

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 079773/2023

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
.....[REDACTED].....	...11/09/2024.....
SIGNATURE	DATE

In the matter between:

BRETT THOMAS LANG

Applicant

and

ABSA BANK

First Respondent

NEDBANK

Second Respondent

STANDARD BANK

Third Respondent

INVESTEC BANK

Fourth Respondent

WESBANK

Fifth Respondent

JAN VAN DER WALT (CRS)

Sixth Respondent

ROBERT DEVEREUX (CRS)

Seventh Respondent

ADVOCATE NIGEL RILEY**Eighth Respondent****FINANCIAL SERVICE'S CONDUCT AUTHORITY****Ninth Respondent**

JUDGMENT

MANOIM J:**Introduction**

[1] In what I will refer to as the “main matter” the applicant, Brett Lang, seeks various declaratory orders against eight respondents. In the main matter, Lang, an unrehabilitated insolvent, and erstwhile founder of three now liquidated companies, seeks several declaratory orders against those he sees as responsible for his and his companies’ financial demise, because he contends, they acted unlawfully. In brief he contends that they contravened both criminal and civil law obligations to which they are subject. He seeks declaratory orders to this effect.

[2] Five of the respondents are banks, three are individuals, and the ninth is the Financial Conduct Authority.¹ But this judgment does not concern the main matter which is still not ready to be heard. This is because seven of the eight respondents have brought interlocutory challenges. They seek either dismissal of the main matter on grounds that Lang lacks locus standi to seek the declaratory relief he does or, in the alternative, that in terms of Rule 47 of the Uniform Rules, he be ordered to give security for their costs.

¹ The latter has had no part in these proceedings because no relief is sought against it.

[3] The basis for the Rule 47 challenge is that although it is accepted that Lang is an incola the application is vexatious in the sense that the relief sought is considered unsustainable.²

[4] At a case management meeting I held with the parties earlier in the year, it was agreed that these interlocutory applications should be decided first. This decision is confined to these interlocutory applications.

Background

[5] At the outset I must mention that Lang is a layperson who represents himself both in the main matter and these interlocutory applications. Lang is unable to afford representation because he is an unrehabilitated insolvent. However, it seems to me that even if he could afford to retain counsel, he may still have elected to represent himself. What animates him is his belief in the justice of his own cause and his sense that others, whose advice he once relied on, have let him down.

[6] The passion he feels for his cause is exemplified by the founding affidavit in the main application. It is 319 pages long. But it does not end there. It is accompanied by a lengthy set of annexures which take the founding papers to 2700 pages. For many laypeople insolvency law is an esoteric and unfamiliar field. But Lang it appears is an autodidact, who has schooled himself in the finer concepts of this field, giving him the self-confidence to challenge what he perceives to be the unjust conduct of major financial institutions towards him

² Here all the parties rely on the decision in *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* 2015 (5) SA 38 where this approach is discussed comprehensively.

and his erstwhile companies. On his own he has fought the case against seven legal teams, three of which were represented by senior counsel.

- [7] Few people would take on such a challenge unassisted and on their own. Perhaps Lang did because he has always been a self-made man. He came to this country from Zimbabwe with a standard 9 education, trained as an aircraft repair mechanic and went on to found three of his own companies. His companies owned aircraft and leased them to others, sometimes with aircrews, sometime without. He has bought and sold aircraft. Large international organisations have been among the customers of his companies. At one stage in their history, he considers they were worth more than R 500 million rand.
- [8] His three firms had the following governance structure. He was the sole director, and the shares were owned by two different family trusts. He was one of two trustees, along with another person, although the latter never features in these proceedings.
- [9] The three firms were Aircraft Africa Contract Company (Pty) Limited ("AACC"); Executive Turbine Aviation (Pty) Limited ("ETA"), and New Order Vehicle Sales (Pty) Limited ("NOVS").
- [10] The firms according to Lang were highly successful until 2007/2008 when due to a strengthening of the rand because of the global financial crisis his major firm – AACC – which was reliant predominantly on earning dollar income, experienced cash flow problems. The spiralling debt meant that AACC had to increase its exposure to financing from banks. It also meant that Lang had to

give personal sureties to, inter alia, three of the respondent banks, ABSA, Nedbank, and Standard.

[11] It never worked out for Lang and his companies. At the instance of Nedbank all three companies were liquidated in 2010. Then in September 2016, Lang was sequestrated at the instance of ABSA. He has not been rehabilitated since.

