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

CASE NO: 2021/40976

(1) REPORTABLE: YES/~~NO~~

(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~

(3) REVISED: YES/NO

DATE: 26/8/24

SIGNATURE:

In the matter between:

TASKFLOW (PTY) LTD

The plaintiff

and

ALUXIUM (PTY) LTD

First Defendant

ANDRE DE KOCK

Second Defendant

CHRISTIAN DAVID FRISCHE

Third Defendant

This judgment was handed down electronically by circulation to the parties' legal representatives via email and by uploading it to the electronic file of this matter on Caselines. The date of judgment is deemed to be 26 August 2024.

JUDGMENT

Discovery- compelling discovery in terms of Rule 35(3) of Uniform Rules of Court.

Applicable legal principles- relevancy

defences - resisting application

failure to object to amendments of the particulars of claim- changing nature of claim or cause of action

Effect of tender/undertaking made under oath- binding

MOGAGABE AJ

INTRODUCTION

1. This is an application by the applicant (Taskflow) seeking an order compelling the respondents to discover a computer program and software in compliance with the rule 35(3) notice, dated 14 April 2023, as more fully detailed hereafter.

RULE 35(3) NOTICE DATED 14 APRIL 2023

2. In terms of this notice, Taskflow calls upon the respondents to discover:

(a) the computer program used by first respondent (Aluxium) on or about 29 July 2021 and thereafter to provide the four core solutions referred to on w[...] being Lux Help Desk, Lux Sales, Lux Voice and Lux Marketing,

(b) The computer program used by Aluxium on or about 29 July 2021 and thereafter, to provide the additional modules referred to on w[...] being the workflow manager, project manager, HR management, Chatbot and Live Chat, real estate, CRM, timesheets, website builder and e-learning

(c) the software products and services used by Aluxium to render, amongst others, logistical and customer support services to the Mpumalanga Health

Department, DPC Laser Courier and the NDC, as set out in the answering affidavit deposed to by the second respondent (Andre de Kock) dated 3 September 2021 under case number 2021/41676.

3. However, prior to dealing with the merits of the matter, it is appropriate for a proper appreciation of the entire matter, to provide the context that led to the launching of this application to compel to compel discovery, as outlined hereafter. For the sake of convenience, the applicant will be referred to as “Taskflow” or the plaintiff and the respondents as defendants, as so cited in the action instituted by the applicant against the respondents, pursuant to which the Rule 35(3) notice, forming the subject matter of the present application, was issued by applicant.

CONTEXT

4. Context matters. An analysis of the pleadings reveals the following context. The first and second respondents were at all times material hereto former employees and directors of Taskflow. They resigned from Taskflow. Subsequent thereto they formed or established the first respondent (Aluxium). The core business of Aluxium was to develop computer software programs for *inter alia* marketing and sales thereof. As such, Aluxium was a competitor with Taskflow in the field of developing computer software programs.

5. On 17th August 2021 the plaintiff instituted an action against the defendants in this division under case no. 40976/2021. In terms of the particulars of claim,¹ the plaintiff sought interdictory relief, interdicting and restraining the defendants from infringing its copyright in its Taskflow computer program source code. The defendants filed a plea resisting the claim.

6. On 19 August 2021, the plaintiff launched an urgent application interdicting and restraining defendants from infringing such source code, on the basis that such conduct constituted an infringement of its Taskflow computer source code. On 21 September

¹ CaseLines 0011-128 to 0011-138.

2021, Van Der Westhuizen J delivered judgment and dismissed the urgent application with costs on the basis, *inter alia*, of the the plaintiff (Taskflow) having “*dismally failed to indicate a sufficient degree of objective similarity between the alleged work and the alleged infringing work on a qualitative level*”.

7. Thereafter the plaintiff (Taskflow) obtained an Anton Piller order in terms of which the Sheriff made copies of everything on first defendant’s (Aluxium) computers, stored such information in a hard drive disc and kept same in his possession, until July 2022 when the Anton Piller order was discharged or set aside and the Sheriff returned the hard drive disc to first defendant (Aluxium).

