

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO/YES
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CASE NO.: 1299/2024

In the matter between:

SUNSHINE SUGAR SUPPLIES (PTY) LTD

Applicant

and

THE SHERIFF OF THE HIGH COURT

BLOEMFONTEIN EAST, FREE STATE

First Respondent

THE SHERIFF: PETRO ROODT

Second Respondent

TOYOTA FINANCIAL SERVICES LIMITED

Third Respondent

[Registration number: 1982[...]]

Bench: M Opperman J

Heard: 2 May 2024

Delivered: 16 July 2024. This judgment was handed down in court and electronically by circulation to the parties' legal representatives *via* email and release to SAFLII on 16 July 2024. The date and time of hand-down is deemed to be 15h00 on 16 July 2024

Summary: Costs – urgent application – conduct of sheriff of the court

ORDER

It is ordered that the applicant shall pay the costs of the application, including counsel's fees, on scale B. The costs to include the costs incurred for the postponement of 13 March 2024.

JUDGMENT

INTRODUCTION

- [1] The issue here is of costs for an urgent application that was instituted by the applicant on 5 March 2024 and set down for hearing on 13 March 2024. The application on the main relief claimed was abandoned by the applicant as will be shown later.
- [2] The applicant, in main, wanted for the respondents to be compelled to “attach, remove and keep a Toyota Hilux with VIN: AHT[...] and registration number HSM [...] *until the finalisation of interpleader proceedings and/or such extended period as agreed to between the parties.*” They also demanded that “the second respondent be ordered to pay the costs of the application as on the scale between attorney and client in her personal capacity, jointly and severally with the first respondent.” (Emphasis added)

[3] The applicant and the first and second respondents participated in the litigation and hearing on costs on 2 May 2024. Toyota Financial Services Limited (TFS), the third respondent, did not participate here and only filed a rule 58(1) – affidavit as third claimant earlier dated 5 March 2024, wherein they applied for the Toyota Hilux vehicle, which is the bone of contention, to be uplifted from the judicial attachment and for them to be placed in possession thereof.¹ It was not opposed by the applicant in *casu*. In fact, on 26 February 2024 already, the following order was obtained from Daniso J by Toyota Financial Services (plaintiff) against RZT Zelpy 4185 (Pty) Ltd (1st defendant) and Andre-Hendri Le Roux (2nd defendant/Mr Le Roux):

IT IS ORDERED THAT:

1. The agreement is Cancelled.
2. The 2021 TOYOTA HILUX 2.8 GD-6 RB RAIDER A/T P/U D/C with ENGINE NUMBER: 1GD[...] and CHASSIS NUMBER: AHT[...] vehicle must be delivered by the Defendant to the Plaintiff, alternatively *that the sheriff should take into possession the said vehicle from wherever and whoever's possession it may be found and place the Plaintiff in possession thereof.*
3. The Plaintiff is granted leave to approach the Honorable Court on the same papers supplemented by a damage affidavit after repossession and sale of the vehicle to prove its damages.
4. Costs of Action.² (Emphasis added)

¹ Pages 128 to 142 & 166 to 182 of the court bundle (the “bundle”) indexed 5 April 2024. All references to page numbers shall be to that of the bundle except if otherwise indicated.

² Pages 145 to 146.

[4] It is clear that the sheriff of the court was ordered to place the vehicle in the possession of Toyota Financial Services *and obvious that the applicant did not have any role to play from here*. The request for delivery to the sheriff by Toyota Financial Services was made on 1 March 2024.³ The urgent application by the applicant was filed on 5 March 2024.

[5] The situation as reported in a return of service might have set the scene for the consternation and the emotional decisions that followed and caused the whole dilemma. This is what the deputy sheriff reported on a return of service dated 29 February 2024:

On this 21st day of February 2024 at 11:15 – 14:00 I attempted to remove the moveable property under judicial attachment at 27A I A, W,⁴ Bloemfontein as per your instructions. **I was unable to remove assets due to the defendant⁵ threatening us by stating that if we enter the premises, he is going to shoot us with his gun.**

A further attempt (sic) was made the same day at @ 17:30 with the assistance of Bayswater SAPS to remove the bakkie as new instructions. The bakkie was not found, the defendant's daughter opened the garage and the bakkie was not there.

