



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: 3195/25

In the matter between:

**THE INSTITUTE OF MARKET AGENCIES
OF SOUTH AFRICA (IMASA)**

Applicant

and

**THE CITY OF MATLOSANA LOCAL
MUNICIPALITY**

First Respondent

THE EXECUTIVE MAYOR OF

THE CITY OF MATLOSANA

Second Respondent

THE MINISTER OF PUBLIC WORKS

AND INFRASTRUCTURE

Third Respondent

THE MINISTER OF COOPERATIVE

GOVERNANCE AND TRADITIONAL AFFAIRS

Fourth Respondent

THE MINISTER OF TRADE, INDUSTRY

& COMPETITION

Fifth Respondent

THE MINISTER OF AGRICULTURE

Sixth Respondent

THE MEC FOR THE NORTH WEST

DEPARTMENT OF ECONOMIC DEVELOPMENT,

ENVIRONMENT, CONSERVATION & TOURISM Seventh Respondent

AGRICULTURAL PRODUCE AGENTS'

COUNCIL (APAC)

Eighth Respondent

ABSA BANK LIMITED (KERK ST KLERKSDORP

BRANCH)

Ninth Respondent

FRESHLINQ (PTY) LTD

Tenth Respondent

Coram: Reddy J

Heard: 12 February 2026

Reserved: 12 February 2026

Delivered: This judgment was electronically circulated to the parties' legal representatives by e-mail and released on SAFLII. The date and time of hand down are deemed to be 12 May 2026 at 16h00.

Summary:

Interdicts — Interim — Requirements — *Setlogelo* test — Application against organ of state — Municipality in persistent non-compliance with court order for four years — All four requirements for interim interdict

established — No adequate alternative remedy where prior money judgment ignored — Structural interim relief competent.

Interdicts — Structural interdict — Against municipality — Removal of municipal officials from operational control of disbursement function — Appointment of private mandatee on municipal bank account — Whether order impermissibly impacts running of municipality — Funds held in trust not municipal money — Municipal Finance Management Act 56 of 2003 not applicable to trust funds belonging to third parties — Order constitutionally grounded in sections 165 and 172 of Constitution — Order proportionate, interim and reversible — Relief competent.

Municipalities — Fresh produce market — Agricultural Produce Agents Act 12 of 1992 — Market agent's trust funds — Municipality collecting sale proceeds as conduit — Obligation to disburse 95% of proceeds to market agents within 48 hours — Persistent non-compliance with court order — Structural interim relief granted.

Contempt — Non-compliance with court order — Prior court order ignored for four years — Municipality failing to return to court to seek variation — No explanation for non-compliance — Opposition consisting of inadmissible hearsay — Further compliance order futile on facts — Structural enforcement mechanism appropriate.

Costs — Attorney and client scale — Organ of state — Municipality maintaining opposition on inadmissible and objectively contradicted evidence — Four years of non-compliance with court order — Complexity of litigation requiring two counsel — Attorney and client costs awarded jointly and severally against Municipality and Executive Mayor in official capacity.

JUDGMENT

REDDY J

Introduction

[1] This application is brought by the Institute of Market Agencies of South Africa ("IMASA"), a voluntary association representing registered fresh produce market agents, against the City of Matlosana Local Municipality ("the Municipality") and nine other respondents. The application arises from the Municipality's failure to make timely payments to market agents operating at the Matlosana Fresh Produce Market at Klerksdorp ("MFPM"). IMASA seeks interim relief in Part A to address the Municipality's continued non-compliance with its payment obligations, pending the determination of the relief sought in Part B.

[2] The application was initially enrolled on the urgent roll on 22 August 2025 but was struck from that roll for lack of urgency. It thereafter proceeded on the opposed motion roll and was argued before me on 12 February 2026.

The parties

[3] To navigate the application properly, an accurate description of the parties is essential. The applicant is the Institute of Market Agencies of South Africa ("IMASA"), a voluntary, non-profit association registered under the Companies Act. It comprises market agencies and individual market agents who operate at fresh produce markets throughout South Africa, including at the MFPM.

