



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 041961/22

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

SIGNATURE
27/9/2023
DATE

In the matter between:

LEONARDUS JOHANNES LABUSCHAGNE

APPLICANT

and

FARM TO TABLE MEATS (PTY) LTD

FIRST RESPONDENT

JOHANNES FREDERICK VAN DER WALT

SECOND RESPONDENT

CAREL JOHN VAN HEERDEN

THIRD RESPONDENT

SEAN LEON LABUSCHAGNE

FOURTH RESPONDENT

STEFAN GEORGE VAN HEERDEN

FIFTH RESPONDENT

ANDREW VRELE DU TOIT

SIXTH RESPONDENT

JUDGMENT

BURGER AJ

[1] In the matter before me the Applicant applies for an order to evict the First Respondent from his property.

[2] The Respondents, save for the Fourth Respondent, resist the application.

MISS-JOINDER

[3] Although not raised by the Respondents as a point *in limine*, the question of miss-joinder of the Second to Sixth Respondents was raised by the Third Respondent in the Answering Affidavit and I intend to deal first with this issue before I move on to the main issues of the Application.

[4] The Applicant meticulously dealt with every Respondent in the Founding Affidavit and clearly stated convincing reasons why the Respondents were cited in this Application.

[5] The Third Respondent, in his opposition, merely averred the following:

“AD PARAGRAPHS 2.2 TO 2.7 THEREOF:

43.

43.1 The contents of these paragraphs are noted;

43.2 There are, however, no legitimist (*sic*) grounds for joining the Second to Sixth Respondents in this matter. It seems that the Applicant joined the mentioned Respondents merely because they are, or were at some stage, directors of the First Respondent. That is inappropriate;

43.3 The Second to Sixth Respondents will, consequently, for this reason alone, seek an order in terms of which the application, in as far as they are concerned, is dismissed and that the Applicant be ordered to pay the mentioned Respondents costs of this application, to be taxed on a scale as between attorney and client;

43.4 As I have stated earlier the Fourth Respondent, who only recently received these (*sic*) application and opposed it, will file his answering

affidavit in due course.” (Caselines: 03-20 and 03-21 to the Answering Affidavit)

[6] The Second, Fourth, Fifth and Sixth Respondents did not depose off Affidavits in support of the Answering Affidavit.

[7] The Third Respondent, disingenuously so, also did not take this Court into his confidence to note the correct state of affairs with regards to the interest held by the Respondents in the First Respondent.

[8] The position in relation to joinder was summarised in **Mashike and Ross NNO and Another v Senwesbel Limited and Another [2013] 3 All SA 20 (SCA)** at paragraph 20 as follows:

“[20] Where a party has a direct and substantial interest in any order a court may make, or if such order cannot be sustained or carried into effect without prejudicing that party, the joinder of that party is necessary unless the court is satisfied that that party waived his or her right to be joined or agreed to be bound by the order. The enquiry as to non-joinder is a matter of substance and not of form:

‘The substantial test is whether the party that is alleged to be a necessary party for purposes of joinder has a legal interest in the subject-matter of the litigation, which may be affected prejudicially by the judgment of the Court in the proceedings concerned . . .’

[9] I am satisfied that the Respondents have a legal interest in the subject-matter of this Application and the “defence” raised by the Third Respondent in this respect, stands to be rejected.

BACKGROUND

[10] To enable me to come to a just and fair conclusion, I need to start at the very onset of the relationship between the Applicant and First Respondent.

[11] The Applicant is the owner of Rietfontein, a 206-hectare farm in the district of Bronkhorstspuit, Gauteng Province. It is a crop/feed production and livestock farm, with a modern sheep abattoir facility erected on a portion thereof. The farm, together with its improvements and as a going concern, was valued respectively at R 19 890 000-00 (by an estate agent during September 2021) and R 38 900 00-00 (by a registered professional valuer during August 2021). (Caselines: Annexures “F1” and “F2” to the Founding Affidavit) The latter was a well-reasoned and articulated report.

[12] The Applicant acquired the above property during 1994 and erected and operated a seemingly successful commercial abattoir thereon.

[13] In 2018, when the Applicant was already in his seventies, he decided to down-scale and rent the business and the land out to a person or entity who could continue with the business.

