



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

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

Case No. **5889/2017**

In the matter between:

JOHN DOUGLAS JANSEN KNIPE
ANDRÉ BAZZET JANSEN KNIPE
JACKIE VIGNE
MELANY SIMONE KNIPE
MICHAEL JOHN KNIPE
WILLEM LODIEWYK PRETORIUS

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant
Sixth Applicant

and

CHARLES STEWART
S.M. RAMPOPORO N.O.
CHAVONNE B ST CLAIR COOPER N.O.
FREDERICK JACOBUS SENEKAL
THE MASTER OF THE HIGH COURT,
BLOEMFONTEIN
CAROL JESSIE KATHLEEN LOTZ

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent

CORAM: **I VAN RHYN, AJ**

HEARD ON: **2 MAY 2019**

JUDGMENT BY: **I VAN RHYN, AJ**

DELIVERED:**1 AUGUST 2019**

INTRODUCTION:

- [1] This is an interlocutory application for an order whereby the First, Second and Third Applicants in the main application are declared vexatious litigants and ordered to furnish security in the main application for the Sixth Respondent's costs in the amount of R1.5 million within ten (10) days of date of such an order.
- [2] The Applicant, Carol Lotz in this interlocutory application is the Sixth Respondent in the main application. For convenience sake in this judgment it is appropriate to refer to the parties as cited in the interlocutory application. The First Respondent is John Knipe, the Second Respondent is André Knipe and the Third Respondent is Jackie Vigne. The First, Second and Third Respondents are referred to separately as the Respondents. The Fourth to the Sixth Applicants in the main application does not feature in this interlocutory application and furthermore the Second, Third as well as the Fifth Respondents in the main application are also not concerned with the interlocutory application.

BACKGROUND:

- [3] The Applicant and the First, Second and Third Respondents are siblings, born of the marriage between the late Mr H B J L Knipe and their late mother, Mrs M E Knipe. The Applicant was appointed as the Executrix in the estate of the late H B J L Knipe and also in her late mother's estate. Subsequent to the death of their father in 2007 the Respondents' disputes with their late mother and the Applicant ensued involving litigation which commenced almost eleven (11) years ago. Initially the family was split into three camps consisting of their mother and the Applicant in the first camp, the First, Second and Third Respondents in a second camp and their brother Peter Knipe forming a third camp. Peter Knipe is not a party in the present

application. In order to adjudicate upon the facts of this matter it is not necessary to make any credibility findings in regard to the allegations made towards any of the parties or other persons referred to in this application and I refrained from doing so.

- [4] The Applicant contends that the rivalry between the siblings started shortly after their father died in 2007 whereafter the Respondents laid claim to the whole estate of their late father and assets held in trust which was not part of their late father's estate. Not only legal action against their late mother and the Applicant had to be fended off, but due to numerous actions by the Respondents their late mother and the Applicant were also forced to take legal action against the Respondents to protect their own interests, the interests of the deceased estate of their late father, the companies (in liquidation) and the heirs of their late father's estate. Criminal charges were laid against their late mother and the Applicant, all criminal charges later to be withdrawn and family violence applications were also launched against the Applicant, all to be dismissed.
- [5] During the past eleven (11) years, twenty seven (27) matters served before the Courts and it is contended by the Applicant that she (and her late mother) were successful in twenty six (26) of these matters which excludes the criminal matters and family violence matters. The Applicant argues that between her late mother and herself they spent approximately R14 231 088.85 on litigation but notwithstanding their substantial success in the litigation they were only able to recover less than R250 000.00 in costs from the Respondents.
- [6] When the date for the hearing of this matter was arranged, all the parties concerned, concurred that it was convenient for this court to hear argument on the matters under case number 3864/2018, case number 6302/2018 and the main application under case number 5889/2017 (which was not argued at the time of the hearing on 2 and 3 May 2019) as well as the vexatious application under case number 5889/2017. This judgment should accordingly be read conjunctively with my judgments in the other inter-related matters.