[12] It is Lang's contention that the companies could either have been saved through business rescue or the implementation of a turnaround plan or should have been wound up much earlier. He accuses the banks of conspiring or colluding to prevent these outcomes in order to secure their own positions first in priority to other creditors. Most of these accusations are laid at the door of Nedbank who he views as having orchestrated this scheme to buy time to organise security for its own position.

[13] Nedbank is also alleged to have induced him to engage the sixth and seventh respondents, respectively Du Toit and Deveraux. Both worked at the time for a firm called CRS, which specialises in turning around ailing companies³. They are alleged to have been appointed as directors or at least occupied that position by virtue of the extended definition of who a director is in terms of the Companies Act. 71 of 2008.

[14] The position of the eighth respondent Nigel Riley follows a different trajectory. He is a practising advocate who at the instance of Lang was appointed a director and chairperson of the AACC during its time of difficulties. Lang had

³ In opposing the business rescue application Nedbank allege that Lang not it was responsible for appointing Du Toit and Deveraux.

hoped that with Riley's legal acumen he might be in a better position to ward off the banks. However, he considers that Riley betrayed him in the end, and thus both Riley and the two CRS directors are, in the view of Lang, persons who acted at the behest of the banks and not in the interests of the company of which they acted in the position of directors.

[15] The founding affidavit in the main application indicates that Lang harbours considerable personal animosity towards Riley. He makes several allegations about him which are not pertinent to the current application, and I therefore do not need to repeat them.

[16] It is common cause that the three companies were liquidated at the instance of Nedbank in 2010. Liquidators were duly appointed, and I am told that this process has been completed in respect of the two of the three companies. Lang, as noted, was then sequestrated in 2016. In the interim Lang had brought an unsuccessful attempt in 2011, to have the companies placed in business rescue. (The new Companies Act had come into operation during this period in 1 May 2011, introducing business rescue for the first time).

[17] In the course of this litigation, which was opposed by Nedbank, the latter had annexed to its papers a minute of a meeting of the banks held on 12 October 2009 (the "October minute"). The minutes show that all five respondent banks were represented at this meeting. The meeting was chaired by a representative from Nedbank. Although Lang was present at the venue, he was only allowed to attend part of the meeting after discussions had taken place in his absence. But he says that on a reading of the text of the minutes, it became apparent to

him that the banks had colluded to bring about the liquidation of AACC, which he contends is a violation of the Competition Act, 89 of 1998. I assume he has in mind section 4(1) of the Act which proscribes agreements between competitors which are anticompetitive.

[18] His other key source of evidence comes from an enquiry which was held in terms of section 417 of the Companies Act into two of the firms, AACC and NOVS. The Commissioner who conducted the enquiry made her report in February 2019. Lang seeks in the main application to rely on the content of this report as well as evidence led during the course of the enquiry. However, at the instance of Nedbank the report was set aside in November 2019. The order went further – it set aside the decision by the Master to “*adopt and or implement the recommendation*” and the latter’s referral of the report to the Director Public Prosecutions.

[19] The October minute, and the section 417 enquiry and subsequent report, are thus foundational to the relief that Lang seeks in the main application. Later in judgment I consider the various prayers for relief that Lang seeks.

The locus standi challenge

[20] Before I can get to the declaratory relief being sought, I must consider whether Lang has established his locus standi for the relief he seeks. Several of the

respondents challenge his locus standi. The law is clear that the duty to establish locus standi rests on the party instituting the proceedings.⁴

[21] Lang in the first instance relies on section 21(1)(c) of the Superior Courts Act, 10 of 2013, which states:

“(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power-

(a)

(b);

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

[22] The test for locus standi in terms of this section has been laid out in the frequently cited case of *Cordiant* where the Supreme Court of Appeal (SCA) set out a two-stage test as follows;

“During the first leg of the enquiry the court must be satisfied that the applicant has an interest in an ‘existing, future or contingent right or obligation’. At this stage the focus is only upon establishing that the necessary conditions precedent for the

⁴ *Four Wheel Drive Accessory Distributors CC v Rattan* NO 2019 (3) SA 451 (SCA) at paragraph 7.

exercise of the court's discretion exist. If the court is satisfied that the existence of such conditions has been proved, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration of whether or not to grant the order constitutes the second leg of the enquiry.”⁵

[23] More recently in *Four Wheel Drive* the SCA held that:

