

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE No: 08060/2025

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED: YES/NO

VAN WYK ASL (AJ)

A black rectangular box redacting the signature of the judge.

SIGNATURE

2 JUNE 2025
DATE

In the matter between:

MEROPA LEISURE AND ENTERTAINMENT (PTY) LTD
T/A SUN MEROPA (REGISTRATION NUMBER
1997/007830/07)

APPLICANT

and

REJASIMANO TRADING (PTY) LTD t/a
MARIMBA RESTAURANT (REGISTRATION NUMBER
2024/666496/07)

FIRST RESPONDENT

MOSIMA MARY LANGA

SECOND RESPONDENT

*IN RE***REJASIMANO TRADING (PTY) LTD t/a**

MARIMBA RESTAURANT (REGISTRATION NUMBER
2024/666496/07)

FIRST APPLICANT

MOSIMA MARY LANGA

SECOND APPLICANT

And

MEROPA LEISURE AND ENTERTAINMENT (PTY) LTD
T/A SUN MEROPA (REGISTRATION NUMBER
1997/007830/07)

RESPONDENT

JUDGMENT

VAN WYK ASL (AJ):

1. This is a reconsideration application in accordance with Uniform Rule 6(12)(c) following an *ex parte* order granted by Bresler AJ in favour of the Respondents herein on 30 May 2025.
2. The Applicant in the reconsideration application *inter alia* argued that the order granted as such by Bresler AJ was erroneously sought and approached this Court on Saturday 31 May 2025 to have the interim ex

parte order, rescinded and set aside. Following my directive the matter stood down until Sunday 1 June 2025 at 10:00 AM for argument.

3. I am of the view that the very nature of an application in accordance with Uniform Rule 6(12)(c) is urgent, more specifically within the context of the facts of the matter in *casu*. The Applicant became aware of the *ex parte* order seemingly on the eve of 31 May 2025 and without delay approached this Court on Saturday 31 May 2025. Uniform rule 6(12)(c) demands the presence of two jurisdictional requirements, i.e. (i) First the order must have been granted on an urgent basis and (ii) secondly, the order must have been granted in the absence of a litigant. I am satisfied that both requirements were met for the reconsideration of the order. In consequence I find that this matter is sufficiently urgent to be heard outside the normal time frames of this Court's practice directives and other authorities relating to the urgency of this nature.
4. Without dealing extensively with the facts and merits of the matter at hand because for obvious reasons it is not necessary, it is important to mention that on 22 May 2025 an altercation ensued at the premises of the Applicant. I will deal with the issue and consequences of full and

frank disclosure, more specifically within the context of *ex-parte* applications, in more detail herein below. On 23 May 2025, the Applicant, through its appointed representative(s), terminated the verbal lease agreement *alternatively* the verbal service level agreement with the First Respondent with immediate effect. The lawfulness and validity of such immediate termination of the verbal agreement is not before me for consideration. It is common cause that the Second Respondent and her husband, Mr Langa's access to the Applicants premises was terminated on 23 May 2025 with the so-called letter 'banning' them from its premises.

5. Although the First and Second Respondent provided an explanation as regards the procedures, avenues, and processes they followed from 23 May 2025 until 30 May 2025, they were fully aware that the Applicant was legally represented and written communication during the aforesaid period ensued between the respective legal representatives of the parties. Notwithstanding this knowledge the First and Second Respondent elected to approach this Court on an urgent *ex-parte* basis.
6. It follows that exceptional circumstances must be present to approach Court on an urgent *ex-parte* basis and that the duty of full disclosure as

encapsulated in the concept of *uberrima fides*, or utmost good faith must be upheld by the Respondents.

7. The reasons advanced by the Respondents for approaching the Court on an *ex parte* basis as they did, includes *inter alia* reference to a function (wedding) which at that stage was two days away and if notice were to be given to the Applicants the time periods which had to be imposed would render the application incapable of being adjudicated before Saturday 31 May 2025, leaving too little time to finalize and ensure that the wedding can proceed on Sunday, referring to 1 June 2025- my emphasis. The Respondents made further reference to other functions commencing 5 June 2025 to 26 June 2025. I am not persuaded that the reasons advanced by the Respondents constitute exceptional circumstances to invoke a procedure with the exclusion of the Applicant whereby they were entitled to receive notice or to be heard by the Court on 30 May 2025. This preservation of *audi alteram partem* principle remains trite.
8. Turning to the principle of the Respondents duty in disclosing all facts and circumstances and upholding the principle of *uberrima fides*, or utmost good faith, the following is of importance:

