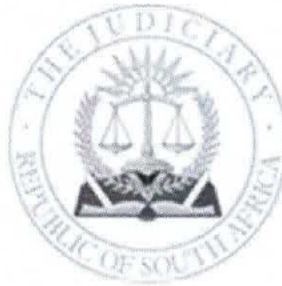


REPUBLIC OF SOUTH AFRICA



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

Case Numbers: **2023-114027**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
(4)	Date heard: 14 October 2024
(5)	Date of judgment: 22 October 2024
22/10/2024	
DATE	SIGNATURE

MBITA CONSULTING SERVICES CC

(In business rescue)

SUMAIYA KHAMMISSA N.O.

PONANI RUSSEL MBIZA

First Applicant

Second Applicant

Third Applicant

And

THE PASSENGER RAIL AGENCY

OF SOUTH AFRICA (PTY) LIMITED

NOMPUMELELO PHASHA

THATO TSAUTSE

First Respondent

Second Respondent

Third Respondent

JUDGMENT

SENYATSI J

Introduction

- [1] This is an opposed application to make an unsigned settlement agreement an order of this court. The application is brought on the basis that Mr. Mphelo, the acting chief executive officer of Passenger Rail Agency (“Prasa”) during April 2022, agreed to settle the various actions between the applicant and Prasa on the basis that an amount of R16 906 520.00 was to be payable to the applicant. In a nutshell, the applicant seeks a money judgment that it contends is premised on the unsigned settlement agreement. Prasa denies that the agreement was concluded as alleged by the applicant and that there is no merit in law and that the application should be dismissed with costs.

Background

- [2] The applicant, which is in business rescue, was a cleaning service provider to Prasa’s stations and its MB1 stations agreement with Prasa was terminated on 14 November 2015. Prasa argued that it was entitled to terminate the main agreement on the basis that the main agreement and the additional stations agreement, referred to as MB2 additional stations agreement, was separate agreements. The MB1 stations agreement was extended to 31 January 2016. The applicant disputed the termination on the

basis that the MB1 stations agreement could not be terminated separately as it was part of the main agreement.

- [3] Various litigations ensued culminating in the judgment of this court per Spilg J on 23 July 2019, in favour of the First Applicant in the amount of R971 098.00 (relating to the MB1 stations for the month of July 2017). Prasa has sought to appeal this judgment. A judgment was granted by Spilg J on 23 July 2029, in favour of the First Applicant in the amount of R15 935 422. Prasa obtained a rescission of this judgment, and the dispute was referred to arbitration before Adv Baloyi SC.
- [4] The arbitration was determined in favour of Prasa, on the basis that the first applicant had no contractual claim for damages against Prasa. In essence, the arbitrator found that Prasa's termination of the MB2 contract at 31 October 2015 was lawful, and the First Applicant had no contractual claim for its services following termination up to and including 31 July 2017. The First Applicant filed an application in terms of Section 32(2) of the Arbitration Act 42 of 1965 calling for the remittal to the arbitrator for reconsideration of the award. There is no record on what has transpired about the reconsideration application. It can, however, be inferred that the application has not been finalized. There's no any other steps on record on what other options the applicants have considered and pursued including a possible enrichment claim because it is common course that the services were in fact rendered in terms of the MB2 stations without a contract. Furthermore, it appears that the bulk of the claim in the R16 million referred to in the unsigned settlement agreement may be in relation to the possible enrichment claim.

Issue

- [5] The controversy in this case is whether the disputed settlement agreement can be made an order of court. Put differently, whether in fact there is a *lis* between the parties from which settlement has been reached which this court is required to make an order as sought.

Submissions for Applicants

- [6] Mr. Hoffman, for the applicant, submitted that the relief sought should be granted. He referred me to an unsigned copy of the settlement agreement which he contended that it had been negotiated and agreed to by the parties. He contended on behalf of the applicant that there was no doubt that the settlement had been agreed to and that Mr. Mphelo and Ms Tsautse, the latter, being the chief legal officer of Prasa, had indeed agreed that the dispute between the parties be resolved as envisaged in the unsigned settlement agreement. He stated that the only issue was whether the two Prasa officials had the necessary authority to conclude the agreement.
- [7] It was furthermore submitted that during 2021 and 2022, the parties engaged in discussions regarding a settlement of the matter. Mr Hoffman, in his heads of argument, stated furthermore that on 11 July 2021, a memorandum was sent by Sifiso Simelane (the then acting group executive: legal and compliance of Prasa) to Zolani Matthews the then group CEO of Prasa). The memorandum recommended that the MB1 claim of R971 098.43 be settled by PRASA Cres by paying the First Respondent. I must state at this time that I was interested in knowing how this internal and obviously confidential information communications came to be in possession of the applicants and Mr. Hoffman could not assist as he had no idea.

