



Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Before: The Hon. Mr Acting Justice De Waal
Date of hearing: 13 November 2023
Date of judgment: 16 November 2023

Case No: 16103 / 2022

THE STANDARD BANK OF SOUTH AFRICA LIMITED	First Applicant
GORDON, JAYSON	Second Applicant
FORD, LLEWELLYN	Third Applicant
GREEN, KYLEN	Fourth Applicant
LANTERMANS, SHAUN	Fifth Applicant
and	
THE MASTER OF THE HIGH COURT, CAPE TOWN	First Respondent
ALAN RICHARD NEWTON N.O.	Second Respondent
JOHANNES HENDRIKUS DU PLESSIS N.O.	Third Respondent
AYESHA MOHAMED AYOB N.O.	Fourth Respondent
CRATOS CAPITAL (PROPRIETARY) LIMITED	Fifth Respondent
CYGNE BLEU (PROPRIETARY) LIMITED (IN LIQUIDATION)	Sixth Respondent

JUDGMENT

DE WAAL AJ:

[1] In the main application in this matter, the Applicants are seeking an order that, insofar as they are concerned, the ss 417 / 418 inquiry held in terms of the Companies Act 61 of 1973 into the affairs of the Sixth Respondent (Cygne Bleu) is an abusive proceeding and that the evidence given on 13, 14 and 15 July 2022 by the Second to Fifth Respondents at the inquiry be set aside.

[2] Given the volume of paper (some 9 lever arch files), the matter came to me as an early allocation. I noticed that the Third and Fourth Respondents (“the liquidators”) brought an application to file a further affidavit (“the further evidence application”) and a strike-out application on 18 October 2023, i.e. some three weeks before the date allocated for the hearing. This application was opposed by the Applicants, who in turn indicated that they intended to bring a strike-out application of their own in respect of allegations in the liquidators’ founding affidavit in the further evidence application. I then convened a meeting of the parties’ legal representatives for 6 November 2023 at which it was decided that the main application would not be heard on 13 November 2023 and that the day would rather be used for argument on the various interlocutory applications and the issue of the costs of the postponement of the main application. I provided directions in respect of timelines for the filing of further papers in the interlocutory applications.

[3] It turned out that there are five issues for me to decide:

- 3.1. The liquidators’ application to strike out four paragraphs of the Applicants’ replying affidavit in the main application and annexure “**RA1**” thereto;

- 3.2. The Applicants' application to strike out eleven paragraphs of the founding affidavit in the liquidators' further evidence application;
- 3.3. An application by Mr W Lüderitz SC ("Mr Lüderitz") and Mr Colin Strime ("Mr Strime"), i.e. the senior counsel and attorney acting for the Applicants, to intervene in the proceedings in their personal capacities;
- 3.4. The liquidators' further evidence application; and
- 3.5. The wasted costs of the postponement of the main application.

[4] I deal with the five issues in the above order. The background to the first issue (the liquidators' strike-out) gives sufficient background to the other applications.

The liquidators' strike-out application

[5] The liquidators' strike-out application relates to the following subparagraphs in the Applicants' replying affidavit:

- 5.1. "8.11.2 I also take liberty at this stage of attaching as "**RAI**" a judgment of a commercial judge in the Johannesburg High Court, Her Ladyship Justice Opperman ("**Judge Opperman**") in which she has made severe and almost identical findings against Du Plessis in another matter in which he holds a joint appointment as liquidator. This is not a new matter. Mr Du Plessis is well aware of this judgment."

5.2. “8.11.3 I am advised that the applicants’ counsel will deal with this judgment and its significance to this application in argument at the hearing.”

5.3. “8.11.4 In it, Du Plessis unscrupulously favoured certain creditors above other creditors in a liquidation. That is precisely what has taken place in the 6th respondent’s insolvency. Here, Du Plessis has clearly favoured, worked with, acted on the instructions of the 5th respondent and thereby prejudiced and acted contrary to the interests of the remaining creditors of the 6th respondent. As the 5th respondent state in their answering affidavit:

55.1 I admit that Cratos funded the Inquiry.

55.2 Cratos is acting in its own interests, as it is entitled to do.

55.3 The liquidators are acting in the estate’s best interests.

55.4 The interests are aligned.

55.5 There is nothing precluding the liquidators from using the evidence derived at the Inquiry for any actions they may wish to take against Standard Bank, the JSE or any other party.”

