



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

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

Appeal Case No's: **A84/2021, A85/2021 & A86/2021**
Court *a quo* Case No's: **H50/2020, 125/2020 & 132/2020**

In the matter between:

JACOBUS DU PLESSIS OOSTHUIZEN
(Identity number: [...])

Appellant

and

ELIZABETH SOPHIA TERBLANCHE
(Identity number: [...])

Respondent

CORAM: DAFFUE J *et* RAMLAL AJ

HEARD ON: 14 FEBRUARY 2022

DELIVERED ON: 24 MARCH 2022

JUDGMENT BY: DAFFUE J

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 14h00 on 24 March 2022.

I INTRODUCTION

- [1] Two elderly siblings are the role players in acrimonious litigation that kicked off in the Magistrate's Court of Reitz. The elder sibling has recently turned 76 years old whilst his younger sister is 67 years old.

- [2] We are confronted with three appeals between the same parties that were argued the same day. In appeal A84/2021 a final protection order was granted by the Magistrate of Reitz on 13 May 2021 in favour of the applicant (the respondent in the appeal) against her elder brother who is the appellant in the proceedings before us.

- [3] In appeals A85/2021 & A86/2021 the rules *nisi* initially granted by the Magistrate of Reitz in favour of the present appellant based on his sister's alleged spoliation were discharged on 13 May 2021. The three applications were simultaneously heard on 29 April 2021 by the court *a quo*.

- [4] The appellant, being the unsuccessful litigant in all three matters in the court *a quo*, took them on appeal and although counsel for the parties drafted separate heads of argument pertaining to the protection order and the dismissal of the spoliation applications, all three appeals were argued simultaneously. Insofar as the facts relating to the different matters are to a great extent intertwined I have decided to prepare one judgment to deal with all three appeals.

II THE PARTIES

- [5] The appellant is Jacobus Du Plessis Oosthuizen, as mentioned a 76-year-old male person who resides in the town of Reitz and farms in the district. He was represented before us by Adv J Els of the local Bar.

- [6] The respondent is Elizabeth Sophia Terblanche who resides in Odendaalsrus. She is a trustee of a trust that owns several farms in the district of Reitz. She still carries on farming activities although on a limited

scale. She was represented before us by Adv E Larney of the Johannesburg Bar.

III THE ORDERS OF THE COURT A QUO

[7] On 11 November 2020 the respondent, who was not represented by a legal practitioner at the time, applied for and obtained an *interim* protection order with return date 3 December 2020 against her brother, the present appellant, under case number H50/2020 in accordance with the provisions of the Protection from Harassment Act.¹

[8] After filing of the necessary affidavits, including a supplementary founding affidavit by the respondent who obtained legal representation at a later stage, and after hearing argument on 29 April 2021, the court *a quo* made the following order on 13 May 2021 which is quoted *verbatim*:

“The protection order is confirmed and amended to include that the respondent may not enter the Boomplaats, Whala, Templemore and uitgunst Farms without the express prior consent of the Applicant, this includes the Whala Farm and Boomplaats Farm routes, in the event of an actual emergency, which includes fires, floods or a medical emergency, consent of the Applicant may be waived. Should an accident occur i.e livestock wandering onto neighboring farms the retrieval thereof would not constitute a contravention of the order.

No order as to costs.”²

[9] On 3 December 2020 and shortly after the granting of the *interim* protection order the appellant applied *ex parte* under case no 125/2020 for urgent relief in terms of the mandament van spolie. This order with return date 21 January 2021 was granted on the same day in the absence of the respondent and just after the *interim* protection order with return date 3 December 2020 was extended at the request of the appellant’s attorney to 21 January 2021.

[10] In terms of the spoliation order the respondent was directed “to immediately remove the lock on the gate and to provide a duplicate key for the lock affixed to the gate to

¹ Act 17 of 2011; the order appears on p 13 of vol 1 of the harassment record

² Para 9 of the judgment, p 378 of vol 2 of the harassment record

the Respondent, giving access from the T2410 to the Farm Whala, district Reitz, Free State Province.”³

I shall refer to this route as the Whala route herein after. On 21 January 2021 the rule *nisi* was extended by agreement to 11 March 2021 and again on that date to 29 April 2021 as was the case with the other two matters. After filing full sets of papers by agreement and as ordered by the court *a quo*, and the hearing of argument, the rule *nisi* was discharged on 13 May 2021. Each party was ordered to pay his or her own costs. Written reasons were delivered on 18 June 2021.⁴

[11] On 11 December 2020 the appellant brought another urgent *ex parte* spoliation application under case no 132/2020. Similar relief was sought and ordered, save insofar as the relief applied to the access from the S74 to the farm Gedagtenis, district Reitz, herein later referred to as the Boomplaats route. The return date was again 21 January 2021 when it was also extended by agreement as mentioned above.

[12] The application was eventually ripe for hearing and argued on 29 April 2021 as was the case in the other two matters. On 13 May 2021 the court *a quo* discharged the rule *nisi* with costs on a party and party scale, including the costs of counsel.⁵ The written reasons were also provided on 18 June 2021.

IV THE REASONS FOR THE JUDGMENTS

The harassment order: court a quo case number H50/2020 and appeal A84/2021:

[13] One could have been excused for thinking that the court *a quo* was dealing with spoliation when it presented its reasons for judgment in the harassment application. Aspects that should have been dealt with in the reasons for discharging the rules *nisi* in the spoliation applications were dealt with in

³ Spoliation record, p 16

⁴ *Ibid*, pp 173-177

⁵ Para 9 of the written reasons, p183 of the spoliation record

detail. Having mentioned this, the parties and the respondent in particular must be blamed. The supplementary founding affidavit consisting of 60 pages regurgitates to a large extent what was stated in the answering affidavits in the spoliation applications.