[8] The memorandum also recommended that the MB2 claim of R15 935 422.00 not be settled “*as it has prescribed as per the Attorneys advises(sic). This matter can only be relooked at the time when Mbita can prove that it has not prescribed*”. Mr Hoffman furthermore stated that between September 2021 and April 2022, Prasa engaged in internal discussions to quantify the extent of the First Applicant’s claims. On 22 April 2022, a memorandum was sent by Tsautse to Mphelo for the settlement to be finalized.

[9] The memorandum summarised the history of the dispute between the parties. In contradistinction to the first memorandum, this memorandum recommended that Prasa settle the first applicant’s claim by paying it the sum of R16 906 520.00, consisting of: -

- (a) R971 098.43 relating to the MB1 stations; and
- (b) R15 935 421 relating to the MB2 stations.

[10] On 26 April 2022, Tsautse, on a Prasa letterhead, addressed a letter to addressed to the Second Applicant (the First Applicant’s business rescue practitioner) which letter was forwarded via e-mail by the Second Respondent.

- (a) The letter confirmed that PRASA Cres had “extensively investigated” the First Applicant’s claim, and “*recommended for approval that MBITA be settled in the amount of R16 906 520.00*”.
- (b) The letter also confirmed that the settlement “*has been approved by the Group Executive Officer (acting) and will be submitted to finance for payment as soon as we reduce the terms of the*

settlement in writing". Mr Hoffman contended that there is no denial that Tsautse sent this letter on a Prasa letterhead, or that Mphelo approved the settlement.

[11] Following the issuing of the letter, so contended Mr. Hoffman, the parties exchanged drafts of a written settlement agreement. By 13 May 2022, the parties had agreed to the content of the settlement agreement, albeit had not signed the document. On 18 May 2022, the first applicant signed the settlement agreement. In October 2022, the third applicant addressed an e-mail to Hishaam Emeran, the then acting CEO of Prasa to enquire when payment would be made and the latter said he would revert soon. Based on the sequence of events, the applicants pray that there is a proper basis the unsigned settlement agreement to be made an order of this court.

For the First Respondent

[12] Ms. Narhmuravate, on behalf of Prasa contended that the application is *res judicata* and stated that that the same parties and the same subject matter were before arbitration. It furthermore averred that the arbitrator Advocate Sesi Baloyi SC ruled as follows in Prasa's favour:

- (a) MB2 stations were not part of the main contract (MB1 stations);
- (b) the award of MB2 stations was not irregular, unlawful, invalid or void;
- (c) the termination of the contract in respect of MB2 stations, separately from the MB1 stations, is valid;
- (d) the claim for uniforms and equipment in the amount of R458 498.88 plus interest was dismissed;
- (e) the claim for damages was dismissed and

(f) the first applicant was ordered to pay the costs, including the costs of two counsel. Prasa furthermore argued that the findings of the arbitrator remain final and are consistent with a pre-arbitration agreement.

The legal principles

[13] The practice of making settlement agreements is well-established and has existed for a long time in South Africa. In *Van Schalkwyk v Van Schalkwyk*,¹ the Court said “[t]he tradition of such orders is very strong in our legal system”. The authority of the court to make a settlement agreement an order of court is premised on the adversarial model on which dispute resolution is based in our law, namely, that the court's mandate or jurisdiction is determined by the *lis* [lawsuit] between the parties.

[14] If parties may however choose to agree to ask the court to give judgment on the issues raised by the action in accordance with the terms of their settlement agreement. One of the advantages of this arrangement is that the court retains jurisdiction over the matter in the sense that it has the inherent power or authority to ensure compliance with its own orders.² This enables the parties, in the event of a failure by any one of them to honour the terms of the order, to return directly to the court that made the order, and to seek the enforcement thereof without the necessity of commencing a new action.

¹ 1947(4) SA86 at 95

² *Ex parte Le Grange and Another; Le Grange v Le Grange* [2013] ZAECHGHC 75; [2013] 4 All SA 41 (ECG) at para 10.