- 8.1 The Second Respondents version of the 22 May 2025 event includes, *inter alia* that she had an altercation with Mr Freeman. This related to a dispute where the Second Respondent had parked her vehicle and the removal thereof. Thereafter she phoned her husband for emotional support. The Second Respondents husband, Mr Langa, upon hearing how distraught the Second Respondent was, came to the Applicants premises. Mr Langa entered the Applicants premises at a high speed and whilst emotional and furious regarding how Mr Freeman treated the Second Respondent went to search for Mr Freeman and confront him. Mr Langa was unable to locate Mr Freeman and before he left, he informed staff members of the Applicant to tell Mr Freeman he must stop threatening the Second Respondent. Mr Langa, still angry, used bitter words in order to deliver a strong message to Mr Freeman. The Second Respondent denied that Mr Langa threatened or intimidated Mr Freeman's person or his life. The Second Respondent stated that she was not present when Mr Langa entered the Applicants' premises and searched for Mr Freeman. Further, the Second Respondent stated that at no time was any person or patron's life threatened or were they threatened with a firearm. The Second Respondent vaguely

mentioned that the Applicants main complaint is the alleged conduct of her husband and two other persons, which is denied. She stated that she was not involved in the conduct complained of by the Applicant.

8.2 The Applicant deponent stated that Mr Freeman requested the Second Respondent to remove her vehicle from the loading zone, because of a board meeting taking place on 22 May 2025 at the Applicants' premises. The Second Respondent refused to do so and became hysterical and verbally abused, Mr Freeman. The Second Respondent made a telephone call to which the Applicants deponent presumed to be to her husband. Thereafter Mr Langa entered the Applicants' premises at high speed together with two accomplices driving their own vehicles. The two accomplices were large men brandishing firearms. It is stated on behalf of the Applicant that the two accomplices were summoned to the Applicants premises to intimidate, threaten and cause harm to the Applicants employees and specifically Mr Freeman.

8.3 Upon their attempts to enter the Applicants premises, a security officer employed by the Applicant, Mr Masuanyisa requested the

men to leave their firearms at reception in safe custody. Mr Masuanyisa was assaulted by one of Mr Langa's accomplices. Mr Langa shouted for Mr Freeman and verbally made threats to kill him in the presence of staff members and guests. The Applicant presented three witness statements by its security personnel, Mr Dineo Motladi, Mr Dineo Mabotja, and Mr Nyambeni Masuantise all confirming at least verbal threats directed by the Second Respondents husband, Mr Langa to Mr Freeman. The Applicants version is that following the incident as aforesaid it terminated the verbal lease and/or service agreement with the First Respondent, and it proceeded to "ban" or exclude the Second Respondents and her husband's access from its premises for the safety and well-being of its employees and customers.

- 8.4 I perused the video footage material of the 22 May 2025 incident and could establish that Mr and Mrs Langa, the Second Respondent, did meet at some stage when he entered the Applicants building premises and further that a physical altercation did take place during the periods 08:03 to 08:04 at the Applicants premises. The Respondents did not disclose the

aforesaid information. The Respondent furthermore failed to disclose in specific detail that the two other men accompanied Mr Langa in their own vehicles or exactly what their purpose, intention and role was for attending or accompanying Mr Langa to the Applicants premises or that life terminating threats were made by Mr Langa to Mr Freeman. The Second Respondent vaguely stated that Mr Langa was emotional and furious and used bitter words in order to deliver a strong message to Mr Freeman.

- 8.5 I am of the view that the Second Respondent cannot distance herself from the turmoil and discord that unfolded on the 22nd of May 2025 at the Applicants premises. If it was not for the telephone call by the Second Respondent to her husband, whether she summoned him and his accomplices to the Applicants premises or whether they attended the Applicants premises of their own accord, the preposterous and illegal conduct as explained herein *supra* and in the affidavits before me could have been avoided in *toto*.

9. I am of the view that the Respondents failed in their duty of full disclosure encapsulated by the concept of *uberrima fides*, or utmost good faith in applications of this nature.
10. In **LW v KCA** [2023] 4 All SA (GJ) (13 October 2023), the court reiterated that a party seeking relief *ex parte* has a duty of utmost good faith to disclose all material facts impacting the court's decision, including potential defences that might favour the refusal of the relief sought. Failure to comply with this duty can result in the court setting aside the interim protection order on the return date, even if the non-disclosure was not willful or in bad faith.
11. In **Schlesinger v Schlesinger** 1979 (4) SA 342 (W), the court outlined the essential elements of this duty. This principle was further elaborated in **Recycling and Economic Development Initiative of South Africa v Minister of Environmental Affairs; Kusaga Taka Consulting (Pty) Ltd v Minister of Environmental Affairs** 2019 (3) SA 251 (SCA). The Supreme Court of Appeal emphasized that the utmost good faith must be observed in *ex-parte* proceedings, and all material facts must be

disclosed¹. The withholding or suppression of material facts entitles a court to set aside an order, even if the non-disclosure was not willful or mala fide. The SCA further emphasized that *ex parte* applicants assume a “heavy responsibility” to neutralize the prejudice the affected party may suffer by their absence. This includes disclosing all relevant adverse material that the absent respondent might have put up in opposition to the order.