- [14] The court *a quo* mentioned that the relationship between the parties became sour as long ago as 2018, but in 2020 “matters (were) coming to a head”.⁶ The court *a quo* did not indicate which of the allegations made by the respondent were accepted to be correct in order to grant final orders in her favour. It *inter alia* referred to the alleged threatening electronic message sent by appellant to the respondent pertaining to the closing of the gates by the respondents,⁷ without coming to a pertinent conclusion, bearing in mind the surrounding circumstances and the respondent’s equally aggressive response.
- [15] The court *a quo* also referred to “shooting lights” that were directed on 20 October 2020 to the respondent’s farm residence. Although the appellant indicated that his tenant was shooting porcupines on Iowa, he failed to attach a confirmatory affidavit of the tenant. The appellant, who stays in the town of Reitz, explained that he as an elderly person would not and did in fact not visit the farms in the middle of the night due to security reasons. The court *a quo* did not state whether it accepted that the appellant was the cause of the alleged harassment, but should have found that the appellant’s version could not be rejected as false or far-fetched.
- [16] On 11 November 2020 the appellant did not seek permission to enter the respondent’s farm in search of missing cows which caused another confrontation. The appellant also informed the respondent’s lessee, Mr Fivaz, that although he did not have to make use of the Whala and Boomplaats routes, he would continue doing so merely in order to aggrieve the respondent. Appellant would also utilise the respondent’s workers without their permission and even flash his vehicle’s lights to her on her own farm in

⁶ Judgment para 5.3 harassment application vol 2 p 373

⁷ Judgment para 5.17 harassment application vol 2 p 375

order for her to give way to his vehicle. The court *a quo* held that the appellant had insulted the respondent on more than one occasion in the presence of her employees and others which caused her emotional and psychological harm.

- [17] It appears as if the court *a quo* accepted the version of the respondent on the basis that the appellant responded with bare denials to her allegations. The court *a quo* concluded that not one specific act, but the cumulative behaviour and actions of the appellant over a period of time which escalated during the latter part of 2020 constituted harassment.

The dismissal of the spoliation applications: court a quo case numbers 125/2020 & 132/2020 and appeal case numbers 125/2020 & 132/2020:

- [18] As mentioned above, the court *a quo* dealt quite extensively with the appellant's right to make use of the Whala and Boomplaats routes. It appears from the reasons provided in the harassment application as well as the two spoliation applications that the court *a quo* failed to accept that the appellant had peaceful and undisturbed use of the specific routes for many years. The appellant was criticised for not deciding whether he was relying on a servitude obtained through prescription, or a right of way. The court *a quo* held that there was no agreement between the parties concerning a right of way, or that a right of way was created by a court order and that the appellant was also not entitled to the use of the two routes insofar as no servitude was created by way of prescription.

V THE GROUNDS OF APPEAL

The harassment order: Court a quo case number H50/2020 and appeal A84/2021:

- [19] The notice of appeal consists of 27 grounds of appeal. This was really not required. No wonder, the appellant's counsel reduced the grounds to 12 in his heads of argument. Eventually, the matter was argued on much more limited

issues. The appellant's case is that the court *a quo* erred in finding that the appellant committed the acts complained of. Even if these were proven which was denied, the acts on their own, or even cumulatively, did not constitute harassment as defined in the Act. It was also submitted that the court *a quo* erred in amending the initial order granted in order to prevent the appellant from using the Wahla and Boomplaats routes. It was submitted in conclusion that the court *a quo* failed to discharge the rule *nisi*, but instead, confirmed the protection order in the amended form.

The dismissal of the spoliation applications: Court a quo case numbers 125/2020 & 132/2020 and appeal case numbers 125/2020 & 132/2020:

- [20] The same scenario applies to the grounds of appeal pertaining to the spoliation applications. The two notices of appeal consist of 13 and 16 grounds of appeal respectively. These grounds were also limited in the heads of argument and the appeal was eventually argued on narrow issues.
- [21] It is the appellant's case that the court *a quo* erred in accepting that urgency was a requirement to succeed with the mandament van spolie and that he could only be spoliated if he had a right to possession and/or that he became entitled to use the two routes based on prescription. The court *a quo* should have found that the appellant was in *de facto* possession of the two routes, that he was being despoiled and consequently, the two requirements to succeed with the mandament van spolie have been met. Therefore, the two rules *nisi* should have been confirmed with costs.

VI THE COMMON CAUSE FACTS

- [22] The following facts are common cause or were not seriously contested:

22.1 The parties' father was the owner of several farms in the district of Reitz. Before his death he established two trusts, the Boomplaats Trust and the Iowa Trust.

- 22.2 The appellant is the trustee of the Iowa Trust who owns *inter alia* the Farm Iowa and other farms, whilst the respondent is the trustee of the Boomplaats Trust who *inter alia* owns the farms Boomplaats and Whala.
- 22.3 In 2001 the appellant bought the remainder of the farm Gedagtenis (“Gedagtenis”).
- 22.4 The aforesaid farms are adjacent to each other. Whala is situated next to the T2410 gravel road between Harrismith and Reitz.
- 22.5 In 1985 double gates were installed at the entrance from the T2410 to Whala.
- 22.6 In 1995 the appellant installed a gate in the border fence between Whala and Iowa. The route is referred to herein as the Whala route.
- 22.7 After appellant had bought Gedagtenis in 2001 he used the entrance route from the S74 through Boomplaats to this farm, the Boomplaats route.
- 22.8 Although in dispute since when the appellant had access to Iowa and Gedagtenis as alleged by him in the two founding affidavits, there can be no doubt that it was the case for many years. In fact, he had undisturbed and peaceful possession of both routes, the first route being the subject in application 125/2020 and the second in application number 132/2020, these being the Whala and Boomplaats routes respectively. Even on the respondent’s version the routes were used by the appellant from at least 2006.⁸

⁸ See paras 63.3 & 63.6 at p 78 of the spoliation record; the respondent disputes that the routes are servitude routes and/or that the appellant is entitled to a right of way; see also para 75 on p 82 in respect of the second application