“Generally, the requirements for locus standi are these. The plaintiff must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought; the interest must not be too remote; the interest must be actual, not abstract or academic; and it must be a current interest and not a hypothetical one.”⁶

[24] The first obstacle Lang has to navigate is the difficulty that as an unrehabilitated insolvent he may not litigate without the consent of his trustee. Lang does not have that consent, nor has he joined his trustee. However, in terms of section 23(6) of the Insolvency Act 24, 1936, an insolvent:

“may sue or may be sued in his own name without reference to the trustee of his estate in any matter relating to status or any right in so far as it does not affect his estate or in respect of any claim due to or against him under this section, but no cession of his

⁵ *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA), Paragraph 18. Most recently followed again by the SCA in *Pasiya and Others v Lithemba Mining (Pty) Ltd and Others* (206/2022; 264/2022) [2023] ZASCA 169; [2024] 1 All SA 626 (SCA); 2024 (4) SA 118 (SCA) (1 December 2023)

⁶ *Four Wheel Drive Accessory Distributors CC v Rattan NO* 2019 (3) SA 451 (SCA) at paragraph 7.

earnings after the sequestration of his estate, whether made before or after the sequestration shall be of any effect so long as his estate is under sequestration.”

[25] There is thus no absolute bar to an insolvent bringing an action without the consent of his trustee. I thus turn to the question of whether he has an adequate interest in the subject matter of the litigation.⁷

[26] In his founding affidavit in the main application Lang says that the right he is asserting is brought in his capacity as a former sole director of the three companies and as the founder and former trustee of the shareholders of the three companies. But locus standi is not conferred by what position an applicant may have had. What matters is the position held at the time the litigation is instituted. This is a point all the respondents have taken.

[27] This criticism led to Lang adopting a new basis for his locus standi which he set out in his answering affidavit in the interlocutory applications. He now asserted:

“I am not litigating on behalf of the liquidators against another party for any monetary relief for the companies or for myself in this application, or ever after for that matter. I am simply seeking a declaratory order as to the conduct of the respondents as a previous director in the best interests of the public.”

⁷ As per *Cordiant* and *Four Wheel Drive*.

[28] But in his heads of argument, he revealed yet a further reason for the application:

“Should the Court find the Conduct of the 1st to 8th Respondents was wrongful, contra bonos mores, and/or contrary to public policy and/or mala fide, I will launch a Rule 42 application for consequential relief by way of rescission of my sequestration by ABSA (1 Respondent) due to fraud, common law fraud and that the order was erroneously granted, in order for me to regain my financial and legal personae, as well as my credibility back with creditors and that I may act as a director again to earn a living being an economic right I have per the Constitution.”

[29] Thus, Lang has asserted his locus standi based on three separate grounds, as an ex-director and shareholder, on general public interest grounds and then, finally, as an insolvent seeking a basis for the rescission of his sequestration.

[30] It was argued by some of the respondents that he must make his case for locus standi in the founding affidavit and having pinned his colours to that version he must stand or fall by it.⁸ But I have to take into account that Lang is a layperson who has had to navigate through a thicket of technical objections and so I am willing to give him some leeway so as not to restrict his right of access to court without the fullest consideration.

⁸ *Tavakoli and Another v Bantry Hills (Pty) Ltd* 2019 (3) SA 163 (SCA) para [26] where the court held that the appellants were required to establish their locus standi in their founding papers.

- [31] It is worth pointing out that when he brought the business rescue application which was opposed by Nedbank, the latter in making a case for piercing the corporate veil stated:

“The central figure, driving force, dramatis personae and alter ego of the Group and its constituent entities is Mr Bret Lang”.

- [32] And later in the same affidavit Nedbank’s deponent stated:

“Having regard to the substance rather than form of things, Lang, on his own version. exercises de facto, complete and absolute control of the various respondent companies. He does so as if they were his alter egos.”

