

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

Case Number: 2024-007632

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____	_____
DATE	SIGNATURE

In the matter between:

LANGLAAGTE TRUCK AND CAR CC	First Applicant
and	
8 MILE INVESTMENTS 539 (PTY) LTD	First Respondent
BRADLEY TRENT JONES	Second Respondent
ABSA BANK LIMITED	Third Respondent
REGISTRAR OF DEEDS PRETORIA	Fourth Respondent
COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION	Fifth Respondent
MINISTER OF FINANCE	Sixth Respondent

JUDGMENT

PJ DU PLESSIS, AJ

INTRODUCTION

[1] In this opposed motion the applicant is requesting the reinstatement of the First Respondent in terms of sections 82 (4) and 83 (4) of The Companies Act¹.

[2] It started with the seemingly harmless phrase, from Adv. Rodriques on behalf of the Applicant: “The respondent is not opposing the application”.

[3] Simplicity, was expected, but a conundrum revealed itself. This, as a property sold in execution was in the centre of this dispute. As such, a detailed chronological explanation of events is required.

[4] The Second Respondent, Mr. Bradley Trent Jones (Mr. Jones) was the sole director of the First Respondent 8 Mile Investments (8 Mile), who was the registered owner of the Property. This property was bonded to the Third Respondent, ABSA Bank Limited, for an amount of R3,200,000. Following a default on the bond repayments, an order for execution was granted by Adams J on 20 December 2018. The order declared the Property executable, with a reserve price of R5,000,000 and a proviso, that if the reserve price is not attained at the first sale in execution, ABSA can set a new sale date and sell the property without reserve.

[5] The property is in Waverley Johannesburg and its correct description according to title deed transfer number T[...] is “**Remaining Extent of Portion 1 of**

¹ 71 of 2008

*Erf [...] W[...] (Johannesburg) Township, Registration Division I.R. Province of Gauteng **measuring 1532 square meters***² (the Property). The property was the business and home address of Mr Jones and he still resides there with his wife and children.

[6] The Adams J Order declared executable a property described as “**Portion 1** of erf 1[...] W[...], (Johannesburg) Township, Registration Division I.R. Province of Gauteng **measuring 3718 square meters**”

[7] The problem - **Portion 1** declared executable by the order on 20 December 2018, is an incorrect description of the property which should have read the “**Remaining extent** of” portion 1. The square meterage was 3718 whilst it should have read 1532. The deed transfer number T3[...] and erf description was correct.

[8] A writ of attachment was issued in respect of **Portion 1** on 11 January 2019. It was attached on 14 January 2019 and sold in execution for R1 430 000 on 19 November 2020, with a sale agreement signed between the Sheriff Johannesburg East (Seventh Respondent) and Mr A Naidoo, a member of Langlaagte Truck and Car CC, the Applicant.

[9] These important dates and facts are *ex facie* the averments of the parties before court. This was my reason for an opposed roll publishing query to the litigating parties related to the court orders and compliance with Rule 46 as there appeared to be only one execution sale on 19 November 2020.

[10] The following information (objected to by the Second Respondent, as it was not on affidavit before court) was only brought to the attention of the Second respondents attorney in court at the hearing by myself - (Counsel - Adv. Cohen was aware of it due to his preparation the night before). I accept the content of the letter despite the objection, as nothing in evidence or address suggest that the information provided is wrong.

² My emphasise **in bold** to highlight different property descriptions

[11] The letter from the ABSA attorneys (Lowndes / Dlamini) stated Mr Jones appealed the Adams J order on 22 March 2019 and the appeal was dismissed on 17 September 2019. When the appeal failed ABSA caused a writ to be issued and a public sale in execution took place on 3 September 2020 with a “no bid / no sale” outcome.

[12] This meant that when the second sale in execution of this incorrectly described property took place on 19 November 2020 the reserve price fell away as per the Adams J order, and it was sold to the applicant for R1 430 000. This information from ABSA’s attorneys addressed my concerns and explained the long periods between events and the reservations I had about Rule 46 compliance.