8. Consequent to the judgment of Van Der Westhuizen J, Taskflow in October and December 2021 amended its particular of claim,² still relying on the infringement by Aluxium of its Taskflow computer program source code. Defendants filed a consequential plea based on Van Der Westhuizen J’s judgment as aforesaid. Thereafter in March 2023, Taskflow further amended its particulars of claim (final amended version)³ and deleted in its entirety its cause of action based on the infringement of its computer program source code and substituted same with a new cause of action alleging that Aluxium/defendants has/have infringed its Taskflow compute program and software (Taskflow computer program) by adapting or reproducing same without its authority or consent, thus constituting an infringement thereof as at 29 July 2021 and thereafter. The defendants filed a consequential plea disputing or resisting the claim.

9. In April 2022, defendants delivered a rule 35(12) notice calling upon Taskflow to produce for inspection and copying its Taskflow computer program, forming the basis of its claim as per the amended final version of the particulars of claim, the “software and source code”, “the reproduction and adaptation of the Taskflow computer program” and the “copy, reproduction or adaptation of the Taskflow computer program”, so referred to in the amended final version of Taskflow’s particulars of claim.

² CaseLines 0011-274 to 0011-289.

³ CaseLines 0011-290 to 0011-304.

10. In response thereto, Taskflow delivered an affidavit in terms of which it stated that it was not in possession of the “adaptation and reproduction of the Taskflow computer program” referred to in the amended final version of its particulars of claim, contending that defendants are in possession thereof, and thus was unable to make same available to defendants for inspection and copying. Insofar as it concerned producing for inspection and copying its own Taskflow computer program and source code, Taskflow admitted being in possession thereof, however stating that same will only be made available to defendants, subject to defendants “*concluding a confidentiality undertaking agreeing or undertaking, inter alia, to disclose or make same available only to defendants advocates and attorneys or to a person whom Taskflow has consented to in writing and has also signed a similar undertaking*”. Such conduct or attitude on Taskflow’s part indicates its willingness to make conditional discovery, on condition that defendants sign such confidentiality undertaking.⁴ I interpose point out *en passant*, that once documentation or information is relevant to an issue(s) between the parties, as is apparent from or contained in the pleadings, the party required to disclose same, is obliged to discover same, in its entirety without attaching any conditions.

11. In response thereto, defendants declined to sign or conclude such confidentiality undertaking on the basis that Taskflow’s computer software program is an open source code software, which code is available to the public, having regard to the judgment of Van Der Westhuizen J to the effect that Taskflow’s computer software program was not confidential as Taskflow had already publicly disclosed same in the urgent application papers.

12. Taskflow in turn responded thereto denying having publicly disclosed the computer program, asserting that it only disclosed “*the JAVA script portion comprising only 5%*” of such program. Furthermore, Taskflow stated that it will only comply with the defendants’ rule 35(12) notice provided defendant signed the confidentiality undertaking. In conclusion, Taskflow threatened that it will apply for an order compelling

⁴ CaseLines 0011-305 to 0011-307; CaseLines 0011-310 to 0011-313.

the defendants to sign the confidentiality undertaking. In the absence of a response by the defendants, Taskflow by letter dated 23 June 2022 put defendants on terms to sign the non-disclosure agreement (confidentiality undertaking) by no later than close of business Friday 24 June 2022, failing which it will proceed to launch the application compelling defendants to do so. As at the date of the hearing of the matter, the threatened application never materialised. Likewise, the defendants did not compel Taskflow to discover its, Taskflow software program.

13. I interpose to point out that the defendants likewise made a proposal to Taskflow to the effect that they were willing to disclose their computer program, software and source code, provided Taskflow agreed to sign an undertaking to the effect that the parties submit both their respective computer programs, software and source codes to an independent expert for examination, to determine whether the defendants computer program, software and source code, constitute an adaptation or reproduction of Taskflow's computer program. Taskflow likewise declined to do so.

14. Instead of instituting the application to compel the defendants to sign the confidentiality agreement, Taskflow issued three rule 35(3) notices. The first and second notices were withdrawn and related to the pleadings prior to the final amendment of the particulars of claim, calling upon defendants to produce the computer software program used by Aluxium on or about 29 July 2021. In response thereto, defendants stated that they are no longer in possession of the computer software program used by Aluxium on or about 29 July 2021, as the hard drive disc so returned by the Sheriff as aforesaid, containing amongst other things, such computer software program, was stolen during a break - in at third defendant's residential garage during the latter period of July 2021. This being so, I point out that a litigant cannot be compelled to discover documentation or information which was initially in its possession, but subsequent thereto lost possession thereof due to theft.