- [33] I will therefore as a matter of fairness consider the opposition to his locus standi based both on what it was initially, in terms of the case made out in the founding affidavit in the main application, and his reconsidered position in his answering affidavit in the interlocutory applications, and finally in his heads of argument. Nor is there any prejudice to the respondents all of whom at varying lengths have dealt with these other claims for locus standi.

a. Locus standi in the founding affidavit of the Main application

- [34] The case for locus standi in the founding affidavit is premised on Lang being either a shareholder or director of the three companies. The problem for him as I observed earlier is that he is neither of these now. Absent this status he has no locus standi to institute action for any relief let alone declaratory relief on

their behalf. The one company no longer exists (“NOVS”) and the other two are in the process of liquidation. The locus standi for those latter two companies vests in their liquidators who are neither joined in this action nor have they indicated any intention to bring relief of the nature sought now. Moreover, as an insolvent in terms of the Companies Act, he is disqualified from acting as a director.⁹

[35] The same problem exists in relation to the shareholding. Lang was a trustee of two trusts; the BT Lang Trust and the BOD Trust which are the shareholders in two of the three companies.¹⁰ But because of his insolvency he can no longer serve as a trustee. This is because of the provisions of section 20(2)(c) of the Trust Property Control Act 57 of 1998) which states that a trustee may at any time be removed from office by the Master if his estate is sequestrated. Lang does not appear to be contesting these facts as he describes himself both as a former director and shareholder.

[36] This means that a best for him the declaration is based on Lang's history that preceded his sequestration and the companies liquidation. But a claim based on what he once was historically, does not ground a basis for a declaratory order that is not met by the criticism that it is abstract and academic. Thus, on the basis he has pleaded it in the founding affidavit in the main application Lang does not have locus standi to bring the current application and the matter should end there.

⁹ Section 69(8)(b)(i).

¹⁰ One company is a subsidiary of the other.

- [37] Put simply the relief based on his history with the companies is hypothetical and as put in *Four Wheel Drive* it does not represent a current interest.

b. Locus standi to claim the relief sought in the answering affidavit in the interlocutory applications.

- [38] In his answering affidavit in respect of the application of the first respondent ABSA, Lang now states:

“I am not litigating on behalf of the liquidators against another party for any monetary relief for the companies or for myself in this application, or ever after for that matter. I am simply seeking a declaratory order as to the conduct of the respondents as a previous director in the best interests of the public”.

- [39] And he went on to state:

“Furthermore prescription is not involved in this application as I seek no damages or monies, only a declaratory order regards to the conduct both civil and criminal of the 1" to 8th Respondents.”

- [40] Later in same affidavit he refers to section 38 of the Constitution which sets out who may enforce a right in terms of the Bill of Rights.

- [41] Lang has then highlighted, quoting from the provisions of section 38, which of its subsections he seeks to rely on. They are section 38(a) *“anyone acting in their own interest”*; 38(c) *“anyone acting in the interests of a group or class of person”*, and; (d) *“anyone acting in the public interest”*.

- [42] Having done so he alleges that the conduct of the 1st to 8th respondents is inconsistent with the rule of law and the values of the Constitution because they undermine the Constitution's commitment to equality, dignity and the advancement of human rights and freedoms. He concludes by saying that: *"If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state."*
- [43] Lang has recited these rights in the Constitution without any further amplification of how they relate to the case he attempts to make. Lang seems to have resorted to this invocation as a last-ditch attempt to keep his application for a declaratory order on track.
- [44] But if Lang has been dealt with unlawfully by the respondents this does not mean he can simply translate his personal experience to one of general public interest. He makes out no case for this. The implied theme is that if it happened to me it can happen to everyone. But that broadbrush approach would entitle anyone personally wronged to make out case of public interest. More is required to make such an invocation, and this is not made out in the answering affidavit let alone the criticism that this is the wrong place to have commenced doing so.
- [45] While the Constitutional Court in cases such as *Ferriera v Levin NO and others*¹¹, and *Giant Concerts CC v Rinaldo Investments* has interpreted the notion of public interest standing under section 38 expansively, it has still

¹¹ 1996(1) SA 984.

cautioned that limits remain. In *Ferreira v Levin Chaskalson P* drew the line at what he termed “*hypothetical and academic interests*.”

[46] In a later case in the Constitutional Court, *Giant Concerts* Cameron J stated:

*“Hence, where a litigant acts solely in his or her own interest, there is no broad or unqualified capacity to litigate against illegalities. Something more must be shown.”*¹²

[47] But Lang’s attempt to rely on section 38 to find his locus standi falls into both of these two categories of disqualification. He has failed to demonstrate the “something more” and the relief he seeks as I go on to discuss later is hypothetical.

c. Locus standi to bring relief because of a possible rescission application.

[48] In his heads of argument Lang contended that the basis for his standing in the main application was his intention to bring an application for the rescission of his sequestration. But if this is what he intends it does not explain why he chooses not to do so directly instead of seeking the relief that he does in the form of declaratory orders against the eight respondents, alleging various contraventions of the law.