[6] The judgment referred to in paragraph 8.11.2 of the Applicant’s replying affidavit is that of Opperman J in the matter of *Barak Fund SPC Ltd v Insure Group Managers and*

Another and related matters,¹ which is available on SAFLII. This matter has been referred to in the affidavits as “the *Ericode* matter” and shall do the same.

[7] From the Applicants’ answering affidavit in the liquidators’ strike-out, it appears that the intention of the Applicants was indeed to contend that the present ss 417 / 418 inquiry forms part of a pattern of conduct on the part of the Third Respondent (“Du Plessis N.O.” or “Mr Du Plessis” when referred to in his personal capacity) which is that he is “*habitually willing – and despite being publicly admonished by the court – to allow his office to be abused by a single creditor*”. It was contended further in this affidavit by the Applicants that the judgment of Opperman J is relevant, both at a factual level and also as authority for the legal proposition that a liquidator must act impartially.

[8] At the beginning of the hearing of the matter, Mr Claassens, who appeared for the liquidators, indicated to me that they are not persisting with the strike-out application. This disposed of the first issue, save for the issue of costs. Given the withdrawal of this interlocutory application I can see no reason why the liquidators should not pay the cost thereof.

The Applicants’ strike-out application

[9] To my mind it is logical to deal with the Applicants’ strike-out application next. The Applicants’ strike-out is directed at the founding affidavit in the liquidators’ further evidence application. Before determining the latter it is necessary to determine what the evidence sought to be introduced is, i.e. whether any part of the founding affidavit should be struck out.

¹ Case numbers: (2021/43053; 2021/47302; 2021/50157;2021/41947) [2022] ZAGPJHC 469 (12 July 2022).

[10] The background is the *Ericode* matter referred to above.

[11] Mr Lüderitz did not act for Du Plessis N.O. in that matter but was asked in or about July 2022 to advise on the prospects of successfully applying for leave to appeal against the judgment of Opperman J. The groundwork for the opinion was done by junior counsel, Mr P Lourens (“Mr Lourens”). The advice was that there were no prospects of success in overturning the cost order *de bonis propriis* made against Mr Du Plessis and his attorney Mr D Schikerling (“Mr Schikerling”) in that matter. Despite the advice, Du Plessis N.O. and Mr Schikerling nevertheless went ahead and filed an application for leave to appeal which was eventually withdrawn before the hearing on the advice of another senior counsel, Mr S Van Rensburg SC (“Mr Van Rensburg”).

[12] Referring to the above, Du Plessis N.O. makes the following allegations in the founding affidavit of the further evidence application:

“13. *My concern and complaint is that the same Lüderitz who acted on my behalf and instructed by Derick Schikerling is using that information against me in the present [the main] application.*

15. *I respectfully submit that the only possible basis for Advocate Lüderitz to have given the opinion against me and advising my attorney of record in the Ericode matter to withdraw the appeal was calculated by Advocate Lüderitz in order to use such information against me in an attempt to besmirch my good name and to bring me into disrepute with this court. This is behaviour unbecoming of a professional, especially the calibre of a senior counsel of the Republic of South Africa. Further, if the attorney for the Applicant, Mr Strime, was aware of this, it further raises issues with regard to Mr Strime’s integrity as Mr Strime being a senior practitioner, should know very well that this should not ever happen.*

16. *I respectfully submit that not only is this improper and falls to be investigated by the Legal Practitioner (sic) Counsel (sic) but is also extremely prejudicial.*

...26. *It is somewhat dishonest that the very same advocate who was instructed to provide an opinion and prepare a notice of leave to appeal, for which he charged fees in the amount of [omitted], **NOW** intends to deal with my alleged unscrupulous behaviour.*

...26. *It is such unprofessional behaviour by Lüderitz and Strime that necessitates this further affidavit."*

[13] Given that the attack was levelled against Messrs Lüderitz and Strime, they sought leave to intervene in the matter in their personal capacities. That intervention application and the Applicants' strike-out application were argued by Mr C Eloff SC.

