

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

CASE NO:78882/15

In the matter between:

MYNETTE COETZEE

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	☒ YES ☒ NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒ YES ☒ NO
(3) REVISED.	☐ YES ☐ NO
13/2/2020.	[REDACTED]
DATE	SIGNATURE

And

MARISKA COETZEE N.O

FIRST RESPONDENT

MARISKA COETZEE

SECOND RESPONDENT

**THE MASTER OF THE HIGH COURT
PRETORIA**

THIRD RESPONDENT

DELENE DENNIS (Formerly COETZEE)

FOURTH RESPONDENT

STEPHAN COETZEE

FIFTH RESPONDENT

JUDGMENT

1.

This is an interlocutory application by the Applicant who are the respondents in the main application, for the purpose of easy reference, the parties are referred to as in the main application.

2.

The Respondents application to this court seek to set aside a supplementary founding affidavit which was filed by the Applicant in the main application, as they contend it constitutes an irregular proceeding in terms of Rule 30.

3.

The Applicant on or about the 17th September 2015 issued an application against the First and Second Respondent.

4.

The required answering and replying affidavits were exchanged between the parties and the application was set down for hearing on the 13th March 2017.

5.

The matter was set down before the then Acting Justice Mbongwe and where after the parties agreed to the terms of a draft order which draft order was subsequently and duly made an order of court.

6.

In the main application the following order was made:-

- 6.1 *That the First and Second Respondent be directed to provide the Applicant with the outstanding bank statements as referred to in Paragraph 23 of the First Respondent's answering affidavit within 30 days from the date of granting the order.*
- 6.2 *If the statement referred to in paragraph 1 above are not available and/or not obtainable from the relevant financial institutions within 30 days from the date of this order, the First Respondent is directed to deliver and serve an affidavit within 10 days thereafter on the Applicant setting steps taken to obtain the statement, and the reasons why the statements are not available, and the reasons why the statements are not available.*
- 6.3 *The Applicant be directed to serve and file within 21 days from the date of this order with the First and Second Respondent's attorneys of record, a list of further documents required, which list must clearly specify the nature and dates of the documents so required, only insofar as it is relevant and it relates to the First Respondent's dealings with the property and assets of the Trust registered with the Fourth Respondent under reference number IT7073/2003*
- 6.4 *That the First Respondent be directed to serve and file within 21 days from the date of the request made in terms of paragraph 3 hereof, the documents required;*

- 6.5 *If the documents referred to in paragraph 3 above are not available and/or not obtainable within 21 days from the date of the request made in terms of paragraph 3 herein, the First Respondent is directed to deliver and serve an affidavit within 10 days thereafter on the Applicant setting out the steps taken to obtain the documents, and the reasons why the documents are not available;*
- 6.6 *If the documents requested by the Applicant in terms of paragraph 3 above are not relevant to the First Respondent's dealing with the property and assets of the Trust, or privileged, the First Respondent is directed to deliver and serve within 10 days thereafter on the Applicant an affidavit setting out the reasons why such document will not be made available;*
- 6.7 *That the First Respondent be directed to debate the aforesaid documents and account with the Applicant within 21 days after the receipt of the documents and/or affidavits served and filed as required in terms of paragraph 4 and 5 hereof;*
- 6.8 *Any dispute between the Applicant and the First Respondent arising from the aforesaid debatement in regards to assets and/or funds of the Trust found in the debatement to have been wrongfully removed from the Trust, shall be referred to the High Court of South Africa by way of action or application for final determination within 30 days after the debatement.*

Subsequent to the court order in the main application made there was a meeting between the parties and their respective legal representatives, where a dispute in respect of the proceeds of policy held with Discovery Life ensued, the Applicant contention was that the proceeds of the policy belong to the Trust while on the other hand, the First Respondent contention was that the proceeds of the policy belong to her personally.

8.

The Applicant demanded from the First Respondent that she should repay the proceeds of the Discovery Life Policy to the Trust within 15 days, failing which the Applicant would cause a supplementary founding affidavit to be delivered and the First Respondent disputed the liability to repay the proceeds of the policy to the Trust and as a result the Applicant delivered a supplementary founding affidavit on the 14th January 2019.

9.

The Respondent in terms of the rule on the 29th January 2019 filed a notice informing the Applicant of the purported irregularity and requesting that the Applicant within fifteen days withdraw the affidavit and/or take steps to rectify the irregular steps.

10.

The question to be asked is whether the filing of the supplementary affidavit is an irregular step as the matter is res judicata and/or whether the proper interpretation of paragraph 8 of the order of Acting Judge Mbongwe read with prayer 4 of the Notice of

Motion permits the Applicant, necessary leave to file a further supplementary affidavit to her founding affidavit.

