



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

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

Application number: 3583/2023

In the application between:

**INDEPENDENT SOUTH AFRICAN NATIONAL
CIVIC ORGANIZATION (ISANCO)**

Applicant

and

BAKOENA STEPHEN RAMOSIE

1st Respondent

INDEPENDENT ELECTORAL COMMISSION (IEC)

2nd Respondent

CORAM: VAN ZYL, J

HEARD ON: 11 AUGUST 2023

DELIVERED ON: 11 AUGUST 2023; 18 AUGUST 2023

[1] The applicant approached court on an urgent basis and this matter was argued before me on 11 August 2023 at

approximately 10h00. At the conclusion of the said hearing, I indicated that I will make an order in the matter later that afternoon.

[2] During late afternoon of 11 August 2023, I issued the following order:

1. The non-compliance with the time frames and procedures in terms of the Rules of Court is condoned and the application is heard as one of urgency in terms of Rule 6(12).
2. A rule *nisi* is hereby issued, calling upon the respondents to show cause, if any, on Thursday, 14 September 2023 at 9h30, or as soon thereafter as the matter may be heard, why the following orders should not be made final:
 - 2.1 That the order issued under the above application number by Reinders, J on 27 July 2023 in the matter between Independent South African National Civic Organization and Independent Electoral Commission, be rescinded.
 - 2.2 Interdicting and restraining the second respondent, Independent Electoral Commission, from removing the name of Zukile Luyenge as the President of the applicant, Independent South African National Civic Organization, and its contact person in the records of Independent Electoral Commission.
3. Paragraphs 2.1 and 2.2 above shall serve as interim interdicts with immediate effect pending the finalisation of this application.
4. The adjudication of the further relief sought by the applicant in the Notice of Motion, dated 7 August 2023, is postponed to 14 September

2023 at 9h30, to be heard together with the adjudication with the rule *nisi*.

5. For purposes of the adjudication of the rule *nisi* and the aforesaid postponed relief:

- 5.1 The first respondent is granted leave to file a supplementary answering affidavit on or before 24 August 2023.

- 5.2 The applicant is to file its replying affidavit on or before 31 August 2023.

- 5.3 The applicant is to file its heads of argument on or before 7 September 2023.

- 5.4 The first respondent is to file his heads of argument on or before 8 September 2023.

6. The costs of 10 & 11 August 2023 stand over to be adjudicated on 14 September 2023.

7. This order is to be served upon the first and second respondents in terms of the Court Rules."

[3] Before I adjourned the hearing on 11 August 2023, I requested the parties to provide me with a suggested return date and also suggested time frames should I decide to grant a rule *nisi*. The aforesaid dates were suggested by the parties and since I was satisfied with the proposed dates, I incorporated them in my order.

[4] Considering the contents of the order I made and the reason for the urgency (which I will deal with hereunder), I considered it necessary that the said order be issued as soon as possible. However, due to time constraints I was unable to provide the reasons for the said order at the time. The reasons for the said order are consequently provided herewith.

[5] In terms of the Notice of Motion the applicant approached the court for the following relief:

“Kindly take notice that an application will be made before the above Honourable Court on Thursday, 10th of August 2023, at 9h30 am or as soon thereafter as the matter may be heard for an order in the following terms:

1. That the applicant be and is hereby granted leave to bring this application as a matter of urgency in terms of Rule 6(12) of the Uniform Rules of Court and that all formalities regarding notice for service and time frames thereof be and are hereby dispensed with.
2. That a rule *nisi* do hereby issue calling upon the respondents to show cause, if any, before this Honourable Court on Thursday, 14th of September 2023 at 09h30 am, or as soon thereafter as the matter may be heard, why the following orders should not be made final:
 - 2.1 Rescinding an order obtained by Bakoena Stephen Ramosie in the name of the Independent South African National Civic Organization under Bloemfontein High Court case number 3583/2023 on 27 July 2023.
 - 2.2 Declaring the convention of Special National Conference by Bakoena Stephen Ramosie in the name of applicant at Ferdi Meyer Hall during week ending 09 to 10th of June 2023 unlawful;