Interpleader summons was issued for appearance 17 May 2024.

Confirmation of your removal instructions and Rule 45(3)(c)(i) Indemnity (sic) is awaited.

The original return together with the original abovementioned process is retained pending further instructions. (Emphasis added)⁶

³ See pages 143 and 144.

⁴ Address concealed to protect the privacy of the party.

⁵ Mr Le Roux was the defendant referred to.

⁶ Page 156. The document is also marked "AA13".

- [6] It is the case of the applicant that the sheriff of this court as the second respondent, failed in her duties and must pay the costs for the urgent application. I will discuss the duties of the sheriff on the facts of this case and the veracity of the claim by the applicant later. The nature of the proceedings plays a role in the adjudication of the costs.

THE DISCONTINUED PROCEEDINGS

- [7] It is a common place fact that on 11 March 2024 the second respondent delivered her answering affidavit and the applicant, as result, decided not to pursue the application in respect of the main relief they wanted.
- [8] They did however demand a hearing of the issue of costs. By agreement between the parties, and the agreement made an order of court on 13 March 2024; the matter was postponed for the adjudication of said costs. Leave was granted for the filing by the first and second respondents of a supplementary answering affidavit followed by the filing of a replying affidavit by the applicant.
- [9] The applicant undoubtedly discontinued proceedings at the proverbial door of the court on the main relief sought. The first and second respondent's supplementary answering affidavit disproves and invalidates any claim or possibility of a settlement between the parties on the main relief sought.⁷

⁷ Pages 185 to 204.

[10] A litigant responsible for abortive or discontinued proceedings will generally be ordered to pay the costs of such proceedings. It is imperative to understand what the nature of the proceedings were that did not proceed and what the rationale behind the situation is. This is what Cilliers⁸ concluded after research of the prevailing case law:

- a. A plaintiff or applicant who withdraws his or her action or application is usually in the same position as an unsuccessful litigant because, after all, his or her claim or application is (as a rule) futile and the defendant or respondent is entitled to all costs caused by the institution of proceedings by the withdrawing party.
- b. In such a case it is not necessary to go into the merits of the case.
- c. *There is a crucial difference between the position of an applicant settling his or her case on the merits and then asking the court's ruling on costs, and the position of an applicant withdrawing his or her claim and after that attempting to avoid an order of costs against him.*
- d. The above notwithstanding; the court retains a discretion on the award of costs.
- e. Ordinarily a party who withdraws or terminate an application is as a rule considered as having conceded the merits and, thus, is

⁸ Cilliers AC, *Law of Costs*, Civil Procedure. Last Updated: March 2024 - SI 49 at Chapter 8. LexisNexis accessed on 8 July 2024.

“8.17A

Discontinuance of proceedings

In South African law discontinuance of proceedings would generally encompass abandonment or withdrawal. In English law the word “discontinuance” is often used in this context. In the case of a compromise, it could also be said that proceedings have been discontinued. However, the court has a discretion to make no order as to costs. See *Re Walker Windsail Systems Ltd; Walker v Walker* [2006] 1 All ER 272 (no reason, in the circumstances, to depart from the general rule).”

obliged to make a tender of the costs. The respondent may, nevertheless, have been complicit in causing the litigation and may be ordered to pay costs.

