REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(MPUMALANGA DIVISION, MBOMBELA)

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

[redacted] 13/12/2021

SIGNATURE DATE

CASE NO: 4629/2021

In the matter between:

VIPCON (PTY) LTD Applicant

and

THABA CHWEU LOCAL MUNICIPALITY First Respondent

DEPARTMENT OF HUMAN SETTLEMENTS PROVINCIAL GOVERNMENT: MPUMALANGA PROVINCE Second Respondent

MPUMALANGA ECONOMIC GROWTH AGENCY Third Respondent

REGISTRAR OF DEEDS: MBOMBELA
DEEDS REGISTRY Fourth Respondent

JUDGMENT

MASHILE J:

INTRODUCTION

[1] On urgent basis, the Applicant, Vipcon (Pty) Ltd ("Vipcon"), seeks relief that the First Respondent, Thaba Chweu Local Municipality, ("the Municipality"), be interdicted and restrained in the respects described below:

1.1 Mmarketing, negotiating a sale, selling or in any other way disposing or alienating; and/or

1.2 Attempting to pass transfer of the following immovable properties for which the Municipality has by Notice Number 10/2021-2022 given notice of its intention to dispose:

1.2.1 476 stands in Mashishing Extension 6;

1.2.2 250 stands in Lydenburg Extension 108;

1.2.3 206 stands in Lydenburg Extension 109; and

1.2.4 800 stands in Lydenburg Extension 110.

1.3 The Municipality be ordered to immediately cease any and all advertisements or marketing representing that it is entitled to dispose of the immovable properties described in Paragraphs 1.2.1 to 1.2.4 above for which it has by Notice Number 10/2021 - 2022 given notice of its intention to dispose;

1.4 The Fourth Respondent, Registrar of Deeds: Mbombela Deeds Registry, ("the Registrar") ("be interdicted and restrained from registering transfer of the immovable properties mentioned in Paragraphs 1.2.1 to 1.2.4 above for which the Municipality has by Notice Number 10/2021 – 2022 given notice of its intention to dispose to any third party without the written consent of Vipcon;

1.5 The opposing Respondents be ordered to pay the costs of this application.

[2] The application is not opposed by any of the remaining Respondents, the Second ("the Department"), the Third ("MEGA") and the Registrar respectively. The Department and MEGA have merely been cited as a result of the interest that they may have in these proceedings. As such, no relief is sought against them save in the event that they choose to oppose this application. Similarly, no costs will be sought against the Registrar unless he opposes the application. The Department, MEGA and the Registrar will henceforth, depending on the context, together be referred to as Respondents otherwise, their actual names will be used.

[3] The application is challenged on a number of grounds. Firstly, the Municipality is firm that the application is not urgent or that if it is, such urgency was self – created. Secondly, Vipcon has no *locus standi* to bring this application. Thirdly, Vipcon has not satisfied the requirements for final interdict.

<u>FACTUAL MATRIX</u>

[4] On or about 13 December 2007 and at or near Mashishing, the Municipality and Mpumalanga Housing Finance Company (*"the Finance Company "*), concluded a written Land Availability & Services Agreement (*"the Land Availability Agreement"*). The Land Availability Agreement concerned development of erven in Mashishing. In terms of the Land Availability Agreement, the Municipality made certain land owned by it available to the Finance Company for development and establishment of townships.

[5] In terms of Clause 6.4 of the Land Availability Agreement, The Finance Company would be responsible for the construction of infrastructure, including external and internal services. The Department would contribute an amount of R19 271 206.00 towards the provision of internal services in respect of the Portion 2 land and the Finance Company would be responsible to procure the balance of the funding required for the provision and installation of external and internal services.

[6] Clause 7.1.1 of the Land Availability Agreement provides that the Finance Company would be entitled to dispose and/or develop the erven in the townships apart from public open spaces. Clause 7.1.4 entitles The Finance Company to determine the disposal price of erven. In terms of Clause 7.4, the price for which the erven are disposed would accrue to the Finance Company subject to payment of the land costs to the Municipality.