15. Thereafter on 13 October 2022, Taskflow further amended its particulars of claim.⁵

16. On 20 March 2023, Taskflow further amended its particulars of claim (final amended version).⁶ In terms of this final amended version, a new paragraph 15A surfaced for the first time i.e. was introduced in the particulars of claim for the first time. This is the paragraph on which Taskflow relies in compelling defendants to discover its computer software program and source code as so listed in the said rule 35(3) notice as outlined in paragraph 2 above. For the first time in terms of paragraph 15A, Taskflow introduces after the words “*including those used by the first defendant on or about 29th July 2021*”, the words “*and thereafter*”.⁷

17. As the main thrust of the defendants’ resistance to the relief sought by the plaintiff herein, is based on the averments foreshadowed in the new paragraph 15A of the amended particulars of claim, it is apposite to quote the relevant parts of paragraph 13 and 15A to the following effect:

“ 13. *During the course of June 2021 the plaintiff obtained knowledge that the first defendant has, and that the second and third defendants have aided and/or abetted and/or caused the first defendant, without the authorisation of the plaintiff, and without a licence to:*

13.1. make a reproduction and/or adaptation of the Taskflow computer program

13.2. ...

14. ...

15. ...

⁵ CaseLines 0011-326 to 0011-340.

⁶ CaseLines 0011-343 to 0011-356.

⁷ CaseLines 0011-349 to 0011-350.

15A. The reproduction and/or adaptations of the Taskflow computer program referred to in paragraph 13 are those used by the first defendant to provide the solutions and modules referred to below, including those used by the first defendant on or, or about, 29 July 2021 and thereafter.”⁸⁸

The present application to compel discovery relates solely to the third Rule 35(3) notice, which is predicated on the averments contained in the new paragraph 15A of the particulars of claim, as so finally amended.

APPLICABLE LEGAL PRINCIPLES

18. Rule 35(3) of the Uniform Rules of Court provides thus:

“If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection in accordance with subrule (6), or to state on oath within ten days that such documents are not in his possession, in which event he shall state their whereabouts, if known to him.”

19. Rule 35 of the Uniform Rules of Court regulates the discovery, inspection, and copying of documents and tape recordings by litigants, relating to any matter in question in legal proceedings, be it in trial actions or motion proceedings. Rule 35 sets out the procedure in terms of which a litigant may ascertain what documents and tape recordings relating to any matter in issue/question are in the possession of the opponent. A party requesting discovery is entitled in terms of the discovery rules to full or complete discovery under oath. Rule 35(3) as so foreshadowed above, accords to a party the right to compel further discovery against a party who fails to make discovery or

⁸⁸ Caselines 0011-348 to 0011-349.

makes insufficient or incomplete discovery.⁹ In other words, Rule 35(3) is designed to provide a mechanism to supplement discovery that had already occurred, in instances where a party contends that it is insufficient, incomplete or inadequate.¹⁰ A party seeking further discovery bears the onus of establishing facts demonstrating a strong possibility or reasonable grounds of the existence of further relevant documents or tape recordings in the possession of an opponent.¹¹ However, the application of rule 35(3) is not absolute. In other words, neither party has an absolute right to discovery or further discovery. A court has a discretion after examination of the recognised sources, including the pleadings and the nature of the claim, whether to order compliance with the rule or decline to do so.¹²

20. In trial actions discovery takes place after the close of pleadings, whereas in motion proceedings same takes place after all sets of affidavits have been served and filed by the parties.

21. In instances where a court is satisfied that an application to compel compliance is tantamount to or constitutes in the circumstances a “fishing expedition” or that justice will not be served by ordering further discovery, the application will be declined.¹³ As such, the provisions of rule 35(3) were not designed “as a tool to put a party in a position to draw the battle lines and establish the legal issues, but as a tool used to identify factual issues once legal issues are established”,¹⁴ nor was it intended to “afford a litigant a license to fish in the hope of catching something useful”.¹⁵ The utilisation or employment of the discovery process or tool, should be confined to instances where the parties are properly before the court and are litigating “at full stretch”.¹⁶ In instances

⁹ **Roucher & Another v Beckenstrater** 1954 (2) SA 483 (T).