[11] In *Wildlife and Environment Society of South Africa v MEC for Economic Affairs, Environment and Tourism, Eastern Cape Provincial Government and Others* (ECJ 046/2005) [2005] ZAECHC 14; [2005] 3 All SA 389 (E); 2005 (6) SA 123 (E) (28 April 2005) Pickering J investigated the principles to be applied as it developed through the years in our courts. He noted that:

- a) In *Germishuys v Douglas Besproeiingsraad* 1973 (3) SA 299 (NC) it was stated by Van Rhyn J at 300D–E that where a litigant withdraws an action *or in effect withdraws it*, sound reasons must exist why a defendant or respondent should not be entitled to his costs. The plaintiff or applicant who withdraws his action or application is in the same position as an unsuccessful litigant because, after all, his claim or application is futile and the defendant, or respondent, is entitled to all costs associated with the withdrawing plaintiff's or applicant's institution of proceedings. (Emphasis added)
- b) In *Reuben Rosenblum Family Investments (Pty) Ltd and Another v Marsubar (Pty) Ltd (Forward Enterprises (Pty) Ltd and Others intervening)* 2003 (3) SA 547 (C) at 550C–D Van Reenen J ruled that it is only in exceptional circumstances that a party that has been put to the expense of opposing withdrawn proceedings will not be entitled to all the costs caused thereby.

- c) In *Waste Products Utilisation (Pty) Ltd v Wilkes and Another (Biccari Interested Party)* 2003 (2) SA 590 (W) Lewis J stated at 597A that where a party withdraws a claim the other is entitled to costs unless there are good grounds for depriving him.
- d) At 597F Lewis J referred also to the circumstances of the case as being “special”.
- e) I support the proposition of Pickering J that “exceptional” and “special” circumstances referred to by Van Reenen J and Lewis J may not be interpreted to be a more stringent test than that referred to by Van Rhyn J.
- f) The governing test to be applied was aptly declared in *Ward v Sulzer* 1973 (3) SA 701 (A) by Holmes JA at 706G to be that in awarding costs the court has a discretion, to be exercised judicially upon a consideration of all the facts; and, as between the parties, *in essence it is a matter of fairness to both sides*.

[12] The enactment of the Constitution brought an enhanced perspective to the principle to be applied. Access to justice is crucial but may not be abused. It is a privilege that must be coveted for what it is. In *Sanderson v Attorney-General, Eastern Cape* 1998 (2) SA 38 (CC); 1997 (12) BCLR 1675 (CC) reference was made at paragraph 43 to *Motsepe v Commissioner for Inland Revenue* [1997] ZACC 3; 1997 (2) SA 898 (CC); 1997 (6) BCLR 692 (CC) where the following was stated at paragraph 30:

... one should be cautious in awarding costs against litigants who seek to enforce their constitutional right against the State, particularly where the constitutionality of the statutory provision is attacked, lest such orders have an unduly inhibiting or ‘chilling’ effect on other potential litigants in this category. *This cautious approach cannot, however, be allowed to develop into an inflexible rule so that litigants are induced into believing that they are free to challenge the constitutionality of statutory provisions in this Court, no matter how spurious the grounds for doing so may be or how remote the possibility that this Court will grant them access. This can neither be in the interests of the administration of justice nor fair to those who are forced to oppose such attacks.* (Emphasis added)

THE EVENTS

[13] The chronology of the events and the rationale behind the urgent application that was aborted are crucial to the adjudication of the case.

[14] The version of the applicant in their replying affidavit⁹ dated 5 April 2024 is acknowledged but the facts are not as simple. It ignores the core of the situation. *Toyota Financial Services was dominis litis in the management of the possession of the vehicle.*

Ad paragraphs 18 to 21

6.1. ...

6.2. The urgency of the application stems from the fact that the first respondent's dilatory conduct resulted in Mr le Roux being allowed to further use his vehicle despite the fact that the first respondent should have removed it.

6.3. The urgency was also created by the First and Second Respondent in that the opportunity to find and remove the asset was becoming more unlikely as the Judgment Debtor became aware of the First and Second Respondent's

⁹ Page 210.

instructions to remove the vehicle. The likelihood that the Judgment Creditor was to hide and move the vehicle to a different location was becoming more and more likely with every day the first two Respondents refused to execute their duties.