[7] Clause 7.1.3 stipulates that 100 of the low income serviced erven in Portion 2 land would be sold at a price not exceeding the development cost of those erven. Clause 7.1.4 prescribes that 10% of all fully serviced erven would be transferred to the Municipality to a maximum of 450 erven. Clauses 8.5 and 8.6 lay down that the Finance Company shall conclude agreements of sale with purchasers and attend to registration of transfer of the land to various purchasers utilizing conveyancers appointed by it.

[8] In 2010, the Finance Company and Mpumalanga Agricultural Development Corporation merged to form the present MEGA. Following its formation, MEGA appointed Vipcon as preferred developer for the integrated housing development in Mashishing (Tender No. MEGA/2014/06) in terms of a letter dated 25 July 2014. The Tender concerns development to be done in terms of the Land Availability Agreement. Vipcon accepted the appointment.

[9] Subsequently, in 2016 and at Mashishing, Vipcon and MEGA entered into a written Service Level Agreement for Housing Development Services (*"the Service Level Agreement"*). In terms of the Service Level Agreement Vipcon agreed to provide services in respect of the land made available by the Municipality to the Finance Company (and it successor in title, MEGA). In a letter dated 25 April 2016 addressed to the Municipal Manager of the Municipality, MEGA reconfirmed its obligations in terms of clause 6.4.6 of the Land Availability Agreement. The clause pertains to funding of external and internal services by MEGA.

[10] On 25 May 2016, the Council of the Municipality confirmed and accepted the appointment of Vipcon as implementation agent of MEGA in terms of the Land Availability Agreement. As the implementation agent, Vipcon was authorized to sign all documents and to do all things necessary to:

10.1 Open the township registers for Lydenburg Extension 108 to 116 and to give effect to the registration of transfer of the following erven into the names of the various beneficiaries to be nominated by the Municipality in writing as set out in the Land Availability Agreement:

10.1.1 Erf 7274 to 7954 Lydenburg Extension 108;

10.1.2 Erf 7955 to 8192 Lydenburg Extension 109;

10.1.3 Erf 8193 to 9092 Lydenburg Extension 110;

10.1.4 Erf 9093 to 90515 Lydenburg Extension 111;

10.1.5 Erf 9516 to 9838 Lydenburg Extension 112;

10.1.6 Erf 9839 to 1024 Lydenburg Extension 113;

10.1.7 Erf 10422 to 10854 Lydenburg Extension 114;

10.1.8 Erf 10855 to 11070 Lydenburg Extension 115;

10.1.9 Erf 11071 to 11165 Lydenburg Extension 116;

10.2 Give effect to the registration of Portions 1 to 482 of Erf 5438 Lydenburg Extension 6, as indicated on Plan S.G. No 882/2008, into the names of the various beneficiaries to be nominated by the Municipality in writing as set out in the Land Availability Agreement;

10.3 Conclude Agreements of Sale with Purchasers;

10.4 Register transfer of ownership through conveyancers appointed by it and attend to all legal work pertaining to the sale and transfer.

[11] The beneficiaries to be nominated by the Municipality in writing only pertained to the 450 erven that had to be transferred to the Municipality in terms of clause 7.1.4 of the Land Availability Agreement.

[12] On 14 December 2016, at Mbombela Vipcon, the Municipality and the Department concluded a written agreement for the purchase of 1 000 serviced sites at Extension 108 and 110, Mashishing (*"the Purchase Agreement"*). In terms of Clause 6.1.8 of the Purchase Agreement, Vipcon would transfer the fully serviced

stands in Extensions 108 and 110, Mashishing to the legitimate beneficiaries at a cost approved by the National Department of Human Settlements. Vipcon performed in line with the obligations imposed upon it by the agreements and resolution.

[13] The Municipality has, under Notice Number 10/2021 - 2022, given notice of its intention to dispose of the following properties:

13.1 476 stands in Mashishing Extension 6;

13.2 250 stands in Lydenburg Extension 108;

13.3 206 stands in Lydenburg Extension 109; and

13.4 800 stands in Lydenburg Extension 110.

[14] The notice was published in the Lydenburg News and also affixed to the offices of the Municipality in Mashishing, Sabie and Graskop. The Municipality has advertised that the immovable properties are on tender and that the general public can tender for them.