- 22.9 Notwithstanding the fact that the parties are siblings, they have not seen eye to eye for some time. From about June 2018 their relationship became loathsome. The animosity intensified especially during the latter half of 2020.
- 22.10 It is not in contention that the respondent took the law into her own hands and unlawfully deprived the appellant of his possession of the Wahla and Boomplaats routes, although she subjectively believed that she was entitled to do so. No doubt, she admitted removing gates used by the appellant on the Whala route to get access to his farm, Iowa and fencing off the entrances as well as placing scrap metal along the fence openings. She also admitted to digging a trench to prevent access to appellant and eventually locking gates without providing the appellant with keys.⁹
- 22.11 On 11 November 2020 the respondent approached the court *a quo*, relying on the appellant's harassment. An *interim* order was issued with return date 3 December 2020. The terms of the order are not in line with the relief sought by the respondent, but this is immaterial for purposes hereof. Clearly, she sought more extensive relief than initially obtained.¹⁰
- 22.12 On 13 November 2020 the *interim* order was served on the appellant. He failed to take any steps in order to oppose the application on the return date. Instead, he eventually deposed to an affidavit on 2 December 2020, not to oppose the protection order, but in order to obtain relief in terms of the mandament van spolie. As mentioned the application was brought *ex parte*. The appellant also relied on alleged urgency.
- 22.13 On 3 December 2020 appellant, his attorney, Mr Johan Niemann ("Niemann") of Niemann Grobbelaar Attorneys in Bethlehem and the

⁹ See *inter alia* para 11.2 at p 54 of the spoliation record

¹⁰ Harassment record pp 1-13

respondent were all present at the Magistrate's Court in Reitz. Niemann requested an extension of the rule *nisi* in respect of the protection order and a postponement of the application to 21 January 2021 in order for the appellant to respond to the allegations in that application. Such an order was made. Not a word was said by Niemann about the spoliation application that the appellant was on the verge of moving in the court *a quo* that very same morning.

- 22.14 Eventually and in the respondent's absence who could not have the faintest idea what was about to happen, the court *a quo* was convinced to grant an *interim* spoliation order with return date 21 January 2021 in respect of the Whala route. There is a brief reference to the protection order granted against the appellant in the founding affidavit, but the court *a quo* should have noticed that the same parties are embroiled in the litigation relating to the harassment matter, bearing in mind the small town and that just over a hundred civil applications had been issued by that time of the year.¹¹
- 25.15 It is clear that the letter of demand dated 29 November 2020 attached to the founding affidavit in the first spoliation application was sent to an email address that previously belonged to the respondent, but contrary to what was alleged in the founding affidavit, this email was never read. Coincidentally, Niemann asked the respondent's email address when the harassment application was postponed. He was provided with the same email address that is reflected in the harassment application. Niemann preferred not to send the letter of demand to that email address, although at the relevant time this information would have been known to him and his client.

¹¹ Para 6.15 on p 8 of the spoliation record

- 22.16 On 11 December 2020 appellant brought a second spoliation application under application number 132/2020. This time it was about the locking of the entrance gate from the S74 to Gedagtenis, the Boomplaats route. Again, as in the previous case, an urgent *ex parte* application was brought and as in the previous case, a rule *nisi* was issued with return date 21 January 2021.
- 22.17 On 10 December 2020, the day before the second spoliation application was brought, there was a telephonic conversation between Niemann's secretary, Me AA Cronje and the respondent. The contents of the conversation are in dispute and will be dealt with under the next heading, save to refer at this stage to the following note made by the secretary pertaining to this telephonic conversation:
"Sy het ook bevestig dat die hekke by Plaas Boomplaats nie gesluit is nie."¹² (In English: She confirmed that the gates on the farm Boomplaats were not locked.)
- 22.18 On 21 January 2021 the return dates of the rules *nisi* in the three applications were extended and the applications postponed to 11 March 2021, where after the applications were again postponed to 29 April 2021. The postponements allowed the parties an opportunity to file comprehensive affidavits which really caused unnecessary reading, bearing in mind the less than complex issues that had arisen initially. They also filed extensive heads of argument in respect of all disputes raised in the applications as submitted by Ms Larney.
- 22.19 On 29 April 2021 all three applications were heard and on 13 May 2021 orders were granted. The court *a quo*'s written reasons in all three matters were made available to the parties on 18 June 2021.

¹² Annexure "RB" at p 168 of the spoliation record

- 22.20 The court *a quo* gave additional reasons in the harassment application upon receipt of the notice of appeal, specifically pointing out that the appellant never requested a referral of the matter for oral evidence and furthermore, that the appellant failed to raise a real, genuine or *bona fide* dispute in his answering affidavit.

VII FACTS IN DISPUTE

[23] The following facts are in dispute:

- 23.1 The factual allegations of the respondent in support of the protection order.
- 23.2 Even if the allegations in the harassment application are accepted to be correct, it is still disputed that any allegation on its own, or the allegations cumulatively fall within the definition of harassment.
- 23.3 Whether the court *a quo* could have amended the protection order to limit the appellant's right to use the Whala and Boomplaats routes to pass through the relevant farms and/or to make use of the entrances leading to Iowa and Gedagtenis, bearing in mind that the appellant was in peaceful and undisturbed possession of the access routes at all relevant times (an aspect to a certain extent placed in dispute by the respondent as will be shown later).
- 23.4 Whether the appellant could rely on any right in the form of a servitude, or any other right of way in order to make use of the access routes to his farms.
- 23.5 Whether the spoliation applications were urgent, bearing in mind available alternative routes.

- 23.6 Whether or not the appellant failed to act with the utmost good faith in line with the *locus classicus*, *Schlesinger v Schlesinger*.¹³
- 23.7 Whether or not the second application was necessary, bearing in mind the respondent's version that the gates on the Boomplaats were open, allowing the appellant access to Gedagtenis through the Boomplaats route prior to the application being moved for on 11 December 2020.
- 23.8 Whether the orders discharging the rules *nisi* in the spoliation applications are appealable, bearing in mind the judgment of the Namibian Supreme Court in *Beukes v Kubitzausboerdery (Pty) Ltd*¹⁴ insofar as the *rules nisi* were allegedly dismissed based on lack of urgency.
- 23.9 There are factual disputes pertaining to the removal of the gates, the erection of fences and the locking of the gates, but as indicated above, the undisputed facts clearly indicate that the appellant had proven the two requisites of the mandament van spolie in respect of at least the first application. The respondent's version that the Whala and Boomplaats routes are not servitude routes or that the appellant did not obtain a right to use the routes based on prescription is misplaced.¹⁵ There is a dispute in respect of the second application insofar as the respondent stated that the particular gates on the Boomplaats route were opened to the knowledge of the attorney's secretary before the application served before the court *a quo*.