- 6.4. The applicant required the Sheriff to act immediately given the time lapse since the first instruction was given and the very real possibility at the time that the asset might not be found in future.

[15] The evidence filed shows that the first and second respondents did all in their power to avoid litigation in a complicated situation with numerous factors to regard and demands to observe. The detail must be depicted as it is to underscore the reality. This is the core of the factual and legal situation as appropriately depicted by the second respondent in her answering affidavit:¹⁰

The crux of the first and second respondents' defence:

22. As mentioned above, the applicant applies for an order to compel me to attach, remove and keep the Toyota Hilux until the finalisation of interpleader proceedings or such extended period as agreed between the parties.
23. On 12 January 2024 my Deputy Sheriff, Mr LM Nthinya (“Mr Nthinya”) served the writ of execution on Mr Le Roux, who is also the representative of RZT, at 27A I A, W, Bloemfontein and attached various household items as well as a Toyota Yaris motor vehicle and the Toyota Hilux. Copies of the returns of service, issued by Mr Nthinya, including the inventory which he made pursuant to the execution of the writ, are collectively annexed hereto as annexure “AA2”. I refer the Court to the content of the return of service, specifically the remark which Mr Nthinya made to the effect that the writ of execution and notice of attachment will be handed over to the Licencing

¹⁰ Pages 104 to 111.

Authorities in order to establish the name of the titleholders of the motor vehicles.

24. On 12 January 2024, when the writ of execution was served, Mr Le Roux's wife, Mrs Mariska Le Roux ("Mrs Le Roux") submitted an affidavit to Mr Nthinya, claiming that she is the owner of the household furniture. She also indicated to him that she is the owner of the Toyota Yaris vehicle.
25. As a result, Mr Nthinya did not remove the assets under attachment.
26. My office established from the office of the Licencing Authority, Bloemfontein that Toyota Financial Services is registered as the titleholder of the Toyota Hilux as envisaged in the National Road Traffic Act, no. 93 of 1996 ("the Road Traffic Act") and that RZT is the registered owner thereof. It was also established that Mrs Le Roux is the registered titleholder and owner of the Toyota Yaris.
27. On 30 January 2024 Mr Pieter Strydom ("Mr Strydom") of Krone & Associates instructed my office to proceed with an interpleader regarding the movable assets attached in terms of the writ of execution.
28. On 2 February 2024 Mr Strydom informed my office that because no claim has been made in respect of the Toyota Hilux, the Toyota Hilux should be removed. I, however, informed Mr Strydom on 5 February 2024 that it appears from the information received from the Licencing Authority that Toyota Financial Services is the titleholder of the vehicle and that I could only proceed to remove the Toyota Hilux if a "paid-up letter" is received from Toyota Financial Services. A copy of the e-mail is annexed as annexure "FA7" to the founding papers.
29. As explained by the applicant, since 20 February 2024 further correspondence were exchanged regarding the removal of the assets under attachment, including the Toyota Hilux. I shall later deal with the content of the correspondence and attempts made to remove *inter alia* the Toyota Hilux.
30. I pause to mention that although the other movable assets were also not removed and Mrs Le Roux's claim regarding those assets has not been

accepted by the applicant, the applicant only insist that the Toyota Hilux be removed and not the other assets too.