12. In **Schlesinger v Schlesinger**, the court outlined the foundational principles regarding non-disclosure in *ex parte* applications. The court held that:

12.1 All material facts must be disclosed that might influence a court in coming to a decision.

12.2 The non-disclosure or suppression of facts need not be willful or mala fide to incur the penalty of rescission.

¹ **Thint (Pty) Ltd v National Director of Public Prosecutions and others; Zuma and another v National Director of Public Prosecutions and others** 2008 (12) BCLR 1197 (CC).

12.3 The court, when apprised of the true facts, has the discretion to set aside the order obtained on incomplete information or to preserve it.

13. The judgment in **Schlesinger** established that the duty of full disclosure is not merely a procedural formality but a substantive requirement that underpins the fairness and integrity of the judicial process.
14. The rationale behind this strict duty is that *ex-parte* proceedings are a significant departure from the *audi alteram partem* rule, a fundamental principle of justice that requires all parties to have the opportunity to be heard. In the absence of the respondent, the applicant must effectively speak for the absent party, presenting all relevant information, including potential defences. In **Powell NO and others v Van der Merwe and others** [2005] 1 All SA 149 (SCA) at pars 66 – 76 the following legal principles were stated:

[66] ... In my view the applications for the search warrants (paragraphs 3044 of Cameron JA's judgment) were fatally flawed by the misstatement of the material facts and this, in

itself, justified the setting aside of the warrants and the return of the documents and other things seized.

[67] *A search and seizure warrant obtained ex parte places a formidable weapon in the hands of the Director of IDSEO. It authorises the Director and his staff to enter and search the premises of the person involved without prior notice and to seize and retain documents and other things relevant to the suspected offence. Such an operation is a profound violation of the right of privacy.*

[68] *In **Investigating Directorate: Serious Economic Offences and others v Hyundai Motor Distributors (Pty) Ltd and others: In re Hyundai Motor Distributors (Pty) Ltd and others v Smit NO and others** 2001 (1) SA 545 (CC) [also reported at 2000 (10) BCLR 1079 (CC) Ed] the Constitutional Court considered how the right to privacy is protected by the provisions of the National Prosecuting Authority Act 32 of 1998 ("the NPA Act") where the director seeks a search and seizure warrant for the purpose of a*

preparatory investigation. The court identified a number of essential safeguards.

[69] ...

[70] *Second, the investigating directorate is required to place before a judicial officer an adequate and objective basis to justify the infringement of the right to privacy. The legislation sets up an objective standard that must be met prior to the violation of the right, thus ensuring that search and seizure powers will only be exercised where there are sufficient reasons for doing so (paragraph 55).*

[71] *Third, there must be authorisation by a judicial officer before a search and seizure of property takes place: an investigating director may not search and seize property, in the context of a preparatory investigation, without prior judicial authorisation (paragraph 35). It must appear to the judicial officer, from information on oath or affirmation, that there are reasonable grounds for believing that anything connected with the preparatory investigation is, or is*

suspected to be, on such premises. The judicial officer is required, among other things, to be satisfied that there are grounds for a preparatory investigation and in order to be satisfied the judicial officer must evaluate the suspicion that gave rise to the preparatory investigation as well as the need for a search for purposes of a preparatory investigation (paragraph 36). It is implicit in section 29(5) that the judicial officer will apply his or her mind to the question whether the suspicion which led to the preparatory investigation, and the need for the search and seizure to be sanctioned, are sufficient to justify the invasion of privacy that is to take place. On the basis of the information, the judicial officer makes an independent evaluation and determines whether or not there are reasonable grounds to suspect that an object that might have a bearing on a preparatory investigation is on the targeted premises (paragraph 37). It is also implicit in the legislation that the judicial officer should have regard to the provisions of the Constitution in making the decision (paragraph 38).

