

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**CASE NOS: 894/2011
and 6432/2011**

In the matter between:

DIVERSIFIED POWER & SYSTEMS
INTERGRATION (PTY) LIMITED

First Applicant

SOMASUNDRAM GOVENDER

Second Applicant

HERMAN FRANS IRVING

Third Applicant

CRAIG JOHAN SMIT

Fourth Applicant

and

MOTHUSI PETER MOLOKOANE

Respondent

ORDER

1. (a) The applicants' application brought under Case No.894/2011 is dismissed with costs. Such costs to be determined on the scale as between attorney and client;
- (b) The application brought under Case No. 6432/2011 is dismissed with costs. Such costs to be determined on the scale as between attorney and client;

2. That the order in terms of the respondent's counter application be granted as follows:-
 - 2.1 It is declared that the first to fourth applicants are in contempt of the court order dated 27 August 2010;
3. The first to fourth applicants are granted a further ten days from the date of this judgment to purge the contempt set out in paragraph 2.1 above, failing which the respondent may set the matter down upon notice, with or without further amplification of the papers, calling upon the first to fourth applicants to show cause why:-
 - (a) A further order should not be issued in terms of which the first to fourth applicants are prohibited from proceeding with any other litigation against the respondent until they have purged the said contempt;
 - (b) They should not pay the costs of any further proceedings on an attorney and client scale;
 - (c) Further sanctions to ensure purging of the contempt should not be imposed against them.
4. The first to fourth applicants are ordered to pay the costs of the counter application on the scale as between attorney and client.

JUDGMENT

SISHI J

Introduction

[1] The applicants seek an order under Case No. 894/2011 in terms of its Notice of Motion, *Inter alia*, as follows:

- 1.1 That it be declared that the first to fourth applicants complied with the order of his Lordship Mr Justice Kruger issued on 27 August 2010;
- 1.2 Ordering the respondent to accept the valuation of 26% of his shareholding in the first applicant as at 28 February 2010 at R332 000,00, in terms of the valuation by the first applicant's auditors, in compliance with clauses 12.3.2.2 alternatively 15.1.4 of the shareholders agreement.
- 1.3 That the respondent pay the costs of the application only in the event of opposition.

[2] The respondent in turn launched a counter application seeking an order, *inter alia*, declaring the applicants in contempt of the order granted by this Honourable Court on 27 August 2010 and affording the applicant's an opportunity to purge its contempt.

[3] In addition the applicants launched a further application out of this Honourable Court under Case No. 6432, *inter alia*, allegedly seeking the condonation of this Honourable Court for the late filing of a replying affidavit.

[4] These applications are opposed by the respective respondents.

Background

[5] The second, third and fourth applicants and the respondent are shareholders of the first applicant.

[6] The respondent applied for the winding up of the first applicant during the year 2009 on the grounds that it is just and equitable to do so due to the internal strife between the respondent and his co-shareholders. For reasons not relevant to these applications, that application was dismissed with costs.

[7] The respondent thereafter requested to have sight of the first applicant's books of account and records. The respondent did not receive a satisfactory response thereto. The respondent thereafter brought an application under Case No. 7134/2010 for an order that the applicant and its then shareholders should make available to him for inspection all books of account and records of the first applicant. Such order was granted on 27 August 2010 by Mr Justice Kruger in the following terms:

"It is ordered:

[1] That the first to fourth respondents be and is hereby ordered to make available to the applicant for inspection, perusal and including making copies of, all the books of account and records of the first respondent.

[2] That in the event that the first to fourth respondents fail to comply with this order, then the sheriff of this Honourable Court is directed and authorised to do all things necessary to give effect thereto.

[3] That the first and the fourth respondents be and is hereby directed to pay the costs of this application”.

[8] It is clear from the correspondence exchanged between the parties legal representatives annexed to the founding affidavit that the parties held different views as to whether there had been compliance with the Court order on a Case No.7134/2010 and they therefore brought the current application in which they first of all seek an order confirming that they complied with an order granted under Case No.7134/2010. The applicants also seek an order that the respondent accept the valuation of 26% of his shareholding in the first applicant as determined by the first applicant's Auditors as being R332 000,00.

[9] The respondent brought a counter application for an order that the applicants are in contempt of court.

Applicants' application for the condonation of the late filing of the replying affidavit

[10] In terms of the Court order made by this Court on 18 February 2011 under Case No.894/2011, the applicants were directed to deliver their replying affidavit if any, on or before 29 March 2011.

