THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Reportable: YES/NO

Case No: 697/2023

In the matter between:

JANTJIE SABATA THULO Applicant

and

HANS SMANGA MADOLO First Respondent
RELEBOHILE PENELOPE MADOLO Second Respondent

Coram: Opperman, J

Heard: 5 October 2023

Delivered: 31 October 2023. This judgment was handed down in court and electronically by circulation to the parties' legal representatives *via* email and release to SAFLII on 31 October 2023. The date and time of hand-down is deemed to be 15h00 on 31 October 2023

Judgment: Opperman, J

Summary: Opposed motion – application for order of the costs of the removal of encroachment – costs of the application

JUDGMENT

INTRODUCTION

[1] It was ordered on 22 June 2023 that:

1. The respondents shall remove the encroachment erected upon the applicant's property within twenty-one (21) days after the granting of this order and make good the land on which the encroachment was erected.
2. In the event of the respondent failing to comply with paragraph 1 of this order, the applicant is hereby authorised and directed to remove the encroachment on the respondents' behalf and if needs be with the assistance of the relevant sheriff.
3. Prayer 3 of the relief sought in the notice of motion is postponed to the opposed roll on Thursday 27 July 2023.
4. The costs occasioned by the postponement shall stand over for later determination

[2] Prayer 3 reads as follows:

3. Costs of this Application as well as costs of removing the encroachment:

[3] There is a paradox in the orders and the prayer above in that it would follow automatically that if the respondents were ordered to remove the encroachment, they will have to carry the costs of the removal. They cannot remove the encroachment without carrying the costs. The judgment of the court sitting on 22 June 2023 could not be obtained for clarity.

[4] The rationale behind the postponement to hear the issue of the costs for the removing of the encroachment as well as the costs of the application is difficult to determine on the order and the facts of the case.

[5] If the respondents did not comply with the order they are in contempt of the order of the court and the applicant has the remedy of: "2. In the event of the respondent failing to comply with paragraph 1 of this order, the applicant is hereby authorised and directed to remove the encroachment *on the respondents' behalf* and if needs be with the assistance of

the relevant sheriff." It follows that the costs of the removal can then be claimed from the respondents.

[6] On the facts of the case, it was undoubtedly not the intention of the court to order and authorise the removal of the fence and hold the applicant liable for the costs. A reasonable inference is that this application might be moot but for the issue of the costs for the litigation.

[7] That said; the costs for the litigation could have been addressed on 22 June 2023.

THE CASE FOR THE APPLICANT

[8] If I am mistaken on the above; fortifying the fact that the respondents must carry the liability for the costs of the removal consequent to the June 2023 - order are the facts proven and that already existed and the law that prevailed when the order was made as is aptly pointed out by the applicant.

1. The respondents have already conceded that the fence erected on their immoveable property, by the erstwhile owner thereof, is unlawfully encroaching upon the applicant's immovable property and is to be removed.
2. The applicant is the registered owner of the immoveable property on which the encroachment occurs. The respondents are the registered co-owners of the immoveable property adjacent to the applicant's property, which property is benefitting from the encroachment of the fence.
3. The parties were not *ad idem* regarding the extent of the encroachment. The respondents averred that the encroachment is negligible whilst the applicant averred that the encroachment is approximately 125 square metres in extent, which is supported by the testimony of the land surveyor that the encroachment is "well into" the applicant's property and constitutes a substantial encroachment. The encroachment has been proven and the order for removal was made.
4. It is common cause that the fence being the cause of the encroachment was erected by the previous owner of the encroaching property, Mr Kakane. The respondents took issue with the applicant's purported failure to have the encroachment removed

by Mr Kakane. This forms the basis of their submission that they should not bear the costs of the removal of the encroachment. It is however, evident from the papers that the applicant attempted to resolve the matter amicably with Mr Kakane before approaching an attorney, addressed formal demands to Mr Kakane as early as 2017, had consequently informed Mr Kakane of the encroachment, and had already instituted proceedings to compel Mr Kakane to remove the encroachment which proceedings could not be served or proceeded with in the light of Mr Kakane's sale of the immoveable property to the respondents.

5. The applicant cannot be said to be the author of his own misfortune, contrary to that which has been submitted by the respondents. It is clear that the applicant demanded rectification of the issue by the respondents, but the respondents failed to adhere to these demands. That the respondents failed to heed notifications to collect registered post addressed to them, does not assist them whatsoever.