- 2.3 Declaring all the resolutions adopted at such a National Conference in the name of Applicant null and void and of no force or effect whatsoever;
 - 2.4 Directing Bakoena Stephen Ramosie to remove all his pictures he posted in social media as member and President of ISANCO;
 - 2.5 Interdicting and restraining Bakoena Stephen Ramosie from acting as member and President of ISANCO or in any way direct his supporters to do so;
 - 2.6 Interdicting and restraining Independent Electoral Commission (IEC) from removing the name of Zukile Luyenge as the leader of ISANCO and its contact person in its records;
 - 2.7 Ordering the first respondent, Bakoena Stephen Ramosie, to pay costs of this application on punitive attorney and own client scale and the second respondent to pay costs of this application only in the event of it opposing this application.
3. That paragraphs 2.4, 2.5 and 2.6 of the rule *nisi* shall operate as interim relief and *mandamus* pending the finalization of this application.
 4. Granting the applicant such further and/or alternative relief as the Court may deem appropriate."

[6] The application was issued on 7 August 2023 and served upon the attorney of record of the first respondent on 7 August 2023 at 13h44. It was also served upon the second respondent on 7 August 2023 at 15h46.

[7] In the Notice of Motion it was stated that should any of the respondents wish to oppose the application, such respondent is required to “*Notify applicant’s attorneys in writing of such intention to oppose and [to file] any opposing affidavit, if any, on or before Tuesday 8 August 2023; ...*”

[8] It is to be noted that Wednesday, 9 August 2023, was a public holiday.

[9] The first respondent duly filed his answering affidavit at court on 8 August 2023 and it was filed with the applicant’s attorney of record on 8 August 2023 at 14h45. In his answering affidavit the first respondent raised two points *in limine*, namely:

1. “*Lack of urgency*”; and
2. “*Zukile Luyenge lacks the authority to institute this application*”.

[10] After having dealt with the aforesaid points *in limine*, the first respondent further stated as follows in his answering affidavit:

“SUPPLEMENTATION:

59. This answering affidavit has been prepared in haste as my attorneys were served with the full set of this application on Monday, 7 August 2023, at 13h44, just hours before the applicant expected us to submit our answering affidavit as evident on the applicant’s notice of motion.

60. For these reasons, the relevant aspects may not have been canvassed as fully and comprehensively as we would have liked, and certain facts may have been overlooked in the process.

61. Under the circumstances, we will seek leave to supplement this answering affidavit in due course, if necessary.

CONCLUSION:

62. The applicant's clandestine approach in launching these urgent proceedings deserves this Honourable Court's censure.

WHEREFORE, I pray that the application should be dismissed. Further that Mr Zukile Luyenge, the deponent to the founding affidavit, personally be ordered to pay costs on an attorney and client scale."

Background:

[11] The applicant is the Independent South African National Civic Organization ("ISANCO"), an independent civic movement, which operates in terms of its constitution. ISANCO is a duly registered political party in terms of the applicable electoral laws of South Africa. It is registered as such with the second respondent ("the IEC"). In a letter from the IEC addressed to ISANCO, dated 21 June 2022, attached to the founding affidavit as annexure "ZL3", the following was stated in paragraph 2 thereof:

"The Electoral Commission's records reflect that Dr. Luyenge is the leader and duly authorized contact person of ISANCO."