- [7] Appended to the Applicants' Practice Note and Heads of Argument under case number 6302/2018 is a chronology of the events and history of litigation, marked annexure "C". The chronology of events does not contain a summary of the all the litigation between the parties. In their answering affidavit the Respondents stated that, in respect of the costs of R14 231 088.85 which the Applicant and their late mother allegedly spent on litigation, the Applicant is invited to disclose tax returns to substantiate the allegation that both the Applicant and their late mother were in the financial position to pay these legal costs. The Respondents contend that funds utilized to pay legal costs were syphoned from the estates of their late father and later also their late mother. The Applicant referred to a reconciliation pertaining to payments which was appended to the founding affidavit. It is assumed that the Applicant referred to annexure "CJK11" in terms whereof the parties' late mother paid for the administration of the estate an amount of R8 898 659.76 and the Applicant paid an amount of R5 332 429.09 towards the administration of the estate.
- [8] On behalf of the Applicant it was argued that the Respondents litigated at will, but have generally refused to pay any adverse costs orders and have used every imaginable method to frustrate the liquidation of Kameelhoek (Pty) Ltd and Schaapplaats (Pty) Ltd (the two "Companies" (in liquidation)). The total taxed bills of costs including interest which resulted from this litigation and for which the Respondents are jointly and severally liable, exceeds R4.6 million together with mora interest of 10.25% per year. The Applicant argues that cost orders in case number 4817/2014 and 5081/2014 have remained unpaid since July 2016, despite taxation, review and unsuccessful applications for leave to appeal. Despite numerous attempts to recover these costs from the Respondents, the Applicant and also the liquidators have been unsuccessful.
- [9] The liquidators applied for leave to sell the farms belonging to the two Companies by way of public auction due to the opposition from the First and Second Respondents in preventing the process of winding-up of the Companies. Two (2) business rescue applications were brought by the First

and Second Respondents and in the second business rescue application, Hancke J found (under case number 2120/2016) that the application by the Second Respondent and supported by the First and Third Respondents was an abuse of process and warranted a special cost order on attorney- and own client scale. An application for leave to appeal against the judgment of Hancke J soon followed. Rampai J, in dismissing the application for leave to appeal, found that enormous administration costs had been incurred over years as a result of the Respondents recalcitrant attitude, coupled with their endless litigation and that the true purpose of the application was to delay the winding-up, to frustrate the liquidators and to spite the Applicant. Rampai J also held that the winding-up of the companies would have been uncomplicated, efficient and cost-effective, but for the endless litigation.

- [10] On behalf of the Applicant it was argued that the *modus operandi* of the Respondents is to issue an application, obliging interested parties to oppose the application in order to protect their interests, and then once judgment is delivered against the Respondents, they would seek leave to appeal. If unsuccessful, they lodge an application for special leave to appeal to the Supreme Court of Appeal. It is also argued that once the end of the litigation process has been reached and the Bills of Costs have been taxed, the Respondents would review the Taxing Master's decision and followed-up by an appeal against the review Judge's judgment.

- [11] The Respondents contend that the Fourth Respondent, Mr Senekal and counsel has doubled charged for fees and expenses in case number 4606/2016 and case number 1660/2017. Charges of fraud have been laid in this respect. The Respondents allege that they have always acted in the best interest of the estates of the two Companies (in liquidation) by *inter alia* bringing an application to set aside the proving of the false claim of Mr Loftus Viljoen. I was referred to the judgment of Rampai R in case number 956/2014 and 957/2014 in this regard.

- [12] Respondents referred to several inconsistencies in the administration of the estates of the two Companies and the involvement of Mr Senekal, *inter alia* to the settlement agreement reached during April 2018 and contend that Mr

Senekal coerced them into agreeing to a withdrawal of certain applications and to tender the costs to enable Mr Senekal to tax these “fraudulent” Bills of Costs (on behalf of the Applicant in this matter) and to sell their shares to settle the Bills of Cost. They contend that his actions is in direct contravention of the settlement reached and as contained in the letter of 10 April 2018. They argue that they would never have agreed to the terms of the settlement agreement if their shares were to be sold in execution, approximately two (2) months later.