[13] All parties assume that due to the wrong property description in the first court order the process of transfer was halted by The Registrar of Deeds, Pretoria (Fourth Respondent).

[14] As a result ABSA approach the court for a variation order on 4 May 2022 which was granted by Molahlehi J (as he then was) correcting only the Property description in paragraph 4 of the Adams J order.

[15] This lead to Mr. Naidoo and the Sheriff during May 2022 in the days following the Molahleli order, signing an addendum which is termed the “Amended conditions” of sale.

[16] These two sale agreement documents are on Caselines forming part of the notice of motion as FA 2 (actually signed 19/11/2020) and FA 5 (signed in May 2022 but back-dated).

[17] Scrutinising both documents one finds it is the exact document content apart from the property now correctly described as “The extent of” and the square meterage is corrected to 1531. Also noted on the last page of FA 5, it seems as if the 0 (zero) of 2020 was overwritten. Some of the signatures in FA 2, looks similar to those in FA 5, although we know FA5 was signed in May 2022.

[18] The opposing parties agree on reinstatement, but how it should be ordered is the basis of this dispute.

[19] It is agreed by the parties that the signing of the addendum in May 2022 was backdated to 19 November 2020. That a writ of attachment in respect of the property was issued on 13 May 2022 and the attachment by the Sheriff was on 12 July 2022 - which date the Sheriff states to the Deeds office as the date the Property was attached. On 16 March 2023 a Mr Ian Burton in his capacity as Acting Sheriff signs the power of attorney to pass transfer from 8 Mile to the Applicant.

[20] The aforesaid culminated in the lodgement by Lawndes Dlamini (ABSA attorneys) with the Deeds office. Transfer of the Property to the Applicant takes place on 21 September 2023.

[21] Unbeknown to the Applicant was that at the time of registration (21 September 2023), 8 Mile had not submitted their annual returns for two years to the "The Companies and Intellectual Property Commission" (CIPC) Fifth Respondent, and was deregistered as a Company on 30 March 2023. Such a deregistration meant that all of 8 Mile's property became *bona vacantia* (State owned), and the reason for the citation of the Minister of Finance as Sixth Respondent.

[22] Due to the deregistration of 8 Mile on 30 March 2023 and the Property becoming State owned, the Registration of the Title deed in the name of the Applicant by the fourth Respondent on 21 September 2023, five months later, is at issue.

[23] The Applicant after becoming the "Registered owner", despite being informed of 8 Mile's deregistration, proceeded with an Eviction application in the Johannesburg Magistrates Court which was later withdrawn.

[24] Mr Jones in the meantime received confirmation that no auction took place on 4 May 2022 as stated by Mr Ian Barton in the power of attorney used to pass transfer. 4 May 2022 was actually the date of the Molahlehi J order which corrected the property description.

[25] This is important as Applicants' Deed of Transfer number T[...] issued by the fourth Respondent, reflects that on 14 January 2019 attachment took place at a Public auction on 4 May 2022, not 19 November 2020 as per the original sale agreement (having the wrong property description) and the backdated "Amended conditions" (having the right property description, but backdated in May 2022 to 19 November 2020)

THE RESPECTIVE ORDERS REQUESTED

[26] The Applicant and Second Respondent agree reinstatement of 8 Mile should be ordered in terms of Section 83 (4) of the Companies Act. That this reinstatement should not be subject to compliance with Regulation 40 (6) of the Regulations in the Companies Act.

[27] The Applicant request reinstatement from 30 March 2023 and that 8 Mile's corporate activities should be validated retrospectively, and its assets should revert automatically. Meaning effectively that the Applicant will become the owner of the Property. They further request a cost order on scale B, against the First and Second Respondents.

[28] The Second Respondent request reinstatement of 8 Mile from 29 March 2023 (the day prior its deregistration) and does not seek the validation of its Corporate activities, only the re-vestment of the Property. Further that the Applicants name be expunged from the Title Deed and the First Respondents be restored in title as the owner of the property. This in effect, if granted, will mean 8 Mile becomes the property owner again and all actions taken against it previously will have to be re-instituted. A cost order to be paid by the Applicant was asked.