[14] Mr Eloff described the above paragraphs to amount to a vicious personal attack against Messrs Lüderitz and Strime in a manner which was scandalous, vexatious and prejudicial to the Applicants and Messrs Lüderitz and Strime.

[15] I cannot but agree. I say this for the reasons set out below.

[16] Firstly, the opinion prepared by Messrs Lüderitz and Lourens was provided to Du Plessis N.O. on 25 July 2022. The main application was launched on 23 September 2022. The opinion accordingly preceded the main application (and particularly the replying affidavit therein which was filed on 13 March 2023) by many months and could not possibly have been provided to besmirch Du Plessis N.O. in the present matter. It was not contended, nor could it be, that Mr Lüderitz gave the negative opinion regarding the appealability of the *Ericode* matter in order to use same in a different case months down the line. He is after all not clairvoyant.

[17] Secondly, neither Mr Lüderitz nor Mr Lourens previously acted for or on the instructions of Mr Schikerling. Mr Lüderitz had also not previously acted on the instructions of Du Plessis N.O. There was no reason for either of the two advocates to “*besmirch*” Du Plessis N.O. at the time when they compiled their opinion.

[18] Thirdly, the advice of Messrs Lüderitz and Lourens were later confirmed by Mr Van Rensburg. This advice was followed by Du Plessis N.O.

[19] Fourthly, Mr Strime became aware of the *Ericode* matter entirely independently from Mr Lüderitz. It was not disputed that Mr Strime became aware of the matter either through Caselines or because it was widely circulated between insolvency practitioners. It was Mr Strime, who was not involved in the *Ericode* matter in any shape or form, who decided to raise the alleged pattern of behaviour of Du Plessis N.O.

[20] Fifthly, it was Mr Strime (not Mr Lüderitz) who drafted the Applicants’ replying affidavit in which the *Ericode* matter was raised.

[21] From the above it is clear to me that the attacks on the integrity of Messrs Lüderitz and Strime are false and totally unwarranted. The attacks are moreover:

21.1. *Irrelevant* because they do not in fact deal with the alleged pattern of behaviour on the part of Du Plessis N.O. but instead take a swing at the professional reputations of Messrs Lüderitz and Strime for no good reason whatsoever.

21.2. *Scandalous* because they were abusive and defamatory and intended to convey that Messrs Lüderitz and Strime are dishonest and contrived a stratagem designed and calculated to besmirch Du Plessis N.O. and to bring

him into disrepute with the Court in the main application. There is absolutely no factual basis for this contention. As Mr Eloff submitted, there can be little more defamatory said of an advocate than that his opinion is based on anything other than his honest and objective judgment.

21.3. *Vexatious* in that they were worded to harass and annoy the Applicants and Messrs Lüderitz and Strime.

[22] The allegations sought to be struck out were also prejudicial to the Applicants and Messrs Lüderitz and Strime. It effectively derailed the main application and drew the focus away from that application to an irrelevant attack on the integrity of the Applicants' legal team. New counsel had to be briefed in order to deal with this irrelevant and unjustified attack.

[23] This means that the paragraphs sought to be struck out falls under all three categories listed in Uniform Rule 6(15) as interpreted by the Court in the well-known case of *Vaatz v Law Society of Namibia*.²

[24] For all these reasons, I conclude that the Applicants' strike-out application must succeed.

[25] The Applicants sought an order that Mr Du Plessis and the liquidators' attorney, Mr Jason Morris ("Mr Morris") pay the cost of the strike-out application *de bonis propriis* on the attorney-client scale.

² 1991 (3) SA 563 (Nm) at 334J – 335A.