- [13] The Respondents furthermore refer to the Master’s questionnaire regarding the appointment of Mr Senekal to act on behalf of the provisional liquidators of the two Companies (in liquidation) as well as Mr Senekal’s alleged indication to the Commissioner at the insolvency inquiry that he indeed had a mandate to act on behalf of the final liquidators. The Respondents therefore argue that without a mandate from the liquidators, Mr Senekal is not entitled to any fees in respect of the insolvent estates of the two Companies (in liquidation).
- [14] The Respondents argued that due to the collusion between the Applicant and her attorney, Mr Senekal, as well as the liquidators, the Respondents are prevented from receiving the amounts due and owing to them and that it is the Applicant and Mr Senekal who are preventing the finalization of the liquidation process. The query sheet issued by the Assistant Master with regard to the first liquidation and distribution account, addressed to the liquidators, is of serious concern to the Respondents. On 11 December 2018 the Master of the High Court notified the liquidators that they are removed from office with immediate effect due to their conduct in the handling of the administration of the estates of the two Companies (in liquidation). The Respondents therefore argue that the “true situation regarding the liquidator’s collusion with Mr Senekal has now been revealed and will subsequently come to an end”. According to the Respondents the liquidators were doing their utmost to prevent the Respondents from receiving their dividends from the estates of the two companies (in liquidation). The Respondents argue that the Applicant, in collusion with Mr Senekal, attempted to litigate the Respondents into insolvency and that the

claim for security for costs is a further attempt to deprive them from obtaining justice.

RELEVANT LEGAL PRINCIPLES:

- [15] In **Corderoy v Union Government (Minister of Finance)**¹ the Appellate Division held that our Courts has inherent power to regulate its procedures. A litigant is entitled to protection against “*long-continued unsuccessful onslaughts in respect of the same dispute*”² Innes CJ however warned as follows: “*This is a power which should be very cautiously exercised, because it affects the elemental right of free access to the Courts, which we should be slow to interfere with except in exceptional and necessary instances.*”³

The test adopted in the **Corderoy**-matter was that it must be shown that such a person “*habitually and persistently instituted vexatious legal proceedings without reasonable grounds*”.⁴ In **African Farms and Townships Ltd v Cape Town Municipality**⁵ Holmes, JA held that: “*An action is vexatious and an abuse of the process of Court inter alia if it is obviously unsustainable. This must appear as a certainty, and not merely on a preponderance of probability.*”

- [16] At common law our Courts enjoy an inherent power to strike out claims that are vexatious, by which is meant “*frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant*”.⁶ As a complement to the common law, the Vexatious Proceedings Act 3 of 1956 (“the Act”) provides the Court with a mechanism for preventing the institution of vexatious legal proceedings. The present application has been brought in terms of Section 2 of the Act which provides as follows:
- “*If, on an application made by any person against whom legal proceedings have been instituted by any other person, or who has reason to believe that*

¹ 1918 AD 518.

² At 518.

³ At 519.

⁴ At 519.

⁵ 1963 (2) SA 555 (A) at 565 D – E.

Fisheries Development Corporation of SA Ltd v Jorgensen & Another; Fisheries Development Corporation of SA Ltd v A W J Investments (Pty) Ltd & Others 1979 (3) SA 1331 (W) at 1339 E – F; Bisset and Others v Boland Bank Ltd and Others 1991 (4) SA 603 (D) 608 B - E

the institution of legal proceedings against him is contemplated by any other person, the Court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any Court or in any inferior Court, whether against the same person or against different persons, the Court may, after hearing that other person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any Court or any inferior Court without the leave of that Court, or any Judge thereof, or that inferior Court, as the case may be, and such leave shall not be granted unless the Court or judge or the inferior Court, as the case may be, is satisfied that the proceedings are not an abuse of process of the Court and that there is prima facie ground for the proceedings.”

- [17] The purpose of the Act, as well as its constitutionality, were discussed by the Constitutional Court in **Beinash and Another v Ernest & Young and Others**⁷. With regard to the purpose of the Act, the Court held as follows: (This purpose) “... *is to put a stop to persistent and ungrounded institution of legal proceedings. The Act does so by allowing a court to screen (as opposed to absolutely bar) a person (who) has persistently and without any reasonable ground instituted legal proceedings in any court or inferior court. This screening mechanism is necessary to protect at least two important interests. These are the interests of the victims of the vexatious litigant who have repeatedly been subjected to the costs, harassment and embarrassment of unmeritorious litigation; and the public interest that the functioning of the courts and the administration of justice proceed unimpeded by the clog of groundless proceedings.*”
- [18] The Constitutional Court in **Beinash** found Section 2(1)(b) of the Act to pass constitutional muster. The only manner by which the institution of future vexatious proceedings can be prevented, is to rely on the provisions of the Act, while the only manner to stay, strike out or otherwise deal with vexatious proceedings which have already been instituted and which constitute an abuse of process, or generally bring the administration of justice into