[14] The Applicant subsequently concluded lease agreements with entities which belonged to the Fourth Respondent, his biological son. Due to financial constraints of the lessee, said lease agreements were cancelled some time after conclusion. I pause here to note that the aforementioned agreements contained similar stipulations with regards to improvements to the leased property as contained in the initial agreement between the Applicant and the First Respondent. (Caselines:Annexures "E1" and "E2") I will deal comprehensively with latter agreement shortly.

[15] Enter the First and Third Respondents.

[16] During late 2020, the Applicant was approached by the Second and Third Respondents, representing the First Respondent. They showed interest to buy the property of the Applicant. It is clear from the facts before me that the Applicant proverbially lend an ear to the approach by the Second and Third Respondents because of the intended involvement of the Fourth Respondent in the activities of the First Respondent on the Property of the Applicant.

[17] The Parties could *ab initio* not agree on a purchase price but decided to enter into an initial agreement which would regulate the relationship between the Parties.

The Parties before me disagreed on which Party drew up and presented the initial agreement to the other. I find this dispute of fact to be immaterial in reaching the conclusion I did. The *contra proferentem* rule might have had some value if the Parties were *ad idem* with who the author of the initial agreement was, but only if it operated in favour of the Applicant. It would not have had any effect on position of the Respondents.

[18] Be that as it may, the initial agreement, signed by the Applicant and the Second Respondent on behalf of the First Respondent, contained the following important clauses:

“IN TERMS OF WHICH the above parties [“the Parties”] have already approved the following salient provisions:

1. The Company shall acquire the Land from the Landowner for a purchase consideration to be agreed upon, which purchase consideration shall be discharged by the Company on a deferred basis. Ownership of the Land shall only be transferred to the Company on condition that the full purchase consideration is either paid in full or payment thereof is secured to the satisfaction of the Landowner.
2. Pending the transfer of the Land to the Company, **the Company shall be given occupation, risk, benefit and possession of that portion of**

the Land associated with the existing sheep abattoir facility already established and operated on the Land. The right afforded to the Company shall include the right to have proper access to the relevant portion of the Land. Monthly occupational rent in an amount to be agreed upon shall be payable to the Landowner by the Company.

3. With effect from date of signature of this document, the Company shall be entitled, at its cost and expense and without any recourse to the Landowner, to effect all improvements and/or alterations to the existing sheep abattoir facility already established and operated on the Land, subject to the nature and extent of such improvements and/or alterations being approved in writing by the Landowner prior to any such improvements and/or alterations being undertaken. The approval of the Landowner shall not be unreasonably withheld, delayed or refused.
4. In the event of the transaction(s) as envisaged by this document not proceeding, the Company shall have no claim for compensation against the Landowner in respect of such improvements and/or alterations, unless the reason for the transaction not proceeding can be attributed to actions or omissions on the part of the Landowner, in which event the Landowner shall be liable to the Company for the reasonable and market related costs of the

improvements and/or alterations effected to the Land, or any part thereof.

5. In order to give effect to the provisions of this document, the Parties agree and undertake to negotiate the conclusive terms and enter into the following formal and definitive agreement as soon as reasonably possible following signature of this document:

5.1 An Agreement of Sale by and between the Landowner and the Company, in terms of which the Company will be acquiring the Land and occupying a portion thereof.

6. The aforementioned agreements shall be indivisible transactions and shall embody the salient provisions as expressed in this document as well as such additional terms which are customary to transactions and agreements of the nature intended." (Caselines: Annexure "D" to the Founding Affidavit) (My emphasis)

[19] The Parties engaged in ongoing negotiations regarding the purchase price and in the meanwhile the First Respondent occupied the abattoir and paid rent to the Applicant. This was seemingly to give effect to clause 2 of the initial agreement referred to in paragraph 11 *supra*. Payment by the First Respondent were made punctually and continued until July 2022. According to the Applicant, the First

Respondent even unilaterally increased the monthly rental with 6% during December 2021. The Respondents did not gainsay the aforementioned before me.

[20] It is important to note that the initial agreement did not afford the First Respondent a right of first refusal.

[21] It is common cause that the First Respondent erected a cold storage facility on the Property of the Applicant.

[22] The First Respondent obtained a valuation of the property in the amount of R 12 818 157-00 and made an offer to the Applicant of R 13 million. The First Respondent unfortunately did not attach said valuation to the Answering Affidavit. The offer was declined by the Applicant.

[23] The Applicant was obviously convinced that the property was much more valuable and obtained the valuations referred to in paragraph 4 *supra* which confirmed his convictions. I pause here to note that the Third Respondent accused the Applicant of dishonesty by averring the following in the Answering Affidavit:

"23.

