

SOUTH AFRICA / JUDGMENT

BP Southern Africa (Pty) Limited v KI Energy (Pty) Limited (02523/2020) [2020] ZAKZDHC 19 (25 June 2020) [2020] ZAKZDHC 19

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Bederson

CASE / FILE NUMBER

02523/2020

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION,

DURBAN

CASE NO: 02523/2020

In

the matter between:

BP SOUTHERN AFRICA (PTY)

LIMITED

APPLICANT

and

KI ENERGY (PTY)

LIMITED

RESPONDENT

ORDER

1.

The reconsideration application is dismissed.

2.

The rule granted on 20 March 2020 is

confirmed subject to the amendments as reflected in paragraph 3

below:

3.

The Respondent is directed within fourteen (14) days of the grant of this order, to furnish to the Applicant's attorneys the following documents which relate to the sale of fuel by the Applicant to the Respondent for ultimate export by the Respondent to consignees in Zimbabwe, which sales occurred between the Applicant and the Respondent during the period August 2018 to March 2020:

(a)

In respect of all transactions appearing in "ARD 1" to the founding affidavit (save for items 18, 21, 32, 40, 49, 50 and 53) and "RC4" to the answering affidavit attached to this order marked "X", and the 11 transactions relating to Hilforth Investments (as detailed in the October LOI from SARS read with the February LOI from SARS), a list of which is attached to this order marked "Y":-

(i)

Purchase orders or any recordal thereof;

(ii)

Proof of payment by the consignees;

(iii)

Proof of payment of VAT and duties to ZIMRA; and

(iv)

Proof of delivery of the consignments to the consignees.

(b)

In relation to proof of payment referred to in paragraph (a) above the Respondent is ordered to provide the Applicant's attorneys with legible copies of the following:-

(i) those

pages of its bank statements that reflect payments from the consignees for each of the transactions listed in "X" and

"Y" to this order, with the other transactions that are not relevant blacked-out but all details of the relevant payments left visible;

(ii) where

a single payment is for more than one transaction, a schedule itemizing the Respondent's invoice numbers to which the payment relates; and

(iii) all

remittance advices received from the consignees in relation to each

of the transactions; and
(iv) those
pages of its bank statement that reflect refunds to the consignees of
payments for the transactions reflected as items 21,
32, 40 and 52 in
the spreadsheet as "ARD1 " to the founding affidavit and
"RC4" to the answering affidavit,
attached to this order
marked "X".
4. The
Respondent is directed to pay the costs of this application and the
reconsideration application, including all reserved costs,
such costs
to include those consequent upon the employment of two counsel where
so employed.

JUDGMENT

BEDDERSON AJ

Introduction

- [1] This application came before me as an urgent application on 20 March 2020. There had been informal service of the application by way of email the previous night on the sole director and shareholder of the Respondent, Rindie Cloete and on the Respondent's attorneys of record. On 20 March 2020 Counsel for the Applicant requested that the matter stand down in order for her to furnish proof of formal service on the Respondent. As it happened formal service was only effected at 11h30. The time of the hearing on the notice of motion was not altered and it was not clear whether the Respondent was aware that the matter would ultimately only be heard at 2 o'clock that afternoon. It is quite clear however that the Respondent and its attorney upon whom informal email service were effected and were aware of the application and despite being so aware, elected not to appear at the hearing of the application at 09h30 or to arrange for representation at the hearing on 20 March 2020. In view of the importance of the matter and the urgency referred to hereinafter as well as the limited relief that was sought coupled with the short return date (being 24 March 2020), I decided to grant certain interim relief which in my view did not prejudice the Respondent.
- [2] Notwithstanding short notice of the application the Respondent was nonetheless able to produce and deliver a comprehensive answering affidavit on 23 March 2020. On 24 March 2020 Counsel for the Respondent did not seek further time to supplement the answering affidavit despite her protestations about the alleged lack of urgency. She did however reserve her right to raise the issue of urgency when the matter was finally heard. There was no mention of any application for reconsideration of the interim relief that I had granted earlier.

[3] I pause to mention that a day before the return date, there was an announcement by the President of the initial 21 day lockdown period that would be implemented on 26 March 2020 in response to the Covid 19 pandemic. The Applicant handed up its Replying Affidavit on 24 March 2020 thereby resulting in the papers in the matter being complete and comprising at that stage approximately 630 pages. This excluded the subsequent Respondent's reconsideration application (which comprised 2 volumes totalling 170 pages) and the Applicant's

application for leave to deliver a further affidavit dealing primarily why the matter was still urgent (which comprised 40 pages).