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1999 (2) SA 116 at paras [15] – [21]

disrepute, is to seek relief under the applicable common law principles. Thus, when the court finds that there is an attempt to use machinery devised for the better administration of justice for ulterior purposes, it is the duty of the court to prevent such abuse.⁸

- [19] Griesel J, with reference to the **Beinash**-matter held that at common law the courts enjoyed an inherent power to strike out claims that were vexatious, holding that it meant claims that were “*frivolous, improper, instituted without sufficient ground, to serve solely, as an annoyance to the defendant.*”⁹ The Applicant referred to the case of **Christensen and Keiter N.O. v Richter and Naidoo**¹⁰ where the First Respondent was impecunious and despite multiple cost orders granted against him, continued to litigate against the Applicants, accusing the Applicants and their attorneys of negligence, fraud, maladministration and misleading the Court. The Court held that many applications launched by the First Respondent constituted an abuse of the Court process and that he was a vexatious litigant, meriting the grant of a final interdict against him.
- [20] Section 2(1)(b) of the Act only provides for an order that no legal proceedings *shall* be instituted by a person, therefore the finding by Rabie J in **Absa Bank v Dlamini**¹¹ that the Act only deals with prospective litigation and not existing litigation, was correct. This clearly deals only with an interdict against instituting litigation, not one against continuing it. For existing litigation, a party must make out a case under the common law. Section 2(1)(b) has two requirements before an order may be granted. The first requirement is that legal proceedings have in the past been, or there is reason to believe will in the future be, instituted against the Applicant. The second requirement is that the Court must be satisfied on two counts. First, that the person in question has persistently instituted legal proceedings in a Court. Secondly, that he/she has done so without any reasonable ground.

⁸ Hudson v Hudson 1927 AD 259 at 268.

⁹ Cohen v Cohen and Another 2003 (1) SA 103 (C) ([2002] 4 All SA 21);
Western Assurance Co v Caldwell’s Trustees 1918 AD 262 at 271;
African Farms and Townships Ltd v Cape Town Municipality 1963 (2) SA 555 (A) at 5650.

¹⁰ Unreported Judgment by Teffo J – case number 73868/2016, Gauteng Division, Pretoria High Court of South Africa, dated 6 October 2017.

¹¹ 2008 (2) SA 262 (T).

THE PARTIES' CONTENTIONS:

[21] The Applicant contends that over a period of approximately eleven (11) years the Respondents have instituted and prosecuted a torrent of litigation against her of which twenty seven (27) matters served before the Courts and the Applicant and her late mother was successful in twenty six (26) of these matters. Not surprisingly, it was contended on her behalf that she has suffered significant financial losses as a result of the Respondents past conduct. The Applicant contends that the Respondents had failed to achieve any significant successes whatsoever. On behalf of the Applicant it was argued that the Respondents are oblivious to punitive cost orders and have so little regard for the findings of any Court and such cost orders, that fresh litigation is almost immediately instituted once the litigation option in a particular matter has been exhausted, with the utmost disregard for existing cost orders. Furthermore, the three Respondents have no assets to pay for the enormous debts created by existing cost orders and the Sheriff has issued *nulla bona* returns in respect of all three of them.

[22] The Applicant contends that the allegations underpinning vexatious litigation by the Respondents are common cause in that many of the most pertinent allegations are not disputed by the Respondents. These are *inter alia* the following allegations:

22.1 The Respondents threatened and boasted that they would litigate the Applicant and their late mother into submission and would then take all that their late father and mother had built up over the years whenever they were opposed and did not get their way. In reply to these allegations the Respondents stated that they do not intend to answer all the allegations made by the Applicant since it is irrelevant, vexatious, argumentative and without any factual basis. They furthermore contend that the application is a further attempt to prevent them from protecting their rights to share in the proceeds of the estates of the Companies (in liquidation).