[4] The first respondent is the City of Matlosana Local Municipality ("the Municipality"), a local authority constituted under the Local Government Municipal Systems Act 32 of 2000 and the Local Government: Municipal Structures Act 117 of 1998. The Municipality owns and operates the MFPM. The second respondent is the Executive Mayor of the City of Matlosana, cited in his official capacity.

[5] The third to seventh respondents are organs of state, being the Ministers of Public Works and Infrastructure, Cooperative Governance and Traditional Affairs, Trade Industry and Competition, and Agriculture respectively, and the MEC for the North West Department of Economic Development, Environment, Conservation and Tourism cited by reason of the statutory and regulatory framework governing fresh produce markets.

[6] The eighth respondent is the Agricultural Produce Agents Council ("APAC"), the regulatory body established under the Agricultural Produce Agents Act 12 of 1992 ("the APA Act") that registers and oversees market agents, including all IMASA members. The ninth respondent is ABSA Bank Limited (Kerk Street, Klerksdorp Branch), the financial institution holding the MFPM's closed trust account ("the Bank Account"). The tenth respondent is FreshLinq (Pty) Ltd ("FreshLinq"), the private company that

administers the Freshmark payment and accounting system ("the Freshmark system") deployed at the MFPM to record all daily sales and regulate the disbursement of funds to market agents.

The way the Market system operates

[7] The MFPM operates within a well-established statutory and commercial framework that has been in place for decades. Market agents are appointed by farmers and producers to sell their fresh produce on a commission basis. Buyers attend the market and purchase produce; payment for these purchases is made into the Municipality's Bank Account at ABSA Bank. In law, this account is a closed trust account. The proceeds received therein do not belong to the Municipality but are held in trust on behalf of the market agents and, ultimately, the producers.

[8] The Municipality is entitled to retain a commission of five percent of the gross proceeds from each sale. The remaining ninety-five percent must be transferred daily to the trust account of the relevant market agent, who, in turn, accounts to the producer within five business days of the sale. This obligation arises from both the parties' contractual arrangements and Rule 32 of the rules made under the APA Act, which requires market agents to effect electronic payment to their principals (the producers/farmers) no later than five business days after the fresh produce is sold.

[9] Immediate payment by the Municipality to market agents is therefore not merely a commercial obligation. It is a legal imperative that enables market agents to fulfil their downstream obligations to producers under the APA Act. The Freshmark system was specifically designed to record all daily transactions and to facilitate immediate disbursement upon the

conclusion of each sale. The Municipality's failure to process disbursements in a timely manner thus places market agents in an impossible position, as they cannot pay producers within five business days when the Municipality has retained the proceeds beyond that period.

[10] The consequences of delayed payment cascade through the chain. Market agents, starved of the funds they are owed, cannot meet their obligations to producers. Producers, dependent on the timely receipt of their selling price, cannot fund the next production cycle. The knock-on effect on the agricultural sector that relies on the MFPM is, on the evidence before me, severe and ongoing.

The court order of 4 March 2021 and the non-compliance thereof

[11] The Municipality's non-compliance with its payment obligations is not a recent development. According to Mr Hooghiemstra, the Municipality has been in contravention of its payment obligations since at least 2018. Accordingly, in 2021, the market agents were compelled to approach this Court. On 4 March 2021, this Court granted an order that is not challenged and remains extant, directing, inter alia, that the Municipality comply with future payment obligations by paying ninety-five percent of the capital amounts received on the market agents' behalf within forty-eight hours, and further directing that the Municipality pay the costs of that application on the attorney-and-client scale.

[12] A crucial feature of the 2021 proceedings was that a money judgment was entered against the Municipality in favour of IMASA's members for failure to pay amounts already due at that time, totalling R1,166,786.00.

[13] Notwithstanding these orders, the Municipality has continued to treat its obligations with indifference. The founding affidavit, deposed to on 21 August 2025, demonstrates that, as at that date, market agents had not been paid for produce sold on 15, 16, 18 and 19 August 2025, which was already more than five days overdue. The outstanding payment on the reconciliation for one market agent, Subtropico Market Agents (Pty) Ltd, continued to escalate on a daily basis. WL Ochse & Kie (Klerksdorp) (Pty) Ltd was in an even worse position, with outstanding amounts going back considerably further. These are not isolated incidents; they are symptomatic of a systemic and persistent failure.