- [12] The first respondent, Bakoena Stephen Ramosie, is cited as an adult male person and in terms of the allegations in the founding affidavit, he was expelled as a member of ISANCO and he misled the court to grant an order under the above case number without any mandate from ISANCO, being the order issued by Reinders, J sought to be rescinded in the present urgent application.
- [13] The second respondent, the IEC, is not opposing the application.
- [14] The aforesaid court order issued by Reinders, J on 27 July 2023 under the above case number, which order ISANCO is seeking to have rescinded, is a court order which, on face value thereof, was issued in an application of the present applicant, ISANCO, as applicant, and the present second respondent, the IEC, as respondent. I will henceforth refer to the said application as the main application. The order reads as follows:
- “1. Respondent is directed to effect the changes, relating to the applicant’s party leader and party contact person in line with the applicant’s submission notifying the respondent of the changes in the registration particulars within 30 days from service of this court order.
 2. The respondent is directed to inform the applicant, in writing, that the applicant (*sic*) has effected the changes in line with Regulation 9 of the Regulations for the Registration of Political Parties, 2004, as submitted by the applicant in its letter dated 20 June 2023.”
- [15] It is of crucial importance for purposes of the present application to note that in the main application, the present first respondent, Mr Ramosie, deposed to the founding affidavit on behalf of

ISANCO on the basis that he is the President of ISANCO and that he was duly authorized by ISANCO to have deposed to the said founding affidavit in terms of the applicable constitution of ISANCO, *“as amended and adopted in its Special National Conference / NGC on 9th to 10th June 2023”*. A copy of the constitution referred to is attached to the main application as annexure “ISA 1”. Also attached to the founding affidavit filed in the main application is a confirmatory affidavit of one Cliff Pringle, who alleges that he is the Treasurer General of ISANCO and wherein he states that he has read the affidavit deposed to by Mr Ramosie *“as authorized by the applicant as stipulated in the applicant constitution in his official capacity as the President of ISANCO, in the answering affidavit (sic) and I hereby confirm as far as the contents related to the Independent South African National Civic Organization to be true and correct”*. A further confirmatory affidavit deposed to by one Velly Mokgotho, who alleges that he is the National Chairperson of ISANCO, is also attached to the founding affidavit filed in the main application, which affidavit contains a paragraph which reads the same as the aforesaid paragraph quoted from the confirmatory affidavit of Cliff Pringle.

- [16] Contrary to the main application, the founding affidavit filed in the present urgent application was deposed to by Zukile Luyenge, who alleges that he is the President of ISANCO, *“having been duly elected by the members of the applicant on 28th of November 2020 for a period of five years”*. Mr Luyenge further alleges that he is duly authorized by ISANCO *“to defend (sic) this application and to depose to all the affidavits in this matter for and on its*

behalf in terms of a resolution adopted by ISANCO at its Special Meeting which was held on 2 of August 2023, a copy of which resolution is attached to the founding affidavit as annexure “ZL1”.

- [17] On face value of the said resolution it was signed by the Secretary General of ISANCO on 2 August 2023. For reasons that will become evident later in the judgment, I do not deem it appropriate to make any further remarks with regard to the contents of the resolution.
- [18] According to Mr Luyenge ISANCO was established on 28 November 2020 in terms of its original constitution which was adopted by the members of ISANCO on the said date, which constitution was signed by Mr Luyenge as its President and by the first respondent as its Secretary General. A copy of the original constitution is attached to the founding affidavit as annexure “ZL2”. According to Mr Luyenge ISANCO held its Special National Conference in Mthatha at Christ the King Senior Secondary School on 31 March 2023 to 1 April 2023, during which Conference it amended its original constitution, which amended constitution was adopted at the said Conference, a copy of which constitution is attached to the founding affidavit as annexure “ZL5”. On face value thereof this amended constitution was signed by Mr Luyenge in his capacity as President and by the Secretary General.
- [19] According to Mr Luyenge ISANCO had expelled the first respondent from ISANCO, that he had been advised accordingly by means of a letter dated 18 March 2022 and that he was

consequently also removed as the counsellor representing ISANCO at Matjhabeng Local Municipality. It is alleged that a copy of the letter is attached to the founding affidavit as annexure “ZL7”, but I was unable to find such a letter in my copy of the application papers.