31. On 27 February 2024 I received an e-mail from Mrs Letsie, an employee of Symington De Kok Attorneys, Bloemfontein, in which she confirmed that Symington De Kok acts on behalf of Toyota Financial Services, that Toyota Financial Services is the rightful owner of the Toyota Hilux, that Toyota Financial Services does not consent to the sale of the Toyota Hilux, and that the outstanding amount on the account is R739 406.75. I notified Mr Krone accordingly on 27 February 2024 and confirmed the facts in the e-mail which I sent to Mr Krone and Mr Strydom on 29 February 2024 (annexure “FA16”).
32. On 28 February 2024 I also proceeded to issue an interpleader notice in terms of rule 58(1). A copy of the interpleader is annexed as annexure “FA18” to the founding papers.
33. On 1 March 2024 I received an e-mail from Mr Krone, in terms of which he, *inter alia*, confirmed that the applicant does indeed recognise Toyota Financial Services' claim as titleholder of the Toyota Hilux. A copy of the e-mail is included in annexure “FA17”. However, according to Mr Krone Toyota Financial Services will enjoy a preferent claim, seemingly in respect of the proceeds of the Toyota Hilux when it is sold in execution, and therefore again instructed me to remove the Toyota Hilux with immediate effect.
34. In terms of the writ of execution, I was directed to attach and remove the movable assets of RZT and Mr Le Roux.
35. *It should be uncontentious that, having conceded and acknowledged on 1 March 2024 that Toyota Financial Services is the titleholder of the Toyota Hilux, Toyota Financial Services' rights in and to the ownership of the Toyota Hilux was accepted by the applicant and the applicant was not anymore entitled to have the Toyota Hilux sold in execution under the writ of execution. It also disposed of the necessity to proceed with the interpleader proceedings regarding the Toyota Hilux.*(Emphasis added)

36. It is also common cause that Toyota Financial Services did not consent to the sale of the Toyota Hilux.
37. Consequently, I was not entitled to continue to remove and take the Toyota Hilux into my possession and under my control in terms of the writ of execution. I informed the applicant's attorneys accordingly on 1 March 2024 (annexure “FA17”).
38. Nevertheless, on 5 March 2024, after admitting Toyota Financial Services’ right as titleholder of the Toyota Hilux, the applicant proceeded to institute this application for an order directing me to remove and keep the Toyota Hilux until the finalisation of the interpleader proceedings or such extended period as agreed to between the parties.
39. *In view of the aforesaid facts, the relief is not legally tenable, and the application clearly constitutes an abuse of process. The applicant undoubtedly knows that it cannot insist on the execution of the Toyota Hilux but still seeks the removal of the Toyota Hilux under the writ of execution.* (Emphasis added)
40. On 5 March 2024, after the issuing of the application, I received Toyota Financial Services' affidavit in terms of rule 58(1) in respect of the interpleader from Symington De Kok. A copy of Symington De Kok’s letter date 5 March 2024 is annexed hereto as annexure “AA3” and a copy of the affidavit in terms of rule 58(1), together with the annexures thereto, is annexed hereto as annexure “AA4”. I refer the Court to the content of the affidavit as well as the annexures thereto.
41. In terms of annexure “A” to the affidavit, Toyota Financial Services is the registered titleholder of the Toyota Hilux. In addition, it is clear from the provisions of annexure “B” to the affidavit, namely the instalment sale agreement concluded between Toyota Financial Services and RZT, that Toyota Financial Services remained the legal owner and titleholder of the Toyota Hilux until payment of the full purchase price under the instalment sale agreement. The full purchase price has not yet been paid by RZT. It is still indebted to Toyota Financial Services in the amount of R736 982.51.

42. On 5 March 2024 I also received a warrant for delivery from Symington De Kok, issued under case number 4607/2023, being an action instituted by Toyota Financial Services against RZT and Mr Le Roux. A copy of the warrant for delivery is annexed hereto as annexure “AA5”. In terms of the warrant for delivery, it is recorded that the Court ordered that the defendant should deliver to Toyota Financial Services the 2021 Toyota Hilux motor vehicle described in the warrant for delivery, being the Toyota Hilux. In terms of the warrant for delivery I, as Sheriff, am authorised and required to attach and remove the Toyota Hilux and place Toyota Financial Services in possession thereof.
43. My attorney has also obtained a copy of the order granted on 26 February 2024 in favour of Toyota Financial Services, a copy of which is annexed hereto as annexure “AA6”.
44. On 7 March 2024 my attorney, Mr HJ Stander (“Mr Stander”) of Stander & Associates, addressed a letter to Mr Krone, providing him with a copy of the warrant of delivery as well as the affidavit received by Toyota Financial Services in respect of the interpleader. A copy of Mr Stander's letter dated 7 March 2024 is annexed hereto as annexure a “AA7”. I do not annex copies of the annexures to the letter as they are already annexed hereto.
45. Consequently, Mr Stander enquired from Mr Krone whether the applicant still intends to proceed to move for the relief as sought on an urgent basis. Mr Strydom responded to the letter on 8 March 2024. A copy of his letter is annexed hereto as annexure “AA8”. In terms of this letter, the applicant still insisted that I should execute my duties as an officer of this Court, clearly meaning that I should still proceed to remove the Toyota Hilux in terms of the attachment made under the writ of execution.
46. Later that day, Mr Stander received a further letter from Mr Strydom, a copy of which is annexed hereto as annexure “AA9”. In terms of this letter, the applicant indicated that should the vehicle be removed on or before close of business on 12 March 2024, the application would be removed from the urgent roll. It is evident from the content of the letter that the applicant still