[14] IMASA avers that the Municipality has been wholly oblivious to the obligations imposed upon it by the 2021 order of court and that, notwithstanding years of correspondence and meetings, it has simply disregarded those obligations. I accept this evidence. It stands unrebutted.

The Rule 30(2)(b) application

[15] Before addressing the merits of the interim relief, I must deal with the first and second respondents' notice in terms of Rule 30(2)(b) read with Rule 30A(1) of the Uniform Rules of Court, in which they sought to strike out the supplementary affidavit filed by the tenth respondent (FreshLinq) on 4 February 2026. The Municipality contended that the supplementary affidavit constituted an irregular step because FreshLinq had previously elected to abide by the Court's decision.

[16] I disagree. FreshLinq is a party to these proceedings. As the administrator of the Freshmark system, it has a direct and substantial interest in the outcome. FreshLinq's supplementary affidavit does no more than

contextualise and comment upon documents that the Municipality itself disclosed in response to the applicant's Rule 35(12) notice. Specifically, the affidavit explains, from the perspective of an experienced market operator, why the documents discovered by the Municipality cannot demonstrate that the MFPM's finances are in order, and identifies the absence of key reconciliations that any proper accounting audit would require.

[17] To my mind, this does not introduce a new cause of action or new evidence in the prohibited sense. The Rule 30 procedure is not a mechanism for suppressing inconvenient evidence. Prejudice is a jurisdictional prerequisite for such relief. The Municipality has demonstrated no prejudice to the further conduct of this litigation. Any alleged prejudice can be addressed in Part B of the application. Accordingly, the Rule 30 application fails, and I allow the affidavit to stand.

Submissions of the applicant

[18] Advocate de Beer SC submitted that the applicant has established all four requirements for an interim interdict. He submitted, first, that IMASA has a clear *prima facie* right arising from the contractual arrangements between the market agents and the Municipality, the express provisions of the APA Act and its rules, and the court order of 4 March 2021, which has never been set aside or suspended. Advocate de Beer SC argued that the ABSA Bank Account holds funds that are trust monies in law and that the Municipality's continued retention of those funds constitutes an ongoing unlawful act.

[19] Advocate de Beer SC contended that irreparable harm was self-evident. The inability of market agents to pay producers within five business

days of sale exposed them to regulatory sanctions by APAC, potential deregistration, and reputational harm that could not be adequately remedied by a damages award after the fact. Moreover, Advocate de Beer SC claimed that the harm was cumulative: each day of non-compliance increased the shortfall owed to agents and producers alike, and the financial cascade had already begun to undermine the viability of certain market agencies.

[20] On the balance of convenience, Mr de Beer SC asserted that the relief sought was narrowly tailored; it did not dispossess the Municipality of its market or its infrastructure. It merely removed municipal officials from control of the Bank Account and placed oversight of disbursements with FreshLinq, as the technical administrator of the Freshmark system, with Mr Hooghiemstra of IMASA as the authorised signatory. Importantly, Mr de Beer SC maintained that this arrangement precisely mirrored the position the parties were always contractually and legally obliged to be in, and that the Municipality would suffer no cognisable prejudice.

[21] Regarding the absence of any other adequate remedy, Mr de Beer SC pointed to the history of non-compliance. He submitted that the 2021 money judgment and compliance order had been completely disregarded, and that any further monetary or contempt remedy would be equally futile unless operational control over the disbursement mechanism were first restored. The structural relief sought in Part A was therefore the only remedy capable of providing meaningful redress.

The first and second respondents' opposition

[22] Advocate Chwaro, for the first and second respondents resisted the application on three principal grounds. First, Advocate Chwaro argued that

the payment delays were not attributable to any wrongful act by the Municipality, but rather to systemic delays in the South African banking clearing system, specifically the time required for payments made by buyers through various banking platforms to be reflected in the ABSA trust account. Advocate Chwaro maintains that the Municipality could affect disbursements only once the funds had cleared and were visible in the account.