[20] In the answering affidavit of Mr Ramosie, the first respondent, he alleges that the deponent to the founding affidavit filed in the urgent application, Mr Luyenge, is not the President of ISANCO. According to the first respondent, Mr Luyenge had been suspended by ISANCO by means of two letters dated 29 November 2021 and 20 December 2021, respectively, where after he was finally expelled as leader and member of ISANCO on 29 December 2021. Copies of the said letters are attached to the answering affidavit as annexures “BR5”, “BR6” and “BR7”. Two letters were also addressed from ISANCO to the IEC informing the IEC of the expulsion of Mr Luyenge, copies of which letters are attached to the answering affidavit as annexures “BR10” and “BR11”, dated 24 January 2022 and 17 March 2022, respectively. It is to be noted that the letter of 17 March 2022 was signed by the first respondent, on face value of the letter in his capacity as Secretary General of ISANCO at the time.

[21] According to the first respondent he is in fact currently the President of ISANCO, for purposes of which allegation the first respondent relies on the minutes of the Special National Conference/NGC of ISANCO held on 9 June 2023, attached to his answering affidavit as annexure “BR 1”. The first respondent also relies on the said minutes where it is stated that Mr Luyenge

was expelled from ISANCO on 29 December 2021 and that after deliberation, the Conference adopted and endorsed the expulsion of Mr Luyenge from ISANCO and that his membership remains terminated.

Authority of Mr Luyenge:

[22] In addition to the aforesaid denial that Mr Luyenge is the President of ISANCO, the first respondent alleges that even should the court find that Mr Luyenge is the President of ISANCO, Mr Luyenge still lacks the authority to have instituted the urgent application due to his failure to have complied with mandatory sections of the original 2020-constitution in this regard, which constitution, according to the first respondent, is the version of the constitution on which Mr Luyenge is relying for purposes of his authority.

[23] Without dealing with it in detail, it is evident that the parties are in dispute as to which version of the constitution is presently the lawful, valid and properly adopted constitution of ISANCO. In this regard it is the version of ISANCO, as represented by Mr Luyenge, that the constitution as amended and adopted by the Special National Conference held on 31 March 2023 to 1 April 2023, attached to the founding affidavit as annexure “ZL5”, is presently the lawful, valid and legally binding constitution of ISANCO. Contrary thereto, according to the first respondent, the version of the constitution as amended and adopted at the Special National Conference held at 9 to 10 June 2023, is

presently the lawful, valid and legally binding constitution of ISANCO.

- [24] It is evident from the founding affidavit and the answering affidavit that there is a litigious history between ISANCO and Mr Luyenge and/or the first respondent, which litigation directly or indirectly emanated from disputes regarding the leadership of ISANCO and the authority of Mr Luyenge or the first respondent to act on behalf of ISANCO.
- [25] Some of the aforesaid applications had contradictory outcomes pertaining to such authority of Mr Luyenge and the first respondent. In one of the applications referred to in the founding affidavit filed in the present urgent application, being an application which served in this court under case number 5374/2022, ISANCO was the applicant and the first respondent deposed to the founding affidavit on behalf of INSANCO in his capacity as the Secretary General of INSANCO and Mr Luyenge was the first of seven respondents. The requested relief, *inter alia*, entailed declaratory orders that Mr Luyenge had been expelled as a member of ISANCO and was removed as President of ISANCO as from 29 December 2021. Mr Luyenge raised a point *in limine* in which he attacked the authority of Mr Ramosie to have deposed to the founding affidavit on behalf of ISANCO. Naidoo, J found, *inter alia*, as follows at paragraphs [17], [24] and [26] of her judgment dated 20 June 2023 (the founding affidavit in that application was deposed to in 2022):

“[17] As I indicated earlier, the applicant appears to be a divided organisation, with its senior members locked in battle with each other, attempting to assert themselves over the “opposing” group. A number of inconsistencies appear in the evidence put up by both Ramosie and the first respondent, where both purport to be authorised to act in the name of the applicant. ...

[24] From what I have said it appears that neither Ramosie nor the first respondent have approached this court with clean hands. There appears to be all manners of manipulation, which creates a situation that this court cannot decide the matter on the papers. ...

