

REPUBLIC OF SOUTH AFRICA



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

Not reportable

Case no: 2622/2023

In the matter between:

**THE MEMBER OF THE EXECUTIVE COUNCIL:
DEPARTMENT OF HUMAN SETTLEMENTS,
FREE STATE**

Applicant¹

and

SXB CIVILS & PROPERTY DEVELOPERS CC

Respondent²

Coram: Opperman J

Heard: 30 August 2024

Delivered: 28 January 2025. The judgment was handed down in court and electronically by circulation to the parties' legal representatives by email and by release to SAFLII on 28 January 2025. The date and time for hand-down is deemed to be 15h00 on 28 January 2025

¹ 'Applicant/MEC'.

² 'Respondent'.

Summary: Leave to appeal – rescission application – non-compliance with the Uniform Rules of Court by the applicant and legal representatives for the applicant.

ORDER

The application for leave to appeal is dismissed with costs and on an attorney and client scale.

JUDGMENT

Opperman, J

Introduction

[1] – This is an application for leave to appeal after the court ordered as follows in February 2024.

‘ORDER:

1. The application for the postponement of the matter is dismissed with costs. The costs to be on an attorney and client scale.
2. The application for the condonation of the late filing of the rescission application is dismissed with costs. The costs to be on an attorney and client scale.
3. The application for rescission of the order dated the 3rd of August 2023 and granted by Mhlambi J is dismissed with costs. The costs to be on an attorney and client scale.’

[2] The respondent did prove their case on the law that is applicable. The applicant did have a fair trial and extensive opportunity to present their case; they failed to do so. The record will show that it is not only the legal practitioner that is held accountable for the outcome of the case but also the MEC that did not manage their case in accordance with the law. They did have access to court and

extensively so. Section 34 of the Constitution is not a limitless right that can be abused as it was in this case.

[3] The justice system battles to maintain veracity because the layperson cannot fathom the delays and the astronomical costs that makes access to justice unreachable. The Constitutional Court remarked in *Grootboom v National Prosecuting Authority and Another*³ that:

‘[21] The failure by parties to comply with the rules of court or directions is not of recent origin. Non-compliance has bedevilled our courts at various levels for a long time. Even this Court has not been spared the irritation and inconvenience flowing from a failure by parties to abide by the Rules of this Court.’

[4] Parties may not twist, manipulate and manoeuvre the rules of law as, when and how it suits them; it simply destroys the administration of justice. Litigants have the right and the duty to keep each other accountable to the rule of law.

[5] The Supreme Court of Appeal in *Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga and Others*⁴ noted that:

‘[27] It remains to observe that the conduct of the officials in the employ of respondents evokes strong feelings of disquiet in one. Because of their conduct the public purse is much the poorer . . . To that must be added the costs of what can only be described as ill-advised and morally unconscionable litigation. In *Mokala Beleggings (Pty) Ltd*, Majiedt JA observed (para 16):

“ . . . Considerable circumspection, diligence and sensitivity are required on the part of all concerned, including departmental officials. . . . ” (Emphasis added.)

³ *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013).

⁴ *Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga and Others* (590/2011) [2012] ZASCA 128; 2013 (2) SA 259 (SCA); [2013] 2 All SA 1 (SCA) (21 September 2012).

[6] Section 34 of the Constitution cuts both ways; both the applicant and respondent have a right to justice by the effective application of the administration of justice.

[7] The case of *Venmop 275 (Pty) Ltd and Another v Cleverland Projects (Pty) and Another*⁵ said it all and lays down the law:

‘[7] The efficient conduct of litigation has as its object the judicial resolution of disputes optimising both expedition and economy. The conduct and finalisation of litigation in a speedy and cost-efficient manner is a collaborative effort . . . Where practitioners neglect their roles, it leads to the protracted conduct of the litigation in an ill-disciplined manner, the introduction of inadmissible evidence and the confusion of fact and argument, with the attendant increase in costs and delay in its finalisation, inimical to both expedition and economy.’