persist that the Toyota Hilux should be removed in terms of the attachment made under the writ of execution.

47. Since receipt of the warrant for delivery, my Deputy Sheriff, Mr W Holtzhausen attempted on numerous occasions to remove the Toyota Hilux. A copy of the return of service, issued on 11 March 2024 by Mr Holtzhausen, in which the attempts to remove the Toyota Hilux are confirmed, is annexed hereto as annexure "AA10".
48. On 8 March 2024 Mr Roodt, my husband and one of my duly appointed deputy sheriffs, attempted to remove the Toyota Hilux. He contacted Mr Le Roux to make the necessary arrangements. Mr Le Roux however referred him to his attorney, Mr Charles Virtue ("Mr Virtue") of Virtue Attorneys. Mr Roodt informed about the discussion, following which I had a telephonic (sic) with Mr Virtue. Pursuant to our discussion, I received a letter from Mr Virtue on 9 March 2024 confirming that Mr Le Roux is at present in Cape Town with the Toyota Hilux and will return to Bloemfontein on Wednesday, 13 March 2024. An undertaking was given that Mr Le Roux will surrender the Toyota Hilux to my office upon his return to Bloemfontein. A copy of Mr Virtue's letter is annexed hereto as annexure "AA11". The undertaking was given in respect of Toyota Financial Services' warrant of delivery.
49. On 9 March 2024 my attorney provided Mr Krone with a copy of Mr Virtue's letter and again enquired whether the applicant persists in proceeding with the urgent application. A copy of Mr Stander's letter dated 9 March 2024 is annexed hereto as annexure "AA12".
50. Mr Stander has not yet received a response from Mr Krone.
51. On 21 February 2024 Mr Krone recorded in an e-mail (annexure "FA10"), that the applicant has no intention to proceed with the sale of the Toyota Hilux without Toyota Financial Services' consent. Despite the fact that I informed Mr Krone on 29 February 2024 that Toyota Financial Services does not consent to the sale of the vehicle which was also confirmed in

terms of the documents annexed to the interpleader notice, the applicant still seeks the removal of the Toyota Hilux.

52. It needs to be emphasized that I was never instructed to attach or remove the Toyota Hilux for purposes of selling RZT's right to possession and use of the Toyota Hilux in terms of the provisions of the instalment sale agreement. In any event, having regard to the order granted in favour of Toyota Financial Services for the delivery of the Toyota Hilux, RZT does not have such right anymore.
53. The applicant is not entitled to have the Toyota Hilux sold in execution under the writ of execution in circumstances where the true ownership of the Toyota Hilux does not vest in RZT but in Toyota Financial Services. A judgment creditor is not entitled to have assets of which the judgment debtor is not the owner, attached and sold in terms of writ of execution without the consent of the owner of such asset. Toyota Financial Services did not consent to the sale of the Toyota Hilux.
54. In terms of the warrant for delivery, and the order granted in favour of Toyota Financial Services, Toyota Financial Services is entitled to the delivery and possession of the Toyota Hilux, being in its capacity as the true owner of the Toyota Hilux.