VIII LEGAL PRINCIPLES AND STATUTORY PROVISIONS PERTAINING TO HARASSMENT

¹³ 1979 (4) SA 342 (W)

¹⁴ 2020 JDR 1424 (NmS) & *Vena v Vena and another NO* 2010 (2) SA 248 (ECP)

¹⁵ See para 65 & 66, p 80

[24] Insofar as the respondent brought her application for protection in terms of s 2(1) of the Protection of Harassment Act and an order was made by the court *a quo* in accordance with s 3 thereof, it is apposite to quote the following definitions of harassment, harm and related person:¹⁶

Section 1 of the Act defines these as follows:

“harassment’ means directly or indirectly engaging in conduct that respondent knows or ought to know –

- (a) Causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably –
 - (i) Following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
 - (ii) Engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
 - (iii) Sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
- (b) Amounts to sexual harassment of the complainant or a related person.”

Harm is defined as follows:

“harm’ means any mental, psychological, physical or economic harm”.

Related person is defined as follows:

“related person’ means any member of the family or household of a complainant, or any other person in a close relationship to the complainant”

[25] The only reported judgment that could be found in respect of harassment is that of *Mnyandu v Padayachi*¹⁷ where the court made the following observation:¹⁸

“Based on its examination of international legislation, the SALRC recommended that the recurrent element of the offence should be incorporated in the definition of harassment’. The definition in the Act states that harassment’ is constituted by directly or indirectly engaging in conduct...’. However although the definition does not refer to a course of conduct’ in my view the conduct engaged in must necessarily either have a repetitive element which makes it oppressive and unreasonable, thereby tormenting or inculcating serious fear or distress in the

¹⁶ Section 1 of the Act

¹⁷ 2017 (1) SA 151 (KZP)

¹⁸ *Ibid* para 68

victim. Alternatively the conduct must be of such an overwhelmingly oppressive nature that a single act has the same consequences, as in the case of a single protracted incident when the victim is physically stalked.”

- [26] In *De Buys Scott and others v Scott*¹⁹ this court dealt with a feud between brothers who were also neighbours. The court emphasised the notion of neighbourliness and the interests of each neighbour within small neighbourhood communities. The observation of the court is relevant and directly in point, but it must be considered whether the proven facts *in casu* are sufficient in order to dismiss the appeal.

IX EVALUATION OF THE EVIDENCE IN RESPECT OF HARASSMENT

- [27] I prefer to deal with the evidence in respect of harassment separately although the issues between the parties are intertwined. The repetitive versions in the various applications made it extremely difficult to adjudicate the applications. When dealing with harassment, it is clear that the parties had strong words for each other and even related parties in the case of the respondent. No doubt, irritation and annoyance were the order of the day between the two elderly siblings. The animosity became fiercer over time. However, it appears as if the real drama started when the respondent unilaterally decided to remove the gates as fully set out in the first spoliation application. It is also evident that the version of the appellant in this regard pertaining to spoliation was essentially conceded by the respondent to be correct. Annexure “FA14”,²⁰ an extract of WhatsApp exchanges between the appellant and the respondent, is indicative of the fact that even the respondent was prepared to use offensive language towards the appellant.

- [28] In considering the appeal I appreciate that one specific deed may constitute harassment and although one or more actions could not be considered as harassment on their own, the totality of all the accepted actions by one person directed at another or related persons may be such that a finding of

¹⁹ (A100/2018) [2018] ZAFSHC 205 (22 November 2018), paras 5-7

²⁰ Volume 1 p191 of the harassment application

harassment can be made. Therefore, the cumulative effect of all acts of alleged harassment must always be considered in order to come to a proper conclusion.

[29] It must be borne in mind that the appellant's version could not merely be rejected as false and far-fetched and/or so improbable that it could not be believed and therefore rejected. The Plascon Evans rule finds application in these matters as well.

[30] The court *a quo* held that the appellant was guilty of relying on bare denials. I am of the view that this is not the case. He responded to each allegation. No doubt, the respondent's legal team, instructed after the rule *nisi* was extended and the filing of the appellant's initial answering affidavit, accepted that a proper response was presented by the appellant which might have caused the discharge of the *interim* order. I accept that in the nature of these kinds of applications an applicant, who is mostly not assisted by a legal representative at the time, is required to provide nothing more than a cryptic version on the form provided. Ultimately, the respondent filed her comprehensive 60-page supplementary affidavit and unnecessarily attached thereto documents such as the Deed of Trust and Deed of Transfer which are irrelevant to the dispute and could never have been in contention. Again, as he did in his initial answering affidavit, the appellant respondent to the various allegations. His testimony could not be held to be mere bare denials. It is really unnecessary to deal with all allegations and the responses thereto, but some of the alleged acts of harassment and the responses thereto will be mentioned to make the point that the court *a quo* was wrong in concluding that the appellant was relying on bare denials.

[31] The use of the Boomplaats route to Gedagtenis by the appellant's tenant, Mr De Jager, is fully explained and there is no reason to reject it.²¹ The allegation of objectionable behaviour which may have an influence on the respondent's tenant, Mr Fivaz, must be seen in light of the fact that the

²¹ Answering affidavit para 71, volume 2 on p 257

appellant is entitled to make use of the particular route mentioned in Fivaz' affidavit. Furthermore, the appellant responded appropriately to Fivaz' affidavit.²² The alleged "game of chicken" incident occurred as long ago as June 2018. However, the appellant dealt with the occasion and relevant circumstances in detail and again, his version cannot be rejected.²³ The incident with Mr Pretorius and the farm workers were also dealt with in detail.²⁴ The respondent's removal of the gates – the gate in the fence between Whala and Iowa as well as the double gates providing entrance to Whala – the Wahla route - at the end of September 2020²⁵ started a series of incidents. The respondent complained that this left her emotionally drained,²⁶ but she was the person that took the law into her own hands by despoiling the appellant. The appellant dealt with the issue from his perspective and also admitted the WhatsApp messages between them. The parties were not exchanging niceties, but in light of the history between them and the respondent's unlawful closing of the Whala route, that could have been expected.