[8] Litigants are the masters of their cases and not their legal representatives. It should not be necessary for the court to protect the rule of law against litigants. The Constitutional Court in the *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*⁶ was clear and unyielding when it was ruled that:

‘[2] . . . Ironically, the judgment now impugned, contains a thorough exposition of the rule of law and its fundamental importance to South Africa’s constitutional democracy. Indeed, it says, “[n]o one familiar with our history can be unaware of the very special need to preserve the integrity of the rule of law” in South Africa. Yet, with the finality of its decision questioned, this Court, once again, finds itself tasked with defending the integrity of the rule of law.

. . .

[103] If our law, through the doctrine of peremption, expressly prohibits litigants from acquiescing in a court’s decision and then later challenging that same decision, it would fly in the face of the interests of justice for a party to be allowed to wilfully refuse to participate in

⁵ *Venmop 275 (Pty) Ltd and Another v Cleverland Projects (Pty) and Another* (2014/14286) [2015] ZAGPJHC 176; 2016 (1) SA 78 (GJ) (3 August 2015).

⁶ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021).

litigation and then expect the opportunity to re-open the case when it suits them. *It is simply not in the interests of justice to tolerate this manner of litigious vacillation.*' (Emphasis added)

Leave to appeal

[9] In *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*⁷ the Supreme Court of Appeal stressed that a court should not grant leave to appeal and it is under a duty not to do so where the threshold which warrants such leave has not been cleared by the applicant:

'The need to obtain leave to appeal is a valuable tool in insuring that scarce judicial resources are not spent on appeals that lack merit.'⁸

[10] The High Court elucidated in *H.B (Nee D.J) v R.J.B (Leave to Appeal)*⁹ that the dictum above means that a court may not grant leave to appeal where the threshold which warrants such leave has not been cleared by the Applicant:

'[5] Applications for leave to appeal are governed by the provisions of **section 17** of the **Superior Courts Act 10 of 2013**. **Section 17(1)** provides as follows:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (a) (i) the appeal would have reasonable prospect of success; or*
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;*
- (b) The decision sought to appeal does not fall within the ambit of **section 16(2)(a)**; and*
- (c) Where the decision sought to be appealed does not dispose of all the issues in case, the appeal would lead to a just and prompt resolution of the real issues between the parties."*

[6] The traditional test that was applied by the Courts in considering leave to appeal applications have been whether there is a reasonable prospect that another Court may come to a different conclusion to the one reached by the Court *a quo* [*Commissioner of Inland Revenue v Tuck* **1989 (4) SA 888** (T) at 890B]. With the enactment of **section 17**, the test obtained

⁷ *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others* (687/12) [2013] ZASCA 120; 2013 (6) SA 520 (SCA); [2014] 1 All SA 375 (SCA) (20 September 2013).

⁸ *Ibid* para 24.

⁹ *H.B (Nee D.J) v R.J.B (Leave to Appeal)* (21480/2014) [2024] ZAGPPHC 401 (2 April 2024).

statutory force. In terms of section 17(1)(a)(i) leave to appeal may now only be granted where the Judge or Judges concerned is of the view that the appeal would have a reasonable prospect of success, which made it clear that the threshold to grant leave to appeal has been raised. In Mont Chevant Trust v Tina Goosen and 18 Others *supra*, at para 6, it was held that:

"It is clear that the threshold or granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come at a different conclusion, see Van Heerden v Cronwright & others 1985 (2) SA 342 (T) at 342H. the use of the word "would" in the new statute indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against." In Notshokuvu v S (2016) ZASCA 112 at para 2, it was indicated that an Appellant faces a "higher and stringent" threshold under the Superior Courts Act. Thus, in relation to said section 17, the test for leave to appeal is not whether another Court "may" come to a different conclusion, but "would" indeed come to a different conclusion.

[7] With regard to the meaning of reasonable prospects of success, it was held in S v Smith 2012 (1) SACR 567 (SCA) 570, at para 7, as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the fact and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[8] In the decision of Ramakatsa v ANC which it was [(724/2019)[2021] ZASCA 31 (31 March 2021)] it was held that:

"I am mindful of the decision at High Court level debating whether the use of the word "would" as oppose to "could" possible mean that the threshold or granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted . . . The test of reasonable prospect of success postulates a dispassionate decision based on the facts and the law that a Court of Appeal could reasonably arrive at a conclusion different to that of the trial court [at para 10]."