[11] The replying affidavit was not filed timeously. It is clear from the correspondence exchanged between the parties that a request by the applicants' attorneys to file their replying affidavit not later by 15 April 2011 was not acceded to by the respondent's attorneys. The applicants' reason for the delay is that their Counsel was not available to deal with the matter.

[12] Although it is not clear from the papers when exactly was the replying affidavit filed, the affidavit in question headed "answering affidavit" was commissioned on 2 June 2011.

[13] To indicate that this affidavit was intended to be a replying affidavit, paragraph 3 thereof, reads as follows:

"I have read an answering affidavit of the respondent and reply thereto as follows:"

[14] The affidavit is deposed to by the third applicant, Herman Frans Irving.

[15] A Notice of Motion dated 6 June 2011 which bears the Registrar's stamp date of 9 June 2011 was filed and the notice of motion reads as follows:

"Kindly take notice that application will be made to this Honourable Court on the 5th day of July 2011 at 9h30 or soon thereafter as the matter may be heard for an order in the following terms:-

- 1. That condonation be granted for the late filing of the applicants' replying affidavit;*
- 2. That the applicants pay the costs of this application unless opposed;*
- 3. Further and alternative relief.*

Kindly take further notice that the affidavit of Herman Frans Irving together with the annexures will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

Dated at Durban this, 6 day of June 2011".

The notice of motion is signed by Applicants' Attorneys

[16] This application is brought under Case No.6432/2011. There are two Registrar's stamps on the face of this Notice of Motion. The first is dated 9 June 2011 and the second is dated 8 June 2011. On the face of the document, the Notice of Motion appears to have been received by the respondent's attorneys Motala & Associates on the 8th day of June 2011.

[17] The affidavit deposed to by Hermen Frans Irving which is headed “Answering Affidavit” which purports to support this application for condonation does not deal at all with the prayers sought in the Notice of Motion.

[18] The Notice of Motion is on pages 374 to 375 of the indexed papers and the affidavit in question begins from pages 376 and the following pages of the indexed papers.

[19] Furthermore, no case number has been inserted on the first page of this affidavit nor does it make mention or indicate in which matter condonation to file a relying affidavit is sought. As indicated above the application for condonation of the late filing of the replying affidavit is brought under a separate case number, Case No.6432/2011.

[20] It has been submitted, correctly in my view, on behalf of the respondent that an applicant seeking condonation is seeking an indulgence from the court, accordingly it must set out the basis upon which it requires that this Court is called upon to grant such indulgence. Furthermore, in application proceedings, the affidavits take the place not only of the pleadings in an action, but also of the essential evidence which would be led at a trial.

See: MEC for Health, Gauteng v 3P Consulting Pty Ltd¹.

¹ 2012(2) SA 542 SCA at 550 G to 551 C.

[21] The applicants filed a further affidavit deposed to on 22 February 2013 by the applicants' attorney of record, Mr Martinis Laas. This affidavit is filed under Case No.6432/2011. In this affidavit the deponent states that the purpose of this affidavit is to depose to an affidavit in support of the applicants' application for condonation for the late filing of their replying affidavit.

[22] In this affidavit, the deponent also deals with the correspondence I have already referred to wherein the applicants requested an extension of time which was refused by the respondent's attorneys.

[23] The deponent further says that the replying affidavit as well as a confirmatory affidavit by himself as well as a substantive application for condonation was then drafted, these were supposed to be dispatched to the correspondent attorneys in Durban to arrange for signature and filing. It was also arranged with the deponent to attend to the commissioning of the affidavit.

[24] He further says that on 19 May 2011, the application for condonation as well as the replying affidavit was supposed to have been sent by his offices to the correspondent attorneys. He states that some confusion also crept in regarding the replying affidavit as it is erroneously captured "Answering Affidavit". He says that on 27 May 2011, a letter was telefaxed to the respondent's Attorney's confirming that the documents which he thought had been dispatched on 19 May 2011 were in fact received by them, that they

were collected for commissioning and will be served shortly. Unbeknown to him only the Notice of Motion wherein condonation is sought was dispatched to the correspondent attorneys together with the replying affidavit.