[32] Even insofar as it could be found that the appellant used profane and insulting language, it needs to be pointed out that the definition of harassment refers to the unreasonable engagement of verbal, electronic or other communication that causes harm or inspires the reasonable belief that harm may be caused. I do not agree that the communication was unreasonable in the circumstances and even the admitted WhatsApp messages, which the court *a quo* considered to be a threat, are not viewed in the same light. It merely serves as confirmation that the respondent's attempts to prevent access to the Wahla route would be countered.

[33] I am satisfied that the respondent failed to make out a case and in my view the *interim* order should have been discharged, each party to pay his/her own costs. The attitude of the appellant throughout the particular period cannot be

²² Ibid pp 300 - 302

²³ Supplementary affidavit para 43 on pp 56/7 of volume 1 and the response in paras 76 – 80 of the answering affidavit in volume 2 pp 258 - 256

²⁴ Answering affidavit paras 86 – 89 , volume 2 at pp 263/4

²⁵ Para 48.4 of the supplementary affidavit, volume 1 p 61

²⁶ Para 50.2 of the supplementary affidavit, p 64 and subsequent averments

condoned and therefore, I would uphold the appeal, but also order each party to pay his/her own costs of the appeal.

X LEGAL PRINCIPLES PERTAINING TO MANDAMENT VAN SPOLIE

[34] I dealt with the requirements in order to succeed with the mandament van spolie quite recently in *Kymdell v Kymdell*²⁷ as follows:

“[6] The requirements to be proven by an applicant relying on the mandament van spolie are well-known. All that the despoiled person needs to prove is that—

- (a) he/she was in peaceful and undisturbed possession of the property; and
- (b) he/she was deprived of possession unlawfully, ie forcibly or wrongfully against his consent.

[7] The remedy was quite recently discussed in *Ngqukumba v Minister of Safety and Security and Others*.¹²¹ The Constitutional court held that:

“The essence of the *mandament van spolie* is the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim *spoliatus ante omnia restituendus est* (the despoiled person must be restored to possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the *mandament van spolie* is to preserve public order by restraining

²⁷ (4711/2020) [2021] ZAFSHC 13 (3 February 2021) paras 6 – 9. Several years ago I stated the following in *Bibbey N.O v Dohne* (4645/2014) [2015] ZAFSHC 43 (5 March 2015) in para 21: “Die teenaansoek is ook daarop gemik dat respondent gemagtig word om weer eens draad te span en ysterpale te plant langs die motorhek soos wat hy gedoen het na verlening van die bevel nisi in die eerste spoliassie-aansoek en welke optrede die tweede spoliassie-aansoek genoodsaak het. Applikant het in die repliserende beëdigde verklaring wat ook gedien het as opponerende beëdigde verklaring tot die teenaansoek insoverre die hof bereid sou wees om die teenaansoek aan te hoor, dit duidelik gemaak dat die alternatiewe roete geheel en al onprakties en nie beskikbaar is om gebruik te word deur groot plaasimplimente nie. Ten einde toegang tot die plaas op hierdie wyse te bekom moet van ‘n totaal en al ander openbare pad aan die noordekant van respondent se plaas in stede van die suidekant daarvan gebruik gemaak word. Nog nooit in die sewe jaar wat applikant die lande op die plaas Holpan bewerk en dus ongestoorde besit van die lande gehad het, was van hom verwag om hierdie pad te gebruik nie. Anders as wat verwag kon word het respondent nie hierop geantwoord soos wat hy geregtig was om te doen nie.”

persons from taking the law into their own hands and by inducing them to follow due process.” (Emphasis added).”

- [8] A co-possessor such as a spouse or partner, or even a person entitled to partial possession only, is entitled to rely on the *mandament van spolie* in the event of an infringement of his or her rights.
- [9] The *mandament van spolie* is an extraordinary and robust remedy. Few defences may be raised and once an applicant has discharged the onus to prove the aforesaid requisites and none of the recognized defences have been raised with success, the court is bound to grant relief, notwithstanding the merits of the dispute between the parties. It is also a speedy remedy and restoration should take place immediately or “dadelik.” I shall later show that this principle does not entail that each and every spoliation application shall automatically be deemed urgent, or even extremely urgent, requiring a flouting of the Uniform Rules of Court.”

[35] It is important to keep in mind that the rights of the parties and the lawfulness or not of the applicant’s possession are not considered by the court during a spoliation application.²⁸ Therefore the applicant does not even have to show that he was entitled to be in possession, but that he was in *de facto* possession at the time of being despoiled.²⁹ As often stated, even a thief may be despoiled.

[36] In *Willowvale Estates CC and Another v Bryanmore Estates Ltd*³⁰ it was again recognised that the right to use a road or route is included in the concept of possession and that the locking of gates across such road or route constitutes spoliation.

XI APPEALABILITY OF THE DISMISSAL OF THE SPOLIATION APPLICATIONS

[37] We were referred by Ms Larney to *Beukes v Kubitzausboerdery (Pty) Ltd*, the judgment of the Supreme Court of Namibia mentioned above. In this case the court had to determine whether urgency as an issue was appealable. In that

²⁸ *Rosenbuch v Rosenbuch and Another* 1975 (1) SA 181 (W) at p 183 and *Painter v Strauss* 1951 (3) SA 307 (O) at p 313

²⁹ *Malan and Another v Green Valley Farm Portion 7 Holt Hill 434 CC and Others* 2007 (5) SA 114 (E) at 123 E – 124 A; and *Bibbey N.O v Dohne* at para 22 quoted *supra*

³⁰ 1990 (3) SA 954 (W) at p 956I – 957E, relying on the well-known judgment of the Appeal Court in *Nienaber v Stuckey* 1946 AD 1049 and the *dictum* at p 1055 in particular to indicate that exclusive possession to a particular road is not necessary

case the appeal was struck from the roll with costs insofar as the court held on appeal that the court *a quo* should have discharged the rule *nisi* and struck the application from the roll instead of dismissing it. The judgment must be seen in context. I deem it necessary to quote the relevant paragraphs:

[31] The decision to discharge the rule and dismiss the application is not a final one as the matter can always be revisited in the normal course. In fact it is not even a judgment or order. It is a ruling and thus not appealable. The only criticism of the order is that it should have discharged the rule and struck the application from the roll instead of dismissing it. This however is a question of semantics as it is clear from the ruling that the merits were not considered in this context.