[26] On this issue, I raised with Mr Eloff the question of whether such an order can be granted without joining Messrs Du Plessis and Morris in their personal capacities. The Constitutional Court held as follows in *Ex parte Minister of Home Affairs and Others; In re Lawyers for Human Rights v Minister of Home Affairs and Others*:³

“Possible costs order against the applicants in their personal capacities

[70] *Mindful of the fact that the applicants, the Minister and the Director General, have been cited in this application in their official capacities, the Chief Justice directed them on 7 June 2023 to show cause on affidavit why they should not be joined to the proceedings in their personal capacities and why they should not be ordered to pay the costs of the application out of their own pockets. This accords with the procedure adopted in Black Sash II, where this Court joined the Minister of Social Development for this purpose.”*

[27] The Applicants’ response to my question was twofold:

27.1. Reference was made to *Public Protector v CSARS*⁴ where the Constitutional Court held that:

“[47] . . . in this court the Public Protector alleged that she had not received notice that a personal costs order would be sought against her. According to the Commissioner this was an untruth. Indeed, the true position is that both in the notice of motion and founding affidavit filed at the High Court the Commissioner did indicate that he was seeking a personal costs order against the Public Protector. What was not done was to have her mentioned by name, Ms Busisiwe Mkhwebane, as a party. But saying that she had not received notice that a personal costs order would be sought against her was simply not true. The truth is that in her answering affidavit in the High Court she

³ (CCT 38/16) [2023] ZACC 34 (30 October 2023) at para 70.

⁴ 2022 (1) SA 340 (CC) at para 47.

stated under oath that she had read the founding affidavit in which the Commissioner sought a personal costs order against her. On the face of it, therefore, her assertion before us that there was no notice in this regard is astounding and warrants censure and perhaps more....”⁵

27.2. It was submitted that, if considered necessary, Messrs Du Plessis and Morris be called upon, within seven days, to show cause why they should not be joined in their personal capacities and pay the cost of the strike-out *de bonis propriis* on a punitive scale.

[28] On reflection I am persuaded that there is no need to join Messrs Du Plessis and Morris in their personal capacities, nor to give them another opportunity to deal with the personal and punitive cost order sought against them. As in the 2022 *Public Protector* case quoted above, both Mr Du Plessis and Mr Morris were put on terms in the notice of motion and in the founding affidavit that a personal and punitive cost order will be sought against them. They were given a fair opportunity to deal with the costs order sought. They have not done so. They have also not taken the point that they have not been joined in their personal capacities or that they would need more time to deal with the issue of personal and punitive costs.

⁵ See, also, paragraph [50] where the Court held as follows: “This sets the scene for how the Public Protector came to make the contentious assertion in the founding affidavit filed in this court that she was not given notice that a personal costs order would be sought against her. In oral argument as well, her counsel owned up to the fact that it was his idea that the Public Protector must adopt this stance [that she had not been joined in her personal capacity], an idea he wisely abandoned and did not pursue in oral argument as it was legally indefensible. So, outlandish though the Public Protector’s assertion appears to be, it would be ignoring all this reality if we were to take it at face value. What is crucial here is that the assertion was counsel’s, not the Public Protector’s, idea. We may criticise the Public Protector for failing to realise that the legal point she was obviously advised to advance was a non-starter. But can we really go far with that criticism? I think not. She got that advice from senior counsel. Of importance, we do not know whether the Public Protector has any experience in civil legal practice. And the Commissioner did not suggest that she does. That for me is the end of the matter.”

[29] In the circumstances, it would be elevating form over substance to give them yet another opportunity to show why they should not be joined in order to pay the costs personally on a punitive scale.

[30] Turning to the merits of the costs order sought, the latest formulation of the test applicable for personal and punitive cost orders is contained in the *Home Affairs* judgment, referred to above, which was handed down on 30 October 2023. The following emerged from that judgment of the Constitutional Court:

30.1. Imposing punitive cost on the one hand and cost on a personal basis are two different issues.⁶

30.2. The tests for these two costs orders may overlap but there must be an independent, separate enquiry in respect of each order. Such costs orders are “*extraordinary in nature and should not be awarded ‘willy nilly’, but rather only in exceptional circumstances*”.⁷

30.3. *Punitive* costs serve to convey a Court’s displeasure at a party’s reprehensible conduct. A punitive costs order is justified where the conduct concerned is extraordinary and deserving of a Court’s rebuke.⁸

30.4. An order to pay costs in a litigant’s *personal capacity*, on the other hand, is made where the litigant’s conduct demonstrates a gross disregard for their professional responsibilities, and where they acted inappropriately and egregiously. The assessment of the gravity of the conduct is objective and

⁶ *Public Protector* at para 91.