[25] When he briefed Counsel, he required the correspondent attorneys to provide him with an index as well as the issued commissioned condonation application. He was informed by the correspondent attorneys that they do not have a founding affidavit in support of the condonation application which he found it strange as an affidavit in its unsigned form was still saved on his computer.

[26] Their correspondent attorneys informed them that they are not in possession of an affidavit, in support of the condonation application and made mention of the fact that they have previously indicated that they were sent an answering affidavit (which is obviously the replying affidavit) together with the Notice of Motion seeking condonation. He then once again perused his office file and came across a letter written by the respondent's attorneys as long ago as May 2011 wherein they indeed informed his offices that the founding affidavit that was supposed to support the application for condonation was not served on them. He then realised that his office forwarded only the Notice of Motion together with the replying affidavit and did not send the founding affidavit for signature to Durban. He says that he can offer no explanation why he or his office did not respond to that letter. In my view, this is negligence of a worse kind by a firm of attorneys.

[27] The deponent further alleges in the affidavit that in the meantime the third applicant resigned as director of the first applicant and also sold his shares and therefore has no authority to further act on behalf of the first applicant. He then refers the Court to a confirmatory affidavit by the second applicant, S. Govender, wherein he states that he has read the affidavit of the third applicant in support of the condonation application and confirms the contents thereof as correct and that the first applicant indeed seeks condonation for late filing of the reply. But I have already indicated that, the affidavit by the third applicant in support of the condonation application was never ever signed by the third applicant. Instead of preparing a new affidavit in support of that application, the second applicant, S Govender, at his own peril confirms the contents of an unsigned affidavit.

[28] It has been submitted correctly, in my view, on behalf of the respondent that all the necessary allegation upon which the applicants rely must appear in his or her founding affidavit as he or she will not generally be allowed to supplement the affidavit by adducing supporting facts in a replying affidavit.

See: *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*².

[29] It is trite that in any application for the condonation of the late filing of the court documents, the applicant must show good cause in order to be successful.

² 2008 (5) SA 339 (SCA) at 349A-B

[30] In order to show cause, the applicant must deal with the following issues:

[30.1] The nature and the extent of the delay;

[30.2] The reasons therefor;

[30.3] The prospects of success; and

[30.4] The interest of the parties in the matter.

[31] These issues have not been dealt with in any of the affidavits referred to earlier on in this judgment. I have already indicated that the affidavit of the Hermen Frans Irving referred to in the Notice of Motion does not deal at all with the condonation of the late delivery of the replying affidavit. The same applies to the affidavit deposed to by the applicant's attorney of record Mr Laas., on 22 February 2013. So does the confirmatory affidavit of the second applicant, S. Govender.

[32] In paragraph 10 of the affidavit, deposed to by Mr Laas on 22 February 2013, the applicants' attorney of record states the following:

"... I deem it necessary to annex a copy of the unsigned affidavit hereto as annexure "MJL5" to show the Honourable Court that it was indeed prepared as long ago as May 2011 ..."

[33] Surprisingly, annexure MJL5 (pages 744-746 Indexed papers) is a Notice of Motion which is unsigned prepared by Attorneys for the applicant wherein they seek the orders set out in paragraph one of this judgment.

[34] This notice of motion is supported by an affidavit deposed to by Herman Frans Irving which is also unsigned.

[35] This affidavit does not deal with the allegations in support of the condonation application as suggested by the applicants' attorney of record in his affidavit deposed on 22 February 2013. Instead, the affidavit only deals with the issues in support of the prayers sought in the Notice of Motion to which the affidavit is annexed.

[36] This, in my view, again demonstrates gross negligence on the part of the applicants' attorneys in this matter.

[37] It was submitted correctly, in my view, on behalf of the respondent that the affidavit deposed on 22 February 2013 by the applicant's attorney of record does not assist the applicants in that it lacks any averments to disclose a cause of action for the relief sought. Accordingly, the applicant did not disclose the cause of action in respect of the relief sought in paragraph 1 of the Notice of Motion. There is in fact no founding affidavit in support of an application for the condonation of the late filing of the relying affidavit. In my judgment, the absence of a proper affidavit in support of the condonation application is fatal to the applicants' case. The application for the condonation of the late filing of the replying affidavit should, in my view, be dismissed with costs.

Application under Case No.894/2011

[38] The respondent has raised three points *in limine* in respect of this application.