[49] In *Rail Commuters* the Constitutional Court pointed out that:

¹² 2012 JDR 2298 (CC) paragraph 35.

*“A declaratory order is a flexible remedy which can assist in clarifying legal and constitutional obligations in a manner which promotes the protection and enforcement of our Constitution and its values. Declaratory orders, of course, may be accompanied by other forms of relief, such as mandatory or prohibitory orders, but they may also stand on their own. In considering whether it is desirable to order mandatory or prohibitory relief in addition to the declarator, a court will consider all the relevant circumstances.”*¹³

[50] In *Oakbay* a full court of this division set out the various factors a court must take into account in exercising a discretion to grant declaratory relief.

*“These include (i) the existence or absence of a dispute; (ii) the utility of the declaratory relief and whether, if granted, it will settle the question in issue between the parties; (iii) whether a tangible and justifiable advantage in relation to the applicant’s position appears to flow from the grant of the order sought; (iv) considerations of public policy, justice and convenience; (v) the practical significance of the order; and (vi) the availability of other remedies.”*¹⁴

[51] But in the present case the relief sought does not assist in clarifying any issues that may be relevant to any future rescission application. On the contrary it

¹³ *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC paragraph 107).

¹⁴ *Minister of Finance v Oakbay Investments (Pty) Ltd and others* 2018 (3) SA 515 (GP) paragraph 59. The *Oakbay* decision was cited with approval by the Constitutional Court in *Competition Commission v Hosken Consolidated Investments Ltd and Another* 2019(3) SA 1 (CC) at paragraph 84 and footnote 52.

entails a hugely burdensome engagement on collateral issues that drag all the respondents into the main application where they must defend themselves against an application that might be brought (assuming for some reason it is not too late to do so) for rescission of Lang's sequestration.

[52] Assuming for the benefit of Lang that he could surmount the hurdles of locus standi and the furnishing of security that face him in the interlocutory applications, and that he eventually succeeded in getting some of the prayers he seeks in the main application, to get the NPA and the Competition Commission to investigate the various respondents conduct, it is not clear how this assists him with his quest for legal clarity, if that is what he now seeks. Apart from how long all this would take, even if a criminal prosecution was instituted against one or more of the respondents how does this distant hope avail any subsequent application for rescission which by then would be so hopelessly late? Declaratory orders of the kind he seeks serve neither to clarify his legal position to seek rescission nor would they have any practical significance.

[53] I thus find that he does not have locus standi in respect of any of the three grounds he has relied on. I now turn to the second leg of the *Cordiant* test of whether or not to grant the order even though this may be unnecessary since I have found that he does not qualify for locus standi in terms of the first leg. Nevertheless, it would be remiss not to consider this aspect as well since both the public interest test and the common law test for a declaratory order, address in considering standing, the nature of the relief sought.

The relief sought is incompetent.

- [54] I turn now to the question of why the relief sought by Lang is incompetent.
- [55] The first consideration, and I do not want to disrespect Lang, but some of the relief is framed in a manner so unclear that it is unintelligible.
- [56] Paragraph 1 of the Notice of Motion calls for the court to declare the respondents conduct prior to the liquidation of the three entities "...*wrongful, contra bonos mores, and/or contrary to public policy and/or mala fides.*"
- [57] This calls for a moral judgment of the conduct of the respondents rather than a legal conclusion and hence is incompetent because it is academic.
- [58] In a similar vein, paragraphs 12, 13 and 14, call for a moral judgment to be made of the respondents conduct rather than pronouncing on their lawfulness.
- [59] Some relief is framed in a way that it is either not clear what it means, or it is unclear what is being sought. This is because the formulation is narrative rather than declaratory. Into this category I would place paragraphs 2-6 and 11. But even where it has been more clearly formulated it is incompetent. Prayer 7 falls into the latter category. Here Lang seeks a declarator that the bank respondents acted as the de facto directors of the three companies by acting in concert through the sixth and seventh respondents. Of course, a juristic person cannot be appointed as director of a company.¹⁵
- [60] What I understand him to mean here is that the bank respondents conspired amongst themselves to use the sixth and seventh respondents as instruments

¹⁵ Section 69(7)(a) of the Companies Act.

of their collective will, so that they, the banks, not the sixth and seventh respondents, were the real directors of the three companies. But even giving this confusing prayer this gloss, it is not clear what this relief is meant to achieve concerning companies now liquidated. It is a textbook example of hypothetical relief.