Because of the impending implementation of the lockdown period I then adjourned the application and extended the rule nisi to 20 April 2020 as a holding date. The parties were also directed to deliver their Heads of Argument via email by no later than 14 April 2020.

[4] On 9 April 2020 the lockdown period was extended until 30 April 2020. On 14 April 2020 I issued a directive to the parties granting an extension to 30 April 2020 within which to deliver their Heads of Argument.

[5] On 16 April 2020 the Applicant sought leave by way of an application to file and deliver a further affidavit which primarily dealt with why the matter remained urgent.

[6] On 28 April 2020 the Respondent delivered a notice of intention to launch an application to reconsider the order that I had granted on 20 March 2020 (reconsideration application.)

[7] I received the Respondent's reconsideration application via email on 29 April 2020 from the Respondent's attorneys of record. In terms of that application the Respondent sought the following order:

(i) that the order granted on 20 March 2020 be set aside;

(ii) that the rule nisi issued in terms of the aforesaid order is discharged;

(iii) that the Applicant be ordered to pay the costs of the reconsideration application on an attorney and client scale.

[8] It is noteworthy that the Respondent, in the reconsideration application, did not seek to have the Applicant's entire application

dismissed but instead sought to have the interim order that I had granted discharged.

[9] On 6 May 2020 the matter served before me once again to decide the future conduct of the matter. On specific enquiry with Respondent's

Counsel on whether the Respondent was still intent on pursuing its reconsideration application, especially in light of the fact that the Respondent had furnished a comprehensive answering affidavit in the matter and that the matter appeared to be ripe for hearing, she advised that the Respondent still persisted with the application and that further grounds of the Respondent's

opposition had been expanded in the founding affidavit that was delivered in the reconsideration application which she submitted ought to be read together with the answering affidavit in the main application. I then enquired from Counsel for the Respondent whether the Respondent had any objection to the Applicant's leave to file a further affidavit. She indicated that the Respondent did not object to the further affidavit and I accordingly admitted that affidavit by consent between the parties.

[10] The entire matter was ultimately heard on the Zoom video conferencing platform on 19 May 2020 when it was fully argued on the issues relating to urgency, the reconsideration application as well as on the merits of the main application.

[11] The application itself involved the Applicant seeking various orders against the Respondent to compel the Respondent to produce documents relating to the purchase and sale of consignments of distillate fuel (50ppm diesel) by the Respondent from the Applicant. The fuel was purchased for the ultimate export to the Respondent's customers (consignees) in Zimbabwe. The Applicant is the holder of a manufacturing warehouse license and is registered for customs purposes with SARS. Turners Shipping (Pty) Ltd is a licensed

clearing agent for the Applicant. The Respondent is not licensed or registered with SARS for customs purposes.

[12] It is common cause that Applicant and the Respondent had concluded a supply agreement in terms of which the Applicant would make available from time to time to the Respondent specified volumes of 50ppm diesel fuel for export to consignees of the Respondent.

[13] On 17 October 2019 the South African Revenue Service (SARS) issued a letter of intent to the Applicant[1] and the Respondent in terms of which SARS advised the parties that it had conducted an investigation into 11 (eleven) consignments of distillate fuel (50ppm diesel) that had been declared for export. All 11 consignments related to fuel that was alleged exported to a consignee Hilforth Investments in Zimbabwe. The letter went on to state that the conclusion drawn by SARS from its audit findings is that *prima facie*:

"4.1 the consignments were not exported from South Africa to Zimbabwe as declared in the documentation submitted to him in that regard;

4.2 the consignments were introduced into the South African market without the duties and levies as set out in Annexure "A", Uointly referred to as "the duty") having been paid;

4.3 the provisions of sections 640 (6), 18A(3), 18A(9)(a) and 20(4) read with 20(4)(bis) of the Act have been breached or not complied with. In addition, the aforesaid constitutes an offence in terms of sections 80(1)(c) and (o) read with sections 83(a) and (c) of the Act;

4.4 the consignments have been dealt with irregularly as contemplated by section 87(1) of the Act;

4.5 by virtue of the aforesaid, you are liable for payment of the duty in respect of the consignments;

4.6 Withdraw the acquittals in respect of all the consignments;

4.7 Kl Energy Africa and BP are liable for payment of duties and levies."

[14] SARS sought to hold both parties liable for payment of the duties in respect of all 11 consignments amounting to R2 625 807.60. On 25 February 2020 SARS issued a revised letter of intent^[2] dealing with the same 11 consignments that it had dealt with in the October letter of intent wherein it revised the prima facie findings of its audit and/or investigation and sought to hold both the parties liable for duty totalling the sum of R5 709 706.08.