1st point *in limine* – *locustandi* of the applicant

[39] In support of this point *in limine*, the respondent has made the following submissions:

[39.1] It is trite law that appropriate allegations to establish the *locus standi* of an applicant should be made in its founding papers.

See: *Scott v Hanekom*³

[39.2] The applicants' annex marked "DPS1" to the founding affidavit a resolution which they contend, evidences that the deponent Herman Frans Irving is duly authorized to depose to the said affidavit and the resolution reads as follows:

"RESOLVED

1. *That the company apply to the KwaZulu Natal High Court, Durban for an order amending the order given under Case Number 7134/2010 in the mentioned court and compelling the shareholder MP Molokoane in terms of the application to adhere to the conditions set out in the shareholders' agreement;*

³ 1980 (3) SA 1182 (C) at 1188H

2. *That HERMAN FRANS IRVING be and is hereby authorised to bring the application on behalf of the company and to sign all such documents and to do all such things as may be necessary to give effect to the a foregoing.”*

[39.3] It is apparent *ex facie* the Notice of Motion that the applicants seek, inter alia, the following relief:-

- “1. *That it be declared that the first to fourth applicant’s complied with the order of his lordship Mr Justice Kruger on 27th August 2010”.*
2. *Ordering the Respondent to accept the valuation of 26% of his shareholding in the first respondent as at 28th February 2010 at R332,000, in terms of the valuation by the first respondent’s auditors, in compliance with clauses with 12.3.2.2, alternatively 15.1.4 of the shareholders agreement.”*

[39.4] It is furthermore apparent from the Resolution itself relied upon by the applicants that it does not authorise the applicants to institute this application for the relief they seek. The resolution authorises the applicants to apply for an order amending the order compelling the respondent to adhere to the conditions set out in the shareholders’ agreement. Mr Irving, in terms of paragraph 2 of the resolution is the person authorised to bring that particular application referred to in paragraph 1 of the resolution.

[39.5] In a case where the deponent acting on behalf of an applicant company lacks the capacity to launch application proceedings on behalf of the company, and the respondent objects thereto, want of capacity cannot later be remedied by a decision of the directors of the company which did not exist at the stage when the application was launched.

See: *M & V Tractor & Implement Agencies BK v Vennootskap D S U Cilliers & Seuns; Hoogkwartier Landgoed (Edms) Bpk; Olierivier Landgoed (Edms) Bpk*⁴.

[39.6] Such later decision will also not serve as a ratification of, and give retrospective effect to the capacity to launch such an application.

See: *M&V Tractor & Implement Agancies BK v Vennootskap D S U Cilliers & Seuns; Hoogkwartier Landgoed (Edms) Bpk; Olierivier Landgoed (Edms) Bpk*.⁵

[39.7] Counsel for the respondent submitted that the applicants have failed to establish *locus standi* in this application.

[39.8] Counsel for the respondent further submitted that the application be dismissed with costs, such costs to be determined on the scale as between attorney and client.

[40] The deponent to the replying affidavit which is headed "Answering Affidavit", Mr Herman Frans Irving, who also deposed to the founding affidavit, denies that the resolution does not authorise him to depose to the affidavit on behalf of the first applicant. He states in paragraph 4 of the replying affidavit

⁴ 2000 (2) SA 571 (NC) at 579H-I.

⁵ Supra at 580 D-E.

that prayer 2 is in essence the same as compelling respondent to adhere to the conditions set out in the shareholder's agreement. Although prayer 1 is not an order prayed for under Case No. 7134/2010, the relief deals with the same application.

[41] Mr Irving further makes the following allegation in this replying affidavit:

"I, however, annex hereto as annexure "RA1" a resolution adopted by the first applicant rectifying the actions I have taken on behalf of the first applicant and the relief which is sought in the Notice of Motion".

[42] In any event, having dismissed the applicants' application for the condonation of the applicants' late filing of the replying affidavit, the court cannot have recourse to the same replying affidavit in considering the respondent's point *in limine*. That affidavit should in fact be regarded as *pro-non-scripto*.

[43] If the initial resolution passed by the company to authorise these proceedings were sufficient, it would not have been necessary for the company to issue another resolution rectifying the actions already taken.

[44] Counsel for the respondent correctly submitted, that it is apparent that the resolution relied upon by the applicants does not authorise the applicants to institute this particular application for the relief they seek.

[45] Even if there was a properly filed replying affidavit, a later decision or resolution will also not serve as a rectification of and give retrospective effect of the capacity to launch such an application.