THE DUTY OF THE SHERIFF

- [16] By definition, a sheriff is an officer of the court appointed by the Minister of Justice and Constitutional Development in terms of the Sheriffs Act 90 of 1986.
- [17] The sheriff has a crucial role to play in the administration of justice. Fundamental is the fact that the sheriff is not a lackey that blindly enforces court orders. The sheriff is not a pawn to be used in litigatory

power games played by parties. The sheriff must enforce the law in terms of the rule of law and strife for constitutional equity and justice.

- [18] Counsel for the applicant aptly referred to the quote from the case of *ABSA Bank Limited v Van Eeden and Others* 2011 (4) SA 430 (GSJ), [2011] ZAGPJHC 19; 49918/2009 (22 March 2011):

[32] *Quoniam fiscalis hastae fides facile convelli non debeat* may be translated as “by reason of the fact that public confidence in the institutional weapon of execution should not lightly be disturbed” (my translation). This expression, it seems to me, summarizes the critical point: public confidence in the process of execution is fundamentally important. In the circumstances of this case, it seems clear that public confidence will be better served by an intervention in the sale of execution than by its declining to do so. It is not simply the buyers who must have confidence in the process of sales in execution but all interested parties, indeed the general public as a whole.

- [19] The case of *Interactive Trading 115 CC and Another v South African Securitisation Programme and Others* (2119/2017) [2019] ZALMPPHC 10; 2019 (5) SA 174 (LP) (29 March 2019) referred to by the applicant in their heads of argument does not find application in this case. The sheriff in the instance did nothing of the kind; the facts show the opposite. If the applicant is still dissatisfied with the service that was rendered by the sheriff, they can submit a complaint to the South African Board for Sheriffs in terms of section 44 of the Sheriffs Act 90 of 1986. I suspect the events have overtaken this application and any further steps might be theoretic.

[20] The facts show that all the parties had a role to play in this case to contribute to the effective administration of justice; the applicant included. Counsel for the first and second respondents, in their heads of argument, pointed out that the applicant did not follow the correct procedure. He is correct. This is what he stated:

40. I submit that the respondents have never ignored the obligations imposed upon a sheriff of this Court.
41. After attaching the Toyota Hilux and Toyota Yaris, the respondents immediately took the necessary steps to establish the details of the title holders. The respondents' deputy sheriff also attempted to remove the Toyota Hilux on 21 February 2024 but was threatened by Mr Le Roux.
42. To the extent that the applicant sought interdictory relief, the applicant also did not meet the requirements for the granting of such relief. Having accepted TFS' rights as title holder and having regard to the outstanding debt owing to TFS in respect of the Toyota Hilux, the applicant did not demonstrate that it would suffer irreparable harm if the order was not granted or that the balance of convenience favored the granting of the main relief.
43. Without conceding that the respondents' conduct was irregular or contrary to a sheriff's duties, the applicant also had an alternative remedy, namely the remedy envisaged in section 43 of the Superior Courts Act, no. 10 of 2013. Section 43(4) provides that "*A refusal by the sheriff or a deputy to do any act which he or she is required to do, is subject to review by the court concerned on application ex parte or on notice as the circumstances may require.*"
44. The applicant therefore also did not follow the correct procedure.

[21] The significance of the execution of court orders cannot be denied. The conduct of Le Roux that sabotaged the administration of justice, caused

confusion and instigated the litigation; is unacceptable. De Vos¹¹ emphasised the execution of court orders when he wrote that:

As former Chief Justice Sandile Ngcobo pointed out in a public lecture, the judiciary needs to retain the public's confidence in order for it to fulfil its role properly. Public confidence was important, suggested Ngcobo CJ, because it is necessary for the effective performance of judicial functions. *What was required was for members of the public to recognise the legitimacy of individual decisions of the court even when it disagreed with the outcome of such decisions:* in other words, public opinion related to the institutional position of a court and hence courts had to act in such a manner that it retained the confidence – if not always full agreement – of the public it served.