[32]

[33]

[34] The distinction between the *New Era Investment* case and the one under discussion is self-evident. Firstly, in the *New Era Investment* case, the judge did not deal with the urgency issue separately and upfront – he even suggested that he had not dealt with it at all. In the present matter, the judge *a quo* dealt with it expressly upfront and ruled against the applicants on this score and gave the resultant order before moving on to the merits. Secondly, as is evident from the *New Era Investment's* judgment, the judge *a quo* did consider the fact that spoliation applications are in their nature urgent and it was implicit from the fact that the merits were dealt with that the matter was accepted as being urgent. In the present matter, there is no need to seek an implicit finding as the judge *a quo* expressly dealt with the issue of urgency.” (emphasis added)

[38] The *Beukes* judgment is distinguishable from the facts *in casu* insofar as the judge in the court *a quo* discharged the rule *nisi* and dismissed the application due to lack of urgency without considering the merits. In any event and insofar as there is no distinction, we do not have to follow this judgment as we are bound by the *stare decisis* principle to follow the judgment of our own Supreme Court of Appeal in *Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others*.³¹ No doubt, if an application lacks the requisite degree of urgency, the court can for that reason decline to exercise its powers to entertain the alleged urgent application. In such a case the matter is not properly enrolled and the proper order is to strike the

³¹ 2006 (4) SA 292 (SCA) at pp 299 H – 300 A

application from the roll which will enable the applicant to set the matter down again on proper notice and compliance with the rules. However, once detailed affidavits have been filed dealing with the merits of the matter and especially where the rule *nisi* was extended on occasion, and when detailed arguments have been submitted in respect of the merits and considered by the court, it would be inappropriate to dismiss the application based on lack of urgency. Ms Larney made the point in sub-paragraphs 3.1 to 3.4 of her heads of argument in the spoliation appeals that the court *a quo* heard full argument in all three applications, that the parties filed comprehensive heads of argument in all three matters and that the court *a quo* was also addressed on urgency and authorities pertaining to *ex parte* applications as raised in the respondent's answering affidavit. Why then, could the rules *nisi* be discharged due to lack of urgency after all the months that had come and gone and in view of full argument on the merits? I find this inappropriate.

- [39] Ms Larney also relied on certain passages in *Vena v Vena and Another NO*³² in support of her submissions. I do not agree. The judgment was penned by a single judge having to consider an application for leave to appeal. He distinguished the facts in the matter at hand from the unambiguous judgment of Cameron JA (as he then was), writing for a unanimous Court of Appeal. Dealing with the main application, the learned judge dismissed it on two bases,³³ the first being lack of urgency when he ruled that the application should be dismissed without reference to the merits. Then he decided to consider the merits and this was then the second basis for the conclusion to dismiss the application. Insofar as it was asserted in *Vena* that the dismissal of a claim in application proceedings when the merits have not been adjudicated is synonymous with a ruling of absolution from the instance, I beg to differ. However, I prefer not to get into any argument as it may be nothing more than an issue of semantics and the facts *in casu* are in any event totally different from those in *Vena*. I shall deal with the court *a quo*'s reasons later herein, but need to point out the following in respect of the *Vena* judgment.

³² 2010 (2) SA 248 (ECP) at pp 252 I – 253 B

³³ *Ibid* para 4

Notwithstanding the learned judge's viewpoint, he considered the matter in the following words:³⁴

"[9] Be that as it may. Mr Huisamen is, in my opinion, correct in his submission that the statement in *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd* gives a basis for an argument, which might reasonably be accepted on appeal, that it was not proper in this case to dismiss the action solely for want of proof of urgency. This conclusion would, in the ordinary course, justify leave to appeal. It is, however, superfluous to give leave to appeal on the urgency point, which is procedural, if there is no reasonable prospect of the appeal succeeding on its merits."

XII THE DUTY OF THE APPLICANT IN *EX PARTE* APPLICATIONS

[40] In *Trakman NO v Livshitz and others*³⁵ the court reiterated, relying on *Estate Logie v Priest* and *Schlesinger v Schlesinger*,³⁶ that it is trite law that in an *ex parte* application the utmost good faith must be observed by an applicant, failing which the court may in the exercise of its discretion dismiss the application on that ground alone. I do not know whether this issue was fully argued in the court *a quo*, but I do not find any reference thereto in the written reasons. It was not held that the appellant's conduct amounted to an abuse of the process of the court. Fact of the matter is that we may consider non-compliance at this stage, even if only to deal with the award of costs to be made.

[41] Recently the Supreme Court of Appeal was severe in its criticism of a Minister's non-disclosure in winding-up proceedings that were brought *ex parte* and on alleged urgency. The court dealt with the issue as follows in *Recycling and Economic Development Initiative of South Africa NPC v Minister Of Environmental Affairs* and in order to serve as guidance to the legal representatives of the parties and the court *a quo* I quote extensive:³⁷

"Disclosure — legal principles

³⁴ *Ibid* para 9

³⁵ 1995 (1) SA 282 (A) at 288

³⁶ 1926 AD 312 at 323 and 1979 (4) SA 342 (W) at 348E -350B respectively

³⁷ 2019 (3) SA 251 (SCA) at paras 45 – 52 & 80

[45] The principle of disclosure in ex parte proceedings is clear. In *NDPP v Basson* this court said:

'Where an order is sought *ex parte* it is well established that the utmost good faith must be observed. All material facts must be disclosed which might influence a court in coming to its decision, and the withholding or suppression of material facts, by itself, entitles a court to set aside an order, even if the non-disclosure or suppression was not wilful or *mala fide* (*Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E – 349B).'

[46] The duty of utmost good faith, and in particular the duty of full and fair disclosure, is imposed because orders granted without notice to affected parties are a departure from a fundamental principle of the administration of justice, namely, *audi alteram partem*. The law sometimes allows a departure from this principle in the interests of justice but in those exceptional circumstances the ex parte applicant assumes a heavy responsibility to neutralise the prejudice the affected party suffers by his or her absence.