[15] In *Schierhout v Minister of Justice*,³ the Appeal Court (Kotze JA) had no difficulty in confirming the existence of this practice as part of our law and said that: -

“... if there exists no objection in the nature or terms of such compromise or other agreement between the parties, embodied in a consent paper, the practice of the courts is to confirm it, and make the agreement arrived at a rule or order of court”⁴

[16] An overview of the reported decisions on the subject shows that there are two basic requirements that are to be met when the court considers a request to grant a judgment in accordance with the terms of a settlement agreement. The first is that the court must be satisfied that the parties to the agreement have freely and voluntarily concluded the agreement and that they are *ad idem* with regard to the terms thereof.⁵ To the first requirement must accordingly be added that the court must satisfy itself that the parties are in agreement that the terms of their settlement be made part of the order of the court. The second requirement is that the order sought must be a competent and proper one to make in the circumstances. That is, it must relate directly or indirectly, to an issue or *lis* between the parties that is properly before the court, and in respect whereof, but for the settlement agreement, it would possess the necessary jurisdiction to entertain.⁶

[17] In *Hodd v Hodd; D'Aubrey v D'Aubrey (Hodd v Hodd)*⁷:

³ 1925 AD 417 at para 95.

⁴ *Supra* at 432.

⁵ Caney *The Law of Novation* at page 57.

⁶ *Schierhout v Minister of Justice* 1925 AD 417 at 423; *Ex Parte Venter and Spain NNO; Fordom Factoring Ltd & Others intervening; Venter and Spain v Povey and Others* 1982(2) SA 94 (D) at 101; *Hodd v Hodd; D'Aubrey v D'Aubrey* 1942 NPD 198 at 204 to 205 and *Van Schalkwyk v Van Schalkwyk* 1947(4) SA 86 (O) at 98.

⁷ 1942 NPD 198 at 204 to 205.

“...if two merchants were to make an ordinary commercial agreement in writing, and then were to join an application to Court to have that agreement made an order, merely on the ground that they preferred the agreement to be in the form of a judgment or order because in that form it provided more expeditious or effective remedies against possible breaches, it seems clear that the Court would not grant the application”⁸.

In the second place, the agreement must not be objectionable, that is, its terms must be capable, both from a legal and a practical point of view, of being included in a court order. This means: - (a) that the terms must not be illegal, contrary to public policy or good morals or in violation of a protected right in the Constitution⁹, and (b), that it should hold some practical and legitimate advantage.¹⁰

[18] In *Eke v Parsons*,¹¹ Madlanga J said the following on the purpose of the settlement order in the Constitutional Court:

“[24] Whilst ordinarily the purpose served by a settlement order is that, in the event of non-compliance, the party in whose favour it operates should be in a position to enforce it through execution or contempt proceedings, the efficacy of settlement orders cannot be limited to that. A court may choose to be innovative in ensuring adherence to the

⁸ Above 7 at 204

⁹ See generally Christie *The Law of Contract in South Africa* 5th ed at page 343 to 349; *Schierhout v Minister of Justice* supra and *Schutte v Schutte* 1986(1) SA 872 (A) (an attempt to oust the jurisdiction of the courts); *Swadif (Pty) Ltd v Dyke NO* 1978(1) SA 928 (A) at 945A - B (the order cannot seek to bind or place obligations on third persons who are not parties to the settlement agreement); *Benefeld v West* 2011 (2) SA 379 (GSJ); *Shields v Shields* 1946 CPD 242; *Kotze v Kotze* 2003(3) SA 628 (T).

¹⁰ *Hodd v Hodd*; *D'Aubrey v D'Aubrey* supra at 207; *Van Schalkwyk v Van Schalkwyk* supra at 96, 98; *Mansell v Mansell* 1953(3) SA 716 (N) at 721H and *Claassens v Claassens* 1981(1) SA 360 (N) at 364C - D.

¹¹ [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC)

order. Depending on the nature of the order, it may – for example – first issue a mandamus for compliance. Failing compliance, it may then consider committal for contempt. Both the mandamus and order for committal may be sought by merely supplementing the papers already before court. On the Thutha approach, the terms of the settlement agreement not incorporated by the court in the settlement order can only be enforced by means of a full-blown fresh suit. The disadvantages of this need no elaboration.”