... If members of the public come to believe that what matters is not what a specific legal principle requires, but what those with money and power dictate, lawlessness in its most extreme form logically follows. (Emphasis added)

To quote former Chief Justice Ishmael Mahomed, “[u]nlike Parliament or the executive, the court does not have the power of the purse or the army or the police to execute its will. The superior courts and the Constitutional Court do not have a single soldier. They would be impotent to protect the Constitution if the agencies of the state which control the mighty physical and financial resources of the state refused to command those resources to enforce the orders of the courts. The courts could be reduced to paper tigers with a ferocious capacity to roar and to snarl but no teeth to bite and no sinews to execute what may then become a piece of sterile scholarship.”

CONCLUSION

[22] The applicant has no right to claim costs here. It will be just and fair that the applicant be ordered to pay the costs in the circumstances. I

¹¹ De Vos P, *Flouting a court order: Government risks making a paper tiger of the law*, 15 June 2015, <https://www.dailymaverick.co.za/opinionista/2015-06-15-flouting-a-court-order-government-risks-making-a-paper-tiger-of-the-law/> accessed on 9 July 2024.

considered a punitive costs order but it was not the request of the first and second respondents; graciously so.

- a. It was from the onset explained to the applicant and repeatedly and correctly so that they are not entitled to the relief sought. The matter could have been resolved earlier and the first and second respondents may never be allowed to be forced by any form of litigation to act irresponsibly and outside the parameters of the law.
- b. Counsel for the first and second respondents is correct when he submitted in their heads of argument that “the applicant was aware or should at least have been advised that the Toyota Hilux could not be sold in execution. The applicant’s insistence on the Toyota Hilux’s removal seems driven by hidden agendas. This is evident as it did not push for the removal of the other assets or the Toyota Yaris pending the finalisation of the interpleader proceedings.”
- c. The first and second respondents diligently tended to their tasks as sheriffs of the court. They did not rush recklessly into compliance to the demands of the applicant that might have had dire legal consequences. In paragraphs 9 to 24 of the supplementary affidavit of the first and second respondents dated 20 March 2024 the sheriff again explained in detail why and how the events unfolded and the impossibility of compliance to the demands of the applicant that were not legally theirs to make. It shows that the conduct of the applicant borders

on an abuse of section 34 of the Constitution of the Republic of South Africa.

- d. The one that refused and obstructed the surrender of the asset and went on a trip to Cape Town diminishing the value of the asset and causing the apprehension with the applicant, was not joined. This was the cause for the knee-jerk reaction of the applicant. Reading of the law¹² unequivocally directs that RZT and Mr Le Roux had to be joined in the costs hearing and the litigation in the first instance.
- e. The litigation embarked upon by the applicant could have been prevented if only they applied mature diligent awareness of the real and the true situation in fact and law. The applicant must take responsibility for the costs in the least in the manner requested by the first and second respondents.

[23] **ORDER**

It is ordered that the applicant shall pay the costs of the application, including counsel's fees, on scale B. The costs to include the costs incurred for the postponement of 13 March 2024.¹³

¹² *Snyders and Others v De Jager (Joinder)* (CCT186/15) [2016] ZACC 54; 2017 (5) BCLR 604 (CC) (21 December 2016) at paragraph 9.

“[9] A person has a direct and substantial interest in an order that is sought in proceedings if the order would directly affect such a person's rights or interest. In that case the person should be joined in the proceedings. If the person is not joined in circumstances in which his or her rights or interests will be prejudicially affected by the ultimate judgment that may result from the proceedings, then that will mean that a judgment affecting that person's rights or interests has been given without affording that person an opportunity to be heard. That goes against one of the most fundamental principles of our legal system. That is that, as a general rule, no court may make an order against anyone without giving that person the opportunity to be heard.”

¹³ See page 15 of the heads of argument for the first and second respondents.

M OPPERMAN J

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