[15] Crucial to the Applicant's case is the reliance on clause 61.2 of its general terms and conditions which reads as follows:-^[3]

"61.2 The buyer shall, if the seller so requires, provide the seller with appropriate documentation for the purposes of verifying the final destination of any delivery hereunder. Such documentation shall be so provided within 30 days of request or within such lesser period as will enable the Seller or its supplier to comply with any requirement or request of the government or authority in question and shall include the name of the port⁽²⁾ of discharge, the date(s) of discharge and the grade and quantity discharged. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the Crude Oil or Product in question by the Buyer whether before the Crude Oil or Product arrives at the final destination or otherwise."

[16] It is apparent from a reading of clause 61.2 that it is very broad in nature and refers to "appropriate documentation for the purposes of verifying the final destination of any delivery hereunder".

[17] The Applicant contended that the application was extremely urgent as SARS intended imposing levies of approximately R5.7 million by 26 February 2020. The Applicant therefore required certain documents from the Respondent to demonstrate the fuel was in fact imported.

[18] In the Applicant's further affidavit dated 9 April 2020 the Applicant disclosed that SARS undertook in writing at 11:36 a.m. on 19 March 2020 not to take any further collection steps until a suspension of payment application had been considered. In paragraphs 14 and 15 of the further affidavit the deponent Ian Rory Hodgkinson on behalf of the Applicant stated the following:-^[4]

"14. The undertaking provided by SARS not to continue with further collection steps until the request for the suspension of payment has been considered on 16 April 2020, provides little respite to BPSA. Should SARS not withdraw the Final Demands and the certified statement, it could, upon rejecting BPSA's request for suspension of payment, immediately proceed with execution in respect of BPSA's property, as it attempted to do on 16 March 2020. This creates considerable risk for BPSA in that SARS could attach BPSA's property, including its tankers and

bank accounts, which would result in irreparable harm not only to BPSA's business but, given the integral role BPSA plays in the provision of fuel in the country, to the economy and the general public.

15. Further, the undertaking provided by SARS has not extinguished BPSA's need to respond to SARS' Letters of Demand. If BPSA does not respond to these letters it will be liable for the repayment of millions of Rand for outstanding duties, and amounts in lieu of forfeiture. The reasonable apprehension that SARS may proceed with execution in respect of BPSA's property should it reject BPSA's request for suspension of payment further compounds the need to adequately respond to the Letters of Demand.

[19] When one has regard to the foregoing, in my view it is quite evident that the matter continued to remain urgent.

[20] The Respondent's attack on urgency was based on allegations that they had already furnished documents to the Applicant and that the Applicant was acting in bad faith by bringing the application as the Respondent had supplied "a significant volume of documents" shortly before the application was launched. There was no real attack by the Respondent on the urgency itself. In light of the imminent action by SARS and the fact that every aspect of the application had been fully canvassed by the Respondent in its answering affidavit and dealt with in argument, I find that although the application was brought at very

late stage, there was indeed urgency. In any event I am of the view that there would be no purpose served at this stage to dismiss the matter as the issues had been fully ventilated on the papers and argued extensively.

The Reconsider Application

[21] It is trite that the purpose of a reconsideration application is to allow a party aggrieved by an order granted in its absence an opportunity to bring to the attention of the Court factors that if known to the Court at the time would have militated against the order being granted. See *ISDN Solutions (Pty) Ltd vs SCDN Solutions CC* 1996 (4) SA 484 (W).