[15] Vipcon alleges that its attention was first drawn to the notice on 6 October 2021. It immediately approached its attorneys for assistance and advice. In a letter dated 7 October 2021 addressed to the Municipal Manager of the Municipality, the Applicant's attorneys demanded the following undertakings before close of business on 15 October 2021:

15.1 An unconditional written undertaking that the Municipality would immediately remove any and all advertisements representing that it is entitled to sell the immovable properties;

15.2 an unconditional written undertaking that the Municipality would immediately cease marketing, selling, or in any other way alienating the aforementioned properties without the written consent of Vipcon;

15.3 an unconditional written undertaking that the Municipality would not attempt to pass transfer of any property referred to in the letter;

15.4 an unconditional written undertaking that the Municipality would comply with the resolution adopted on 25 May 2016, which will include (but not be limited to) informing Vipcon of any beneficiaries it may wish to nominate as per the Land Availability & Services Agreement.

[16] The letter advised that the High Court would be approached for an interdict to protect the right of Vipcon should the Municipality fail to furnish the required undertakings. When the Municipality failed to respond, Vipcon allowed it more time to revert until it could not grant any unilateral indulgence and instructed its attorneys on 25 October 2021 to prepare and launch this application.

ASSERTIONS OF THE PARTIES

[16] Vipcon maintains that it is common cause that the stands referred to in the notice, more specifically those identified in paragraphs 13.1 to 13.4 above, relate to stands to be marketed and transferred by Vipcon. Vipcon is also entitled to determine the disposal price of erven in accordance with clause 7.1.4 of the Land Availability Agreement and the disposal price would accrue to Vipcon subject to payment of the land costs to the Municipality as provided for in clause 7.4 of the Land Availability Agreement.

[17] Vipcon is firm that it will perform its obligations arising from the various agreements with the Municipality as and when their execution becomes due. Vipcon contends further that the Municipality has made no attempt to reverse its invalid activities

concerning the withdrawal of the advertisement of the erven. Its actions leave Vipcon vulnerable to a possible sustenance of damages because the municipality can register transfer of ownership of the stands without reference to it. The above is so because the Municipality is currently the registered owner of all the immovable properties.

[18] The Respondents argue that this matter is not urgent because Vipcon has failed to mention in the founding affidavit that the stands have been invaded since 2010. Vipcon having not approached this Court when the stands were invaded in 2010 to protect its rights in respect thereof, it should have been before court shortly following the incursion. Against that background, to the extent that the stands have been occupied by unlawful tenants, contends the Municipality, 'the horses have bolted'.

[19] Secondly, the Municipality argues that Vipcon has not met the requirements for a final interdict in particular, it has not demonstrated that it has a clear right that requires protection from this Court. The Respondents are placing heavy reliance on the belief that Vipcon was not party to the Land Availability Agreement from which, they maintain, the rights of Vipcon would have flown if it were a party thereto. That being the position, it should follow that Vipcon cannot suffer any irreparable harm if it has no right to defend.

[20] Regarding availability of alternative adequate remedy, the Respondents argue that Vipcon has not shown that it will have no alternative adequate remedy. The attitude of the Respondents is that damages remain a practical alternative remedy in case Vipcon sustains a loss as a result of the actions of the Municipality.

ISSUES

[21] The issues for consideration are as follows:

21.1 The urgency of the application;

21.2 Establishment of the requirements of a final interdict by Vipcon; and

21.3 Whether or not Vipcon has established *locus standi*. I will probably discuss this issue in conjunction with the second issue described above as the two seem to be inextricably connected.

URGENCY

[22] The respondents would have this Court believe that Vipcon should have brought this application in 2010 when the land in question was invaded by the unlawful tenants. The argument is disingenuous and needs to be exposed for what it is. If it is true that the 'horses have bolted' because the unlawful tenants have taken occupation, it is hard to appreciate how the Municipality can turn around and hope to recover what it has lost as a result of the unlawful occupation. If the Municipality hopes to recuperate its costs regardless of the unlawful occupation by selling the erven, what will stand in the way of Vipcon from doing the same? The argument is as such, self-destructive

[23] The clock for Vipcon began to tick on 6 October 2021 when its attention was drawn to the publication of Notice Number 10/2021 – 2022. As stated by Vipcon, it is beside the point that the land Availability Agreement was concluded in December 2007 or that the land was invaded and occupied in 2010. What is significant though is that the Municipality was afforded opportunity to make certain commitments, which it failed to do. Even after it had been granted unilateral indulgence until 25 October 2021, it still would not provide any guarantees of withdrawal of the advertisement.