⁷ *Public Protector* at para 91.

⁸ *Public Protector* at para 92.

lies within the discretion of the Court.⁹ It bears emphasis that mere ignorance of the law is certainly not the reason why a Court holds legal representatives accountable. It is the egregious fashion in which the litigation has been conducted which triggers the need for such an order.¹⁰ Legal practitioners are an integral part of our justice system. They must uphold the rule of law, act diligently and professionally. They owe a high ethical and moral duty to the public in general, but in particular to their clients and to the Courts.¹¹ It is improper for counsel to act for a client in respect of a claim or defence which is hopeless in law or on the facts.¹²

[31] Applying these principles to the facts of the present case, it appears to me that both personal costs and punitive costs are warranted in respect of the Applicants' strike-out application.

[32] Beginning with personal costs:

32.1. Both Mr Du Plessis and Mr Morris are experienced practitioners.

32.2. They should have known that the attacks on the integrity of Messrs Lüderitz and Strime were irrelevant and unwarranted. There is simply no factual basis from which one can infer that there was an attempt to besmirch Du Plessis N.O.

⁹ *Public Protector* at para 93.

¹⁰ *Public Protector* at para 96.

¹¹ *Public Protector* at para 103.

¹² *Public Protector* at para 109(b).

- 32.3. The attacks were not only unwarranted but they were vicious in nature, calling into question the honesty of Messrs Lüderitz and Strime.
- 32.4. In my experience an attack of this kind, particularly given that it had no factual foundation, is almost unprecedented.
- 32.5. There can be no question that Messrs Du Plessis and Morris demonstrated a gross disregard for their professional responsibilities and acted inappropriately and egregiously.

[33] As far as punitive costs are concerned:

- 33.1. The conduct of Messrs Du Plessis and Morris was reprehensible.
- 33.2. What weighs heavily is that the opposition to the strike-out was simply hopeless. It had no reasonable factual foundation. It could not be defended by counsel acting for Messrs Du Plessis and Morris.
- 33.3. It was suggested that Mr Morris acted on instructions. That might be so but Mr Morris drafted the founding affidavit the further evidence application. That affidavit contained the scandalous allegations against Messrs Lüderitz and Strime. Mr Morris was as responsible for what was contained therein as Mr Du Plessis. The allegations regarding the integrity of Messrs Lüderitz and Strime should never have been made in that affidavit. They should never have been compelled to deal with these allegations, including seeking to intervene and appointing another senior counsel to act for them.

[34] For all these reasons I will make an order that Messrs Du Plessis and Morris are personally liable to pay the costs of the strike-out application at the punitive scale.

The intervention application

[35] Mr Eloff made clear at the hearing of the matter that the application of Messrs Lüderitz and Strime to intervene in their personal capacities is a conditional one in the sense that it only needs to be determined if the Applicants' strike-out application fails.

[36] Given that the Applicants' strike-out application is to succeed in the terms sought, there is no need to deal with the intervention application.

The further evidence application

[37] The further evidence sought to be introduced are the attacks on the integrity of Messrs Lüderitz and Strime and the entire record of the ss 417 / 418 inquiry.

[38] This Court held as follows regarding the factors to be taken into account in exercising a discretion to allow the filing of further affidavits (i.e. after the founding, answering and replying affidavits are filed) in *Kootbodien v Mitchell's Plain Electrical Plumbing & Building CC*:¹³

“[12] The factors that the court will take into account in the exercise of its discretion are the following: (a) the reason why the evidence was not produced timeously; (b) the degree of materiality of the evidence; (c) the possibility that it may have been shaped to ‘relieve the pinch of the shoe’; (d) the balance of prejudice to the applicant if the application is refused, and the prejudice to the respondent if it is granted; (e) the stage which the litigation has reached; (f) the

¹³ 2011 (4) SA 624 (WCC) at para 12.