[22] It is common cause that the Respondent had launched its reconsideration application at a very late stage, weeks after a comprehensive answering affidavit had been delivered on its behalf and the Applicant had replied thereto. Interim relief was granted on 20 March

2020. In the further affidavit of Hodgkinson, it was pointed out that the interim relief had either been given effect to or was overtaken by events and all that remained to be determined was the issue of the documents which the Applicant contended remained

outstanding. The interim relief required the Respondent to continue to collate documents which it did and pursuant to that, as I have indicated, it is common cause that a large volume of documents were delivered. It is common cause in the Heads of Argument delivered by both the parties in the reconsideration application that a Court in such application must take into account whether an imbalance or oppression or injustice may have resulted from the granting of the

interim order. As stated above, significantly the Respondent's application for reconsideration does not dispose finally of the main application. What was sought was a reconsideration of the interim relief only. Accordingly the reconsideration in effect served no purpose since (as I have indicated) there had been compliance with the interim order and it did not seek to dispose of the whole application.

[23] It is clear that the remedy of a reconsideration is discretionary (ISDN case supra at 487 B - C). Taking into account the factors set above, and the factual background, I do not consider that the interim order created any imbalance or injustice. I accordingly find no merit to such application.

The Main Application

[24] As stated above, it is common cause that the parties had on diverse occasions concluded contracts for the sale and supply of fuel which the Respondent would on sell to its consignees for export to Zimbabwe. The fuel was sold free of domestic duty because it was not to be used for domestic consumption. SARS conducted an audit/investigation into the fuel allegedly sold for export and found that the fuel was not exported and issued the letters of intent referred to above demanding that the Applicant and/or the Respondent produce documentary proof to demonstrate that the fuel was so exported failing which, SARS intended to levy fines and penalties to the value of approximately R50 million. Letters of demand by SARS in some instances were addressed to both parties and in other instances to the Applicant only.

[25] The Applicant contends that properly interpreted clause 61.2 (as set out above) requires the production of any documents that are appropriate to enable the Applicant to respond to SARS and that all the documents requested relate to the correspondence from SARS and must therefore be produced. This is the Applicant's case in a nutshell.

[26] The Respondent on the other hand contends that its contractual obligations to the Applicant is limited to those documents referred to in annexure "RC2"[5] in an email dated 30 July 2018 from Turners to an employee of the Applicant and copied to the sole director and shareholder of the Respondent. It also contends that it had previously supplied documents it contends that are relevant which had then been mislaid

due to mal-administration in the offices of the Applicant and/or Turners.

[27] On a proper analysis of annexure "RC2" I am of the view that it did not purport to be an exhaustive and/or inclusive list of documents. I agree with the submission made by Counsel for the Applicant, Ms Annandale SC assisted by Ms Thobela-Mkhulisi that "RC2" was merely an indicator of the documents which Turners required. I have referred to the fact that clause 62.1 is expressed in very broad and general terms. It must be interpreted in the context in accordance with the principles set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) so as to render a purposive, business-like result which is consistent with the words used in the clause.

- [28] The Respondent further contends that it is unable to produce certain of the documents requested such as purchase orders, delivery notes and proof of payment of duties/Vat to Zimra because inter alia these are paid for by the consignees in Zimbabwe. Counsel for the Respondent, Ms Kolloori in her Heads of Argument dated 14 May 2020 submits that the Respondent had requested the documents from the consignees as set out in the Respondent's answering affidavit. She submitted at the hearing that the consignees in Zimbabwe had failed to respond to the Respondent's request.
- [29] The transactions and purchases between the Applicant and the Respondent are by no means insignificant in number or value. The Respondent is in the business of exporting fuel to Zimbabwe and it is inconceivable in my view that it would have not kept detailed records relating to all transactions and in particular to the export of fuel. The notion that it has very little or no documentary proof of the transactions relating to purchase orders, proof of delivery and payments of duties to Zimra and the like is so inconceivable in modern day business practice that it can be safely rejected. Be that as it may, the order sought by the Applicant and granted by me in this judgment makes provision for the proof of payment of the various transactions to be reconstructed from redacted bank statements of the Respondent. Even if one accepts that the purchase orders do not exist as they were placed telephonically as contended for by the Respondent, there must have been some recordal of the purchase. Accordingly, there is no reason why by such recordal cannot be produced.
- [30] In respect of the furnishing of proof of payment of Vat and duties to Zimra and proof of deliveries of consignments to consignees in Zimbabwe, it was submitted by Counsel for the Respondent that all the Respondent can do is to make the request and if no response is forthcoming, there is nothing that the Respondent can do further. As stated above it appears from the answering affidavit that the request must have been made and indeed the submissions from Counsel was that it had been made.
- [31] I agree with the following submissions made by Counsel for the Applicant in its heads of argument dated 30 April 2020 wherein the following submissions was made in respect of the defences raised by the Respondent:

