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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. **3805/2022**

In the matter between:

**KOPANO UITKYK FARMING ENTERPRISE
(PTY) LIMITED**

Applicant

[Registration number: **2013[...]**]

and

**THE NATIONAL GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

First Respondent

[Through its Department of Agriculture,
Land Reform and Rural Development,
previously known as the Department of
Rural Development and Land Reform]

**THE MINISTER OF AGRICULTURE,
LAND REFORM AND RURAL DEVELOPMENT**

Second Respondent

**MEMBER OF THE EXECUTIVE COUNCIL,
MEC FOR THE FREE STATE DEPARTMENT
OF AGRICULTURE AND RURAL DEVELOPMENT**

Third Respondent

**THE CHIEF DIRECTOR/ACTING CHIEF DIRECTOR
IN THE DEPARTMENT OF AGRICULTURE AND
RURAL DEVELOPMENT**

Fourth Respondent

MACHABEDI DINAH KOMETSI N.O.
[In her capacity as Trustee of the **KOPANO**

Fifth Respondent

UITKYK NO. 2 TRUST]

PHATEDI JOHANNES MOKONE N.O.

Sixth Respondent

[In his capacity as a Trustee of the **KOPANO**

UITKYK NO. 2 TRUST]

PHAKELA BEN MAPHAKISA N.O.

Seventh Respondent

[In his capacity as a Trustee of the **KOPANO**

UITKYK NO. 2 TRUST]

NAMEDI FRANS MELATO N.O.

Eighth Respondent

[In his capacity as a Trustee of the **KOPANO**

UITKYK NO. 2 TRUST]

TEBELLO JOHANNES MOTSOANI N.O.

Ninth Respondent

[In his capacity as a Trustee of the **KOPANO**

UITKYK NO. 2 TRUST]

HEARD ON:

20 JUNE 2024

DELIVERED ON:

25 JUNE 2024

JUDGMENT BY:

MANYE, AJ

[1] The Applicant brought an urgent application before Van Zyl, J heard on the 26th August 2022 in which the Applicant sought the following orders:

1.1 That the Court dispensed with the forms, service and time periods provided for in the Uniform Rules of Court, specifically in Uniform Rule 6(12), and disposes of the matter as such and plays in such a manner and in accordance with such procedure as to it seem meet, and that this application be considered to be one of urgency.

1.2 That the Respondents pending the finalization of the action under case number **1993/2022** in the above Honourable Court, be;

1.2.1 Interdicted from, (i) evicting the Applicant from; (ii) Intervening with the possession exercised by the Applicant over, and (iii) Interfering with the possession exercised by the Applicant in the running of its commercial farming enterprise over, the immovable property, in the district of Parys in the Free State Province, being: Farms and portions stated in paragraph 2.1.1 to 2.1.18 therein referred to as “*DALRRD Farms*”.

- [2] The Applicant further sought an order that the Respondent be entitled, on a monthly basis, to inspect the DALRRD Farms, in order to ensure that the Applicant is indeed conducting a commercial farming enterprise (including the management of the herd of cattle) on the DALRRD Farms, and to ensure to the extent applicable that such equipment as owned by DALRRD and that is utilized, is in fact utilized responsibly in terms of the accepted good farming practices.

- [3] Further the Applicant sought cost orders against Respondents jointly and severally, the one paying the other to be absolved.

- [4] It is so that on the 16th March 2023 Van Zyl, J delivered judgment in which the Applicant’s urgent application was removed from the roll and the Applicant was ordered to pay the costs of the application including the costs of two counsel.¹

- [5] The Applicant re-enrolled the application so removed from the roll on the 16th March 2023 to be heard before this Court on the 20th June 2024 together with further application items of the Uniform Rule 6(5)(e) in which the following orders were sought:

5.1 That the Applicant be granted leave to serve and file *the further founding affidavit*² together with annexures thereto, attached to the Notice of Motion for the filing of further affidavits, and such is deemed

¹ Record, p. 62
² emphasis

to be served and filed herewith;

- 5.2 The First to Fourth Respondents are granted leave to serve and file their further answering affidavit together with annexures thereto, if any, in opposition to the Notice of Motion for the filing of a further affidavit, and such is deemed to be served and filed herewith.
- 5.3 The Fifth to Ninth Respondents are granted leave to serve and file their further answering affidavit together with annexures thereto, if any, in opposition to the Notice of Motion for the filing of a further affidavit, and such is deemed to be served and filed herewith;
- 5.4 The Applicant is granted leave to serve and file a further replying affidavit together with annexures thereto, if any, in response to the further answering affidavit of the First to the Fourth Respondents and/or further answering affidavit of the Fifth to Ninth Respondents, and such is deemed to be served and filed herewith;
- 5.5 The Applicant is to pay the costs of this application to allow further affidavits unless this application is opposed by one or more of the Respondents, in which case such Respondents opposing are to pay the cost of this application, alternatively the cost of this application are to be reserved for determination in the main application.

[6] For clarity, it is important to highlight that what is referred to as the main application is in fact the urgent application under the same case number that served before Van Zyl, J which was removed from the roll on the 16th March 2023, re-enrolled to this date 20th June 2024 on the same papers without any supplementary affidavits and/or amended Notice of Motion.

[7] At the commencement of the proceedings the Applicant's legal representative indicated to the Court that Rule 6(5)(e) must be dealt with first, to allow and admit the further founding affidavit to the main application referred to above (being the urgent application removed from the roll on the

16th March 2023).