The Applicant, acting *mala fide* and contrary to the terms of the agreement, public policy and the principle of Ubuntu, insisted on a further valuation. The

Applicant then acquired the valuation attached to the founding papers as Annexure "F2". This valuation is for R38,900,000.00 and, significantly, relies on the improvements made by the First Respondent to the property for its valuation. This valuation is, however, ridiculous. It seems that the Applicant was never *bona fide* and it is a reasonable conclusion that the Applicant, intentionally and fraudulently, duped the Respondents into improving the property under circumstances where the Applicant never had the intention of selling the property to the Respondents."

The above accusation is factually incorrect and misguided as the valuation by the registered valuator (Annexure "F2") was obtained by the Applicant before the valuation by Remax. (*Vide*: Paragraph 11 *supra*)

[24] Towards the end of 2021, it must have become clear that the Parties are in deadlock with regards to negotiations pertaining to a purchase price of the Property. Negotiations towards the conclusion of a written lease agreement started in all earnest as the Applicant insisted that the oral lease agreement be formalised.

[25] It is common cause that the Parties failed to agree on the terms of said agreement despite "numerous" proposals forwarded by the Applicant to the First Respondent. The Applicant, as a result, dispatched a letter (Caselines: Annexure "G2" to the Founding Affidavit) on 22 June 2022 giving notice to the First Respondent that, if the Parties were unable to enter into a written lease agreement, the First Respondent must vacate the Property by 31 July 2022.

[26] The First Respondent failed to pay the agreed monthly rent to the Applicant at the end of August 2022. The First Respondent instead elected to pay the rent into the Trust account of his attorneys of record. Before me it was submitted on behalf of the Respondents that the rent is still being paid into the Trust Account of the Respondent's attorneys and payment thereof was tendered.

[27] As a result, on 1 September 2022, the attorneys of record on behalf of the Applicant forwarded a letter to the First Respondent calling on the latter to rectify the breach of the verbal lease agreement by 9 September 2022.

[28] On 9 September 2022 at 14:47 the Attorneys of the First Respondent forwarded a letter to the Applicant stating *inter alia* that:

[28.1] the First Respondent is not in breach of the verbal lease agreement; and

[28.2] the monthly rent will be retained in the Trust account of the attorneys of the First Respondent and the First Respondent will retain occupation of the property until the Applicant has reimbursed the First Respondent for the improvements to the Property alternatively provided sufficient security for the improvements should the Applicant sell the Property to a third party.

[29] One would have expected that the First Respondent would, at that point in time, reduce all its complaints against the Applicant to writing. The complaints about the untoward behaviour of the Applicant towards the employees of the First Respondent as well as the Applicant's purported breach of the oral/initial agreement are notably absent from the response of the First Respondent.

[30] The Attorneys of the Applicant subsequently gave notice of the cancellation the verbal lease agreement in a letter forwarded to the attorneys of the First Respondent on 20 September 2022.

[31] Although some negotiations between the Parties took place after the date of cancellation, I deem it not to be material to reach a finding herein.

[32] Lastly, the First Respondent seemingly continues unfettered in its operations on the Property of the Applicant.

LEGAL POSITION

Motion Proceedings in General

[33] When called upon to decide in motion proceedings, the words of Heher JA in **Wightman t/a JW Construction v Headfour (Pty) Ltd and Another 2008 [3] SA 371 SCA** at 375 find application:

“Recognizing that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict accept the version set up by his opponent unless the latter’s allegations are in the opinion of the court not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: **Plascon-Evans Paints Ltd v Van Riebeek Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3) SA 623 A** at 634 E – 635C.

A real, genuine and *bona fide* dispute of fact can only exist where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the facts stated to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment....

There is thus a serious duty imposed upon the legal advisor who settles the answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.” (My emphasis)

[34] This principle was echoed by Harms DP in **National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009 (2) SA 277 (SCA)** at paragraph 26:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes on fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant’s (Mr. Zuma’s) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter justifies such order. It may be different if the respondent’s version consists of bold or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.”

Common Law on Evictions

[35] As far back as 1931 this Court in **Graham v Ridley 1931 TPD 476** confirmed the common law position that all an Applicant has to prove to obtain an eviction order is that it is the lawful owner of the premises and that the Respondent is in occupation of the premises against its will. This was reinforced in **Chetty v Naidoo 1974 (3) SA 13 (A)** at 20A-E where the court held the following:

“The owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the *res* – the *onus* being on the defendant to allege and establish any right to continue to hold against the owner. . .”