- 22.2 According to the Applicant the Respondents argue that they are the only ones entitled to any benefit from the proceeds of the Companies (in liquidation) and that the Applicant and the rest of the family were at their mercy. In their answering affidavit the Respondents stated that they are protecting their rights to share in the proceeds of the estates and I could not find any allegation made by the Respondents that, apart from the three Respondents, no one else is to benefit from the Companies (in liquidation).
- 22.3 According to the Applicant there is a history of frivolous and vexatious litigation instituted by the Respondents. The Respondents, however referred to the settlement reached between the parties in an attempt to settle the whole dispute and agreed to withdraw their application and to tender the costs thereof, in an attempt to reach a settlement. According to the Respondents, Mr Senekal caused the settlement agreement's failure. On behalf of the Respondents it is contended that the application for security for costs is vexatious and a clear attempt to prevent the Respondents from enforcing their rights as shareholders.
- 22.4 The Applicant states that she and her late mother were forced to take legal action in order to protect their own interests and also the interests of the deceased estate and the companies (in liquidation). The Respondents alleged that the Applicant and their late mother utilised funds from the estates of their late father and later on their late mother to fund the legal costs of the Applicant.
- 22.5 On behalf of the Applicant it was argued that the relentless litigation which commenced eleven (11) years ago will never come to an end unless the Court intervenes. Due to the Respondents' disregard for anything except their own entitlement, to which they have no right, the Applicant is obliged to litigate without end. The Respondents on the other hand alleged that they have no intention to frustrate the liquidation process. They deny that they are the sole reason why the liquidation and distribution account has not been finalized. The

Respondents argue that a myriad of serious issues were eventually picked-up by the Master, as is evident from the Master's query sheet.

22.6 The Applicant refers to the judgment of Hancke J as well as the judgment in dismissing the application for leave to appeal by Rampai J who found that enormous administration costs had been incurred over the years as a result of the Respondents' attitude coupled with their endless litigation. It was stated that the winding-up of the companies would have been uncomplicated, efficient and cost-effective but for the endless litigation. Subsequent to the judgment of Rampai J and on 11 December 2018 the Master of the High Court notified the liquidators that they are removed from office with immediate effect due to their conduct in the handling of the administration of the estate of the Companies (in liquidation). The Respondents therefore argue that the "true situation has now come to light and the liquidators' collusion with Mr Senekal will come to an end".

[23] The Respondents' contentions are that, due to the continuous involvement of Mr Senekal and his influence on the liquidators, the finalization of the estates of Companies9in liquidation) is delayed. They argue that the appointment of new liquidators will eventually lead to the speedy finalization of the estates of Companies (in liquidation). The Respondents alleged the fraudulent conduct by Mr Senekal in double charging for work done in both cases with numbers 4606/2016 and 1660/2017 and furthermore refer to Mr Senekal's claim for payment of an amount of R21 million and the specific provision made by the liquidators for Mr Senekal's fees in the amount of R9 million. The Respondents further argue that the Master, Mr Jannie du Plessis confirmed in a directive dated 20 April 2017 that the legal fees of Mr Senekal cannot be recovered from the estates of the Companies (in liquidation) due to the prohibition in Section 384(3) of the Companies Act 61 of 1973.

[24] The Respondents furthermore referred to the judgment by Daffue J delivered on 22 June 2017 in the **Trichardt-** application under case number 4606/2016 where he held that the hatred and lack of respect between Mr

Senekal and the Second Respondent is obvious from the contents of the papers. The toxic relationship between the Respondents and Mr Senekal continues to fester and the continued involvement of Mr Senekal has been questioned by the court on previous occasions. Furthermore, Daffue J held that Mr Senekal orchestrated the application for a sequestration of Second Respondent.

[25] The Respondents, more particularly the First and Second Respondent have not only pursued a legal battle against the Applicant, but certainly also against the liquidators regarding the administration of the estates of the two Companies (in liquidation). The involvement of Mr Noordman (a provisional liquidator) coupled with the involvement of Mr Senekal (both originally from Matsepes Attorneys) has been the basis of several accusations regarding the administration of the estates. The Applicant contends that the issues contained in the query sheet prepared by the Assistant Master was placed in perspective by the contents of her replying affidavit. It was argued that due to the numerous complaints lodged against Mr Strauss, he was removed from handling the file of the two companies (in liquidation). However, due to my involvement in the other applications, all argued on the 2nd and 3rd May 2019, this Court is aware of the contents of Mr Strauss' letter regarding his complaints of the problems experienced at the Master's Office. Mr Strauss also complained that he was harassed by Mr Senekal and that complaints were lodged against him due to certain comments made about Mr S M Rampoporo (the Second Respondent in the main application). Mr Strauss in fact volunteered his removal from the "files" pertaining to the Companies (in liquidation) in an attempt to avoid constant pressure and harassment. I am therefore not convinced by the insinuation presented by the Applicant that the file was removed from Mr Strauss due to his alleged incompetence or the allegation that he has been influenced by the Respondents.