6. Insofar as the respondents' submission that the applicant's claim lies against Mr Kakane is concerned, the respondents are the registered owners of the encroaching property and as such are vested with all of the benefits and entitlement of ownership upon transfer. They are liable for the risks and responsibilities that stem from ownership.

7. Moreover, they are directly deriving a benefit from the encroachment through the unlawful use and enjoyment of the applicant's land. The applicant referred in their heads of argument to the ruling of Murray, AJ in *Bet-el Faith Mission v Motthamme and Others* (5306/2017) [2020] ZAFSHC 6 (16 January 2020):

> [10] It is important to note that encroachment is not to be construed as a type of nuisance: it is an unlawful act. The encroacher unlawfully interferes with the neighbour's use of his land without having a right to do so. In the instant case the encroachment interferes with the Applicant's intention to build a new Church and to expand the parking area to accommodate more congregations. Equity or fairness only becomes an issue when the owner of the land claims removal of the encroachment and the court has to exercise its discretion to order such removal or to award compensation.

8. The encroachment constitutes a continuous wrong. The applicant correctly so, relies on the case of the Supreme Court of Appeal in *Barnett v Minister of Land Affairs* 2007 (6) SA 313 (SCA). The respondents, as the present owners of the

encroaching property, are the present perpetrators of wrongful conduct. The respondents claim against the previous owner cannot be said to have prescribed.

[20] In considering the special plea of prescription, the postulation is, of course, that the allegations underpinning the government's claim had in fact been established. Broadly stated, it must therefore be accepted for the prescription issue that the defendants' occupation of their sites constitutes a contravention of both the Decree and the common law. Departing from this premise, the answer to the prescription defence is, in my view, to be found in the concept which has become well-recognised in the context of prescription, namely that of a continuous wrong. In accordance with this concept, a distinction is drawn between a single, completed wrongful act - with or without continuing injurious effects, such as a blow against the head - on the one hand, and a continuous wrong in the course of being committed, on the other. While the former gives rise to a single debt, the approach with regard to a continuous wrong is essentially that it results in a series of debts arising from moment to moment, as long as the wrongful conduct endures (see eg Slomowitz v Vereeniging Town Council 1966 (3) SA 317 (A); Mbuyisa v Minister of Police, Transkei 1995 (2) SA 362 (Tk) (1995 (9) BCLR 1099); Unilever Bestfoods E Robertsons (Pty) Ltd and Others v Soomar and Another 2007 (2) SA 347 (SCA) in para [15]).

[22] ...To my way of thinking, the result is that the existence and occupation of the structures form part of the continuous wrong perpetrated by the defendants. It follows that, in my view, the special plea of prescription cannot be sustained. (Accentuation added)

9. It is trite that where an owner of immoveable property seeks an order for the removal of an encroachment, the court is vested with discretion whether to order the removal of the encroachment or to make an award of damages in favour of the owner to compensate for the loss suffered by the encroachment. In the instance the order has been made and it is water under the bridge. The costs of the removal are apparently in issue.

10. It is the argument of the applicant that the fault of the encroachment does not lie with the applicant. That it is apparent from the case law that the court may not hold the impoverished owner of the encroached upon land, liable to bear the cost of the removal of the encroachment. To do so would be tantamount to placing the financial burden of remedying an unlawful act on the person on whom the unlawful act was inflicted and would be untenable. The principle that the cost of the removal of the encroachment falls to be borne by the encroaching landowner is further

supported by the judgment in *Phillips v South African National Parks Board* (4035/07) [2010] ZAECGHC 27 (22 April 2010).