11.

It appears and seems to me that the contention of the Respondent it is that the application under case number 78882/2015 , was disposed of by the order of Acting Justice Mbongwe on the 13th March 2017 as a result the matter is res judicata.

12.

Further the Respondent objects to the filing of the supplementary affidavit as an irregular step in that:

- 12.1 The Applicant took almost two years after the order of Acting Justice Mbongwe which allegedly disposed of the matter.
- 12.2 The supplementary affidavit was not accompanied by any Notice of Motion, and it is therefore not clear, what relief is sought as there are no prayers in the form of Notice of Motion.
- 13.3 That the matter was rendered res judicata by the order of Justice Mbongwe.

14.

The Applicant contends that she is entitled to supplement her founding affidavit and that the matter is not res judicata, she states that the main application was one for the statement and debatement of the account and which directed at a process of two stages, the first stage as the statement of account and the second stage, the debatement of the account.

15.

She further states that the debatement in itself it comprises of two steps:

15.1 Debatement between the parties in private proceedings;

15.2 Debatement before the court of those issues remaining in the dispute after the debatement in private.

16.

She contends that the second step of the second stage remains in dispute and in the main application proceedings and to be place in this court for adjudication.

17.

Secondly , the Applicant states that resulting from the Prayer 4 of the Notice of Motion and Paragraph 8 of the order, it cannot be said that the matter is res judicata, further having in regard to the fact that the order expressly refers to the final determination of the matter within thirty days.

18.

Prayer 4 of the Notice of motion reads as follows:

"The First Respondent is ordered and directed to return to the trust all assets and funds of the Trust found in the debatement to have been unlawfully removed from the Trust"

And

Paragraph 8 of the Order of reads as follows:

"Any dispute between the Applicant and the First Respondent arising from the aforesaid debatement in regards to assets and/or funds of the Trust found in the debatement to have been wrongfully removed from the Trust, shall be referred to the High Court of South Africa by way of action or application for final determination within 30 days after the debatement."

19.

The Applicant contends that on a proper interpretation of paragraph 8, it clearly provides that whatever remains in the dispute after the first step of the second stage, shall proceed back to court for the second step of the second stage.

20.

As much as I agree with the Applicant that paragraph 8 of the order opened the doors for the Applicant to approach the court should a dispute arise from the debatement, but did not mean that the Applicant should approach the court on the same papers in the same application, which results in further "supplementary answering affidavit" and/or "supplementary replying affidavit" and even burden the court with cross referencing.

I further agree with Counsel Reinders that it is the executive part of the judgment which defines what the Court requires to be done or not to be done so that a Defendant or Respondent may know what to do. The Court's directions must be found in the order and not elsewhere. Where the meaning of an order is clear and unambiguous, it is decisive and cannot be restricted or extended by anything else stated in the judgment.

As Nicholas AJA pointed out in *Administrator Cape, and Another v Ntshwaqela and Others* 1990 (1) SA (A) at 715 F -1:

" [Trollip JA] said (at 304 D-H) that the basic principles applicable to the construction of documents also apply to the construction of a court 's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual well known rules. As in the case of any document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If on such reading, the meaning of the judgment or order is unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed,

in such a case not even the court that gave the judgment or order can be asked to state what its subjective intention was in giving it. But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the court's granting the judgment or order may be investigated and regarded in order to clarify it.

I take note that nowhere in the order a leave is granted to any party to deliver the supplementary affidavit. It is trite that there are normally three sets of affidavits in the motion proceedings. However, the Court have a wide discretion in to allow the filing of further affidavits in terms of Rule 6 (5) (e) , however the rule does not specify the manner in which the party should approach the court for leave to file a further affidavit or at what time during proceedings leave should be sought. This matter is different and distinguishable to other cases where the supplementary affidavit were file as in this present matter the supplementary affidavit were filed after an order was made.

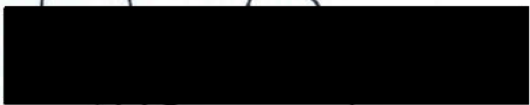
21.

I understand the order of Acting Justice Mbongwe to mean that should any dispute arise from the debatement then the Applicant could approach the by way of a new and fresh action of proceedings and application for final determination within a period of 30 (thirty) days after such debatement.

As a result I made the following order:

1. The Applicant's filing of the supplementary affidavit is declared as an improper and irregular step and is set aside.
2. The Applicant is ordered to pay the cost of the application

Signed and dated at Pretoria on this the 09th day of January 2020



Ephraim Seima AJ

Pretoria

09-01-2020

For the Applicant: Adv. G P Van Rhyn

For the Respondent: Adv. S J Reinders