THE ARGUMENTS BEFORE COURT

APPLICANT

[29] Advocate Rodriques, representing the Applicant, submitted that the court has only one application before it: the Applicant's unopposed reinstatement application.

She maintained that no other application is properly before the court, and therefore, the court should not entertain the Second Respondent's allegations of irregularities or unlawful corporate conduct by the Sheriff and ABSA (cited parties not currently before the court).

[30] Advocate Rodriques argued that Mr. Jones is solely to blame for the situation. As the sole director of 8 Mile, he was responsible for the company's annual return compliance, which he failed to ensure (she suggested intentionally), leading to deregistration. Mr. Jones, now a Respondent, seeks to exploit the Applicant's restoration application for his own benefit. If he genuinely wished to challenge the alleged irregularities, he could have pursued administrative reinstatement under Section 82(4) and launched his own independent application.

[31] Advocate Rodriques asserted that the Applicant's requested order should be granted, as it aligns with established case law and would validate all corporate activities, reaffirming the Applicant's ownership of the property. Conversely, granting the Respondent's order would force ABSA to re-institute all legal proceedings at significant expense.

[32] Her submissions are that:

32.1 the Applicant is an "interested person" who stands to lose in excess of R2 000 000 and can bring this reinstatement application at any time.

32.2 The Applicant acted in good faith, purchasing the property at auction and signing all Sheriff-presented documents before 8 Mile's deregistration; critically, all substantive actions - obtaining court orders, conducting the auction, finalising sale agreements, and submitting documents to ABSA's attorneys - occurred pre-deregistration, with only the formal registration of the property in the Applicant's name happening subsequently.

34.3 Therefore, restoring 8 Mile would retrospectively validate all corporate actions and re-vest assets; given the Applicant's *bona fide* purchase and the adherence to legal process, it would be just and equitable for the property registration to remain in the Applicant's name, allowing them to exercise their legal rights, beginning with Mr. Jones's eviction.

RESPONDENT

[35] Adv. Cohen for the Second Respondent submits

35.1 8 Mile must be restored. He however submit it must happen as proposed by them in their draft order.³

35.2 The Second Respondent argued that a separate application was unnecessary to highlight the alleged unlawful corporate activity affecting the property registration, as these irregularities were already evident within the Applicant's own submitted documents. He stressed that the court should not, under any circumstances, issue an order that condones such unlawfulness, which they had merely pointed out.

[36] The Second Respondent outlined numerous alleged irregularities:

36.1 executing on the incorrect property as per the Adams J order and entering into a sale agreement on November 19, 2020;

36.2 attempting to rectify the property description via an Addendum 18 months later (May 4, 2022) without proper legal process, arguing this could not correct a void sale, which required a new agreement; non-compliance with the reserve price stipulated in the Adams J order;

36.3 the Sheriff's fraudulent claim of an auction on May 4, 2022, as recorded in the Deed of Transfer, rendering the transfer information false;

36.4 the transfer occurring while the property was state-owned, making it unlawful;

36.5 the transfer being based on a fictitious sale, as no actual execution sale occurred; and

36.6 the backdating of the sale agreement, which rendered the initial 19 November 2020 sale *void ab initio* due to the sale of the wrong property, arguing that the Sheriff and Applicant could not simply backdate the sale without conducting a proper legal process, including attachment and a public auction for the correctly described property.

CASELAW

³ Par 28 supra

[37] *Newlands Surgical Clinic v Peninsula Eye Clinic* [2015] ZASCA 25 (20 March 2015) emphasised the following:

37.1 that the deregistration of a company terminates its legal existence. Consequently, any actions purportedly taken on behalf of a deregistered company are deemed *void* and of no legal effect.⁴

37.2 the court further clarified that if a deregistered company was reinstated under the former Companies Act⁵, the effect of re-registration is to deem the company as having continued in existence as if no deregistration had occurred.