[61] Paragraphs 9 and 10 at least have the virtue of clearer language. Prayer 9 is framed as follows:

“A further declaratory order regarding the conduct and / or any contraventions if any by the 1 to 8TM Respondent's, and whether they acted in collusion, to unduly prefer themselves with specific regard, but not limited to,

- a. Extortion.*
- b. Theft.*
- c. Fraud (including misrepresentation and silent non disclosure's)*
- d. Forgery and / or uttering.*
- e. Any offence contemplated in sections 1 (1) and 1A(1) of the Intimidation Act. 1982 (Act No. 72 of 1982);*
- f. Defeating or obstructing the course of justice.*
- g. Perjury.*
- h. Corruption*
- i. Any conspiracy, incitement or attempt to commit offence referred to above.”*

[62] But on 22 March 2024, Lang then filed a notice of amendment in terms of Rule 28(1) in which he sought to delete paragraph 9. He explained in the notice that this was because: “... *the same is incorrect and is a duplication of paragraph 17. Paragraph 17 is limited to declaratory orders in respect of two statutes and is framed in this way:*

“A further declarator regards to any specific offence's contemplated in Section 12 of the Prevention and Combating of Corrupt Activities Act, 2004 and the Prevention of Organised Crime Act 121 of 1998 (Racketeering) per schedule 1 offenses (as stated in paragraph 9 prior hereto) which should be referred to the Director of Public Prosecutions and or the National Prosecuting Authority for further investigation and or prosecution.”

[63] Prayer 10 deals with different alleged contraventions but is formulated in a similar vein:

“10.A further declarator with regards any contraventions of,
a. The Competition Act 89 of 1998.
b. Bribery per the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004).”

[64] But even if the court would grant this relief what practical effect would it have. It would not bind the police, National Prosecuting Authority, or the Competition Commission to prosecute. Both the latter enjoy independence in relation to the

conduct of their respective rights to prosecute.¹⁶ The court is thus being asked to venture an opinion. Worse still it is asked to express an opinion based on papers in an application where disputes of fact can readily be anticipated.¹⁷ None of the banks appear to be conceding an inch on the issue of illegality and neither are the other respondents. Thus, the court is being asked to give an opinion based on a contested record, for relief which is ineffectual, as it falls within the province of other institutions to pursue. This courts cannot do as noted in *Eagles Landing* where Kroon J makes this point:

*“Be that as it may, even were a judgment by me to assist in removing any such uncertainty, the request for such a judgment would undoubtedly be no more than to seek the opinion of the Court, something which cannot be countenanced.”*¹⁸

[65] Lang may well be concerned that these authorities may not take his complaint seriously given that the alleged miscreants are powerful financial institutions. But even if this is so, and I express no view on this, this difficulty does not mean that the court should give an opinion so that there is something to wave at the supine official in the front desk of the charge office.

¹⁶ In any event this court as a civil court has no jurisdiction to declare conduct is in contravention of the Competition Act. That falls within the exclusive jurisdiction of the Competition Tribunal and Competition Appeal Court. (see section 62(1).)

¹⁷ This much is at least clear from some of the prior litigation with Nedbank.

¹⁸ *Eagles Landing Body Corporate v Molewa NO and Others* 2003 (1) SA 412 (T) at paras (61-62).

[66] But there may be another motive. Counsel for ABSA argues that what Lang is seeking is a moral victory. That may well be right. But courts are not set up to give declaratory orders to achieve that purpose.

Conclusion

[67] Mr Lang has for the reasons given no locus standi to bring this action and it falls to be dismissed. I therefore do not need to consider the various arguments concerning whether he should be ordered to furnish security in terms of Rule 47.

[68] Costs of the application are awarded to those respondents who brought the interlocutory applications on a party and party scale. I was asked to consider the awarding of costs of counsel on scale C. Given the length of the papers in this matter and the difficulty of navigating some of the relief, I consider that this request is justified. However, I do not consider that any respondent required the services of two counsel or senior counsel, so I have limited the costs to one counsel.

ORDER:-

[69] In the result the following order is made:

1. The applicant's application is dismissed against all the respondents on the basis of lack of locus standi.
2. Those respondents who opposed the application are awarded party and party costs, including costs on Scale C and costs of one counsel.



N. MANOIM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of hearing: 27 May 2024

Date of Judgment: 11 September 2024

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