[23] Second, Advocate Chwaro posits that the relief sought by the applicant was disproportionate to the alleged harm and amounted to a significant encroachment on the Municipality's executive authority over its own financial operations. He argued that the appointment of a private party as the authorised signatory on a municipal bank account effectively displaced the democratically accountable Municipal Manager from the performance of his statutory functions, and that such relief was not competent in interim proceedings.

[24] Third, Advocate Chwaro contended that IMASA failed to establish urgency in the original application and that, even on the ordinary opposed motion roll, the alleged harm was compensable in money and did not warrant the extraordinary structural relief claimed. Accordingly, the application should be dismissed with costs.

The law on interdicts

[25] The requirements for granting an interim interdict are well settled. In *Setlogelo v Setlogelo*¹ our jurisprudence as regards interdicts was authoritatively decided and has been consistently applied in our law. An

¹ *Setlogelo v Setlogelo* 1914 AD 221 page 227.

applicant must establish (a) a *prima facie* right, even if open to some doubt; (b) a well-grounded apprehension of irreparable harm if the interdict is not granted; (c) that the balance of convenience favours the granting of the interdict; and (d) that there is no other satisfactory remedy.²

[26] In *Webster v Mitchell*³, the court held that the applicant need only show a right that is *prima facie* established, even though open to some doubt. The strength of the right bears on the court's discretion in considering the other factors, particularly the balance of convenience. The weaker the right, the more the court will need to be persuaded that the balance of convenience clearly favours the applicant; and *vice versa*.

[27] In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*⁴ where the apex court held that a court granting interim relief must, in exercising its discretion, have regard to the prospects of success on the merits. In doing so, the court emphasised that the constitutional right of access to courts⁵ and the right of an aggrieved party not to be left without effective remedy are always relevant considerations when interim interdictory relief is sought.

[28] In evaluating irreparable harm, our courts have consistently held that harm is irreparable where monetary compensation would be an inadequate or incomplete remedy for the prejudice suffered. In *Knox D'Arcy Ltd and*

² See also *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189 and *Eriksen Motors (Welkom)Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691C.

³ Op cit fn 2.

⁴ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at para 44-45

⁵ Section 34 of the Constitution of the Republic of South Africa, 108 of 1996.

*Others v Jamieson and Others*⁶, the Appellate Division held that where the injury flows from the very conduct complained of and will continue and compound until the matter is finally resolved, the harm is irreparable in the sense relevant to interim relief.

[29] On the balance of convenience, the court must weigh the prejudice the applicant would suffer if the interdict were refused against the prejudice the respondent would suffer if it were granted. In instances where the respondent is not deprived of any right or property but merely restrained from continuing conduct it was always legally obliged not to engage in, the inconvenience to the respondent is minimal and cannot outweigh the serious ongoing harm to the applicant.

[30] Notably, a distinction must be drawn when an organ of state is the respondent in interdict proceedings. To this end, additional considerations arise. Our precedents establish that organs of state are bound by the principle of legality and the rule of law. Simply put, a court will be reluctant to allow a delinquent organ of state to take refuge in its own non-compliance with legal obligations to resist interim relief designed to restore legality.

[31] I turn to the final requirement governing interim interdictory relief. The jurisdictional requirement is that there be no other satisfactory remedy, which has been interpreted to mean no other remedy that is adequate in the circumstances, not merely the absence of any remedy whatsoever. A monetary judgment against a recalcitrant organ of state that has already demonstrated a disposition to ignore court orders is not a satisfactory alternative remedy.

⁶ *Knox D'Arcy Ltd and Others v Jamison and Others* 1996 (4) SA 348 (A) at 362G.

An evaluation of the Municipality's opposition

[32] The first and second respondents opposed the application. The essence of the opposition is as follows. Their core argument is that any delay in paying market agents is attributable to the general banking system. More specifically, this refers to delays in clearing funds deposited into the Bank Account by purchasers via various banking platforms across South Africa, which prevent the funds from being reflected in the ABSA trust account. The Municipal Manager avers that he has been "advised" of this explanation.