See: *M&V Tractor & Implement Agencies BK v Venonotskap D S U Cilliers & Seuns; Hoogkwartier Landgoed (Edms) Bpk; Olierivier Landgoed (Edms) Bpk*⁶.

[46] Absence of *locus standi* is fatal to the applicants' case. In the light of the above, I am satisfied that the applicants have failed to establish *locus standi* in this application. The application falls to be dismissed with costs.

[47] In the result, the applications' main application should accordingly be dismissed.

[48] There is no reason why the costs should not follow the result.

[49] In the light of the finding that the applicants lack of *locus standi* to bring the application under case No. 894/2011, it is not necessary to deal with further points *in limine* raised by the respondent and the merits of the application.

Respondent's counter application

[50] The respondent in the counter application asked for an order that the applicants are in contempt of court or in contempt of the court order dated 27

⁶ Supra at 580D-E.

August 2010. He further asked that the applicants be granted a further 10 days from the date of judgment to purge the contempt.

[51] Paragraph 1 of the Court order made by Mr Justice Kruger on 27 August 2010 reads as follows:

“1. That the first to fourth respondents be and is hereby ordered to make available to the applicants for inspection, perusal and including making copies of, all the books of account and records of the first respondent”

[52] It was submitted on behalf of the applicants that it became apparent from the applicants that the parties have different views as to whether there has been compliance with the Court order under Case No.7134/2010 and they therefore brought the current application seeking an order confirming that they complied with the order granted under Case No. 7134/2010. In annexure DPS 11 the correspondent exchanged between the respective parties attorneys, the respondent listed 48 documents or information he requires which the applicants submit falls outside the meaning and scope of accounts and records of the applicant.

[53] It was submitted further that on the respondent's own version, his attorney and auditors presented themselves at the businesses of the first applicant on 7 December 2010. The respondent through his attorney and auditors was able to peruse all books and records of the first applicant. It was then submitted that enough information was gained from these books and

records so perused that the auditors were able to express an opinion on their findings. The applicants do not agree that the opinion is correct.

[54] It was submitted on behalf of the applicants that they still do not know why the respondent say that they are in contempt of the court order and they still have not been informed in clear and simple terms what it is that the respondent requires from them. The term “books of account and records” is very wide. The applicants contend that by allowing the respondents attorneys and auditors access to the books and records which were held at the offices where the audit was conducted, is compliance with the Court order.

[55] It was finally submitted on behalf of the applicants that the respondent has failed to show that the applicants are wilfully in default of the Court order. The mere fact that they brought this application shows that there is no wilfulness on their part. The counter application should be dismissed with costs.

[56] The respondent made the following submissions in support of the counter application.

[57] The respondent’s counsel submitted correctly, in my view that, it is apparent from the papers under Case No.6432/2011 that the applicant commenced the application with an affidavit headed “Answering Affidavit”, which appears to be a founding affidavit in the matter. It also appears to be a replying affidavit to the answering affidavit of the respondent under Case

No.894/2011 but nowhere does the applicants make any allegation or reference to Case No.894/2011.

[58] Despite the above, the respondent delivered the answering affidavit, subsequently, the applicant delivered an affidavit deposed to by attorney, Mr Laas and it is apparent therefrom that the applicant limits the reply only in respect of the reasons why it was late for delivering the affidavit in respect of the condonation application and does not respond to the allegations in the respondent's answering affidavit.

[59] It was submitted, correctly in my view, on behalf of the respondent that there being no counter allegations of fact, the entire answering affidavit of the respondent under Case No. 6432/11 is not in dispute, inter alia, the material allegations of the respondent which are, inter alia as follows:

[59.1] That new evidence that had come to light pursuant to respondent deposing to the affidavit under Case No. 894/11 that when the applicants had launched the aforesaid application, they were aware as a result of their wrongful and/or unlawful conduct that the respondent was not a shareholder in the first applicant and that his shareholding appears to have been misappropriated and sold to a third party as a result of which respondent had to launch an application, inter alia, for the return of his shareholding under Case No. 11077/2011.

[59.2] That the matter under Case No. 11077/2011 displays the *mala fides* of the applicants in that the entire application launched by the applicants under Case No. 894/2011 was brought with the intention to cloak and countenance the apparent fraudulent conduct of the applicants perpetrated against respondent.