37.3 In resolving conflicting interpretations among High court divisions, the SCA concluded that Section 82(4) of the Companies Act provides for automatic retrospective effect upon reinstatement, validating corporate activities during the deregistration period, in addition to re-vesting the company with its property. The wording of the section does not support a distinction between the re-vesting of property and the validation of corporate activities.⁶

37.4 Regarding the application of Section 83(4) of the Companies Act, the court held;⁷

37.4.1 Section 83(4) remains available even after administrative reinstatement under Section 82(4).

37.4.2 Section 83(4)(a) permits any "person with an interest" to apply for relief related to the company's dissolution, granting the court broad discretion to make "just and equitable" orders.

37.4.3 Section 83(4) expressly allows applications "at any time after the company has been dissolved."

37.4.4 Due to the wide wording of section 83(4) no justification exist to exclude a company, which after dissolution was reinstated administratively by S 82(4)], from its ambit.

⁴ Par. 15

⁵ Act 61 of 1973 Section 73(6(a) & 73(6A)

⁶ Par. 29

⁷ Par. 29-30

37.4.5 The SCA determined that any party prejudiced by the automatic retrospective effect of reinstatement may seek judicial relief under Section 83(4), with the court empowered to grant just and equitable orders.

[38] The following points will have to be determined before considering the opposed reinstatement of 8 Mile.

38.1 The court must address the Applicant's objection regarding the Respondent's alleged attempt to introduce a counter-application within these proceedings.

38.2 The court must consider the applicability of Section 83(4), which states: "At any time after a company has been dissolved—

(a) the liquidator of the company, or other person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances; and

(b) if the court declares the dissolution to have been void, any proceedings may be taken against the company as might have been taken if the company had not been dissolved.

Specifically, the court must determine whether the Applicant, as a person with an interest, can seek relief under this section.

38.3 Lawful or unlawful Corporate Action in compliance with court orders, execution sale, sale agreement, addendum to sale agreement, Sheriffs actions, recording in the title deed, registration after bona vacantia, non-submission of annual returns to cause bona vacantia.

38.4 The court must evaluate the bona fides of the parties involved.

[39] Application of Law and Findings to the above paragraphs:

38.1 Regarding the alleged counter-application, these are motion proceedings based on affidavits. The Second Respondent does not dispute the Applicant's factual assertions and agrees with the requested relief.

The Respondent's concerns pertain to alleged irregularities evident from the Applicant's documents, but these cannot be attributed to the Applicant's conduct.

This application provides a more convenient option for the Respondent(s) to reinstate than the administrative process.

The second Respondent is attempting to gain benefits without having the legal standing to do so making allegations directed at other parties, not the Applicant. The Second Respondent's own failure to submit annual returns led to the deregistration, limiting their ability to bring applications. The Respondent's in limine points, raised in the replying affidavit, are noted but not directly adjudicated on, as they are improperly raised.

38.2 As established by the SCA, any person (including a juristic person) prejudiced by automatic retrospective action may seek relief under Section 83(4) and such court is authorised to grant any relief it considered just and equitable.⁸

38.3 The Second Respondent should address the legality of corporate actions in a separate application against the relevant parties once he and the First Respondent is reinstated. The court finds no unlawful activity attributable to the Applicant. The court acknowledges the incorrect property description in the initial court order, but finds the Applicant and Sheriff had a clear understanding of the correct property. The incorrect property description was later corrected and all court sanctioned order conditions seems to have been complied with.

Looking at the facts one notes there was a specific court order by Adams J which was subject to a failed appeal. The property at issue was incorrectly described. This to my mind an easy mistake to make if one looks at the title deed and sub divisions recorded therein (FA4;02-41).