[26] The Applicant argues that proof of Mr Loftus Viljoen's claim, which allegedly caused a delay, was found to have been a nullity which could have been ignored. The Applicant however fails to refer to the finding by Rampai J in case number 956/2014 and 957/2014 that "*a few unsavoury things emerged from the conduct of those involved (provisional liquidators & Master's office)*).

Evidence of objectionable and disturbing irregular conduct in which the liquidators gave unfair preference to a creditor of questionable character and integrity” was unveiled. It therefore appears as if the Respondents have merit in their allegations regarding the administration of the estate by the provisional liquidators and the conduct of the Master concerning the meeting of 16 April 2013. I refer in this respect to the judgment under A230/2014 by Van der Merwe J, Mocumie J and Lekale J (presiding) that the purpose of the first meeting of creditors did not include proof of claims by creditors and therefore Mr Viljoen had no right to prove his claim. The Master had no power or jurisdiction to admit proof of such a claim. Rampai J held that the Master and liquidators had administered the estate in a disturbingly irregular fashion or at least made incompetent decisions.

- [27] It is clear the Respondents had been lodging complaints and instituted numerous applications since the death of their father regarding the administration of their late father's estate and later regarding the administration of the estates of the two Companies (in liquidation). Therefore the first requirement that legal proceedings in the past have been instituted, or that there is reason to believe that future proceedings regarding the administration of the estates of the two companies will be instituted in future, has been met. The second requirement that legal proceedings had been instituted on a persistent basis without any reasonable ground is the issue that this Court has to decide upon. If it is found that the Respondents instituted legal proceedings without any reasonable grounds, then the Applicant should succeed with the application.
- [28] The question however remains whether the proceedings instituted by the Respondents in the past were without any reasonable ground. As already indicated the allegations by the Respondents regarding the irregularities that occurred during the creditors' meeting held on 16 April 2013 prove to have merit. Several of the Respondents' complaints regarding the relationship between Mr Senekal and Mr Viljoen, the accounts submitted by Mr Senekal and payment already received from the liquidators as well as payments made to counsel are not yet decided. The appointment of Mr Senekal who acted on behalf of the liquidators for a considerable period of time as well as

the relationship between Mr Senekal and the final liquidators are aspects not yet pronounced upon. These aspects were raised in the query sheet issued by the Assistant Master, who has in the meantime been relieved of the files of these estates. Therefore several aspects of concern to the Respondents, has not been adjudicated upon and therefore it cannot be argued that their complaints can, without exception, be regarded as frivolous, improper and without sufficient ground. The Applicant's application for an order to provide security for costs is unreasonable under the prevailing circumstances.

[29] Many of the applications launched by the Respondents in the past, were found to be an abuse of the court process and furthermore several cost orders have been made against the Respondents which remain unpaid. However, the Respondents, with continued persistence was able to convince the court on previous occasions that certain irregularities in the administration of the estates of the two Companies (in liquidation) did occur. I am therefore not persuaded that all the claims and/or allegations made by the Respondents pertaining to the maladministration of the estates of the Companies (in liquidation) are frivolous or improper. I am furthermore not persuaded that all the legal applications are instituted without sufficient ground and merely to serve as an annoyance to the Applicant. It is obvious that the relationship festering between the Respondents and Mr Senekal remains a serious bone of contention and causes friction which obviously contributes to delaying the finalization of the administration of the estates. Having regard to the history of the litigation between all parties concerned, it is evident that the liquidation ensued with the prospect of receiving dividends in the two companies (in liquidation) and will hopefully end as soon as the process of liquidation is finalized.

[30] Clearly not all the applications instituted by the Respondents have been doomed to failure and certain issues still has to be adjudicated upon in future and therefore all the avenues to resolve pending matters have not been exhausted as yet. Whilst an action or application which is obviously

unsustainable is vexatious, this must appear as a certainty and not merely on a preponderance of probability.¹²

[31] In the result I make the following order:

1. The application is dismissed with costs.

I VAN RHYN, AJ

On behalf of the Applicant:

ADV. D A PREIS SC

Instructed by:

F J SENEKAL INC

On behalf of the Respondents:

ADV. F. J. VAN RENSBURG

Instructed by:

WILLERS ATTORNEYS

¹² Ravden v Beeten 1935 CPD 269 at 276; Burnham v Fakheer 1938 NPD 63; African Farms case supra at 565D E.