¹⁰ **The MV Urgup: Owners of the MV Urgup v Western Bulk Carriers(Australia)(Pty) Ltd** 1999 (3)SA 500 (C) at 515D

¹¹ **Tractor and Excavator Spares (Pty) Ltd v Groenedijk** 1976 (4) SA 359 (W).

¹² **Rains Ford v African Banking Corporation Ltd** 1912 CPD 729 at 738.

¹³ **Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd** 1971 (4) SA 589 (W).

¹⁴ **STT Sales (Pty) Ltd v Fourie** 2010 (6) SA 272 (GSJ) at paragraphs [15] to [18].

¹⁵ **The MV Ugroup: Owners of the MV Ugroup v Western Bulk Carriers (Australia) (Pty) Ltd** 1999 (3) SA 500 (C) at paragraph 515D; **Investec Bank v O’Shea NO** (unreported decision of the Western Cape High Court) under case No: 10038/2014 (16 November 2020) at paragraph [16].

¹⁶ **The MV Ugroup** at paragraph 513 I.

where a party to litigation does not have the relevant and necessary evidence to support or bolster the legal issues in question, such party is not entitled to call for discovery or for that matter further and better discovery.¹⁷

22. It is an established principle of discovery that the party called upon to make discovery, is obliged to discover documents “*which may – not must either directly or indirectly advance or damage the case of his adversary*”. Put otherwise, there is an obligation on the parties to discover documents “*which may – not must either directly or indirectly enable the party requiring discovery either to advance his/her case or damage the case of its adversary*”¹⁸

23. The test in determining the liability or obligation of a party to discover documentation or tape recordings contemplated in Rule 35 remains that of relevance. This was enunciated in **Continental Ore** in the following terms:

*“The test of discoverability or liability to produce for inspection, where no privilege or like protection is claimed, is still that of relevance; the oath of the party alleging non-relevance is still prima facie conclusive, unless it is shown on one or other of the bases referred to above that the court ought to go behind that oath; and the onus of proving relevance, where such is denied, still rests on the party seeking discovery or inspection”.*¹⁹ (My emphasis).

24. It is also trite that a party called upon to make discovery in terms of Rule 35(3) is only obliged to discover documents relevant to a question in the action. In determining what is relevant in a trial action, regard must be had to the pleadings i.e. relevancy is determined with reference to the pleadings. Discovery can only be resisted on the basis of irrelevance and privilege.

¹⁷ **STT Sales** at paragraph [17].

¹⁸ **STT Sales** paragraph 13.

¹⁹ **Continental Ore v Highveld Steel & Vanadium Corporation Ltd** 1971 (4) SA 589 (W) at paragraph 598E-F.

25. For present purposes, the central principle distilled from such jurisprudence is that in order for a party to litigation to succeed in compelling an opponent to discover documentation, information or tape recordings, such party is enjoined to discharge the onus of proving or establishing that such documentation, information or tape recordings are relevant to an issue(s) in question between the parties, as foreshadowed or contained in the pleadings. Once relevancy is established, the opponent is obliged to discover the required documentation, information or tape recordings, entitling a court in the exercise of its discretion to order compliance with the subrule, unless the opponent can raise a defence like privilege. So much then for the applicable legal principles, I turn now to deal with the merits of the relief sought by Taskflow compelling the defendants/respondents to discover their computer program and software as listed in paragraph 2 above.

26. This final amended version of the particulars of claim is the current status of the pleadings herein. The present application to compel falls to be determined based on the pleadings as they currently stand and in particular with reference to the averments foreshadowed in paragraph 15A of the particulars of claim as so finally amended.

ISSUE FOR CONSIDERATION

27. In essence, the central issue for determination herein is not a case of testing the veracity or propriety of the plaintiff's or the defendants case as foreshadowed or contained in the pleadings as they currently stand. On the contrary, it is a case of determining whether Taskflow has proved that the computer program, software and source code sought to be discovered by defendants, are relevant in determining an issue(s) in question between the parties, based on the pleadings. Put otherwise in determining whether the refusal or resistance by the defendants in complying with the third Rule 35(3) notice is in the circumstances justified.²⁰

²⁰ Copalcor Manufacturing (Pty) Ltd v GDC Hauliers (Pty) Ltd 2000 (3) SA 181 (W) para [22]

28. I proceed to do so as outlined hereinafter, mindful of the caveat stated in paragraph 27 above.

RESPONDENTS' DEFENCE(S)