[72] *Despite these safeguards the application for the warrant can be made ex parte on the strength of what the investigating director chooses to place before the judicial officer. In such a case, before the warrant is executed, the person who is targeted by the warrant does not have an opportunity to contest the facts relied upon by the investigating director or to place his or her version before the court. By then, the sentimental damage and damage to his or her good name and reputation and probably professional and business interests will have occurred. These factors emphasise the necessity for a proper "adequate and objective basis" to be placed before the judicial officer who is requested to authorise the warrant. All the safeguards referred to in **Hyundai** (supra) will be negated if the material facts are misstated to the judicial officer or material facts are withheld. If this occurs the judicial officer cannot properly consider whether the warrant should be authorised or not. These factors also illustrate the necessity for the rules relating to proper disclosure of material facts in ex parte applications to be strictly and rigorously applied.*

[73] In **National Director of Public Prosecutions v Basson** 2002 (1) SA 419 (SCA) [21] [also reported at [2002] 2 All SA 255 (A) Ed] this court expressly approved of these rules as they are set out in **Schlesinger v Schlesinger** 1979 (4) SA 342 (W) at 348E349B, concluding with the following three propositions:

- "(1) in ex parte applications all material facts must be disclosed which might influence a court in coming to a decision;
- (2) the nondisclosure or suppression of facts need not be wilful or mala fide to incur the penalty of rescission;
- (3) the Court, apprised of the true facts, has a discretion to set aside the former order or to preserve it."

[74] In **Schlesinger** (supra) Le Roux J also considered when a court will exercise its discretion in favour of a party who has been remiss in its duty to disclose rather than to set aside the order obtained by it on incomplete facts. He concluded (at 350BC)

"It appears to me that unless there are very cogent practical reasons why an order should not be rescinded, the Court will always frown on an order obtained ex parte on incomplete information and will set it aside even if relief could be obtained in a subsequent application by the same applicant."

[75] In my view, this approach should apply equally to relief obtained on facts which are incorrect because they have been misstated or inaccurately set out in the application for the order (compare, **Hall and another v Heyns and others** 1991 (1) SA 381 (C) at 397BC) or, as in this case because they have not been sufficiently investigated. And it should be rigorously applied where a right in the Bill of Rights has

been violated. That is the only way that the courts can ensure that the right to privacy is vindicated after the event.

[76] The purpose of rigorously applying the rule and setting aside the decision to authorise the warrant is not to punish the director as was stated by the court below. It is to maintain the legality of the process. Infringement of the right to privacy by a search and seizure warrant is justifiable only if the correct facts have been placed before the judicial officer in an objective manner so that he can properly apply his mind. The process will be fatally flawed if incorrect facts are placed before him.”

15. As stated, the duty of full disclosure is not merely a procedural formality but a substantive obligation that ensures fairness and justice.
16. In the article **“The Duty of Utmost Good Faith in Asset Forfeiture Jurisprudence – Some Lessons to Learn,”** written by Mr. Nkululeko Christopher Ndzengu, Regional Head of the Asset Forfeiture Unit, Eastern Cape, and Mr. John C. Von Bonde, Senior Lecturer of Criminal and Procedural Law at Nelson Mandela Metropolitan University, Port

Elizabeth, the authors discuss the principle of utmost good faith in ex parte applications. They underscore that the duty of full disclosure is essential to prevent the abuse of ex parte procedures and ensure that justice is served fairly (Ndzengu & Von Bonde, 2023).

17. I am of the view that the reconsideration application is about the procedure and not any other issue and therefore I need not deal with those aspects. The reconsideration if upheld, does not bring an end to the matter.
18. I am of the view that the existing interim order has created an injustice to the Applicant because it was obtained in its absence on an urgent basis notwithstanding the facts presented from 23 May 2025 to 30 May 2025. I am of the view that the application ought to have been served on the Applicant (Respondent in the proceedings of 30 May 2025) and I emphasize that the facts presented by the Respondent do not qualify as exceptional circumstances in approaching this Court on an *ex-parte* basis.
19. It follows that the reconsideration application must succeed.

ORDER

Having considered the papers and the submissions made before me, the following order is made:

- (a) The requirements of form and service as provided for in the rules, insofar as necessary, are dispensed with and the application for reconsideration of the *ex parte* order is heard as one of urgency in terms of the Uniform Rules of Court.
- (b) The order granted *ex parte* (Part A) against the Applicant (Respondent on 30 May 2025) on 30 May 2025 in its absence by Bresler AJ is hereby reconsidered and set aside.
- (c) The First and Second Respondents (First and Second Applicants on 30 May 2025) are ordered to pay the costs of the application for reconsideration.



ASL VAN WYK

Acting Judge of the High Court

Limpopo Division, Polokwane

APPEARANCES:

HEARD ON : 1 JUNE 2025

JUDGMENT DELIVERED ON : **2 JUNE 2025** . This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be at **14:00**

FOR THE APPLICANT
(IN RECONSIDERATION) : **Mr JOHAN MOOLMAN**

INSTRUCTED BY : KNOWLES HUSSAIN LINDSAY INC
C/O PRATT LUYT & DE LANGE
POLOKWANE

FOR THE RESPONDENTS
IN RECONSIDERATION : **ADV SS GREEN**
INSTRUCTED BY : DDKK ATTORNEYS
POLOKWANE

ОКЛАЕИНОР