[47] The applicant must thus be scrupulously fair in presenting her own case. She must also speak for the absent party by disclosing all relevant facts she knows or reasonably expects the absent party would want placed before the court. The applicant must disclose and deal fairly with any defences of which she is aware or which she may reasonably anticipate. She must disclose all relevant adverse material that the absent respondent might have put up in opposition to the order. She must also exercise due care and make such enquiries and conduct such investigations as are reasonable in the circumstances before seeking ex parte relief. She may not refrain from disclosing matter asserted by the absent party because she believes it to be untrue. And even where the ex parte applicant has endeavoured in good faith to discharge her duty, she will be held to have fallen short if the court finds that matter she regarded as irrelevant was sufficiently material to require disclosure. The test is objective.

[49] The ex parte litigant should not be guided by any notion of doing the bare minimum. She should not make disclosure in a way calculated to deflect the judge's attention from the force and substance of the absent respondent's known or likely stance on the matters at issue. Generally, this will require disclosure in the body of the affidavit. The judge who hears an ex parte application, particularly if urgent and voluminous, is rarely able to study the papers at length and cannot be expected to trawl through annexures in order to find material favouring the absent party.

[50] In regard to the court's discretion as to whether to set aside an ex parte order because of non-disclosure, Le Roux J said in *Schlesinger v Schlesinger*:

'(U)nless there are very cogent practical reasons why an order should not be rescinded, the Court will always frown on an order obtained *ex parte* on incomplete information and will set it aside even if relief could be obtained on a subsequent application by the same applicant.'

[52] As to the factors that are relevant in the court's exercise of its discretion whether or not to set aside an *ex parte* order on grounds of non-disclosure, in *NDPP v Phillips* this court said that regard must be had to the extent of the non-disclosure, the question whether the judge hearing the *ex parte* application might have been influenced by proper disclosure, the reasons for non-disclosure and the consequences of setting the provisional order aside.

***Ex parte* proceedings**

[80] It is a fundamental principle of the administration of justice that relief should not be granted against a person without allowing such person to be heard. Very rarely is a case so urgent that there is no time to give notice. In other cases, there may be a reasonable and substantiated apprehension that giving notice would defeat the applicant's legitimate purpose in seeking relief, for example, because the respondent would dispose of property or evidence that the applicant wishes to claim or have preserved. In cases of this kind a court may be willing to dispense with the need to give notice but this power should be exercised with great caution and only in exceptional circumstances..... “ (emphasis added and footnotes omitted)

The court dismissed a submission by the Minister's counsel that “the *ex parte* bird has flown”, that no purpose would be served by discharging the provisional order on this ground and that a punitive costs order might be more appropriate. It held that even if the applicant's disclosure cannot be faulted, her inappropriate use of *ex parte* proceedings should attract the same disciplinary jurisdiction in the following words:³⁸

The *ex parte* litigant's duty of utmost good faith requires not only complete and fair disclosure; it imposes a more fundamental obligation to give notice to the other side unless, objectively, the absence of notice is justified.”

XIII EVALUATION OF THE EVIDENCE AND SUBMISSIONS OF THE PARTIES IN RESPECT OF THE SPOILIATION APPEALS

[42] I have no doubt that the appellant deliberately waited to bring the first spoliation application until after extension of the return date of the *interim* protection order.³⁹ There was no reason why the relatively short answering

³⁸ *Ibid* para 84; see also the commentary to Magistrate's Court rule 55(3) in Revision Service 27, 2021 Rule - p 55 – 26B, regurgitating the above *dicta* and stating that the subrule limits *ex parte* applications to those in respect of which the court is satisfied that the giving of notice would defeat the purpose of the application or the degree of urgency is so great that it justifies dispensing with notice

³⁹ Para 80 p 84

affidavit in the harassment application could not have been filed before the return date of 3 December 2020, but obviously, the appellant and his legal representative tried to obtain a tactical advantage.

[43] The issue of urgency has really become moot at the time when the court *a quo* decided to entertain the two spoliation applications on 3 and 11 December 2020 respectively. In fact, the orders issued read exactly the same and I quote:

“1. The Court condones the non-compliance with the Rules of court and considers the matter as urgent.”⁴⁰

[44] The court *a quo* could have refused to hear the two applications and struck them from the roll in order to force the appellant to bring the applications strictly in terms of rule 55 of the Magistrate’s Court Rules, but it did not act accordingly. Consequently, the rules *nisi* were extended on more than occasion and the parties were allowed ample opportunity to deal comprehensively with the merits, which they did. Thereafter, the matters were argued fully and the court *a quo* gave written reasons as to why the rules *nisi* in the spoliation applications were discharged, dealing specifically with the merits of the applications.

[45] The court *a quo* incorrectly held that the first requirement to succeed with spoliation is urgency and that “the second requirement is whether the Applicant had undisturbed possession, in this case use, of the right so spoliated, thus the right of way.”⁴¹ Bearing in mind the authorities quoted above, the court *a quo* misunderstood what was required.

[46] In paragraph 5 of the written reasons in both applications the court *a quo* dealt extensively with the so-called second requirement, to wit the real merits of the mandament van spolie and considered *inter alia* whether a servitude was created and or whether the appellant had a right of way and/or whether there was an agreement and/or a court order allowing the appellant access to the

⁴⁰ Pages 16 & 40

⁴¹ See para 4 pp 174 & 179

two routes and/or whether he could rely on prescription in order to obtain a right of way. These arguments pertaining to a right of way instead of dealing with the two requisites for obtaining relief in terms of the mandament van spolie were clearly not called for, but is indicative of the fact that the court *a quo* dealt with the merits of the applications in detail.

[47] Only, in order to put a final nail in the coffin of the appellant and basically as an afterthought, the court *a quo* dealt with urgency in paragraph 6 of the written reasons.⁴² If the court *a quo* believed that the applications were not urgent, she should never have granted the *interim* orders in the first place.