[21] There is some uncertainty as to whether a court has a discretion to refuse the grant of a final interdict when the applicant has establish a clear right and a reasonable apprehension of harm. This has been the subject of conflicting decisions. On the one hand it has been held that where a clear right has been established the discretion of a court to refuse a final interdict is very limited and depends exclusively upon the question whether the alternative remedy is adequate (see Transvaal Property and Investment Company Ltd and Reinhold and Co. v SA Townships Mining and Finance Corp Ltd and the Administrator 1938 TPD 512 at 521; and United Technical Equipment Company v Johannesburg City Council 1987 (4) SA 343). On the other hand it was held in Candid Electronics v Merchandised Buying Syndicate 1992 (2) SA 459 at 464G that "the grant or refusal of an interdict is a matter within the discretion of the Court hearing the application and depends on the facts peculiar to each individual case and the right which the applicant is seeking to enforce or protect". See also Kemp, Sacs and Nell Real Estate (Edms) BPK v Soll en 'n Ander 1986 (1) SA 673 (O) at 689; and Wynberg Municipality v Dreyer 1920 (AD) 439 at 477. It has, however, consistently been accepted that where an applicant seeks a demolition order in respect of an encroachment constructed on its property the court does have a discretion. See Rand Klaterraad v Bothma en 'n ander 1997 (3) SA 120 and the authorities set out therein; and Trustees, Brian Lackey Trust v Annandale 2004 (3) SA 281 at 290 para [26] to 291 para [28] and p. 292G-H. I shall assume, without deciding same, that I do have a wide and equitable discretion (see Trustees, Brian Lackey Trust (supra) at 291 para [28]) which is not dependent exclusively on the question whether an alternative remedy is adequate (compare Transvaal Property and Investment Company (supra) at 521).

[22] Section 25(1) of the Constitution of the Republic of South Africa Act 108 of 1996 provides as follows:

"No one may be deprived of property except in terms of law of general application, and no law may permit arbitratory deprivation of property."

[24] It is indisputable that an encroachment of the nature in issue in the instant case constitutes an interference with the applicant's property rights such as to constitute a deprivation in terms of the provisions of section 25 of the Constitution. It follows that, in exercising its discretion the court will accept, as a starting point, that the owner is entitled to claim a demolition order in respect of the encroaching structure. The primary remedy is therefore an order for removal of the structure (see Trustees, Brian Lackey Trust (supra) p. 292; and Rand Klaterraad (supra) at 138F; compare also Meyer v Kaiser 1980 (3) SA 504 (D)). In respect of the exercise of the court's discretion Hefer JA, in the context of a claim for

specific performance, in Benson v SA Mutual Life Assurance Society 1986 (1) SA 776 stated as follows at 783C-E:

"This does not mean that the discretion is in all respects completely unfettered. It remains, after all, a judicial discretion and from its very nature arises the requirement that it is not to be exercised capriciously, nor upon a wrong principle .... It is aimed at preventing an injustice – for cases do arise where justice demands that a plaintiff be denied his right to performance – and the basic principle thus is that the order which the court makes should not produce an unjust result which will be the case, eg, if, in the particular circumstances, the order will operate unduly harshly on the defendant. ..." (Accentuation added)

11. The applicant maintains that the respondents are however, not without their own remedies. Their remedies lie against Mr Kakane in terms of the contract of purchase and sale concluded between the parties.

12. Lastly, the applicant submits that it follows that the applicant, having already achieved substantial success in the relief sought by way of this application should be awarded his costs.

13. The applicant moves for an order that the respondents pay the costs occasioned by the removal of the encroachment as well as the costs of the application, inclusive of such costs occasioned by the postponements of the matter on 8 and 22 June 2023 respectively.

FINDING ON THE CASE FOR THE APPLICANT

[9] The June 2023 - order stands and it follows on the above that the respondents must pay for the removal even if they have not done so within 21 days after 22 June 2023. Another issue is the costs of the litigation.

[10] This is without any doubt a case wherein the vision of the legislator to solve cases by mediation could have been fulfilled.[1] When the case served before the court on 5 October

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[1] 2022: Munyati T.F, *The Role of Mandatory Mediation in the Transformation of the South African Civil Justice System*,
https://repository.up.ac.za/bitstream/handle/2263/78835/Munyati_Role_2020.pdf?sequence=1&isAllowed=y.
Also see Rule 41A of the Uniform Rules of the High Court
MEDIATION AS A DISPUTE RESOLUTION MECHANISM
Rule 41A
(1) In this rule—
"dispute" means the subject matter of litigation between parties, or an aspect thereof.

"mediation" means a voluntary process entered into by agreement between the parties to a dispute, in which an impartial and independent person, the mediator, assists the parties to either resolve the dispute between them, or identify issues upon which agreement can be reached, or explore areas of compromise, or generate options to resolve the dispute, or clarify priorities, by facilitating discussions between the parties and assisting them in their negotiations to resolve the dispute.

