

SOUTH AFRICA / JUDGMENT

Christensen NO v Richter (73868/2016) [2017] ZAGPPHC 647 (6 October 2017)

[2017] ZAGPPHC 647**COURT**

North Gauteng High Court, Pretoria

BEFORE

MJ Teffo

CASE / FILE NUMBER

73868/2016

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REPUBLIC
OF SOUTH AFRICA
IN THE
HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA

CASE NO: 73868/2016
NOT
REPORTABLE
OF
INTEREST TO OTHER JUDGES
REVISED

In the matter between: CHRISTENSEN, SEAN
N.O First
Applicant
KEYTER, LEON
N.O. Second
Applicant
and
RICHTER, ALEANDER
FRANZ First
Respondent
NAIDOO,
NEVILLE Second
Respondent

JUDGMENT

TEFFO J:

INTRODUCTION

This is an application for an order in terms of section 2(b) of the Vexatious Proceedings Act, No 3 of 1956 to declare the first

respondent a vexatious litigant. The applicants also seek an order that the first respondent, prior to instituting any further legal proceedings against them and/or the estate or proceeding with the existing applications already instituted by him under case numbers 99680/2015 and 64817/2016,

first obtain the written permission of the Deputy Judge President. In the event of the Deputy Judge President granting permission to the first respondent to so institute or proceed with litigation, that he provides security for costs to the applicants and the Estate in an amount to be determined by the Registrar. The applicants further seek an order interdicting and restraining the first respondent from instituting any further legal proceedings or continuing with existing legal proceedings against them whether criminal or civil, in whatever capacity, as well as the Estate

unless the first respondent has obtained written permission from the Deputy Judge President to institute or proceed with specific

litigation, and in which event the Deputy Judge President is to be satisfied that the proceedings to be instituted or to be continued,

do not constitute an abuse of process and that there are prima facie grounds for the proceedings. The first and second applicants are the executors of the Estate of the late F X Richter ("the estate"). The late FX Richter is father of the first respondent and Ms Gabriele Burgmer ("Ms Burgmer"). For convenience sake in this judgment the first and second applicants are jointly referred to as the applicants. Where appropriate I refer to them separately as the first and second applicant. The second respondent is a Chartered Accountant who prepared the financial statements for the estate. He is only cited in so far as he may have an interest in the matter. No relief or cost order is sought against him. For convenience's sake in this judgment, it is appropriate to refer to the first and second respondent separately as the first or second respondent. The application is only opposed by the first respondent and he litigates in person. At the hearing of the application the first respondent applied for condonation for the late filing of his heads of argument. The application was not opposed and it was accordingly granted. The first respondent also sought leave to file a supplementary affidavit which he indicated that he served on the applicants on 9 November

2016. The application was opposed and I accordingly refused him leave to file the aforesaid affidavit.

BACKGROUND

The first respondent inherited the business Cardio Fitness (Pty) Ltd ("Cardio") from the estate in terms of the deceased's will. The immovable property as well as the business known as Heia Safari Ranch was bequeathed to his sister, Ms Burgmer. He failed to assume liabilities of Cardio. Eventually Cardio was wound-up by ABSA and the properties attached to it were sold at reduced prices. He launched several applications against the estate which applications have been referred to in the papers. The applications include

amongst others, seeking the removal of one of the co-executors in the estate, seeking an order setting aside the sale of the immovable property forming part of the Ranch, etc. In some of the matters, the first respondent was interdicted from pursuing further litigation against Cardio Fitness, its liquidators and ABSA (case number 70730/2014). He also sought to obtain an urgent interdict against the transfer of the immovable property of the Ranch. The application was struck off the roll in December 2015 and it is still pending (case number 99496/2015).

THE

ISSUES

Are the proceedings launched by the first respondent against the estate and/or its executors an abuse of the court process.

THE LAW

Section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 as amended by Act 3 of 1995 provides as follows:

"If, on application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings."

The Constitutional Court in *Beinash and Another v Ernst & Young and Others* 1999 (2) SA 116 (CC) found section 2(1)(b) of the Vexatious Proceedings Act to be constitutional. In *re Anastassiades* 1955 (2) SA 220 (W) the court found that South African courts do not possess the inherent power to impose a general prohibition. The South African common law merely affords the courts the inherent power to stop frivolous and vexatious proceedings, when they amount to an abuse of its processes. In *ABSA Bank Ltd v Dlamini* [2007] ZAGPPHC 241; 2008 (2) SA 262 (T) the following was

said: "[26] In *Cohen v Cohen and Another* 2003 (1) SA 103 (C) ([2002] 4 All SA 21) the honourable Griesel J, with reference to the Beinash matter, held in para 14 at 1080-E that at common law the courts enjoyed an inherent power to strike out claims that were vexatious, holding that that meant claims that were 'frivolous, improper, instituted without sufficient ground, to serve solely, as an annoyance to the defendant'. The findings in the Cohen matter find application after such proceedings had been instituted.