29. I deem it apposite to frontally dispose of the following submission by the defendants, in resisting compliance with the Rule 35(3) notice to the following effect. Firstly, that Taskflow has not discovered its own Taskflow computer program. Secondly, that Taskflow has also not discovered, amongst other things, the alleged infringing computer program and software after being called upon to do so by the respondents in their rule 35(3) notice dated 11 April 2023. I hasten to point out that the fact that Taskflow has failed to discover its own Taskflow computer program and software as well as the alleged infringing computer program and software, do not constitute a defence in law, entitling defendants not to comply with the third Rule 35(3) notice i.e. justifying the defendants' resistance to the Rule 35(3) notice.

30. In addition thereto, the defendants are resisting the present application on the basis that in terms of jurisprudence on the subject, a litigant is not allowed to seek or compel discovery to draw the battle lines, where no legal or factual issues have been identified by the pleadings, having regard to the plaintiff's particulars of claim as finally amended. Furthermore, that a litigant is not allowed to use discovery as a tool to obtain evidence to support the allegations made in its pleadings, where it has no evidence to bolster such allegations. As such, the Rule 35(3) notice constitutes a "fishing expedition" on Taskflow's part designed to obtain evidence it does not have to bolster its case as so pleaded in paragraph 15A, constituting in the circumstances an abuse of the discovery process by Taskflow. Such contentions are for reasons set out below, misplaced.

ANALYSIS

31. The discovery so required by the plaintiff (Taskflow) in casu, is sought in the context of a pending trial action between the parties. It is common cause herein that the

pleadings have closed. The parties have exchanged discovery affidavits. Thus, the central issue for determination is whether the plaintiff (Taskflow) has established that the documentation so required to be discovered by the defendants are relevant to an issue(s) between the parties, having regard to the pleadings in the action. In this regard, the plaintiff contends that the computer program, software and source code, required to be discovered by the defendants, so listed in the third Rule 35(3) notice, are relevant to an issue(s) as so pleaded in paragraph 15A of the particulars of claim as amended on 20 March 2023 (final amendment), as so outlined above.

32. The defendants dispute relevancy. The defendants resist the relief sought on the basis that the conduct of Taskflow in seeking the computer program, software and source code, constitutes a “fishing expedition” on Taskflow’s part to obtain factual evidence to bolster its case, enabling it to draw the battle lines. In developing this argument, it is submitted as follows. Taskflow has amended its particulars of claim several times, demonstrating that its case has moved from legal issues which were resolved as early as 2022, and has morphed into a new case or cause of action in terms of which Taskflow does not have a shred of evidence to substantiate or support the allegations contained in the final amendment. As such, defendants contend that the third Rule 35(3) notice, constitutes a “fishing expedition” or an attempt on Taskflow’s part to obtain factual evidence to substantiate the legal issues raised in the newly introduced paragraph 15A i.e. to enable it to “draw the battle lines”, which conduct is impermissible in law, constituting an abuse of the process of the law.

33. This contention cannot in the circumstances pass muster, for the simple reason that it is not the court’s function when dealing with applications to compel discovery, to determine the veracity or propriety of the claim/cause of action or defence raised by the parties in the pleadings. This is the function of the trial court. The court’s duty is to determine whether a litigant has discharged the onus resting on it, proving that the documentation sought to be discovered is indeed relevant to an issue(s) between the parties. Furthermore, if the defendants were aggrieved with these amendments, they should have invoked the remedies available to them to deal with such

amendments, namely, object thereto in terms of Rule 28(2) of the Uniform Rules of Court or except to the amended particulars of claim. They failed to do so. To raise such objection long after the amendments have been effected cannot avail the defendants.

34. In essence what the defendants are required to discover in terms of Rule 35(3), is the computer program, software and source code used by the first defendant Auxium to render the services that are being rendered by itself and/or the second and third defendants, for purposes of establishing whether such computer program constitutes an adaptation or reproduction of Taskflow's computer program. It is undisputable that this constitutes an issue(s) in question between the parties as is apparent from the pleadings i.e. as foreshadowed in paragraph 15A of the particulars of claim as so finally amended on 23 March 2023 (final amendment). As per the averments contained in the newly introduced paragraph 15A, the documentation and/or information the defendants are called upon to discover, is not confined to the usage by Aluxium of the computer program on or about or until 29 July 2022. The scope thereof extends to and covers versions of the computer programs and software used by Aluxium and/or the second and third defendants on or about 29 July 2021, subsequent thereto and currently, i.e. as at the time of the hearing of the matter. As such, the computer program, software and source code so used by Aluxium on or about 29 July and thereafter is /are relevant to determine the triable issue(s) foreshadowed in paragraph 15A of the amended particulars of claim.