[33] This opposition is without merit for several reasons. First, the Municipal Manager acknowledges he was "advised" of the cause of the delays but fails to identify the source of that advice. Applying the general principles of hearsay evidence, which find equal application to affidavit evidence, his averment constitutes inadmissible hearsay. When a deponent relies not on personal knowledge but on legal advice and declines to identify the source or confirm the advice by an appropriate confirmatory affidavit, the court may decline to act on such an averment.

[34] Second, the explanation offered is contradicted by objective evidence. The Freshmark payment and accounting system is the same system utilised at the Tshwane Fresh Produce Market, one of the largest of its kind in the country and a similar system is used at the Johannesburg Fresh Produce Market. Both of those markets process deposits, payments, and disbursements using the same South African banking infrastructure, without the delays the Municipality attributes to the banking system. The Municipality's contention that late payments are beyond its control is, on the objective evidence, ill-conceived.

[35] Third, which goes to the heart of the opposition, the Municipality does not explain why it cannot comply with a court order that has been in effect for more than four years. The 2021 order imposed a clear, measurable obligation that ninety-five percent of the capital amounts received on behalf of market agents be paid within forty-eight hours. The Municipality neither appealed the order nor sought its rescission.

[36] Advocate Chwaro contended that the relief sought impermissibly displaces the Municipal Manager from statutory functions. This proposition, properly considered, is answered by the simple observation that the Municipal Manager has comprehensively failed to perform those functions in accordance with both his statutory mandate and the extant court order.

[37] To my mind, the relief is not a substitution for the Municipality's authority; it is a restoration of the legal order. The contention also invites consideration of the Municipal Finance Management Act 56 of 2003 ("the MFMA"), which vests financial management functions in the Municipal Manager, the accounting officer. That statutory framework, however, is confined to the management of municipal money. The funds collected into the Bank Account are not municipal money. They are trust monies, which, as a matter of law and on the undisputed evidence before me, belong to the market agents and ultimately to the producers. The Municipality's five percent commission is the only portion of those proceeds properly classifiable as municipal revenue. The MFMA does not and cannot authorise the Municipal Manager to retain trust funds belonging to third parties beyond the period prescribed by the APA Act and the 2021 court order. Accordingly, there is no protected statutory function under the MFMA that is displaced by the interim relief sought in Part A of the Notice of Motion.

[38] A related objection, implicit in the first and second respondents' submissions, is that the appointment of Mr. Hooghiemstra as the authorised mandatee on the Bank Account is not competent in interim proceedings. I disagree. The appointment is a minimal, specifically targeted measure, chosen because no lesser remedy has proven effective over four years of non-compliance.

[39] FreshLinq already administers the Freshmark system and is the natural technical supervisor of daily disbursements. Mr Hooghiemstra, as the representative of IMASA whose members are the direct beneficiaries of the funds held in trust, is the appropriate person to authorise those disbursements on behalf of the parties entitled to them.

[40] The relief does not transfer ownership or management of the market, dispossess the Municipality of its infrastructure, or permanently remove the Municipal Manager from office. It is interim, expressly pending the finalisation of Part B, and is fully reversible upon the final determination of this matter. It constitutes the minimum necessary relief to give effect to the rights at stake and to restore the legal order that the 2021 court order was designed to maintain.

[41] As a result of these primary findings, I accordingly reject the respondents' opposition in its entirety.

Discussion

[42] Notwithstanding my findings regarding the first and second respondents' opposition, I turn to consider each jurisdictional requirement in light of the facts to determine whether, on a balance of probabilities, the applicant has made out a cause of action for the proposed interdictory relief.

Prima Facie Right

[43] The applicant has demonstrated a *prima facie* right to the relief sought. IMASA's members are entitled by contract, by statute, and by court order to receive payment of ninety-five percent of the daily market proceeds within forty-eight hours of the conclusion of sales. That entitlement is not disputed in any substantive sense. The founding affidavit establishes that these amounts are collected by the Municipality into the closed trust account at ABSA Bank. The Municipality holds these monies not as an owner but as a conduit for funds that, by law, belong to market agents and ultimately to producers. The failure to disburse these funds timeously is a breach of that trust obligation.