Pacta Sunt Servanda

[36] The principle of freedom of contract and the corollary principle that agreements seriously entered into should be enforced (*pacta sunt servanda*) is trite in our law. Our Apex Court noted the following in **Barkhuizen v Napier 2007 (5) SA 323 (CC)** at paragraph 57:

“Public policy, as informed by the Constitution, requires in general that parties should comply with contractual obligations that have been freely and voluntarily undertaken. This consideration is expressed in the maxim *pacta sunt servanda*, which, as the Supreme Court of Appeal has repeatedly noted, gives effect to the central constitutional values of freedom and dignity. Self-autonomy, or the ability to regulate one’s own affairs, even to one’s own detriment, is the very essence of freedom and a vital part of dignity.”

An Improvement Lien

[37] To rely on a lien, the Respondent(s) must allege and prove:

[37.1] lawful possession of the object (*Vide: Roux v Van Rensburg [1996] 3 All SA 499 (A)*);

[37.2] that the expenses were necessary for the salvation of the thing or useful for its improvement;

[37.3] the actual expenses and the extent of the enrichment of the Applicant/Plaintiff (both must be given because the lien covers only the lesser of the two amounts) (*Vide: Rhoode v De Kock and another [2013] 2 All SA 389 (SCA)*); and

[37.4] that there was no contractual arrangement between the parties (or a third person) in respect of the expenses (*Vide: Brooklyn House Furnishers (Pty) Ltd v Knoetze & Sons [1970] 3 All SA 332 (A)*).

[38] In addition, when the leased premises is situated on farmland, the following *dicta* by Brandt JA – traversing into history and visiting the very origin of our current legal position on the issue – in **Business Aviation Corporation v Rand Airport Holdings [2006] SCA 72 (RSA)** find application:

“[6] An appropriate starting point for a discussion of the questions raised by the appeal appears to be a statement of the generally accepted principle that

in Roman Dutch Law, following Roman Law, lessees were originally in the same position as *bona fide possessors* as far as claims for improvements to leased properties were concerned. It follows that, absent any governing provisions in the contract of lease, lessees, like *bona fide possessors*, had an enrichment claim for the recovery of expenses that were necessary for the protection or preservation of the property (called *impensae necessariae*) as well as for expenses incurred in effecting useful improvements to the property (called *impensae utiles*).

[7] Malpractices amongst lessees led, however, to legislation by the Estates of Holland on two occasions, which severely restricted their right to compensation for improvements. The first enactment was promulgated on 26 September 1658. It is to be found in the Groot Placaet-Boeck part 2 cols 2515-2520 under the rubric 'Placaet vande Staten van Hollandt, tegens de Pachters ende Bruyckers vande Landen'. The provisions of this placaet were re-enacted in almost identical terms on 24 February 1696 in a 'Renovatie-placaet' (see GPB part 4 cols 465-7). Because the provisions of the two placaeten were so similar, reference is often made to 'the placaet', singular, meaning the earlier one of 1658.

[8] Four articles of the placaeten dealt with claims for improvements, namely, articles 10 to 13. Of these the most important for present purposes was article 10, which is translated as follows by W E Cooper Landlord and Tenant Second Edition page 329 note 3:

'Provided, nevertheless, that whenever the owner of any lands, takes them for himself, or lets them to others, he is bound to pay the old lessee, or his heirs, compensation for the structures, which the lessee had erected with the consent of the owner, as well as for ploughing, tilling, sowing and seed corn, to be taxed by the court of the locality, without, however, the lessees being allowed to continue occupying and using the lands, after the expiration of the term of the lease, under the pretext of (a claim for) material or improvements, but may only institute their action for compensation after vacating (the lands).' (My emphasis)

[15] ... One of these malpractices, described in the preamble, was that the lessees retained and continued to occupy the leased property after the expiration of the lease period, without entering into a new lease and against the will of the owners, 'onder pretext', *inter alia*, of 'beterschappe' (improvements) and 'timmeragie' (erection of structures). (See also **Spies v Lombard 1950 (3) SA 469 (A)** at 478F-479H.) What the lessees actually did in practice, so we are told by **Bodenstein Huur van Huizen en Landen volgens het Hedendaagsch Romeinsch-Hollandsch Recht** on page 120, was to abuse their common law right of retention arising from an enrichment lien by deliberately effecting costly improvements to the leased property, for which they knew the owners could not afford to compensate them, so as to effectively

deprive the owners of their property permanently. (See also **Lessing v Steyn 1953 (4) SA 193 (O)** at 199D-E.)”