35. It is in the circumstances common cause if not undisputable that the averments foreshadowed in paragraph 15A of the particulars of claim as so finally amended, juxtaposed with the defences raised in the consequential plea, reveal disputed or triable issues relating to the Taskflow computer program, software and source code used by Taskflow and the computer program, software and source code used by Aluxium and/or second and third defendants, in rendering services to their respective clients or customers and in establishing whether Taskflow's copyright has been infringed. The legal and factual issues so raised on the pleadings can only be resolved once the defendants discover such relevant documentation and information for

inspection and copying by Taskflow, to enable it to confirm or establish whether such documentation or information constitute a reproduction or adaptation of the Taskflow computer program. The defendants are legally obliged to do so.

36. Accordingly, the defendants in compliance with the third Rule 35(30) notice, are legally obliged to discover the computer program, software and source code as so listed in the third Rule 35(3) notice, subject to the confidentiality agreement tendered by Taskflow, as more fully outlined hereafter.

TENDER BY THE PLAINTIFF (TASKFLOW)

37. In terms of the letter by Taskflow's attorneys dated 23 June 2023²¹, Taskflow tendered an undertaking to sign a confidentiality agreement prior to the defendants disclosing to it (making available to Taskflow) their documents, computer program and software, forming the subject matter of the third Rule 35(3) notice dated 14 April 2023. This tender is captured in the said letter to the following effect:

“Furthermore, our client [Taskflow] undertakes , if required by your client, to sign a confidentiality undertaking prior to taking your clients’ documents, computer programs and software into its possession.”

38. Such tender is once again repeated in Taskflow's founding affidavit.²² This tender is encapsulated in paragraph 44 of the founding affidavit in the following terms:

“The applicant [the plaintiff/Taskflow] has on previous occasions given undertakings that the applicant [Taskflow] will conclude a written confidentiality undertaking prior to examining the respondents’ [defendants] computer program and/or software. The applicant also informed the respondents that it is willing to provide the respondents with

²¹ Caselines 0011- 106

²² Caselines Founding Affidavit 0011- 19 paragraph 44.

a copy of its computer program and software (29 July 2021 version) subject to the respondents signing the confidentiality undertaking. The applicant once again tenders to sign the confidentiality undertaking attached hereto marked “CN19” in order to examine the respondents computer program and software” (my emphasis).

39. This tender made in a letter and repeated under oath has not been withdrawn or revoked by Taskflow. Thus, it remains operative and binding on Taskflow. As such, such tender will be reflected in the order I intend making as set out hereafter.

ORDER

40. In the result, I make the following order:

1. Subject to paragraph 2 hereof, the respondents are ordered to discover the documents, computer programs and software as listed in the Rule 35(3) notice dated 14 April 2023 (a copy of which is annexure “CN12” to the founding affidavit), within a period of 10 (ten days) from date of uploading this order on Caselines or service of this order on the respondents or their attorneys of record by electronic mail.

2. Such discovery by the respondents, is subject to the tender made by the applicant to conclude or sign a written confidentiality undertaking, prior to the delivery and examination by the applicant of the respondents computer program and software as listed in the Rule 35(3) notice dated 14 April 2023, within 10 (ten) days of the uploading of this order on Caselines or service of the order on applicant’s attorneys by electronic mail. Such written confidentiality undertaking is *mutatis mutandis*, similar to the written confidentiality agreement, a copy of which is annexure “CN19” to the founding affidavit.

3. The respondents are ordered to pay the costs of this application on a party and party scale, jointly and severally, the one paying the other to be absolved on scale B, which costs are limited to the employment of one counsel.

S J R MOGAGABE AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Counsel for the applicant: R. Michau SC and PP Ferreira

Instructed by: Charl Naude Attorneys

Counsel for the respondent: P. Cirone

Instructed by: Spoor & Fischer Attorneys

Date of Judgement: 26 August 2024