(2) (a) In every new action or application proceeding, the plaintiff or applicant shall, together with the summons or combined summons or notice of motion, serve on each defendant or respondent a notice indicating whether such plaintiff or applicant agrees to or opposes referral of the dispute to mediation.

(b) A defendant or respondent shall, when delivering a notice of intention to defend or a notice of intention to oppose, or at any time thereafter, but not later than the delivery of a plea or answering affidavit, serve on each plaintiff or applicant or the plaintiff's or applicant's attorneys, a notice indicating whether such defendant or respondent agrees to or opposes referral of the dispute to mediation.

(c) The notices referred to in paragraphs (a) and (b) shall be substantially in accordance with Form 27 of the First Schedule and shall clearly and concisely indicate the reasons for such party's belief that the dispute is or is not capable of being mediated.

(d) Subject to the provisions of sub-rule (9)(b) the notices referred to in this sub-rule shall be without prejudice and shall not be filed with the registrar.
[Para. (d) substituted by GNR.2133 of 3 June 2022.]

(3) (a) Notwithstanding the provisions of sub-rule (2), the parties may at any stage before judgment, agree to refer the dispute between them to mediation: Provided that where the trial or opposed application has commenced the parties shall obtain the leave of the court.

(b) A Judge, or a Case Management Judge referred to in rule 37A or the court may at any stage before judgment direct the parties to consider referral of a dispute to mediation, whereupon the parties may agree to refer the dispute to mediation.

(4) Where a dispute is referred to mediation—

(a) the parties shall deliver a joint signed minute recording their election to refer the dispute to mediation;

(b) the parties shall prior to the commencement of mediation proceedings enter into an agreement to mediate;

(c) the time limits prescribed by the Rules for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party to the dispute from the date of signature of the minute referred to in paragraph (a) to the time of conclusion of mediation: Provided that any party to the proceedings who considers that the suspension of the prescribed time limits is being abused, may apply to the court for the upliftment of the suspension of the prescribed time limits; and

(d) the process of mediation shall be concluded within 30 days from the date of signature of the minute referred to in paragraph (a): Provided that a Judge or the court may on good cause shown by the parties extend such time period for completion of the mediation session.

(5) (a) In proceedings where there are multiple parties some of whom are agreeable to mediation and some of whom are not, parties who are agreeable to mediation may proceed to mediation notwithstanding any other party's refusal to mediate.

(b) The time limits prescribed for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party from the date of signature of the minute referred to in sub-rule (4)(a) to the time of conclusion of mediation by the parties who have elected to mediate: Provided that any party to the proceedings who considers that such suspension of time limits is being abused, may apply to the court for the upliftment of such suspension.

(c) In any matter where there are multiple issues, the parties may agree that some issues be referred to mediation and that the issues remaining in dispute may proceed to litigation.

(d) If any issue remains in dispute after mediation, the parties may proceed to litigation on such issue in dispute.

(6) Except as provided by law, or discoverable in terms of the Rules or agreed between the parties, all communications and disclosures, whether oral or written, made at mediation proceedings shall be confidential and inadmissible in evidence.

(7) (a) Upon conclusion of mediation the parties who engaged in mediation shall inform the registrar and all other parties by notice that mediation has been completed.

(b) Notwithstanding the failure of parties who have engaged in mediation to deliver the notice referred to in paragraph (a), the suspension of the time limits referred to in sub-rule (4)(c) shall lapse unless a Judge or a court has extended the time limit and notice thereof has been given to all parties to the proceedings within 5 days of such order.

2023 before me Advocate Roux for the respondents made it clear that they come to the litigation with the proverbial olive branch. They proposed that the applicant and respondents will see to the removal and re-installation of the devil's fork fence, and bear the cost occasioned by the removal and re-installation on equal basis. They will each be liable for payment of their own legal costs. The respondents also withdrew the interlocutory application filed on 3 October 2023.

[11] The origin of the instigation to proceed with expensive, acrimonious and awkward litigation in the High Court is not known to the court. The difference in opinions have been declared and timeous intervention by the legal practitioners and parties to involve the previous and current owners could have resolved the matter years ago. The outcome, here and now, must be as fair as possible to all concerned and, as the court can muster in the consternation. The background is important for perspective.