[9] In *Van Zyl v Steyn* [(83856/15) [2022] ZAGPPHC 302 (3 May 2022)] the Court considered the decision of *Ramakatsa*, para 10, *supra* against the background of, *inter alia*, *MEC for Health, Eastern Cape v Mkhitha and Another* [2016 ZASCA 176 (25 November 2016) para 16-18], *Notshokovu v S*, *supra*, *Van Wyk v S*, *Galela v S* [(2014) ZASCA 152; 2015 (1) SACR 548 (SCA), para 14], *Four Wheel Drive Accessory Distributors CC v Rattan No* [2019 (3) SA 451 (SCA), para 34], *Zuma v Office of the Public Protector and Others* [2020] ZASCA 133 (30 October 2020), para 19], *Nwafor v Minister of Home Affairs and Others* [(2021) ZASCA 58 (12 May 2021) para 25 and *Khatide v S* [(2022) ZASCA 17 (14 February 2022) at para 4] **and concluded that the Ramakatsa judgment did not lower the threshold as generally applied and that all courts must still determine if an appeal could have a reasonable prospect of success** [at para 15 thereof].’ (Emphasis added)

The reasons for judgment

[11] The submissions on which the application for leave to appeal are based do not align with the reality of the case. The application cannot be granted. I reiterate:

‘BACKGROUND

[1] Rule 49(1)(c) of the Uniform Rules of Court reads as follows:

When in giving an order, the court declares that the reason for the order will be furnished to any of the parties on application, such application shall be delivered within 10 days after the date of the order.

[2] On the 22nd of February 2024 the application served before me as a *de iure* unopposed rescission application and an *ex-tempore* judgment was handed down and the order issued. There was not any indication that the court will furnish any further reasons or reasons on application. This notwithstanding, a request for reasons was filed on 1 March 2024. I will thus elaborate on the *ex-tempore* judgment.

[3] The case is a shocking example of grave neglect by the legal practitioner serving at the Office of the State Attorney, Free State, Bloemfontein that represented the applicant. This case is tainted with sloppy management of the applicant’s litigatory obligations by the legal practitioner for the applicant. The matter will be reported to the Legal Practise Council (“LPC”); Free State by ordering the Registrar of this court to forward a copy of this judgment to the Director of the LPC: Free State.

- [4] On 22 February 2024 it was ordered that the application for the postponement of the matter is dismissed, the application for the condonation of the late filing of the rescission application is dismissed and the application for rescission of the order dated the 3rd of August 2023 and granted by Mhlambi J, is dismissed. The applications were dismissed with costs. The costs to be on an attorney and client scale.
- [5] The matter was set down on the opposed motion court roll on 22 February 2024 though it became unopposed by the litigatory malfunction and fault of the applicant. On the morning of 22 February 2024; just as the court was to proceed with the application, there was a request from counsel to address the court in chambers.
- [6] The legal practitioner for the applicant informed the court that she only learned that the matter is on the roll when she came to court that morning for another case and she noticed it on the roll. She wanted to apply for a postponement. She proceeded to inform the court about the case-load that she carries at the Office of the State Attorney: Free State and that the non-compliance with the rules is all her fault. I informed counsel that the matter must be addressed in court and that I feel uncomfortable to hear the issues in chambers.
- [7] The respondent is SXB Civils and Property Developers CC, (Registration number:2005/103971/23), a close corporation, with its address for purposes of this application at 204 Andries Pretorius Road, Noordhoek, Bloemfontein, Free State Province.
- [8] The applicant is the MEC: Department of Human Settlements, Free State Province, in his representative capacity, with chosen *domicilium* address at Room 749, OR Tambo House, c/o St Andrews & Markgraaff Streets, Bloemfontein, Free State Province and address for purposes of service of this application at the Offices of the State Attorney, 11th Floor, Fedsure Building, 49 Charlotte Maxeke Street, Bloemfontein, Free State Province.