[19] In *National Youth Development Agency v Dual Point Consulting (Pty) Ltd and Another*,¹² Van der Linde J said the following on whether a settlement agreement without prior litigation can be made an order of court: -

“[7] As indicated, I intimated when the matter was called that I was not convinced that this court has the power to make a settlement agreement an order of court where there was no prior litigation. In Eke v Parsons¹³ the Constitutional Court said that it was important for courts to make settlement agreements orders of court, but that was not in the context of settlement agreements that had not been preceded by litigation.”

[20] Agreements made extra-judicially are normally regulated by specific legislation. For instance, there is legislation specifically designed to the availing of the enforcement mechanisms of this court, to extra-judicial processes.¹⁴ That occurs under and in terms of section 31 of the Arbitration Act.¹⁵ That Act sets out in some considerable detail the prerequisites that would have to be followed before an award made under it would be made an order of court. For instance, there is required to be an arbitrator who has

¹² [2016] ZAGPJHC 114 at para 7.

¹³ Above foot note 11.

¹⁴ Above para 12.

¹⁵ 42 of 1965.

to conduct him/herself in accordance with a minimum standard. The point made here is that the legislature has expressly acknowledged the value of extra-judicial dispute resolution; and has respected to a significant degree party autonomy in the parties' running of that process. And it has, under those prescribed conditions, aided by the machinery of the Law in other respects, for instance the subpoenaing of witnesses, lent also the enforcement arm of the Law to the process. If the legislature were prepared to lend the enforcement arm of the Law no matter what the underlying process; no matter how the settlement came about; no matter whether there was a fair underlying process; one would have expected explicit litigation to that effect. There is no such.¹⁶

Considerations and reasons

[21] I now turn the papers and deal with the submissions before bearing in mind whether it is competent for this court to make a disputed and unsigned settlement agreement an order of this court. It is common course that there has been several applications involving the same parties and the same subject matter. These applications were all opposed resulting the in the arbitral award which by agreement has brought the matter to halt. This is so because the parties agreed in the pre-arbitration agreement that the decision of the arbitrator would be final.

[22] At the hearing of the application, Mr. Hoffman submitted that the disputed settlement was concluded following the ongoing litigation between the parties. He was asked specifically which case number the settlement related to and to in fact identify it from the founding affidavit. He conceded that the

¹⁶ Above at para 15.

founding affidavit did not identify the case pending before this court which would render it appropriate for the settlement agreement to be made an order of this court. Based on the volume of authorities quoted in this judgment, the absence of a *lis* between the parties cannot be overcome by the applicants in the instant case.

[23] Mr. Hoffman also made a proposition that the order is competent because when Mr. Mphelo and Ms. Tsautse decided to conclude the settlement, they had the authority to do so. He relied on section 20 (7) and (8) which state as follows: -

“(7) A person dealing with a company in good faith, other than a director, prescribed officer or shareholder of the company, is entitled to presume that the company, in making any decision in the exercise of its powers, has complied with all of the formal and procedural requirements in terms of this Act, its Memorandum of Incorporation and any rules of the company unless, in the circumstances, the person knew or reasonably ought to have known of any failure by the company to comply with any such requirement.

(8) Subsection (7) must be construed concurrently with, and not in substitution for, any relevant common law principle relating to the presumed validity of the actions of a company in the exercise of its powers.”

Reliance on this section is misplaced because the relief sought is beyond the objective of the legislature in these circumstances. It does not cover instances where the agreement is disputed under the circumstances as these.

[24] If regard is had to the fact that there was previous attempt by the applicants to enforce earlier, another purported settlement agreement in court and that the proceedings were unsuccessful, I have no doubt that this is yet another

attempt. I am emboldened by the fact that ordinarily, it would have been appropriate to institute a new application to deal with the fact that an agreement had been concluded and for the applicants to enforce the rights derived from the agreement. In this case seeking an order where there no pending litigation is simply not competent. If this were allowed, our courts would be overwhelmed with the floods of cases where, if the parties to commercial agreements so agree, they would simply seek the court's intervention without the need to litigate in the normal ways. This is why there is an Arbitration Act which as already indicated, covers the extra-judicial agreements where a process envisaged by that Act has been embarked upon.