[12] The matter was postponed on 27 July 2023 to 17 August 2023 for settlement negotiations. The matter was again postponed to 5 October 2023. Counsel for the respondents also brought it to the attention of the court that the postponements of the matter on two previous occasions were due to the fact that the respondents were awaiting approval from their legal

(8) (a) Mediation shall be deemed to be completed within 30 days from the date of signature of the joint minute referred to in sub-rule (4)(a), from which date the suspension of the time limits prescribed for the delivery of pleadings and notices and the filing of affidavits or the taking of any step referred to in sub-rule (4)(c) shall lapse: Provided that where mediation is completed before the aforesaid period of 30 days, the parties who engaged in mediation shall deliver a notice contemplated in sub-rule (7) indicating that mediation has been completed.

(b) The parties who engaged in mediation and the mediator who conducted the mediation shall within five days of the conclusion of mediation, issue a joint minute indicating—

(i) whether full or partial settlement was reached or whether mediation was not successful; and

(ii) the issues upon which agreement was reached and which do not require hearing by the court.

(c) It shall be the joint responsibility of the parties who engaged in mediation to file with the registrar, the minute referred to in paragraph (b).

(d) No offer or tender made without prejudice in terms of this sub-rule shall be disclosed to the court at any time before judgment has been given.

(e) Where the parties have reached settlement at mediation proceedings the provisions of rule 41 shall apply mutatis mutandis.

(9) (a) Unless the parties agree otherwise, liability for the fees of a mediator shall be borne equally by the parties participating in mediation.

(b) When an order for costs of the action or application is considered, the court may have regard to the notices referred to in sub-rule (2) or any offer or tender referred to in sub-rule (8)(d) and any party shall be entitled to bring such notices or offer or tender to the attention of the court.

[Rule 41A inserter by GNR 107 on 7 February 2020] insurance company to defend the claim. This is indicative of people, unfamiliar with the processes of litigation and the law, that are thrown into said litigation; litigation that could have been avoided. The applicant and the respondents are clearly collateral damage to the conduct of Mr Kekane. That said; the law is and was clear all along.

THE CASE FOR THE RESPONDENT

[13] This is the view and information submitted by the respondents:[2]

1. The applicant and the respondents are owners of adjoining stands in Honey Ball Crescent, Lourierpark, Bloemfontein, Free State. Their dispute concerns what is termed a "devils fork" encroachment erected over the property of the applicant by the previous owner of the respondents' property.
2. The applicant previously lodged a case against the previous owners under case number 3275/2021. The case seems to have been abandoned and that led to this particular case.
3. The respondents have, prior to the issuing of the application by the applicant indicated that they do not oppose the removal of the encroachment caused by the devils' fork fence.
4. The fence was erected sometime in 2009 or 2010 by the previous owner about 10 years ago and registered into the registered owners' names in 2019.
5. The respondents had already indicated to the applicant as early as 2019 when they bought the property that they have no objection whatsoever with the applicant removing the encroachment.
6. The applicant updated the respondent regularly on the progress or lack thereof on the case between himself and the previous owner of the respondents' property on the case that he was having with the previous owner of the respondent's property. At no stage during these updates did the respondent deny the applicants right to remove the encroachment.
7. This action flows from the duty to respect the neighbour's possession in the sense that he must not be excluded wrongfully from the possession of what belongs to him.
8. Where encroachment is the only problem, the court has discretion to either order removal of the encroachment or to award damages and compensation. In such instances, the deciding factor is the disproportionality or otherwise between the removal of the encroachments or inconvenience suffered by the aggrieved land-owner. When compensation rather than demolition is ordered it is done usually on the basis of what might be viewed as acquiescence, and prejudice and the principles of neighbour law are taken into consideration. (*Lester v Ndlambe Municipality* 2015 (6) SA 283 (SCA) at paragraph [22], *Rand Waterraad v Bothma,* 1997 (3) SA 120 (O), at 138, and *Trustees Brian Lackey Trust v Annandale* 2004 (3) SA 281 (CPD) at paragraph [23])

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[2] The heads of argument for the respondents.

9. It can readily be seen from the respondents answering affidavit that the issue to be determined by the court is not whether the encroachment should be removed or not. The respondents have already acceded to the removal of the encroachment. In fact, the respondents agreed to the removal before the applicant brought the application. The respondents always maintained that they had no objection to the removal of the encroachment and that the applicant was free to remove it. This attitude by the respondents was maintained even after the applicant brought the application as can be seen in the correspondence to the applicant's legal representatives attached to the answering affidavit.

