant from giving effect to this order.”

- 3 Prayers 2.4, 2.5 and 2.6 hereof shall be immediately operable.
4. The applicants shall be entitled to place their own 24-hour at the aforesaid premises of the first respondent security (sic) situate at, the Farm Geduld, Remaining ERF 37, Wesselsbron, Free State for the purposes of securing the crop.
5. The applicant may supplement its papers with such additional items as may be appropriate in respect of Part B hereof.
6. The respondents are entitled to the return date after 24 hours written notice to the Applicant’s attorney.
7. The matter to return to this court on 6 October 2022 at 9.30.
7. (Sic) The cost of the application are to be determined on the return date.
8. Further and/or alternative relief.”

PART B

1. Judgment against the first respondent in the amount of R10 332 482.48
2. Judgment against the second respondent in the amount of R10 332 482.48
3. Costs of suit at the attorney and client scale;
4. Further and/or alternative relief.”

[3] The Trust issued a counter-application, seeking, in essence, an order declaring it to be the owner of a large number of the assets

of Weltevrede that the sheriff placed under attachment on behalf of

the applicants, an order for Weltevrede to return those assets to the Trust and for Weltevrede and Venter to pay the costs of the counter-application. As I indicated the applicants opposed the counter-application, and gave detailed evidence and facts in support of their denial that the Trust was in fact owner of the assets it claims to own. They also assailed the authority of the deponent of the Founding Affidavit to institute the counter-application.

[4] The main application has its genesis in a crop purchase agreement entered into between the second applicant, RE Groundnuts (Pty) Ltd (RE Groundnuts) and Weltevrede, represented by Venter. RE Groundnuts is a wholly-owned subsidiary of the first applicant, Vamara South Africa (Pty) Ltd (Vamara). RE Groundnuts is described as a manufacturer, supplier, marketer and trader of foodstuffs and commodities. It purchased from Weltevrede 1000 metric tons of a crop of peanuts grown by Weltevrede. The parties agreed on prices payable in respect of various grades of peanuts that were yielded from that crop, which was to be delivered to the applicants on 30 April 2022. Weltevrede also ceded to Vamara all the crops and proceeds, in terms of the trading account debt that it held with the applicants. Such cession was security for Weltevrede's obligations to the applicants.

[5] Weltevrede failed to deliver the crop or comply with the terms of the crop purchase agreement. It was subsequently discovered by the applicants that Weltevrede, represented by Venter, had

encumbered the crop in favour of other third parties. Thereafter Weltevrede was placed under provisional liquidation, and in order to protect their own interests, the applicants agreed to pay

Weltevrede's debt in order to prevent a final order of liquidation from being granted. Thereafter Weltevrede, again represented by Venter, signed an Acknowledgement of Debt (AOD) in favour of Vamara in the total amount of Ten Million Three Hundred and Thirty Two Thousand Four Hundred and Eighty Two Rand and Forty Eight Cents (R10 332 482.48). As security for the amount of its indebtedness, Weltevrede, ceded to Vamara the movable assets listed in Annexure "A" to the AOD. It was most of these assets that were attached by the Sheriff.

[6] Neither Weltevrede nor Venter opposed the main application. It was only the Trust which launched the counter-application. At the hearing of this matter, Mr Kruger placed on record that he represented only the Trust and opposed only Part A of the Notice of Motion in the main application. He held no instructions to oppose Part B. Weltevrede and Venter were not represented or present at the hearing of this matter. The counter-application was fully argued at the hearing of this matter. As there was no opposition at all to Part B, Mr Morland moved for an order as per the amended Part B, which was granted in the terms set out earlier in this judgment.

[7] After the matter was argued in court, the Trust, as represented by its Trustees, filed a Notice of Withdrawal, withdrawing the counter-application and renouncing any rights that might have been established as a result of the launching of the counter-

application. It is for this reason that I refrained from dealing, in this judgment, in any detail with the arguments put forward in respect of the counter-application during the hearing of this matter. The withdrawal thereof has rendered such an exercise unnecessary.

- [8] I turn now to deal with the orders sought by the applicants. As I indicated, neither Weltevrede nor Venter opposed the main application, in spite of personal service being effected on them. The applicants set out in detail the manner in which Weltevrede's liability to them arose. They also demonstrated that Venter, as the sole director and controlling mind of Weltevrede, who not only conducted the business of the latter in insolvent circumstances, but made fraudulent misrepresentations that the crops purchased by the applicants were unencumbered, repeatedly breached agreements

reached with the applicants to secure their claims, by refusing access to the farm, to members of the applicants' staff, and also repeatedly threatened to sell to third parties, the crops which were sold to the applicant. It was discovered by the applicants that Venter was, in fact, secretly selling, to third parties, the crops purchased and paid for by the applicants.

- [9] The applicants have demonstrated that Venter acted *male fides* in conducting the business of Weltevrede, contrary to his fiduciary duties as a director, as provided for in the Companies Act 71 of 2008, and would be subject to the sanctions stipulated therein. In my view, there is no reason why the *rule nisi* issued on 23 September 2022, as extended, should not be confirmed. This is particularly so that, in spite of the applicants recovering an amount of One Million Four Hundred and Sixty Three Thousand Three Hundred and Forty Six Rand and Five Cents (R1

463 346.05) from part of the crops delivered to them by Venter, the remaining crops would not yield a sufficient amount to settle the entire debt due to the applicants. There is no opposition to Part B of the Notice of Motion, and I see no bar to the grant of the relief sought therein.

However, I am of the view that it would be improper to order each of the respondents to pay the amount claimed. The applicants are owed only R10 332 482.48 but would technically be able to claim the amount twice if each of the respondents were separately ordered to pay that amount. It would be more equitable to order them both to pay the said amount, the one paying the other to be absolved. The applicants have made no submissions in this regard to justify the order in the terms that they seek. With regard to costs, which are in the discretion of the court, there is no reason why the costs should not follow the result.

[10] In the circumstances I make the following order:

10.1 The *rule nisi*, granted on 23 September 2022, as extended, is confirmed;

10.2 Judgment as per Part B of the Notice of Motion is granted as follows:

The first and second respondents are ordered to pay to the applicants the amount of Ten Million Three Hundred and Thirty Two Thousand Four Hundred and Eighty Two Rand and Forty Eight Cents (R10 332 482.48), the one paying the other to be absolved;

10.3 The first and second respondents are ordered to pay the applicants' costs on the attorney and client scale, the one paying the other to be absolved.

S NAIDOO J

On Behalf of the Applicants:

Instructed by:

Adv LCM Morland
Bezuidenhouts Inc
104 Kellner Street
Westdene
Bloemfontein
(Ref: D Milton/ID2519)

On Behalf of the 3rd Respondent:

Instructed by:

Adv JE Kruger
Muller Attorneys
Potchefstroom
simone1@mullerlegal.co.za
c/o Graham Attorneys
14A Torbet Street
Noordhoek
Bloemfontein
(Ref: Charne Nel/EAL1/0086NN)