THE HISTORY AND THE FACTS

[9] This is the history and facts of the case as per the affidavits submitted into evidence by the respondent; it speaks of a total mismanagement of the case by the applicant and their legal representative that involves R9 451 205,55 of the taxpayers' money:

1. On or about the 1st of December 2017 the applicant and the respondent entered into a written agreement for the construction of 200 housing units in Memel, Free State Province.
2. The appointment letter dated 16 October 2017, in which the applicant appointed the respondent to perform works of construction was handed into evidence.
3. The date of completion of the project was extended until 31 March 2021.
4. The respondent accepted the appointment and established site on the 1st of November 2017. In November 2017 the respondent rented offices in Memel as well as secured a storage facility that acted as a site camp. The respondent appointed security to guard the premises at night. The respondent transported the concrete equipment, earthmoving equipment and housed the personnel that have been allocated to the project.
5. The respondent was not allowed by the applicant to commence the project before the applicant provided a list of beneficiaries, as well as the completion of the geotechnical report.
6. The applicant delayed the process of obtaining a list of beneficiaries as well as the completion of the geotechnical report until September 2019. The respondent only commenced with the project during October 2019. A total of twenty-three (23) months were lost by the respondent in this regard.
7. On 23 March 2020 the President announced a national lockdown. The lockdown had a severe impact on the completion date and costs to navigate the practical implications of the lockdown. The respondent had no control over the situation

but was legally bound by the implications of the various stages of the lockdown to execute actions to comply with legislation.

8. On 27 May 2021 the respondent submitted a claim to the applicant for compensation relating to abovementioned standing time and losses caused by the COVID-19 pandemic.
9. The total loss suffered by the respondent due to standing time is calculated at an amount of R5 641 225.00 and the losses caused by the COVID-19 pandemic are calculated at an amount of R3 809 980.55. The total amount of the losses is calculated at an amount of R9 451 205.55.
10. The events that had caused abovementioned losses are either “Justifiable Events” or “Relief Events” as defined in Clause 2.1 of the agreement.
11. The applicant failed to pay abovementioned claim by the respondent.
12. On 5 May 2021 the District Director of the applicant, P. Mohloki, recommended that the Department should pay the respondent’s losses.
13. Despite this recommendation, the applicant failed to pay the claim of the respondent.
14. On 13 July 2021 the respondent, through an attorney firm, referred the claim for dispute resolution and in terms of Clause 23 of the agreement. The parties were, however, unable to resolve the dispute.
15. The project was completed during September 2021 and did the Department pay the respondent regarding work done for the last invoice rendered by the respondent on 17 August 2021. Last-mentioned payment was not related to the respondent’s claim relating to standing time and the effects of the COVID-19 pandemic, but for work done and materials rendered.

16. The General Conditions of Contract ("GCC": third edition, 2015) were applicable in as far as not specifically amended by the agreement and is the respondent entitled to compensation for standing time with reference to Clause 5.10, read with 10.1 of the GCC.
17. The respondent is severely prejudiced by the non-payment of the claim and the delay in the litigation. The amount due is substantial. In terms of the agreement the respondent had to provide all the necessary materials and labor, plant equipment and so forth to render the services to the applicant. The respondent suffered severe losses due to the late-performance of the applicant and due to the COVID-19 pandemic.
18. The respondent issued summons on 29 May 2023 with proper service on the applicant for the payment of the R9 451 205.55.
19. The respondent informed that: "TAKE NOTICE FURTHER that if no such notice of intention to oppose be given, this application will be made on Thursday, the 9th of June 2023, at 09H30, or as soon thereafter as the matter may be heard."
20. On 22 June 2023 the applicant issued and served a notice to oppose out of the Office of the State Attorney: Free State Bloemfontein. This was the last movement in litigation that the State Attorney made on behalf of their client. It must be noted that the same legal practitioner handled the matter throughout this litigatory tragedy.
21. There was not any answering affidavit or any other response from the applicant.
22. The matter was set down on 27 July 2023 for the 3rd of August 2023 with proper service on the Office of the State Attorney. In fact, receipt and acknowledgment of this notice was at 12h20 on 27 July 2023. The applicant blatantly ignored the litigation.

