

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

Case No: 2683/2020

Case No: 2685/2020

Case No: 2686/2020

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

LOUIS JONKER

1st Applicant

JOHANNA JACOBA JONKER

2nd Applicant

LOUIS JONKER N.O.

3rd Applicant

JOHANNA JACOBA JONKER N.O.

4th Applicant

ANETTE LIEBENBERG N.O.

5th Applicant

and

THE LAND AND AGRICULTURAL DEVELOPMENT

BANK OF SOUTH AFRICA

Respondent

IN RE:

THE LAND AND AGRICULTURAL DEVELOPMENT

BANK OF SOUTH AFRICA

Plaintiff

and

JOHANNA JACOBA JONKER N.O.

Defendant

IN RE:

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA**

Plaintiff

and

LOUIS JONKER

Defendant

JUDGMENT BY: C REINDERS, ADJP

HEARD ON: 17 FEBRUARY 2022

DELIVERED ON: 9 MAY 2022

[1] The first applicant Mr Louis Jonker conducted a farming and pesticide business through the entity known as Jonker Produkte CC (in liquidation) ("Jonker Produkte"). The second applicant Mrs Johanna Jacoba Jonker is married out of community of property to Mr Jonker. The couple are also joined to the application as the third and fourth applicants in their capacities as trustees of the Louis Jonker Familie Trust ("the trust").

[2] In support of the relief sought, the applicants in their founding affidavits aver that three identical deeds of suretyship exist in respect of Jonker Produkte's indebtedness to the bank. It is further averred that the causa in the three combined summonses relate to the same facts pertaining to the afore mentioned indebtedness of Jonker Produkte.

[3] The bank instituted three separate actions:

3.1 In case no 2683/2020 the bank has instituted action against first applicant for payment in the amount of R 13 480 486.33 and R 4 708 710.41 based on a deed of suretyship signed on 24 April 2014. According to the plea first applicant admits having signed the suretyship in favour of

the entity Unigro. First applicant pleads that the suretyship did not authorise or entitle Unigro either expressly or otherwise to debit amounts from other accounts that the principle debtor held at Unigro against the 2019 summer credit agreement account.

3.2 In case 2685/2020 the action is instituted against the second applicant claiming payment in similar amounts as in respect of the first applicant. The second applicant admits having signed the suretyship and contend the same defences as that of the first applicant.

3.3 In case no 2686/2020 the bank instituted an action against the first and second applicant in their representative capacities (third and fourth applicants herein) in respect of suretyships signed in respect of the trust. It needs mention that the aforementioned trust according to the summons has a third trustee, Mrs Liebenberg. The bank likewise (amongst others) claims payments of the amounts referred to in par [3.1] above. However, in respect of the trust the trustees admit having signed the suretyships on 24 April 2014 but, amongst others, deny that the purported suretyship is valid and enforceable as the three defendants neither resolved to bind the trust as surety, nor acted jointly when the purported suretyships were signed.

[4] In the notice of motion consolidation of the three actions is sought and in first applicant's founding affidavit it is averred that the relief sought against all the applicants are based on identical deeds of surety in respect of Jonker Produkte.

In its opposing affidavit the bank concedes that the validity and enforceability of the agreements of suretyship are the first hurdle that will have to be satisfied.

[5] It is trite that a consolidation of actions in terms of Rule 11 of the Uniform Rules will in general be ordered to avoid a multiplicity of actions and costs and that the paramount test to be applied is that of convenience.

Such convenience is not only in respect of the parties or witnesses, but also that of the court.

See: ***Rail Commuters' Action Group v Transnet Ltd*** 2006 (6) SA 68 (C)

In exercising its wide judicial discretion to order a consolidation of actions, all factors before a court have to be judged in its particular context.

See: ***Pepcor Holdings Ltd v AJVH Holdings (Pty) Ltd; Steinhoff International Holdings NV v AJVH Holdings (Pty) Ltd*** [2021] 1 All SA 42 (SCA) at para [15].

[6] The evidence adduced and relied upon by the applicants in the founding affidavit in support of the relief sought for consolidation is based on the facts that they signed the suretyships either in their personal or representative capacities. I have to adjudicate the application therefore from that point of view. The applicants admit having signed the suretyship agreements as alleged. In this respect it would appear to be common cause and would not on face value need much evidence to be adduced by the bank as the pleadings stand at the moment. The trust, amongst others, avers that no resolution was ever passed to bind the trust as surety. This defence has got nothing to do with the defences raised by first and second applicants in respect of their liability based on the deeds of suretyship. It would appear to me that a court hearing the defence of the trust would investigate separate and distinct facts in respect of that defence compared to those of the first and second applicants in their personal capacities. I am of the view therefore that the actions under cases no 2683/2020 and 2685/2020 should be consolidated, but in respect of the trust, not.

[7] Accordingly I make the following orders:

1. The actions under case numbers 2683/2020 and 2685/2020 are consolidated under case number 2683/2020.
2. The respondent to pay the costs of the application for the consolidation of the cases mentioned in prayer 1.

3. The application to consolidate case number 2686/2020 with the actions under case numbers 2683/2020 and 2685/2020 is dismissed with costs.

C. REINDERS, ADJP

On behalf of the applicants:

Adv FW Janse van Rensburg
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Geyser Attorneys
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On behalf of the respondent:

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