There was according to the notice of motion (par 22 - 23) and sale agreement (12.1) as well as Title deed number T[...] no misunderstanding between the Sheriff and Applicant on what property was being transacted on. On the title deed number the property was also the only one left to be transacted on as portions 4 (1056 squares) and 5 (1130 squares) were already removed to their own title deed numbers on 30 September 2010. This only leaving the "remaining extent" (1532 squares) to sell. If you add the 3 properties meterages it calculates to 3718 - emphasising the mistake in the Adams J

⁸ See 37.4.5 supra

order. This mistake of property description was corrected by the Molahlehi J order and an Addendum was signed to correct two words “remaining extent” and a square meterage from 3718 to 1532. There was seemingly substantial compliance with the sale conditions in the order, with its only defect being a wrong property description later rectified.

38.4 The Applicant acted in good faith, purchasing the property at auction, complying with all required processes, and incurring significant expenses. The applicant should not be penalised for the Second Respondent's omission as all necessary processes for the applicant's ownership, occurred before the property became *bona vacantia*.

[39] This reinstatement, cannot according to the SCA, be done in the piecemeal way suggested by Mr Jones. I also see no reason in rewarding Mr Jones with an order he should not be allowed to apply for (because of his omission), before he and the First Respondent is re-instated. Mr Jones seems to be frustrating legal processes to extend his stay in a property executed on seven years ago. It would therefore appear that if there is no movement to claim the property he will abide, but when there is, he will oppose.

[40] The court is satisfied that all processes legally required for the Applicant to acquire ownership occurred before the property became *bona vacantia*, with only the lodging and registration occurring during that period. The Applicant was *bona fide* through this process and is an interested person. Therefore, it is just and equitable to order the reinstatement of the First Respondent, enabling the Applicant to assert his rights to the property.

COSTS

[41] The following was held by Wilson J in par 15, 16 and 19 in; Mashavha v Enaex Africa (Pty) Ltd and others 2025 (1) SA 466 (GJ) (22 April 2024)

“... the rule implies that the power to reduce the scale on which counsel's costs are awarded should be exercised sparingly, and only where a case for its exercise has been made out. A Judge generally approaches a case on the assumption that it has been competently litigated, that counsel has done what

is within their power to ensure substantial compliance with the applicable rules, and that argument and evidence has taken as long as it needs to take. It is only where there has been a marked departure from these norms that a court should consider lowering the scale on which counsel's costs are awarded.

Likewise, the default position set under the rule is that, in the absence of contrary indication, counsel's costs will be recovered on scale "A". Scale "A", it seems to me, is the appropriate scale on which to make an award **unless the application of a higher scale has been justified by careful reference to clearly identified features of the case that mark it out as unusually complex, important or valuable**. Run-of-the-mill cases, which must be the vast majority of cases in the High Court, should not attract an order on the B or C scales.

The focus of Rule 67A is not on the conduct of the losing party. It is primarily on the **nature of the case, and, secondarily, on the way that the successful party presented it**. The misconduct of the unsuccessful party, if any, is irrelevant once a court has declined to award a punitive costs order against them."

[41] In the present case the issues were somewhat complicated. The hearing lasted just over an hour. It was competently and ethically pursued by all concerned. I do not think it can be classified as a Run-of-the-mill matter. As such I am prepared to award cost on the "B" scale as requested by the Applicant.

Order

1. The First Respondent known as 8 MILE INVESTMENTS 539 (PTY) LTD with Registration Number 2007/023669/07 which was dissolved / deregistered on 30 March 2023, is restored in terms of Section 83 (4) of the Companies Act 71 of 2008.
2. The Fifth Respondent is ordered to restore / register the First Respondents name to the Register of Companies.

3. The orders in 1 and 2 above is not subject to compliance with Regulation 40 (6) of the Regulations promulgated under the Companies Act 71 of 2008

4. The First Respondents;

4.1 Corporate Activities shall be valid retrospectively, and

4.2 Assets shall automatically revert retrospectively

5. The First Respondent upon restoration to the Register and the Second Respondent shall be liable to pay costs of this application on Scale "B"

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 10 March 2025.

PJ DU PLESSIS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: Adv M Rodriques

Instructed by: Kaveer Guinness Incorporated

For the Respondent: Adv S Cohen

Instructed by Allan Levin & Associates

DATE OF HEARING 24 February 2025

DATE OF JUDGMENT 10 March 2025