23. The matter became unopposed due to the above fault.
24. On 3 August 2023 Mhlambi J issued the following order:
IT IS ORDERED THAT:
1. The Respondent shall pay to the Applicant the amount of R9 451 205.55;
 2. The Respondent shall pay the Applicant interest on the amount of R9 451 205.55 *a tempore morae*.
 3. The Respondent shall pay the costs of this application.
25. Only on 28 November 2023 did the application for rescission by the applicant see the light. I quote verbatim from the founding affidavit:
"REQUIREMENTS IN TERMS OF RULE 31(2)(b) AND CONDONATION"
26. As mentioned in paragraph 24.3 above, an application for the rescission of a default judgment should be brought within twenty days after the Applicant has knowledge of the default judgment granted against it.
27. By letter dated 27 June 2023, written by Adv NG Sidzamba, the Department's Acting Chief Director: Corporate Services, addressed to Ms. JMA Engelbrecht of the Office of The State Attorney in Bloemfontein (herein after referred to as "Ms. Engelbrecht"), following the service of the papers in the main application, she was instructed to oppose the application. A copy of this letter is annexed hereto and marked "VR2".
28. Following the instruction given to Ms. Engelbrecht as set out above, a notice of intention to oppose the application was delivered on 22 June 2023. **Regrettably, however, Ms. Engelbrecht did not take any steps to cause to be prepared and served, a copy of the Department's answering affidavit in opposition to the application served by SXB.**
29. Following the expiration of the *dies* for the delivery of the Department's answering affidavit, the matter was set down for default judgment on 28 July 2023. Subsequent to the grant of the default judgement, it would appear that on

31 August 2023, the State Attorney was provided with a copy of the order that was granted by default against the Department, as it appears from a letter dated 10 October 2023, from SXB's attorneys. A copy of this letter is annexed hereto and marked "VR3".

30. Ms. Engelbrecht has informed me that owing to:

30.1. the workload that she had to carry out at the office of the State Attorney, which included having to attend over 450 files, she inadvertently omitted to diarise the further steps that need to be attended to in respect of the application. This was further exacerbated by the fact that at the time she was responsible for managing two big matters that had many complications;

30.2. the procedure to brief counsel that has been introduced by the Solicitor-General for briefing counsel, requiring that the State Attorney first send invitations to quote to a number of counsel, before a decision can be made by a briefing committee of the State Attorney as to the suitability of counsel to be appointed made it difficult for her to retain the services of counsel, timeously; and

30.3. although the delivery of the court order at the offices of the State Attorney was made as claimed on behalf of SXB, she has no recollection of ever seeing it.

31. It was only on 15 November 2023, that the order relating to the default judgment was brought to Ms. Engelbrecht's attention, following the attachment of the Department's bank account consequent upon the execution of the court order by SXB's attorneys. It was only then that counsel was briefed on an urgent basis to assist the Department in lifting the attachments to its bank account with a view to bringing this application.

32. I annex hereto Ms. Engelbrecht's confirmatory affidavit in which she confirms what is set out above, as annexure "VR4".

33. Following the State Attorney having briefed counsel to prepare this rescission application, I am advised that it will be filed by no later than Monday,

27 November 2023. I am advised further that the twenty days' time period to file the application for rescission of the default judgment, regard being had to the fact that the Department only became aware thereof on 11 October 2023, when the notice of execution was brought to its attention by way of annexure "VR3" hereto, was on 08 November 2023. Should the application be filed on 27 November 2023, it would be thirteen days out of time, at best for the Department.

34. I submit that SXB will not suffer any prejudice due to the late filing of this application for rescission. I pause to mention that on or about 16 November 2023, SXB's attorneys of record gave instructions to the sheriff to uplift the warrant of execution on 17 November 2023, pending the delivery of this application for the rescission of the default judgment. (Accentuation added)

26. Notwithstanding the above; the late filing of the rescission application and the fact that the respondent filed a notice to oppose on 4 December 2023 as well as an answering affidavit on 10 January 2024 with service on the State Attorney; the MEC for The Department of Human Settlements and their legal representative again just disappeared from the litigation.
27. To add insult to injury, the respondent in their answering affidavit to the application for rescission pointed the court to a blatant misrepresentation by the applicant and their legal representative. Both the Office of the MEC and the legal representative received notice of the 3 August 2024 – court order on 10 August 2023.