[25] More importantly, in the instant case, the settlement agreement has not been signed by Prasa and the disputed lack of authority of Mr. Mphelo and Ms. Tsautse, is of no moment is as far as this court is concerned. Even if the agreement was not disputed and if it was signed by Prasa, it would still be incompetent for it to be made an order of court without the preceding *lis*. Even if I were to start making an enquiry into the exchange of emails and letters between the first applicant and Ms. Tsautse, the position would still remain that no agreement had been reached in the sense that until the settlement agreement was signed, there cannot been any agreement under the circumstances that would entitle the applicants to seek judgment by the mere existence of the alleged settlement agreement.

[26] This is true given the previous unsuccessful attempts through the various applications before the court to somewhat vindicate the first applicant's rights. It has done so by even as in this case, obtaining the evidence from Prasa based on documents that in my view, were supposed to be confidential. I say so because making use of the internal memoranda by the applicants in

this case, shows that Mr. Mbita of the first applicant, had “moles” within Prasa that were sharing internal confidential information with him for the benefit of the first applicant. I will not venture more than I have said in this *dictum*.

[27] I have also had regard to the unreported case of *Growthpoint Properties Ltd v Makhonya Technologies (Pty) Ltd and Others*,¹⁷ where the court considered an application similar to the one before me. However, what makes that application distinguishable was that the settlement agreement sought to be made an order of court was not disputed. The parties in the matter had a dispute relating to the arrear rental. They concluded an Acknowledgment of Debt agreement and agreed that the respondent would make monthly payments towards the liquidation of arrear rental. They agreed furthermore that in the event of default, the agreement would be made an order of court through an application. The court held that its inherent jurisdiction could not be ousted by lack of the pending *lis* and made an order. I do not agree with this judgment for the *stare decisis* has to be *Elke v Parsons* already quoted above as it is the decision of our highest court in the land.

[28] The applicant’s contention that the letter sent to its attorneys by Ms. Tsautse and the email from its attorney that the draft is acceptable with minor alteration is an indication of an agreement is of no moment. In my view, it is an indication that the discussions were ongoing. However, there is no doubt that the agreement was disputed because the communications indicate how determined were Ms Tsautse and Mr Mphelo to pay the first applicants. I

¹⁷ [2013] ZAGPPHC 43

say this because of the sharing of confidential information including the legal advice provided to Prasa which the Mr. Mbita of the first applicant knew about. It is not difficult to surmise how else Mr. Mbita would have been privy to such information given the protracted genesis of the various litigations.

[29] Even if I were to accept that there was an agreement in place, which is not so in the instant case, the fact there were communications about what had been recommended by Ms. Tsautse to the acting chief executive officer, Mr. Mphelo is of no consequence. This is because ordinarily, until an approval is secured and the contract is signed, there can be no agreement. Although I have not been able to discern from the papers what the internal delegation matrix devolved by the board of Prasa to its acting chief executive, I take a judicial notice that such an approval would either have been formally submitted to an Executive Committee of Prasa to note and approve the settlement. In such circumstances, the settlement agreement would have been signed and of course payment would have followed without the need to litigate.

[30] However, this did not happen and from the papers, it is evident that Ms. Tsautse and presumably Mr Mphelo were suspended from Prasa. Furthermore, Ms. Tsautse denied in her opposing affidavit that she never told Mr. Mbita that the settlement agreement had been approved. This is evident even from the only letter on Prasa's letterhead that the settlement agreement draft had been recommended for approval. Absent confirmation that the settlement agreement had been approved, there cannot be a proposition that the parties had in fact reached an agreement. Mr. Mbita knew that he was not dealing with a private company, but a State-owned entity and the expectation was the approval would need to be formalized. To

shield behind sections 20(7) and (8) of the *Companies Act*, 2008 under those circumstances is not appropriate.

[31] Courts should not be used force parties to conclude agreements. Equally, our courts should not be used as a mechanism to collect debts on behalf of the creditors. Given the long history of this matter, it is evident that the applicants have repeatedly subjected Prasa to litigation to recover what they claim Prasa owes the first applicant.

[32] It would have served the first applicant well to have considered its options and institute action in relation to the services which it rendered in terms of the MB2 stations which agreement came to an end in 2016. In any event, the first applicant has failed to institute a claim to recover the debt it alleges is owed by Prasa since July 2017 when the arbitration was finalised. There is no reason proffered in the papers why this did not happen. From the genesis of the litigation, it is evident that the previous attempts to litigate, lost significant time on the real issue, which was the vindication of the first applicant's rights based on the MB2 stations. I have not been called upon to decide that aspect and therefore will not comment further.