[44] The right is reinforced by the court order of 4 March 2021, issued by this Court, which remains extant. The applicant need not relitigate the merits of the underlying obligation. The order establishes the right. The crisp question that follows is whether the Municipality is complying. It manifestly is not. This is not a right merely open to doubt; it is a right confirmed by court order. That being said, the applicant has met the threshold of the first jurisdictional requirement.

Apprehension of Irreparable Harm

[45] The applicant has equally successfully established the apprehension of irreparable harm. Market agents cannot indefinitely advance to producers the

proceeds of sales collected by the Municipality but not yet disbursed. The ongoing culture of non-payment increases the outstanding balance and has a prejudicial domino effect on agents. Agents who fail to pay producers within five business days breach the APA Act and their registration conditions, exposing them to regulatory sanctions by APAC, including suspension or cancellation of their registration as market agents. The prejudice is ongoing and cannot be adequately redressed by a monetary judgment alone.

[46] Advocate Chworo's claim that monetary relief, being a further judgment debt, would suffice is rejected. The Municipality has already been the subject of a money judgment and a compliance order, both of which have been disregarded. It bears emphasising the purpose and objectives of court orders. Towards this end, in, *Secretary, Judicial Commission of Inquiry into Allegations of State Capture, v Zuma and Others*⁷ the following was posited:

“It is indeed the lofty and lonely work of the Judiciary, impervious to public commentary and political rhetoric, to uphold, protect and apply the Constitution and the law at any and all costs. The corollary duty borne by all members of South African society – lawyers, laypeople and politicians alike – is to respect and abide by the law, and court orders issued in terms of it, because unlike other arms of State, courts rely solely on the trust and confidence of the people to carry out their constitutionally-mandated function.”

[47] In *Pheko (2)*⁸ Nkabinde J held that:

⁷ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC), at para 1.

⁸ *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* [2015] ZACC 10 at para 1

“(t)he rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.

Courts have the power to ensure that their decisions or orders are complied with by all and sundry, including organs of state. In doing so, courts are not only giving effect to the rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest.”

[48] In my view, there is no rational basis for me to be satisfied that a further money judgment would prompt compliance. It would simply be a superfluous exercise in futility, given the Municipality’s posture in response to orders of court granted against it. As Innes CJ observed in *Setlogelo v Setlogelo*, where the harm flows from the very conduct complained of and will recur until final relief is granted, the court of equity should not stand aside and watch the harm continue.

Balance of Convenience

[49] The balance of convenience is squarely in favour of the applicant. The relief sought in Part A does not permanently transfer management of the market to the applicant. It is expressly interim, pending the final determination in Part B. The interim order restores the position that the Municipality was always obliged, by law and court order, to maintain.

[50] On the one hand, the market agents face ongoing financial prejudice and the risk of cascading defaults to producers. On the other hand, the Municipality faces only the inconvenience of having the Bank Account operated under the supervision of a mandatee of IMASA and the oversight of FreshLinq. This is not prejudice of a kind the law recognises as weighing against relief, particularly where the Municipality's predicament is entirely of its own making.

No Other Adequate Remedy

[51] I am persuaded that there is no other adequate remedy available to the applicant. The 2021 court order has been ignored for four years. A further contempt application, while it may remain a remedy in Part B, does not address the ongoing financial prejudice to market agents and producers. Each day without compliance is another day of unlawful retention of trust monies.

[52] It follows that, where an alternative remedy in the form of a damages award or further court order would not be realistically effective against a party that has demonstrated its willingness to disregard court orders, that alternative is not a satisfactory remedy. On the evidence, no lesser remedy will restore the position required by the law.

The Rule 35 (12) Discovery

[53] I briefly note the difficulties arising from the Municipality's response to the Rule 35(12) notice. The applicant sought production of reconciliations and bank statements for the six months preceding the application, pertaining to the closed trust account. The Municipality, having referred to these documents in its answering affidavit without annexing them.