‘healing balm’ of an appropriate order as to costs; (g) the general need for finality in judicial proceedings; and (h) the appropriateness, or otherwise, in all the circumstances, of visiting the fault of the attorney upon the head of his or her client. (See Erasmus Superior Court Practice at B1-47.)”

[39] I doubt very much whether *any* of the factors favour granting the further evidence application.

[40] Firstly, regarding the reasons why the evidence was not presented timeously, there is no proper explanation for why it took seven months after the Applicants filed their replying affidavit to bring the application for the introduction of the further affidavit. Ultimately the application was brought three weeks before the hearing date of 13 November 2023. It was contended by Du Plessis N.O. that the new material in the replying affidavit only came to his attention upon preparing for the hearing of the matter with the liquidators’ attorney of record (Mr Morris) and this only took place on 4 October 2023. Du Plessis N.O. further states that he had an extraordinary amount of estates to handle and that he had been tied up in enquiries since the replying affidavit was served. In my view, these excuses do not justify a delay of seven months. All Du Plessis N.O. had to do was to read a fairly short replying affidavit. That could not have taken him more than a few hours. Du Plessis N.O. further contends that he was searching for the opinion of Messrs Lüderitz and Lourens on his laptop but was unable to locate same. That is not a good excuse as Du Plessis N.O. could have obtained the opinion from the instructing attorney, Mr Schikerling.

[41] Secondly, as far as the degree of materiality of the further evidence is concerned, the part containing the attack on the integrity of Messrs Lüderitz and Strime have already been struck out for being, *inter alia*, irrelevant. The relevance of the entire record of

the ss 417 / 418 inquiry sought to be introduced is not explained at all. All that is stated by Du Plessis N.O. is that “*it is imperative for the abovementioned Honourable Court to read the entire transcript in relation to this matter, in order to get a full and clear picture as to the atrocities that happened in this estate*” and that “*Further serious allegations were made by most witnesses against these Applicants*”. I am not persuaded by these contentions of Du Plessis N.O. It is well-established that it is impermissible to attach a document to an affidavit without explaining in the affidavit itself what the relevance of the document is and identifying the specific portions relied upon. In the present instance this is all the more so because the transcript attached to the affidavit of Du Plessis N.O. comprises six lever arch files. It cannot be expected of the other party and the Court to decipher which parts thereof are relevant.¹⁴

[42] Thirdly, the timing of the further evidence application caused considerable prejudice to the Applicants. In short, given that it was brought so shortly before the hearing of the main application and contained very serious allegations which had to be dealt with by the Applicants, it was always going to derail the hearing of the main application. This meant that the Applicants were deprived of the opportunity to get finality regarding their involvement in the ss 417 / 418 inquiry.

[43] Fourthly, given that its contents were entirely irrelevant, the liquidators can hardly be prejudiced if the further affidavit is not admitted.

¹⁴ See *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and other* 1999 (2) SA 279 (T) where Joffe J (at 324F) held:

“Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met.”

- [44] Fifthly, the healing balm of an appropriate order as to costs cannot in the present instance fully compensate the Applicants. Due to the late stage at which the application was brought, it derailed the main hearing and deprived the Applicants of finality.
- [45] For all these reasons, the further evidence application is dismissed.
- [46] The Applicants contended that the liquidators, Mr Du Plessis and Mr Ayesha Ayob (“Mr Ayob”) should be ordered to pay the costs of this interlocutory application *de bonis propriis* on the scale as between attorney and own client.
- [47] I was initially inclined to decide the issue of costs in respect of the further evidence application on the basis of the allegations which remained after excising the paragraphs to be struck out. But on reflection, it appears to me that Mr Lüderitz, who argued this aspect for the Applicants, is correct in that the costs should be determined with reference to the application as originally brought.
- [48] It is appropriate to begin with the involvement of Mr Ayob. In his affidavit in this matter he indicates that he read the affidavit deposed to by Du Plessis N.O., being the liquidators’ further affidavit, and that he confirms the contents thereof as it relates to himself. He further confirms that Du Plessis N.O. is attending to the administration of the estate and has his authority to bring and defend any actions in any forum regarding the estate.
- [49] In my view, Mr Ayob was not, nor could he claim to be, an innocent passenger in this litigation. He signed an affidavit which is labelled as a confirmatory affidavit but it is in fact an attempt to abdicate the responsibility for bringing and defending legal actions to Du Plessis N.O. This is most unfortunate and indeed unacceptable.