[48] Clearly the court *a quo* would not be in a possession to strike the two spoliation applications from the roll on the final extended return dates thereof as this would have made a mockery of the process. Therefore, it was decided to discharge the rules *nisi*. I have indicated above that this court is not bound by the judgment of the Namibian Supreme Court or the judgment in *Vena v Vena supra*. As mentioned, the Supreme Court of Appeal has dealt with this matter in *Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others Hawker supra* and based on the *stare decisis* principle we are bound to follow it. I need to emphasise that it would be absurd to find that the appellant did not have a right of appeal. If this was indeed the law, the appellant would then be forced to start spoliation proceedings again, fifteen months after the event, whilst it is trite that the possession of the appellant as the despoiled person must be restored before all else, that no one should resort to self-help and that restoration should take place immediately.⁴³

[49] The appellant has proven both requirements of the mandament van spolie in respect of the first spoliation application number 125/2020 (appeal A85/2021) and the only issue that may be in contention is costs, bearing in mind the attitude of the appellant and his attorney as mentioned above. The question

⁴² Pages 176 and 181

⁴³ See *Ngqukumba v Minister of Safety and Security and Others 2014 (7) BCLR 788 (CC) para 10*; and *Burger v Van Rooyen 1961 (1) SA 159 (O) at 161 G*

is whether the process was abused. I shall return to that later. The appeal in respect of the second application number 132/2020 (appeal A86/2021) is more contentious. No doubt, the respondent did in fact lock the gates in order to prevent the appellant access to the Boomplaats route through the farm Boomplaats to Gedagtenis. It is her case that when she received the email, she instructed her employee to unlock the gates and this was also communicated to Niemann's secretary. Therefore, by the time that the appellant moved the second application on 11 December 2020, the gates were unlocked which would allow the appellant access to Gedagtenis. The question to be answered is whether the version of the respondent should be accepted and if so, how the order should have read. If respondent's version is accepted, the appellant could at best be entitled to some of his costs. But the respondent was not given an opportunity to be heard on 11 December 2020. With the benefit of hindsight, this court is in a position to revisit the orders granted. In my view there is no reason not to accept the version of the respondent if the trite principles enunciated in *inter alia Plascon Evans* are applied. The court *a quo* was correct in discharging the rule *nisi* based on this defence as dealt with in paragraphs 6.10, 6.11 and 7.2 of reasons.⁴⁴

- [50] I must mention that I am of the view that the appellant and his attorney, Niemann's approach to the litigation, both on 3 and 11 December 2020 is deplorable. Well-knowing that the letter of demand of 29 November 2020 was not read, but particularly that the spoliation application was on the verge of being brought *ex parte* later that morning, the respondent was not alerted to this. Consequently, she left the Magistrate's Court under the impression that the appellant would in due course respond to her allegations in the harassment application. It is correctly pointed out on her behalf that if she was alerted to the intended spoliation application on 3 December 2020 and that the orders obtained in her protection order did not go as far as she meant them to be, she might have requested the court *a quo* on that date to reconsider either whether to grant the spoliation order, or to extend the terms of the protection order. The appellant should be penalised for the manner in

⁴⁴ Vol 1, p 182

which the litigation was undertaken. He should not be granted any costs, neither in this court, nor in the court *a quo*. I find support for my conclusion in respect of costs in the judgments referred to above.

[51] Based on the acceptable evidence, the court *a quo* was correct to discharge the rule *nisi* in application number 132/2020 (appeal A86/2021) insofar as the merits favoured the respondent. There is no reason to interfere with the costs order granted by the court *a quo*. Therefore, this appeal stands to be dismissed with costs. There was also no acceptable reason for launching this application *ex parte* and on an urgent basis.

[52] The first spoliation application is somewhat on a different footing. The respondent's subjective belief is no defence. She clearly spoliated the appellant who has proven the two requisites in order to succeed. This appeal, appeal A85/2021, should succeed, but to show the court's disapproval of the manner in which the appellant and his attorney side-stepped the respondent in moving an urgent *ex parte* application in the particular circumstances, I am of the view that in exercising my discretion the appellant should be deprived of all his costs in both courts. Therefore, an order should be made that each party shall pay their own costs in respect of this appeal as well as in the court *a quo*.

XIV CONCLUSION

[53] The papers are unnecessarily voluminous. Bearing in mind the simple application brought – the filling out of the required form by an unrepresented litigant - the appellant could have dealt with the allegations suitably within the 20 days he was afforded from receipt of the order on 13 November 2020⁴⁵ till 3 December 2020. Instead, the proverbial meal was made of the disputes between the parties and to an extent both parties and their legal representatives are to be blamed.

⁴⁵ *Ibid* p 90

[54] Instead of filing an answering affidavit in the harassment application as soon as possible after receipt of the *interim* order - he had nearly three weeks to do so - the appellant deemed it fit to play for time whilst all relevant facts were known to him to enable him to file an answering affidavit. Instead, his attorney came up with an excuse to seek a postponement, whilst it was anticipated that a spoliation order would be snatched the moment the respondent, totally unaware of what was to come, left the court building. This caused the harassment application that could be finalised inexpensively and swiftly, to become – together with the other two applications – a litigious nightmare with repeated allegations and voluminous papers consisting in total close to 400 pages. The appellant, and the respondent to a lesser degree, as well as their legal representatives must be blamed for the failure to curtail proceedings and costs.

[55] I am satisfied that the parties shall bear their own costs in respect of appeals A84/2021 and A85/2021. Notwithstanding the appellant's success on appeal, I am satisfied that he should be deprived of his costs. There is no reason to deprive the respondent as the successful party in appeal A86/2021 of her costs and an appropriate order should be made.

XV ORDERS

[56] The following orders are granted:

1. The appellant's appeal in appeal A84/2021 (court *a quo* case number H50/2020) is upheld.
2. The order of the court *a quo* is rescinded and substituted with the following:
 - “2.1 The rule nisi issued on 11 November 2020 is discharged.
 - 2.2 Each party shall pay his/her own costs.”
3. Each party shall pay his/her own costs in respect of appeal A84/2021.

4. The appellant's appeal in respect of the first spoliation application, appeal A85/2021 (court *a quo* case number 125/2020) succeeds and the order of the court *a quo* is rescinded and substituted with the following:

“4.1 The rule nisi issued on 3 December 2020 is confirmed.

4.2 Each party shall pay his/her own costs.”

5. Each party shall pay his/her own costs in respect of appeal A85/2021.
6. The appellant's appeal in appeal A86/2021 (court *a quo* case number 132/2020) is dismissed with costs.

I concur

JP DAFFUE J

AK RAMLAL AJ

On behalf of the Appellant:
Instructed by:

Adv J Els
Phatshoane Henney Inc
BLOEMFONTEIN

On behalf of the Respondent:
Instructed by:

Adv E Larney
Eg Cooper Majiedt Inc
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