[8] The Applicant's legal representatives' submission was to the effect that there existed exceptional circumstances which necessitate further filing of a further founding affidavit subject to this application under Rule 6(5)(e). Applicant's counsel further submit that there is no prejudice to the Respondents, whether the First to Fourth Respondents or the Fifth to Ninth Respondents, since the relief specifically provides that their respective opposition also be accepted as further answering affidavits. Further that the Respondents are therefore given reasonable opportunity to address all the allegations in the further founding affidavit, pertaining to the subsequent facts set out in the further founding affidavit as is evident from the Notice of Motion for leave to file a further affidavit.

[9] Rule 6 of the Rules of Court provides:

“(1) Every application must be brought on notice of motion supported by an affidavit as to the facts upon which the application relies on for relief.

(2) ...

(3) ...

(4) ...

(5)(d) Any person opposing the grant of an order sought in the Notice of Motion shall –

(i) ...

(ii) Within fifteen (15) days of notifying the applicant of his intention to oppose the application, deliver his answering affidavit, if any, together with the relevant documents; and

(iii) ...

- (e) *within ten (10) days of the service upon him of the affidavit and documents referred to in subparagraph (ii) of paragraph (d) of subrule (5), the applicant may deliver a replying affidavit. The Court may, in its discretion permit filing of further affidavits.*

[10] In **Hanno Trading CC v JR 209 Investments (Pty) Ltd and another**³ it was stated that, it is so that a litigant in civil proceedings has the option of approaching a Court for relief on application as opposed to an action. Should a litigant decide to proceed by way of application, Rule 6 of the Uniform Rules of Court applies. This rule sets out the sequence and timing for filing of affidavits by the respective parties. An advantage inherent to application proceedings, even if opposed, is that it can lead to a speedy and efficient adjudication and resolution of the dispute between parties. Unlike actions, in application proceedings the affidavit takes the place, not only of pleadings, but also of essential evidence that should be led at trial. It is accepted that the affidavits are limited to three sets. It follows thus that great care must be taken to fully set out the case of the party on whose behalf an affidavit is filed. It is therefore not surprising that the Rule 6(5)(e) provides that further affidavits may only be allowed at the discretion of the Court.

[11] In **Porterstraat 69 Eiendomme (Pty) Ltd v PA Venter Worcester (Pty) Ltd**⁴ it was noted that the Court must take the following facts into consideration in determining whether or not to allow a further affidavit:

- (i) *The reason why the evidence was not led timeously;*
- (ii) *The degree of materiality of evidence;*
- (iii) *The possibility that it may have been shaped to “relief the pinch of the shoe”;*
- (iv) *The balance of prejudice, vis the prejudice to the Plaintiff if the application is refused and prejudice to the Defendant if it is granted.*

³ 2012 JOL 29725 (SCA) at para [10]

⁴ 2000 (4) SA 598 C

- (v) *The stage which the particular litigation has reached. Where judgment has been reserved after all evidence has been heard and, before judgment is delivered, Plaintiff asks for leave to lead further evidence, it may well be that he or she will have a greater burden because of factors such as the increased possibility of prejudice to the Defendant, the greater need for finality, and the undesirability of a reconsideration of the whole case, and perhaps also convenience of the Court.*
- (vi) *The “healing balm” of an appropriate order as to costs;*
- (vii) *The general need for finality in judicial proceedings.*
- (viii) *Appropriateness, or otherwise, in all circumstances, of visiting the fault of the attorney upon the head of his client.”*

[12] I differ with the submission of the Applicant’s counsel that there is no prejudice to be suffered by the Respondent as a result of this application to allow further filing of a further founding affidavit. This simply cannot be true. It is clear that the Applicant’s conduct is to revive the main application removed from the roll on the 16th March 2023 without supplementary papers.

[13] The Applicant’s conduct amounts to nothing else but multi-duplication of actions between the parties under the following case numbers **4076/2021**, **1993/2022**, **223/2023**, **3493/2023** including the application currently before this court **3805/2022**.

[14] The essence of this application places this Court in a difficult position as the Applicant does not seek a final relief in this application. The Court has to determine the issues herein as responded to by the Respondents where a glaring dispute of fact arises. It is undisputed that the rights of the parties are a matter pending for determination before the full Court of this division.

[15] In view of the case law stated above in relation to the request to exercise the discretion to allow further founding affidavit, further answering affidavit and further replying affidavits as submitted by the Applicant’s counsel, it goes without saying that the Court can only do so if there are exceptional

circumstances.

[16] I find no exceptional circumstances for the exercise of the discretion to allow affidavits above as there are pending litigious matters between the parties. As such I exercise my discretion in not allowing the further filing of further founding affidavits in *casu*.

In the result, the following order is made:

1. The application in terms of Rule 6(5)(e) is dismissed.
2. The main interim application is removed from the roll.
3. The Applicant is ordered to pay the costs of this application including the costs of two counsel where so employed.

T.L. MANYE, AJ

APPEARANCES:

On behalf of the Applicant

Advocate G V Meijers

Advocate N Lebona

Instructed by:

**J.C Uys Attorneys C/O McIntyre Van Der Post
BLOEMFONTEIN**

On behalf of the 1st to 4th Respondents

Advocate T Seneke, SC

Instructed by:

**State Attorney, Free State
BLOEMFONTEIN**

On behalf of the 5th to 9th Respondents

Advocate M Ramaili, SC

Advocate N Mosia

Advocate V Vilakazi

Instructed by:

Jam Jam Attorneys C/O Rampai Attorneys

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