"Purchase

orders

66. Whilst it may well be that purchase orders do not exist because orders were placed telephonically, once orders had been placed with Kl Energy by consignees there must be some way in which Kl Energy recorded such orders in its internal records. It may not be a purchaser order per se but it is palpably implausible that a business whose core function is sales, has no system in place for recording orders that have been placed. The allegation is far-fetched failing to be rejected outright on an application of Plascon-Evans.[6]

Proof of payment

67. That consignees have paid Kl Energy is information that is directly within Kl Energy's control and is easily ascertainable. Kl Energy has alleged that it only placed an order for fuel when payment had cleared in its bank account.[7] Thus, obtaining redacted bank statements or a letter from its bankers that payment has been received from the consignees that fall within the investigation by SARS would no proof that payment has been received. It is unacceptable to simply allege that a document that can easily be attained and must exist, does not exist.
68. There is no explanation on the papers for why this information cannot be obtained thereby making the allegation that proof of payment does not exist one that is palpably implausible, falling to be rejected outright on an application of Plascon-Evans.

Payment of duty and VAT to the Zimbabwe authorities

69. Lastly in relation to the proof of payment of duty in the FA1 documents, Kl Energy alleges that "the fact that the ZIMRA import documents and bills of entry have been supplied sufficiently proves that the duty/VAT was paid to ZIMRA". This is not supported by the letters dated 18 March 2020 that Kl Energy wrote seeking proof of payments of duty in relation to Hilforth Investments,[8] as well as proof that these documents do exist and are obtainable from the Zimbabwean clearing agent as communicated by Kl Energy on 10[9] and 1[10] March 2020.

Proof of deliveries

70. Kl Energy states that proof of deliveries to consignees do not exist[11] and at the same time states that since these appeared in "RC2"[12] these were provided to Turners.[13] These allegations cannot both be true and to the extent that they directly contradict each other they are uncreditworthy, untenable and on an application of Plascon-Evans must be rejected outright. So too the respondent's claim that there exists a dispute of fact in this regard which requires a reference to oral evidence.

Assertions that the documents don't exist come late in the day

71. Lastly on the FA1 documents, the letter of 89 March 2020 is not the first time that these documents were requested from Kl Energy. As far back as 19 April 2019 SARS requested Kl Energy to furnish it with delivery notes, proof of payment, sales contracts (which would evidence purchase orders) and acquittal documents into country of destination (which would include proof of payment of duties)[14] and Kl Energy provided some documents on 10 June 2019 as per its accountant's letter to SARS of the same date[15] and on 22 August 2019 as per the email of that date.[16]
72. To now say that the documents do not exist when SARS requested the documents and this is not the response that was given to SARS in April 2019, is an attempt by Kl Energy to raise disputes of fact that are fictitious and unsupported by the evidence on the papers."

The Issue Relating to the 13 of the 53 requested documents in Annexure "ARD1"

- [32] The Respondent in its answering affidavit[17] sets out reasons why it is unable to furnish certain documents relating to the 13 items reflected in the Applicant's schedule (annexure "ARD1") to the Applicant's confirmatory affidavit dated 20 March 2020.
- [33] Annexure "ARD1" is a schedule of transactions that has been prepared by the Applicant from its report. It is clear from a reading of annexure "ARD1" that it contains a column which reflects the details of the customer that it had contracted with. Save for item 25 out of the 13 items listed and in terms of which documents have been requested, the Respondent is not reflected as a customer in that schedule. I raised this with Counsel for the Applicant and indicated that unless there was evidence to support the Applicant's case that the Respondent was indeed the customer that the Applicant had contracted with in relation to the disputed items in the schedule then I was not inclined to grant any order in respect of those 13 transactions. In my view the reasons furnished by the Applicant for not being able to provide or locate documents relating to those 13 transactions is justifiable in the circumstances. In any event the onus is on the Applicant to demonstrate on the evidence that it is entitled to that relief. It has failed to do so.