[24] In circumstances where a party to proceedings, such as Vipcon, engages the other before approaching court, it cannot be censured for having been dilatory or self-

created the urgency. This was the essence of the decision in *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* **2004 (2) SA 81 (SE) at 94C – D.** The principle articulated in that case has been confirmed by the Constitutional Court in *South African Traders Forum and Others v City of Johannesburg and Others* **2014 (4) SA 371 (CC).** This application was only launched when Vipcon realized, after two letters of demand, that it would not elicit a response from the Municipality. I cannot falter Vipcon for having held back before approaching court.

[25] The Municipality has also argued that Vipcon has not shown that it will not receive substantial redress were this matter to be heard in the ordinary course. I agree that if this matter were to be allowed to follow the normal course, the Municipality might market, sell and register transfer of the erven into the name of the purchasers without involving Vipcon. The prejudice to Vipcon is real insofar as it may not be able to reverse the transactions because firstly, it would have been a valid contract concluded between two legally competent parties. Secondly and contrary to what the Municipality would have this Court believe, Vipcon cannot reverse the process of registration of the transfer as it is legally sanctioned.

[26] In the circumstances, I am satisfied that the matter was sufficiently urgent warranting the immediate intervention of this Court. The delay between the 6th of October 2021, the date of acquisition of knowledge of the publication of Notice Number 10/2021 – 2022, and the 11th of November 2021, the date on which the application was ultimately launched, was not unconscionable given the two letters seeking the Municipality to commit and its failure to do so. Furthermore, Vipcon stands to suffer prejudice if directed to await being afforded opportunity in the normal course.

LEGAL FRAMEWORK

[27] A final interdict is one that is intended to make an ultimate pronouncement on the rights of parties to a controversy. A party seeking a final interdictory relief must

satisfy a court of the existence of a clear right, an injury actually committed or reasonably apprehended and the absence of an alternative adequate remedy. See, *Setlogelo v Setlogelo* **1914 AD 221 at page 227** and *Akoo & others v Master of the High Court & others* **(5612/11) [2012] ZAKZPHC 45 at paragraph 14.** Against that background, I proceed to discuss the three prerequisites for a final interdict below.

APPLICATION AND EVALUATION

A CLEAR RIGHT

[28] In deciding whether or not an applicant has a clear right, a court ought to be mindful that:

"Whether an applicant has a right is a matter of substantive law. Whether that right is clear is a matter of evidence. In order therefore to establish a clear right the applicant has to prove on a balance of probabilities facts which in terms of substantive law establish the right relied upon." See, the Setlogelo case supra and LAWSA, Second Edition VOL 11 at para 397.

[29] It is manifest from the above factual matrix that Vipcon was appointed to be the implementation agent. It is settled that an agent may maintain an action on a contract in respect of which it acquired rights in its own name. It was in that regard that the court in *Continental Illinois National Bank and Trust Co of Chicago v Greek Seamen's Pension Fund* **1989 (2) SA 515 (D) at 538 – 539** stated the following:

"As a ggeneral rule, a person is not entitled to sue in his own name on a contract in respect of the performance of which he is a mere agent. The agent would, however, be entitled to maintain an action on a contract in respect of which he has acquired rights. In Commaille v Jamaloodien ***1917 CPD 656*** *certain classes of agents are mentioned who do have the right to sue in their own name on the contract. It is only*

necessary to mention here that an agent would have a right to sue in his own name on a contract where the contract was made with him personally, where he has acquired a special interest under the contract (Wessels Law of Contract s 2196) or where there is a special stipulation in the contract that the agent may sue on it."

[30] MEGA IS the result of a merger between the Finance Company and the Mpumalanga Agricultural development Corporation. As such, it is a successor in title of the Finance Company. The Land Availability Agreement entered into between the Finance Company and the Municipality became relevant to Vipcon and MEGA on 25 July 2014 when the latter appointed Vipcon as the preferred developer for the integrated housing development in Mashishing. The tender awarded to Vipcon was Tender No. MEGA/2014/06, which relates to development to be executed in terms of the Land Availability Agreement. Clearly therefore, the appointment s aforesaid gives Vipcon the clear right mentioned herein.