[54] Advocate De Beer SC described the documents ultimately produced as "laborious and nonsensical" and incapable of being contextualised without the supporting records that any proper audit trail would necessitate. The applicant has produced its own reconciliation of the bank statements received. This inadequate discovery fortifies rather than weakens the applicant's case. It suggests that the Municipality's financial management of the MFPM is as muddled as the applicant's evidence indicates.

Costs

[55] The applicant has been substantially successful and is entitled to its costs. Three considerations bear on the appropriate scale. First, the Municipality's opposition was without merit and rested on a factual basis, the banking delay explanation, which was both inadmissible hearsay and objectively contradicted by the evidence regarding comparable markets. Second, the Municipality has had the benefit of the 2021 court order for more than four years and chose to disregard it entirely, necessitating this application. The costs of that application ought also, in principle, to be visited upon those whose conduct made it necessary. Third, the litigation was complex, required two counsel, and involved a multi-respondent application with extensive affidavit evidence and a contested Rule 30(2)(b) application. In the exercise of my discretion, I am satisfied that the appropriate order is that the costs of Part A of this application, including the costs of two counsel where so employed, be paid by the first and second respondents jointly and severally on the scale as between attorney- and-client.

Conclusion

[56] For the foregoing reasons, I am satisfied that the applicant has established all the requirements for interim interdictory relief. The interests of justice, the protection of trust monies, and the vindication of the rule of law all point toward the granting of the relief sought in Part A of the Notice of Motion.

Order

[57] I accordingly make the following order:

1. That the first and/or second respondent be directed to immediately remove the current Market Manager and/or any municipal official responsible for the processing or authorisation of payments to all market agents from the Matlosana Fresh Produce Market ("MFPM") from operational control of the Freshmark payment and accounting system ("the Freshmark system") and the Bank Account held with ABSA Bank Limited (ninth respondent), with the following details:

1.1 Account Number: 9[...]

1.2 Account Name: NASIONALE VARSPRODUKTE MARK
KLERKSDORP

1.3 Branch Code: 334338

2. That the tenth respondent (FreshLinq (Pty) Ltd) is authorised to oversee and ensure the daily disbursement of monies from the Bank Account referred to in paragraphs 1.1 to 1.3 above to the respective trust accounts of all market agents operating at the MFPM, in

accordance with the reconciliations produced by the Freshmark system.

3. That ABSA Bank Limited (ninth respondent) is directed and authorised to effect the change of mandate on the Bank Account profile and to recognise Mr Gjalt Hooghiemstra (Identity Number: 6[...]), representing the applicant, as the mandatee authorised to effect and/or authorise all disbursement transactions in respect of the Bank Account linked to the Freshmark system, save that the first respondent shall remain entitled, without requiring the authorisation of Mr Hooghiemstra, to withdraw its commission of five percent of gross proceeds in respect of each sale at the MFPM in accordance with its ordinary entitlement.

4. That payments shall be made from the Bank Account to the respective trust accounts of all market agents, within forty-eight hours of the conclusion of each sale at the MFPM and consistent with the order of this Court dated 4 March 2021, pending the final determination of the relief sought in Part B of this application.

5. That the relief in paragraphs 1 to 4 above shall operate as an interim interdict with immediate effect, pending the finalisation of Part B of this application.

6. That Part B of the Notice of Motion is postponed *sine die*. Any party may supplement or amplify its papers for purposes of the hearing of Part B.

7. That a copy of this order be served on all market agents of the applicant operating at the MFPM.

8. That the costs of this application (Part A), including the costs of two counsel where so employed, be paid by the first and second respondents jointly and severally, the one paying the other to be absolved, on the scale as between attorney- and- client.

A REDDY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the Applicant: Adv J De Beer SC

Attorney for Applicant Instructed by Lötzt Baloyi Horn Inc., Pretoria
c/o Van Rooyen Tlhapi Wessels Attorneys,
Mahikeng

For the First and Second

Respondents: Adv OK Chwaro

Attorney for the Respondent: Modiboa Attorneys Inc
Mahikeng