[50] Any practitioner who read the affidavit of Du Plessis N.O., as Mr Ayob claimed he did, would have insisted on a proper explanation of the factual basis for the serious allegations made against Messrs Lüderitz and Strime. Mr Ayob does not claim that he did so. He accordingly must take responsibility together with Mr Du Plessis for the egregious failure to comply with their professional duties. For the reasons already set out above, a personal costs order is justified against the liquidators. The attack was irrelevant and unwarranted.

[51] Turning to the issue of punitive costs it seems to me that the same reasoning as in the strike-out applies. It was a hopeless application, both in respect of the attacks on the integrity of Messrs Lüderitz and Strime and the application for the introduction of the entire record of the ss 417 / 418 inquiry. The Applicants should never have been put through the expense and effort of opposing this hopeless case.

The postponement of the main application

[52] It is the further evidence application which caused the main application to be postponed. The postponement was the consequence of a scandalous, vexatious and hopeless application. As far as costs is concerned, it should follow the order in respect of the further evidence application.

Orders

[53] In the result, I make the following orders:

- (a) The costs of the strike-out application brought by the Third and Fourth Respondents (which was withdrawn) are to be paid by the Third and Fourth Respondents, in their official capacities.

- (b) The Applicants' application to strike out the paragraphs or parts thereof listed in paragraph 2 of the notice of motion dated 6 November 2023 is granted and the costs thereof shall be paid by the Third Respondent, Johannes du Plessis and the attorney acting for him, Jason Morris, in their personal capacities *de bonis propriis* on the attorney-client scale, such costs to include the costs of two counsel (where so employed) and they shall be liable for the costs jointly and severally, the one paying the other to be absolved.
- (c) There is no order regarding the costs of the application by Mr Werner Lüderitz and Mr Colin Strime to intervene.
- (d) The application for the admission of further evidence brought by the Third and Fourth Respondents (notice of motion dated 18 October 2023) is dismissed and the costs thereof shall be paid by the Third and Fourth Respondents, Johannes du Plessis and Ayesha Ayob, in their personal capacities *de bonis propriis* on the attorney-client scale, such costs to include the costs of two counsel (where so employed) and they shall be liable for the costs jointly and severally, the one paying the other to be absolved thereof.
- (e) The main application (notice of motion dated 23 September 2022) is postponed for hearing on a date to be allocated by the Acting Judge-President, failing which the Registrar of this Court.
- (f) The wasted costs occasioned by the postponement of the main application (referred to in paragraph (e) above), shall be paid by the Third and Fourth Respondents, Johannes du Plessis and Ayesha Ayob, in their personal capacities *de bonis propriis* on the attorney-client scale, such costs to include the costs of

two counsel (where so employed) and they shall be liable for the costs jointly and severally, the one paying the other to be absolved.

H J DE WAAL AJ
Acting Judge of the High Court
Cape Town
16 November 2023

APPEARANCES

Applicants' counsel:

C.M. Eloff SC in the Applicant's strike-out and in the intervention application; and
W. Lüderitz SC in the other interlocutory applications and the main application.

Applicants' attorneys: Fluxmans Attorneys (per Colin Strime).

Third and Fourth Respondents' (both personal and official capacities) counsel:

D Claassens.

Respondents' attorneys (both personal and official capacities): Snaid & Morris Attorneys Inc. (per Jason Morris).