[39] The Placaaten thus stipulate that a lessee has the right to claim compensation only after he had evacuated the property and accordingly had no lien or right of retention. It is trite that the Placaaten have been received into South African law and have been applied by the courts.

DISCUSSION

[40] I have considered the written and oral submissions of the Parties. In addition, I have also had the benefit of considering the relevant judgments contained in the respective Heads of Argument by the Parties. I am indebted to the Parties for their efforts in this regard.

[41] First and foremost, I am in agreement with the submission by counsel for the Applicant that the Answering Affidavit, deposed to by the Third Respondent, leaves much to be desired. One would expect much more diligence and precision when settling an important document in a matter of this magnitude and that the matter before me requires and, to be blunt, deserves. Except for the linguistic impurities, the Opposing Affidavit contains the following:

“3.

Motion proceedings in the current matter is completely appropriate.

4.

There are numerous factual disputes that cannot be resolved on the papers before this Honourable Court.” (Caselines: 03-3 to the Answering Affidavit)

This clearly amounts to a *contradictio in terminis*.

[42] It is trite that an Applicant must make out his/her/its case in the Founding Affidavit. The phrase “An applicant must stand or fall by his/her founding affidavit” is often referred to in judgments of the various Courts. (*Vide: Director of Hospital Services v Mistry 1979 (1) SA 626 (A)* at 635H-636C. See also **Ramosebudi v Mercedes Benz Financial Services South Africa (Pty) Ltd (51196/2017) [2019] ZAGPPHC (20 March 2019)** at paragraph [11].) I am of the view that a Respondent in motion proceedings should be treated on equal footing.

[43] I find that the Parties ‘seriously entered’ into the initial agreement. I base my findings on the following:

[43.1] the First Respondent was allowed to occupy the sheep abattoir facility on the Property of the Applicant;

[43.2] a verbal lease agreement *in re* occupational rent flowed from the initial agreement; and

[43.3] serious negotiations regarding a purchase price flowed from the initial agreement.

It follows that the Parties obviously considered themselves bound by the provisions of the initial agreement.

[44] It is common cause that the Respondents did not obtain written consent from the Applicant prior to effecting improvements on the Property. Upon close scrutiny of the "improvements" reflected in Annexure "AA1" to the Answering Affidavit (Caselines: 03-35 and 03-36), construction work commenced on 21 October 2020 and concluded on 22 January 2021. I find it difficult to believe that construction of the cold storage facility and offices commenced prior to the conclusion of the initial agreement on 10 November 2020. The Third Respondent, a seasoned business man running a multi-million Rands enterprise like the abattoir, would have committed financial suicide to spend millions of Rands on improvements on somebody else's property without anything in writing to protect himself and the First Respondent.

[45] In addition to the aforementioned and also reflected in Annexure "AA1", I noted more that R 1 million's worth of items listed which can never be described as

“improvements”. In this regard I refer to *inter alia* a Grundfos Pump, 2 Strap Machines, a Vacuum Machine, a Mincer, Offal Trolleys, 2 Scales *et cetera*.

[46] It must have been quite clear to the Respondents that the Parties would not be able to agree on a purchase price for the Property by September 2021. Annexure “AA1” reflects 13 “improvements” from September 2021 to December 2021 and 8 “improvements” in 2022. The aforementioned is clearly what the Court had in mind in paragraph 38 *supra* when it referred to malpractices by lessees.

[47] It is common cause that the Applicant is the owner of the Property concerned and the Respondents occupy same against the will of the Applicant. In addition, I find that the First Respondent breached a material term of the lease agreement by stopping to pay the monthly rent to the Applicant and did not rectify the breach when called upon to do so.

[48] Before me counsel for the Respondents denied that the First Respondent was in breach of the lease agreement but averred that the Applicant was rather in breach. Counsel based his contention on the premises that the Applicant offered the property for sale to a third party. I find this difficult to comprehend. I already noted in paragraph 20 *supra* that the initial agreement between the Parties did not contain a clause which provided the First Respondent a right of first refusal. To claim that the Applicant breached the lease agreement, is ill-conceived and stands to be rejected.