[33] That said, I am not persuaded that the applicants have made out a case in their founding application. Consequently, the application stands to be dismissed.

Costs

[34] Ms. Nharmuravate, submitted on behalf of Prasa that if this Court is with Prasa, then a punitive cost order would be appropriate. Based on the litany of applications previously made regarding the matters before me and

because in fact in one of those unsuccessful applications involved making a disputed application an order of this court, I tend to agree with the submission.

[35] The applicants are, in my view, engaged in the abuse of the court process. This is so given that it never did anything about the arbitral award. To force Prasa to come to court in circumstances where such order if granted, would amount to a judgment, is simply not acceptable. I am fortified in this view by the fact that previously, a similar attempt was made to obtain as similar relief and the attempts came to naught.

[36] The test on whether an appropriate punitive cost order should be imposed lies in the discretion of the court, which discretion must be exercised judicially. The abuse of the court process is something this Court has inherent power to guard against.¹⁸

[37] In the instant case, because of the history of litigation between the parties which culminated in the arbitral award by Advocate Baloyi SC and the fact that no action was taken by the applicants to vindicate the first applicant's rights relating to the services rendered in terms of MB2 stations, the present application is nothing but contrived to circumvent having to deal with the possible prescription defence when the action is instituted. The present application which is designed to have the effect of a judgment through the pronouncement that the disputed settlement agreement, is simply an abuse of the court process which as already stated, should be visited upon with an appropriate punitive cost order.

¹⁸ *Nzuza and Others v National Director of Public Prosecutions and Others* [2024] ZAGPPHC 335 at para 44; *Maughan v Zuma and Others* [2023] ZAKZPHC 59; [2023] 3 All SA 484 (KZP); 2023 (5) SA 467 (KZP); 2023 (2) SACR 435 (KZP) at para 72.

[38] I now deal with the submission on behalf of the third respondent by Mr. Panda that she is entitled to an appropriate cost order. This was premised on the fact that there was no justification for her to be cited in her personal capacity and even seek a cost order against her on a punitive scale. This is so because the third respondent never acted in her personal capacity but was discharging her duties as an official of Prasa.

[39] Mr Hoffman submitted that the cost order was not proceeded with against the third respondent and this was made clear when the heads of arguments were prepared and filed on behalf of the applicants. He argued that the third respondent was not entitled to the costs, more particularly because she filed the practice note late on the doorstep of the court. The submission by Mr. Hoffman loses sight of the fact that the notice to oppose was filed during November 2023 and the opposing affidavit by the third respondent was signed on the 7th December 2023.

[40] It is correct that the heads of arguments from the third respondent were served late and this is the reason condonation for the late filing thereof was sought at the hearing. Mr. Panda submitted on behalf of the third respondent that the late filing of the heads of arguments was a result of the non-notification of the notice of set down to the third respondent's attorneys of record. This submission is not persuasive because firstly, it is not based on any formal application and secondly it is not supported by the affidavit from anyone from the third respondent's attorneys. Consequently, the costs related to the late filing of the heads of arguments by the third respondent will not be allowed. Having said that, I am of the view that all costs related to the opposition but excluding the costs of preparation of the heads should be allowed. This is so because the applicants never formally tendered the

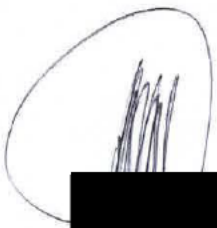
costs when they decided not to pursue the cost order against the third respondent.

[41] I equally satisfied that, for the reasons advanced in this judgment that Prasa is entitled to costs on a punitive scale basis.

Order

[42] The following order is made: -

- (a) The application is dismissed.
- (b) The applicants are ordered to pay costs on a scale C as between client and attorney to Prasa and the second respondent including the cost of counsel and
- (c) The applicants are ordered to pay the costs on a scale C as between client and attorney to the third respondent including the cost of counsel but excluding the cost of heads of arguments and the practice note.



ML SENYATSI

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be **22 October 2024.**

Appearances:

For the Applicant: Adv JM Hoffman

Instructed by Leslie Sedibe Inc.

For the first and second respondents: Adv N Nharmuravate

Instructed by Mncedisi Ndlovu Sedumedi Attorneys

For the third respondents: Adv T Panda

Instructed by Thomson Wilks Incorporated

Date judgment reserved: 14 October 2024

Date of Judgment: 22 October 2024