[31] Additionally, the service level agreement concluded between the parties in 2016 is crucial. The agreement was for housing development services. Vipcon agreed to provide services in respect of the land made available through the Land Availability Agreement to the Finance Company and therefore MEGA, the successor in title of the Finance Company. The agreement, insofar as it refers back to the Land Availability Agreement, endows Vipcon with a clear right. On 25 May 2016, the Council of the Municipality confirmed and accepted the appointment of the Applicant as implementation agent of MEGA in terms of the Land Availability Agreement.

[32] In the letter of 25 May 2016, MEGA reconfirmed its obligations arising from clause 6.4.6 of the Land Availability Agreement. The clause pertains to funding of external and internal services by MEGA. As the implementation agent, Vipcon was allowed to sign all documents and to do all things necessary to execute all the matters mentioned under paragraph 10 *supra.* Of course this also means that Vipcon has *locus standi* to sue in its own name as it has through the various contractual

instruments acquired rights from MEGA and/or the Department and/or the Municipality. The status of Vipcon as an implementation agent ousts the relevance of the Municipality's argument that Vipcon was not a party to the land Availability Agreement.

[33] The last contractual instrument that gives Vipcon a clear right is the purchase agreement entered into between Vipcon, the Municipality and the Department on 14 December 2016 for the purchase of 1 000 serviced sites at Extension 108 and 110, Mashishing. Clause 6.1.8 of that Agreement provides that Vipcon would transfer the fully serviced stands in Extensions 108 and 110, Mashishing to the legitimate beneficiaries at a cost approved by the National Department of Human Settlements. It is not disputed that Vipcon discharged its obligations imposed by the agreement and resolution. Accordingly, the assertion that Vipcon has failed to demonstrate a clear right and *locus standi* is bereft of any merit and it is rejected.

AN INJURY ACTUALLY COMMITTED OR REASONABLY APPREHENDED

[34] The test in this regard is that in circumstances where countenancing the subject matter of the application under consideration to endure culminates in a permanent injury to an applicant, a court should grant the relief sought. See Setlogelo *supra*. That being so, it is trite that the existence of a clear right does not have to coincide with irreparable injury in an application for interdict. A significant and profound question to consider in this regard is whether or not an actual injury has occurred or that it is reasonably apprehended. Having regard to the facts of this matter, the answer is unquestionably in the affirmative.

[35] The Municipality argued that Vipcon will not suffer irreparable harm if registration of transfer of the erven were to take place. This, the Municipality contends, is because Vipcon has not shown that it has invested any capital in the development of the project. Vipcon found this argument objectionable because it is not

foreshadowed anywhere in the papers of the Municipality other than its heads of argument.

[36] That said, Vipcon stated that the Municipality did not deny the allegation in the founding affidavit that Vipcon has complied with the obligations imposed by the Land Availability Agreement together with the resolution. That means that the Municipality accepted or accepts that Vipcon will pay the amount of approximately R130 000 000.00 referred to in the letter of appointment of Vipcon.

[37] Quite apart from the aforegoing, Vipcon has acquired the rights to attend to the transfer of the erven referred to in paragraph 10 above. Vipcon will suffer irreparable harm should the Municipality be permitted to market, sell and register transfer of the erven to the general public without the participation of Vipcon envisaged in the agreements.

[38] The above is because Vipcon will not be able to recover a predetermined amount from the Municipality and neither will it be able to recuperate any losses it might have suffered from the transferees because they would have acquired ownership legitimately. Perceived in this manner, the apprehension of irreparable harm occurring is reasonably tangible. The clear right that Vipcon has established is as such, worthy of protection from the impending harm.