2.20 **AD PARAGRAPH 29:**

- (i) The contents of this paragraph is denied.
- (ii) On the **10th of August 2023** and by e-mail, my attorney of record addressed an e-mail to Me Engelbrecht, attaching the Court order and also made reference to Section 3(a)(i) of the State Liability Act, Act 20 of 1957. A copy of this e-mail is attached hereto and marked as annexure "AA4".

- (iii) Apparent from annexure “AA4” is that Me Engelbrecht reacted to the said e-mail on the **11th of August 2023**, acknowledging receipt of the Court order. She also indicated that she awaited instructions from the client.
- (iv) By indicating that she was awaiting instructions from the client, it implicates that the Department was by the **11th of August 2023** already aware of the Court order.

2.21 **AD PARAGRAPHS 30 TO 33:**

- (i) The contents of these paragraphs are denied.
- (ii) With reference to annexure “AA4”, the Department was already aware of the Court order since the **11th of August 2023**.
- (iii) I also attach hereto a copy of WhatsApp messages sent by SXB's attorney of record and answers by Me Engelbrecht on the **18th of September 2023**. A copy of these WhatsApp messages are (sic) attached hereto and marked as annexure “AA5”.
- (iv) Apparent from the WhatsApp messages, Me Engelbrecht indicated that on **18 September 2023** the client (the Department) gave orders to brief an advocate for the application for rescission.
- (v) It is therefore clear that the Department knew about the Court order at the latest from the **18th of September 2023**.

- 28.** The respondent was forced to set the matter down for hearing on 9 February 2024. They did this with proper service on the Office of the State Attorney: Free State. The Office of the State Attorney: Free State, with a total disregard of their duty and responsibility to their client and the court, ignored this notice.

29. On the 13th of February 2024 the respondent served the index and the paginated bundle on the Office of the State Attorney: Free State. The Office of the State Attorney: Free State, with a total disregard of their duty and responsibility to their client and the court, ignored this.
30. On 16 February 2024 the respondent served their heads of argument and practise note on the Office of the State Attorney: Free State. The Office of the State Attorney: Free State, with a total disregard of their duty and responsibility to their client and the court, ignored this.
31. The court was informed, and it is admitted above, that when the legal practitioner informed them of her mistakes after the first order they went as far as to reimburse the Office of the MEC with the R9 451 205.55 to accommodate them and give them a fair opportunity to section 34 of the Constitution of the Republic of South Africa, 1996. It did not help.
32. The MEC and the Office of the State Attorney: Free State remained in gross neglect of their duties, not only to the administration of justice and the rule of law, but also the taxpayers that they serve and must serve with due diligence.”

CONCLUSION

- [10] The prejudice that the respondent suffered over the years at the hand of the applicant that is a mighty organ of the State is clear. There are not many businesses that can survive a shortfall of R9 451 205.55. Counsel for the respondent pointed out that the respondent is desperate to rescue its business and that the applicant is digging them into ruin with their conduct.
- [11] This court will not be complicit in the erosion and destruction of the rule of law and the administration of justice by the unacceptable conduct of a party or parties. Courts and the administration of justice may not be held hostage by the circumstances that prevail in the Office of the State Attorney: Free State. There was not an application before me for a costs order *de bonis propriis*. I decided not to order such but to refer the matter to the Legal Practise Council: Free State for an inquiry into the conduct of the legal practitioner.’

[12] In conclusion, the court would have failed the administration of justice if it abided by the demands of the applicant and it will do so if the application for leave to appeal is granted. If cases are allowed to be litigated in this manner the rule of law will be eroded and litigatory anarchy will persist. The application must be dismissed with costs and on a punitive basis.

Order

[13] In the result, the following order is made:

The application for leave to appeal is dismissed with costs and on an attorney and client scale.


OPPERMAN J

Appearances

Applicant: R.T. Williams SC
Cape Town
JMA Engelbrecht
Office of the State Attorney:
Free State, Bloemfontein

Respondent: P du P Greyling
Bloemfontein
Marius van Zyl Inc.
Bloemfontein