Costs

- [34] It is trite that this Court has a discretion which must be exercised judicially in relation to costs. The general rule is that a successful party is ordinarily entitled to its costs. The Applicant has been largely successful in its application for the relief sought and accordingly is entitled to its costs. The only issue relating to costs is in respect of costs sought by the Applicant in respect of the employment of two (2) Counsel. Initially the Applicant was represented by Junior Counsel only. As matters progressed and the volume of documents increased substantially and the issues having being expanded by the belated application for reconsideration of the interim order that I had granted on 20 March 2020, Senior Counsel was engaged to assist Junior Counsel in the matter. The Respondent contends that it was unnecessary to employ the services of Senior Counsel. This Court has a discretion whether to allow the fees of two (2) Counsel. In deciding whether the fee of a second advocate should be allowed, the Court has regard to whether it was "a wise and reasonable precaution to employ such advocate." [18] Having regard to the importance of the matter to the Applicant (who potentially faces fines and penalties in the sum of approximately R50 million from SARS in relation to transactions which form the subject matter of the dispute between the parties), the nature of the issues in dispute between the parties as well as the volume of documents involved, I am of the view that it was a wise and reasonable precaution for the Applicant to have enlisted the assistance of Senior Counsel in this matter. In the circumstances I am of the view that it is appropriate for the costs order to include the costs occasioned by the employment of two (2) Counsel where so employed.
- [35] In the result I grant the following order:

1. The reconsideration application is dismissed.
2. The rule granted on 20 March 2020 is confirmed subject to the amendments as reflected in paragraph 3 below:
3. The Respondent is directed within fourteen (14) days of the grant of this order, to furnish to the Applicant's attorneys the following documents which relate to the sale of fuel by the Applicant to the Respondent for ultimate export by the Respondent to consignees in Zimbabwe, which sales occurred between the Applicant and the Respondent during the period August 2018 to March 2020:
 - (a) In respect of all transactions appearing in "ARD 1" to the founding affidavit (save for items 18, 21, 32, 40, 49, 50 and
 - 53) and "RC4" to the answering affidavit attached to this order marked "X", and the 11 transactions relating to Hilforth Investments (as detailed in the October LOI from SARS read with the February LOI from SARS), a list of which is attached to this order marked "Y":-
 - (i) Purchase orders or any recordal thereof;
 - (ii) Proof of payment by the consignees;
 - (b) In relation to proof of payment referred to in paragraph (a) above the Respondent is ordered to provide the Applicant's attorneys with legible copies of the following:-
 - (i) those pages of its bank statements that reflect payments from the consignees for each of the transactions listed in "X" and "Y" to this order, with the other transactions that are not relevant blacked-out but all details of the relevant payments left visible;
 - (iv) those pages of its bank statement that reflect refunds to the consignees of payments for the transactions reflected as items 21, 32, 40 and 52 in the spreadsheet as "ARD1" to the founding affidavit and "RC4" to the answering affidavit, attached to this order marked "X".
4. The Respondent is directed to pay the costs of this application and the reconsideration application, including all reserved costs, such costs to include those consequent upon the employment of two counsel where so employed.

BEDDERSON AJ

Case Information

Application heard on:

19 May 2020

Judgment

handed down on:

25 June 2020

This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLLI. The time and date for hand down is deemed to be 09h30 on 25 June 2020

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[See PDF version for Annexures]

[1] Annexure "FA23" on page 262 of the core bundle

- [2] Annexure "FA3" on page 39 of the core bundle
- [3] Annexure "FA8" on page 144 of volume 2 of Main Application
- [4] Page 636/7 of Volume 7 to Main Application
- [5] Page 433 Vol 5 of Main Application
- [6] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984
- (3) SA 623 (A)
- [7] Vol 5: Answering Affidavit, p411, para 40.3.
- [8] Vol 6: Letters from KI Energy dated 18 March 2020, p580-581
- [9] Vol 4: Email dated 10 March 2020 and 03:33, p312
- [10] Vol 4 Email dated 17 March 2020 at 01:27 specifically at 9333, para 3
- [11] Vol 5: Answering Affidavit, p412, para 40.7.
- [12] Vol 5: Email dated 30 July 2018 at 08:52, specifically p434 para vii
- [13] Vol 5: Answering affidavit, p406 - 407, paras 24 - 25
- [14] Vol 6: Letter from SARS to KI Energy dated 17 April 2019, p524
- [15] Vol 6: Letter dated 10 June 2019, p526
- [16] Vol 6: Email dated 22 August 2019 at 10:23, p527
- [17] Para 38 and 39 on page 410 of the Indexed papers
- [18] Henry v A A Mutual Insurance Association Ltd 1979 (1) SA 105 (C) at 107A

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