LACK OF ALTERNATIVE ADEQUATE REMEDY

[39] Here I agree with the Respondents that the alternative remedy must:

39.1 Be adequate in the circumstances; See, *Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd and another* **1961 (2) SA 505 (W) at 524-525;**

39.2 Be ordinary and reasonable; See, *Martin v Kiesbeampte Newcastle Afdeling* **1958 3 All SA 41 (N); 1958 2 SA 649 (D) 654;**

39.3 Be a legal remedy; See, *Francis v Roberts* **1973 (1) SA 507 (RA);**

39.4 Grant similar protection. See, *Cape Town Municipality v Abdulla* **1974 4 All SA 311 (C); 1974 4 SA 428 (C) 440.**

[40] It is the Municipality's argument that the general rule is that a court should not grant this kind of an interdict where it can be shown that an applicant can receive appropriate relief by suing for damages. In short, the Municipality maintains that this is such an application. Vipcon's case is that it will be impossible or extremely difficult to allege and prove its loss should the Municipality be allowed to proceed with its plans as evinced in the advertisement for the sale of the erven.

[41] In the case of *Wynberg Municipality v Dreyer* **1920 AD 439;** *Tullen Industries Ltd v A de Sousa Costa (Pty) Ltd* **1976 (4) SA,** a case to which I was referred to by Vipcon, it was held that a Court will generally grant an interdict where the injury is a continuing violation of the applicant's rights or where the damages will be difficult to assess. Vipcon submitted that it is indeed in a position no different from that described in Wymberg Municipality *supra*. It submitted that its exclusion from the process of selling the erven means that it will be difficult to assess its damages against the Municipality because the process will necessarily involve valuation of the erven at different times.

[42] Since the threatened breach cause injury of a constant nature to Vipcon, a claim for damages would, in the circumstances, be inappropriate. This is to say that there exists no alternative adequate remedy. For this reason, I can perceive no reason why it should not succeed with its application for the relief that it seeks.

<u>COSTS</u>

[43] The Municipality has contended in this respect that it should be excused from paying costs if the ruling goes against it. The rule is that costs follow result. In an attempt to justify why this should not pertain in this instance, the Municipality stated that inherent in the prayer for costs against it is to intimidate it not to defend lest it will be mulcted with costs. The rationale behind the prayer was explained by Vipcon as being to avoid a party coming to court without necessarily wanting to defend a matter but solely for the purpose of arguing costs. I accept the explanation and as such, do not see need to depart from the establish rule that costs must follow result.

ORDER

[44] In the circumstances, the application succeeds and I make the following order:

1. The forms, service and periods for filing provided for in the Uniform Rules of Court is dispensed with in terms of Rule 6(12) of the Uniform Rules of Court and this application is heard as one of urgency.

2. The Municipality is interdicted and restrained from:

   2.1 marketing, negotiating a sale, selling or in any other way disposing or alienating; and/or

   2.2 attempting to pass transfer of the following immovable properties for which it has given notice of intention to dispose under notice number 10/2021 - 2022:

      2.2.1 476 stands in Mashishing Extension 6;

      2.2.2 250 stands in Lydenburg Extension 108;

2.2.3 206 stands in Lydenburg Extension 109; and

2.2.4 800 stands in Lydenburg Extension 110 without the prior obtained express written consent of the Applicant.

3. The Municipality is ordered to immediately cease any and all advertisements or marketing representing that it is entitled to dispose of the following immovable properties for which it has given notice of intention to dispose under notice number 10/2021 - 2022:

3.1 476 stands in Mashishing Extension 6;

3.2 250 stands in Lydenburg Extension 108;

3.3 206 stands in Lydenburg Extension 109; and

3.4 800 stands in Lydenburg Extension 110.

4. The Registrar is interdicted and restrained from registering transfer of the following immovable properties for which the Municipality has given notice of its intention to dispose under notice number 10/2021 - 2022:

4.1 476 stands in Mashishing Extension 6;

4.2 250 stands in Lydenburg Extension 108;

4.3 206 stands in Lydenburg Extension 109; and

4.4 800 stands in Lydenburg Extension 110 to any third party without the written consent of the Applicant.

5. The Municipality is ordered to pay the costs of this application.

[redacted]

B A MASHILE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 13 December 2021 at 10:00.

APPEARANCES:

Counsel for the Applicant:	**Adv R Grundlingh**
Instructed by:	**SCHEEPERS & AUCAMP ATTORNEYS**
Counsel for the First Respondent:	**Adv L Zwane**
Instructed by:	**Nkosi Attorneys**
Date of Judgment:	**13 December 2021**