10. Despite this communication the applicant persisted in bringing the application and failed to take the respondents into his confidence in accepting the offer of removing the encroachment. Not once did the applicant respond to the offer by the respondents to remove the encroachment. Even if there was some doubt that the respondents were not sincere in the removal of the encroachment, the fact that the respondents repeated this offer to the applicant in the answering affidavit should have proved beyond reasonable doubt that the respondent had no objection with the removal of the encroachment.

11. The respondents never engaged in obstructive behaviour, never denied that the encroachment should be removed, have time and again pointed this out to the applicant. Despite all this, the applicant still deemed it necessary to ignore the offer by the respondents and approached the courts in a matter that could have been resolved by the parties.

12. If one has regard to *inter-alia* the conduct of the respondents in this matter it is evident that the applicant ought to have sought to mediate the dispute in terms of rule 41A(2)(a) of the Uniform Rules (the rules) of the court. <u>The applicants' attorneys ought to have advised the applicant about mediation of the dispute, especially in light of the respondents' cooperation</u>. (Accentuation added)

13. Considering the foregoing, there exist no factual or legal reason why the respondents should be saddled with the costs of the application or the removal of the encroachment. <u>Judging from the behavior of the applicant (Who persisted with litigation unnecessarily despite the respondent agreeing to remove the encroachment) it is the respondents' case that the court should show its disapproval in the manner in which the applicant conducted this case and visit the costs of this application on the applicant's attorneys who were in a much better position to advise the applicant in the face of such clear corporation by the respondents.</u> (Accentuation added)

14. The time period that lapsed from the time that the encroachment occurred to the time that the application was brought by the applicant (3 years) is indicative of the fact that the applicant had enough time to engage with the respondents on the removal of the encroachment (Seeing that the respondents were not against removal) and that the encroachment had an insignificant impact on the applicants.

15. In Rand Waterraad, the main policy reason relied upon by the court as justification for leaving the encroachments in place was acquiescence or delay in bringing the application. The court found that the time period between becoming aware of the encroachment and filing the complaint for its removal indicated that the detriment suffered by the affected landowner on account of the

encroachment was insignificant. The court reasoned that the applicant would have approached the matter with greater urgency had the encroachment caused as great a disadvantage as alleged by the applicant. (my emphasis). The court also stated that justice and equity dictated that the tardiness with which the applicant had approached the removal process should result in the order for removal being denied. (*Rand Waterraad v Bothma* 1997 (3) SA 120 (O) at 138).

16. The applicant was not under pressure to bring this application and had enough time to mediate the dispute.

17. Having regard to all the above-mentioned factors, most specifically the willingness of the respondents to accede to the removal of the encroachment, we submit that the matter be referred for mediation between the parties, alternatively that the applicants remove the encroachment as it had been maintained by the respondent all along and bear the costs of the removal of the encroachment.

18. Further to the above, it is our submission that the applicant bears the costs of this application which he persisted with despite clear corporation of the respondents prior to the application being brought and after the application was instituted.

FINDING

[14] Both parties are to blame for the litigation, and they will have to carry the costs thereof. The respondents could have removed the fence and claim the costs from the previous owner as soon as they became aware of the issue. The applicant could have removed the fence as soon as he was able to prove the encroachment and with a court order as to the costs and some time ago. The June 2023 - order should have on application of the applicant, included an explicit order for the costs of the removal of the fence even though the implication might be clear. The complexities and animosity of the case is to be placed at the door of all the parties. The law on the issue was and is clear to the parties. They will have to share the costs of the litigation.

[15] Due to the confusion caused by the ongoing litigation am I forced to make an order on the costs of the removal of the fence.

[16] **ORDER**

1. The respondents to pay the costs occasioned by the removal of the encroachment.
2. Each of the parties to carry their own costs for the application, inclusive of such costs occasioned by the postponements of the matter up until 5 October 2023.

[redacted]

M OPPERMAN, J

APPEARANCES

On behalf of the applicant **J. DONNELY - BORNMAN**
Kramer Weihmann Inc
Bloemfontein

On behalf of the respondents **A.L. ROUX**
Moroka Attorneys
Bloemfontein