[26] With regard to costs, both parties purport to be acting in the name of the applicant. The applicant asked for costs only in the event of the application being opposed, while the first respondent seeks punitive costs against Ramosie for acting without proper authority. I have made my view clear regarding Ramosie’s *locus standi*, and regarding the conduct of both parties. In any event, the evidence placed before me is confusing, contradictory and insufficient to justify granting the relief sought. I am also of the view that it would be unfair for costs to be paid out of the coffers of the applicant, as the conduct of Ramosie and the first respondent indicates that neither of them were committed to furthering the aims and objectives of the applicant or complying with the constitutional prescripts that bind them, but rather appear to have been pursuing their own ends.”

The application was dismissed and the point *in limine* raised by Mr Luyenge was also dismissed. They were both ordered to pay the costs in their respective personal capacities.

[26] In the circumstances and considering the background facts and circumstances, I am in no position to properly determine and

adjudicate the issue in respect of the authority of Mr Luyenge to have instituted this application on behalf of ISANCO on the papers as they stand. In my view the issue of the authority of Mr Luyenge is intertwined with the merits of the application. I accept and understand that the first respondent did not have enough time in the circumstances to have filed an answering affidavit which also dealt with the merits of the application. However, in the absence of an answering affidavit which fully deals with all the allegations contained in the founding affidavit, I cannot determine this point *in limine* raised by the first respondent.

[27] Having said that, I must remark that I am not convinced that the court will be able to adjudicate the issue of authority on the papers even after the filing of all the outstanding affidavits. However, that will be decided by the Judge who presides over this matter on the return date.

[28] In the circumstances I will **accept** for purposes of this stage of the proceedings that Mr Luyenge was duly authorised to have instituted this application on behalf of the applicant, **without deciding same**. Therefore, the first respondent will be entitled to deal fully with this point *in limine* in his supplementary answering affidavit and INSANCO will be entitled to respond to such affidavits in its replying affidavit, subject to the usual rules and principles applicable to replying affidavits.

Urgency:

[29] Under the heading of urgency the following allegations were made in the founding affidavit on behalf of ISANCO:

“32. The matter is urgent for the following reasons:

32.1 The order sought to be rescinded is based on misinformation intended to mislead the Court and to effect unlawful taking over of the leadership of the applicant by the first respondent by deceit and unconstitutional means;

32.2 The first respondent is taking steps to remove all the *bona fide* members of the applicant representing it in various Municipalities in South Africa;

32.3 The applicant has embarked on programmes in preparation of the national elections expected to take place in 2024 and in this regard meetings are scheduled to take place from week ending 11 August 2024 (*sic*) and sponsors have been secured and may withdraw as a direct result of the order of this court of 27 July 2024 (*sic*) sought to be rescinded.

33. The members of the applicant who have been deployed in Municipalities are being prejudiced as IEC is not amending the list to pave the way for them to fill in the vacancies declared by some Municipalities because of the order sought to be rescinded.”

[30] In his answering affidavit the first respondent relied on the absence of a certificate of urgency. However, during the hearing of the application, Mr Kleingeld, who appeared on behalf of the first respondent, conceded, correctly so, that a certificate of

urgency is not a requirement for urgent applications in this division of the High Court and he consequently indicated that he is not persisting with the said point.

[31] According to the first respondent ISANCO has not alleged why it will not be able to obtain relief in due course. However, ISANCO stated that it has embarked on programs in preparation of the national elections expected to take place in 2024 and that meetings in this regard had been scheduled to take place during the weekend of 11 August 2023 (in the affidavit it was stated to be in 2024, but in my view it is evident that this is a mere typing error and should be read to be 2023, as is the reference to 2024 as being the date of the court order in the main application). Although the first respondent challenged certain allegations made on behalf of ISANCO in support of the alleged urgency of the application, the aforesaid allegation with regard to the meetings of the weekend was not denied, nor responded to.

[32] It is the case of ISANCO that the court order issued by Reinders, J is based on misinformation which is intended to effect the unlawful taking over of the leadership of ISANCO and which will result in the IEC's records not to be updated with the correct information, which will not only prejudice ISANCO as such, but also the members of ISANCO who have been deployed in the Municipalities, since the incorrect information will prevent such members from filling the vacancies declared by some Municipalities.