[59.3] That on 7 December 2010, the proverbial cat was out of the bag, when the secretary of the first applicant, a Mrs Marina Roberts had informed the auditors and respondent's attorney that "*she did not know why they were there on behalf of Mr Molokoane as his shares had been sold*".

[59.4] That none of the deponents to applicants' affidavit nor its attorneys were present at the premises on 7 December 2010 when compliance with the order of this Honourable Court was attempted accordingly the entire application launched by the applicants is based on hearsay.

[59.5] That the applicants have not complied with the order of this Honourable Court and remain patently in contempt, particularly where the applicants' attorney Mr Laas does not indicate in his confirmatory affidavit wherein he states "*The respondent and his party left the premises with the documents I thought they were entitled*" when a Mrs Roberts, first applicant's secretary, who was the only person present for applicants on the day and who had subsequently forwarded an email to respondent's auditors that additional documentation that was required was to be forwarded once completed.

[60] I agree with the submission by the respondent that the entire application is based on hearsay. Mr Laas, the applicants' attorney of record indicated that he was not present at the premises on 7 December 2010. Neither was the Third Respondent (Herman Frans Irving) present on the day in question. No affidavit or confirmatory affidavit has been filed by Mrs Marina Roberts to confirm the events of the day.

[61] The respondent alleges at paragraph 15.12.10 of his answering affidavit as follows:

"I was advised by my attorney that when the Deputy Sheriff of this Honourable Court had attempted to execute on the order on the 7th December 2010, a Mrs Marina Robert of the first applicant had informed those present that the Managing Director Mr Irving, the deponent to the founding affidavit, had given her strict instructions not to allow anyone to enter the premises and to make any copies of the first applicants' books and records."

[62] In response to the foregoing, the applicants prefer not to place a version before this Honourable Court. All the deponent says is that this is not an application rescinding the order granted and therefore he will not reply to these paragraphs.

[63] It was finally submitted on behalf of the respondent that the applicants notwithstanding being aware of this Honourable Courts order, elected to deliberately and intentionally disobey this Honourable Court's order at the very outset.

[64] The Crime of Contempt of Court involves the unlawful and intentional violation of the authority of a judicial officer or judicial body acting in such capacity. In *Fakie NO v CCII Systems (Pty) Ltd*⁷, the Court at paragraph [6] said:

“It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence had, in general terms, received a constitutional ‘stamp of approval’, since the rule of law – a founding value of the Constitution – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.’”

[65] The terms of the Court Order are not ambiguous. In the light of the above, I am satisfied that, the applicants, notwithstanding being aware of this Honourable Court’s order, elected to deliberately and intentionally disobey this order at the very outset.

[66] In the result, I am satisfied that a case has been made out for the orders sought in the counter application.

[67] The relief sought in the Notice of Motion as set out by the applicants in the matter under Case No.894/2011 as well as under Case No.6432/2011 falls to be dismissed. Counsel for the respondent has argued that the applicants be ordered to pay the costs of the applications on attorney and client scale. Considering the manner in which these cases have been

⁷ 2006 (4) SA 326 (SCA)

handled on behalf of the applicants, I am of the view that punitive costs are warranted in the circumstances of these case.

[66] In the result, the following order is made:

1.

(a) The applicants' application brought under Case No.894/2011 is dismissed with costs. Such costs to be determined on the scale as between attorney and client;

(b) The application brought under Case No. 6432/2011 is dismissed with costs. Such costs to be determined on the scale as between attorney and client;

2. That the order in terms of the respondent's counter application be granted as follows:-

2.1 It is declared that the first to fourth applicants are in contempt of the court order dated 27 August 2010;

3. The first to fourth applicants are granted a further ten days from the date of this judgment to purge the contempt set out in paragraph 2.1 above, failing which the respondent may set the matter down upon notice, with or without further amplification of the papers, calling upon the first to fourth applicants to show cause why:-

5. A further order should not be issued in terms of which the first to fourth applicants are prohibited from proceeding with any other litigation against the respondent until they have purged the said contempt;
6. They should not pay the costs of any further proceedings on an attorney and client scale;
7. Further sanctions to ensure purging of the contempt should not be imposed against them.
4. The first to fourth applicants are ordered to pay the costs of the counter application on the scale as between attorney and client.

APPEARANCES

Date of judgment : 28 November 2013

Date of hearing : 24 May 2013

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