[49] Of importance is that the verbal agreement of lease between the Parties has been cancelled by the Applicant and cannot be revived by this Court. Without an agreement in place, the First Respondent cannot continue to be in possession of the Property and is thus in unlawful possession of the Property.

[50] The Respondents based their defence on an improvement lien. A lien, in general, does not entitle the possessor to use the object, but only to hold it as security until his claim is satisfied by the debtor (**Rekdurum (Pty) Ltd v Weider Gym Athlone (Pty) Ltd 1997 (1) SA 646 (C)**). The First Respondent is conducting business as usual to this day. This, in itself, disqualifies the Respondents to rely on a lien.

[51] It is common cause that the leased premises is situated on farmland. It follows that the Placaaten referred to in paragraph 38 *supra* apply. Consequently, the Applicant has no lien or right of retention in respect of the alleged development and/or improvements to the leased premises save for claiming for compensation after the land has been vacated.

[52] In summary: The Applicant is the lawful owner of the Property. The Respondents have failed to discharge the *onus* of proving that their possession of the Applicant's property, and utilisation thereof for own benefit, is lawful. The Respondents raised fictitious disputes of fact and their defences to the application for eviction are clearly untenable which justifies this Court in rejecting them merely on the papers. I therefore find that there are no *bona fide* disputes of fact which would disentitle the

Applicant to final relief. The Applicant is thus entitled to the relief it seeks in the Notice of Motion herein.

[53] In view of the above and the order I intend to make, I need not to pronounce on the question whether the cold storage facility constitutes a permanent structure or not.

COSTS

[54] The Respondent chose to resist the Application on grounds that are bad in fact and in law. In addition, the First Respondent still operates its business on the Property of the Applicant without paying rent and whilst not being in lawful possession of the premises. The Respondents literally captured the Property of the Applicant and then displayed the audacity to accuse the Applicant of being dishonest. The Respondents furthermore abused the legal process to try and avoid eviction. The mere fact that the Respondents had to apply to this Court to compel the Respondents to file their Heads of Argument, is indicative to the delaying tactics followed by the Respondents. The course of action embarked upon by the Respondents should be condemned in the strongest terms.

[55] The Constitutional Court, in the matter of **Public Protector v South African Reserve Bank [2019] ZACC 29**, dealt with the issue of punitive cost orders. At paragraph 8 the following was stated:

[8] Ours are courts of substantive justice. No litigant ought to be left exposed to undeserved ruination just because she did not expressly plead non-compliance with legal requirements that are very loud in their cry for the attention of lady justice. Costs on an attorney and client scale are to be awarded where there is fraudulent, dishonest, vexatious conduct and conduct that amounts to an abuse of court process. As correctly stated by the Labour Appeal Court—

“[t]he scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible [manner]. Such an award is exceptional and is intended to be very punitive and indicative of extreme *opprobrium*.” (Vide: **Plastic Converters Association of South Africa on behalf of Members v National Union of Metalworkers of SA [2016] ZALAC 39**)”

[56] In the circumstances I am of the view that this Court should show its displeasure with the Respondents’ conduct by making a cost award reflecting it.

[57] As a result, I make the following order:

[57.1] That the First, Second, Third, Fifth and Sixth Respondents (hereinafter collectively referred to as “the Respondents”) be ordered to vacate the

immovable property known as Portion 56 (a Portion of Portion 4) of the Farm Rietfontein 395, Registration Division JR, Gauteng Province, held under Deed of Transfer T17358/1995, 206,5964 hectares in extent (hereinafter referred to as "the Property"), within a period of 30 days from the date upon which this order is served upon the Defendants;

[57.2] That, in the event that the Respondents fail or omit or refuse to vacate the property, as provided for and envisaged in paragraph 57.1 *supra*, the Sheriff of this Court and/or his/her Deputy be authorised and mandated to execute this order and to evict the Respondents from the Property and to obtain the assistance of the South African Police Services to assist him/her in this regard, if necessary;

[57.3] That the Respondents be ordered to pay the costs of this application jointly and severally, the one paying the others to be absolved *pro tanto*, on a scale as between attorney and client, the costs to include the services of 2 (two) counsel.



BURGER AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

FOR THE APPLICANT: ADV FW BOTES SC

ASSISTED BY: ADV R DE LEEUW

INSTRUCTED BY: VDT ATTORNEYS

FOR THE RESPONDENT: ADV R RAUBENHEIMER

INSTRUCTED BY: CJ WILLEMSE & BABINSKY ATTORNEYS