[33] The purpose of the Electoral Commission Act, 51 of 1996 (“the Act”), is, amongst others, “...[T]o make provision for the establishment and composition of an Electoral Commission to manage elections for national, provincial and local legislative bodies and referenda...” In terms of section 5(f) of the Act the IEC is to compile and maintain a register of parties. The Regulations for the Registration of Political Parties, issued in terms of the Act and published under GN R13 in GG 25894 of 7 January 2004, as amended (“the Regulations”), determine as follows in Regulation 7 in this regard:

“7 Register of parties and registration of documents

- (1) The Chief Electoral Officer must keep a register of parties in which is recorded all registrations, renewals of registrations, failures to renew registrations, changes of the registered names, abbreviated names, distinguishing marks or symbols of parties and cancellations of registrations.
- (2) The register of parties and a copy of every document lodged with the Chief Electoral Officer for the purposes of the registration of a party, or the renewal of the registration of a party, the changes of the registered name, abbreviated name, distinguishing mark or symbol of a party or the cancellation of the registration of a party, shall be kept for inspection by the public at the office of the Chief Electoral Officer and any person may inspect the register and if requested a copy of the register to be made available free of charge during office hours.”

[34] When a party applies for registration, such an application must, in terms of the Regulations, contain, *inter alia*, the names and contact details of the party’s “leader” and its “contact person”, as well as the names and address of members constituting the executive body of the party.

- [35] The Regulations also makes provision for an official website of the IEC.
- [36] From the aforesaid, it is clear that the register (and the website) of the IEC constitute the formal records pertaining to information regarding registered political parties. It consequently goes without saying that it is crucial for every political party, including ISANCO, that the correct information is reflected in such records.
- [37] As stated earlier, it is evident from the papers which have been filed to date in this application, that there is a history of rivalry between Mr Luyenge and the first respondent regarding their leadership of ISANCO and the concomitant authority to act on its behalf. In fact, it appears that ISANCO may very well currently consist of two competing groups, each with its own agenda and each of which is attempting to take ISANCO over for its own political (and other) agenda. Logic therefore dictates that it is essential that the records of IEC reflect the true and correct position regarding the identity and contact details of the lawful leader and the lawful contact person of ISANCO.
- [38] Although the annexures to the founding affidavit filed in the main application reflect the existence of alleged disciplinary issues with Mr Luyenge in his capacity as leader and member of ISANCO, the true nature and seriousness of the disputes, especially also the involvement of the first respondent therein, are not evident from and were not disclosed in the founding affidavit filed in the main application. The first respondent had even been interdicted by a court order issued on 8 June 2023 under case number

2447/2023 in the High Court of the Eastern Cape Division, Mthatha, from convening the Special National Conference held on 8 and 9 June 2023, being the very Conference during which the decisions were taken which ISANCO relied upon for purposes of the relief it sought in the main application (but importantly, ISANCO as represented by the first respondent, as oppose to the present application where Mr Luyenge deposed to the founding affidavit on behalf ISANCO). The said application has not yet been finalised. However, despite the first respondent's knowledge of this interdictory order, he approached court, (allegedly) on behalf of ISANCO, by means of the main application, relying on decisions which were taken during the said Conference, whilst being fully aware that the lawfulness of the Conference and consequently, the validity of the decisions taken during the said conference, are the subject matter of a pending court application. This was not disclosed in the main application and the first respondent was not even cited as a party to the main application, despite the fact that he clearly had a direct and substantial interest in the relief which was being sought. I am quite sure that had Reinders, J been aware thereof, she would not have entertained the application in the absence of the first respondent having been cited as a party thereto.

- [39] In the circumstances I am satisfied that ISANCO made out a proper case for urgency with regard to the necessity for the IEC to reflect the information as it existed prior to the court order of 27 July 2023.

[40] The requirements for interdictory relief have, in my view, also been established.

[41] I am consequently of the view that the said relief should be granted with immediate effect.

The further relief:

[42] In view of the essential factual disputes pertaining to the leadership of ISANCO and the concomitant authority of the deponent to the founding affidavit, I am of the view that the rest of the requested relief should stand over for determination at the return date, by which time the issue pertaining to authority would properly have been properly ventilated and can then be adjudicated upon.

Costs:

[43] As indicated earlier in this judgment, this matter was enrolled to be heard on Thursday, 10 August 2023, at 09h30.

[44] It is practice in this Division that the unopposed motion court is dealt with by the same duty judge who is responsible for dealing with urgent applications.

[45] Although I attempted to prepare the application during the public holiday of 9 August 2023, I was unable to do so due to the horrendous state of the application papers. At that stage same had not been indexed and/or paginated in accordance with the

practice in this Division. In addition, some of the annexures were incorrectly marked with the wrong annexure numbers. What also caused a great deal of confusion, is the fact that a number of the annexures which are previous applications or which formed part of previous applications, still reflected the annexure numbers and page numbers of such previous applications and not those referred to in the founding affidavit of the present application. I consequently requested my registrar at 8h00 on Thursday morning, 10 August 2023, to make contact with the applicant's attorney of record and to request him to see to it that the application papers are properly indexed and paginated etc, which my registrar duly did.

- [46] With reference to what I stated in the previous paragraph, the applicant will also be well advised to take cognisance of and apply the following principles as stated, with reference to applicable case law, in **Erasmus, Superior Court Practice**, D E van Loggerenberg, at RS 20, 2022, D1-58D:

"It is not open to an applicant or a respondent to merely annex to his affidavit documentation and to request the court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. It cannot be expected of a party to trawl through lengthy annexures to the opponent's affidavit and to speculate on the relevance of facts contained in such annexures. Trial by ambush cannot be permitted. It is also improper for an applicant simply to attach a lengthy document to his affidavit and then proceed to quote therefrom without any indication as to which paragraphs are indeed being quoted. It cannot be expected of the court, in

preparation for the case, to struggle through what is often a quagmire of fine print to check whether the quotes are in fact correct.”

The aforesaid principles can also have a substantial bearing on the consideration of the merits of the application.

- [47] On the said Thursday morning I then attended to the unopposed motion court and only received the indexed and paginated papers during lunchtime. At 14h00 I continued with motion court and only finalized same at approximately 16h30.
- [48] By that time counsel for the applicant was still not in court and I was advised by the applicant's attorney of record that counsel for the applicant was still traveling from the Eastern Cape to Bloemfontein, but that he was only about 20 minutes away from Bloemfontein. I indicated that due to the state in which the papers were, I have not been able to properly prepare same. However, I also indicated that should the legal representatives submit that the application is as urgent that it should be dealt with on Thursday evening, I was willing to let the matter stand down in order for me to properly prepare the application, where after I was willing to hear the application. However, both the attorney of record of the applicant and Mr Kleingeld indicated and submitted the application was not as urgent and that it could be rolled over until Friday morning. Due to the fact that I had another urgent application for Friday morning at 09h30, I ordered that the matter be rolled over to be heard at 10h30 (although it was eventually heard at 10h00 already, since I finished earlier with the other urgent application). I also made an order that the wasted costs of

10 August 2023 stand over for adjudication during the hearing of the application on 11 August 2023.

[49] In my view the final outcome of the application would probably have a crucial impact upon the appropriate order to be made with regard to the aforesaid costs and I consequently ordered that the said costs of 10 August 2023 and 11 August 2023 should stand over to be adjudicated on the return date of the rule *nisi*.



C VAN ZYL, J

On behalf of the applicant:

Adv M Nonkonyana
Instructed by:
Gcasamba Attorneys Inc
BLOEMFONTEIN

On behalf of the first respondent:

Mr AJ Kleingeld
Instructed by:
Kleingeld Attorneys
BLOEMFONTEIN