[27] In *Bisset and Others v Boland Bank Ltd and Others* 1991 (4) SA 603 (D) the honourable Booysen J also found that the court has the inherent discretion to strike out or stay existing proceedings that

are vexatious. In this regard the following was said at 6080-G:

'The court has an inherent power to strike out claims which are vexatious. (*Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271; *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 5650 .)'

Vexatious in this context means 'frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant'. (*Fisheries Development Corporation of SA Ltd v Jorgensen and Another*, *Fisheries Development Corporation of SA Ltd v AWF Investments (Pty) Ltd and Others* 1979 (3) SA 133 (W).) This power to strike out is one which must be exercised with very great caution, and only in a clear case. The reason is that the courts of law are open to all, and it is only in very exceptional circumstances that the doors will be closed upon anyone who desires to prosecute an action. (*Western Assurance Co* case supra at 273, *Fisheries Development* case supra at 1338G.) Whilst an action which is obviously unsustainable is vexatious, this must appear as a certainty and not merely on a preponderance of probability (*Ravden v Beeten* 1935 CPD 269 at 276; *Burnham v Fakheer* 1938 NPD 63; *African Farms* case supra at 565D- E).

[28] In *Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271 the honourable Innes CJ stated the following:

'Every court has an inherent right to prevent an abuse of its process in the form of frivolous or vexatious litigation. (*Reichel v Magrath*, 14 A.G. 665).'

[32] Consequently, in summary, the following appears to be the position: the only manner by which the institution of future vexatious proceedings can be prevented is to rely on the provisions of the Act, the only manner to stay, strike out or otherwise deal with vexatious proceedings which have already been instituted or to deal with any process or action or inaction leading up to, or during

or subsequent to, any legal proceeding or proceedings already instituted, and which constitutes an abuse of process, or generally

brings the administration of justice into disrepute, shall be done in terms of the applicable common law principles and the court's

inherent power to apply same."

THE PARTIES' CONTENTIONS

As regards case number 99680/2015 ("the main application") the applicants contend that the filing of a Rule 35(14) notice by the first respondent instead of a replying affidavit is an abuse of the court processes and therefore vexatious. They also contend that a further application under case number 64817/2016 ("the discovery application") seeking an order that the documents set out in the notice in terms of Rule 35(14) be produced, was also vexatious and an abuse of court processes. The service of the application is irregular. The application had been launched without obtaining an order under Rule 35(13). According to the applicants, the discovery application was sought on the basis that the first respondent requires information to make out a case in the application launched under case number 99680/2015 ("the main application"). The first respondent bases his right to the documents sought on the relief sought by him in the main application. The main application has no prospects of success as the first respondent does not have the locus standi to bring the application. He launched the application without obtaining the court's leave to launch the proceedings against ABSA. As he does not have the right to relief in the main application, he can have no right to the documentation in order to make out a case for relief in the main application. It was further contended that the first respondent has no legally recognisable rights to protect. He has no locus standi in respect of both applications which they regard as vexatious and an abuse of the court's processes. The first respondent's contentions are that he is an executor of the estate. He seeks a declaratory order that he was never removed as such. He is a creditor of the estate and is entitled to the executor's fees. He has a right of pre-emption in respect of the

purchase of the Ranch and that the sale agreement concluded in respect thereof must be declared void. He complained about the certificate issued by the Master that there was no objection to the transfer of the properties in accordance with section 42(2) of the Administration of Estate Act 66 of 1965. He accuses the applicants of not exercising their duties properly by allowing Ms Burgmer to act as the manager of the Ranch. Ms Burgmer acted improperly on the applicants' watch and the applicants should therefore be removed as executors. In reply to the above contentions the applicants stated the following in their replying affidavit:

Executor

25.1 The first respondent consented to his removal as executor and appointed the second applicant as executor in his stead.

Creditor

25.2 Even if the first respondent was a creditor in the Estate, he would not have been entitled to the executor's fees. The position would not give him any right to interfere with the powers and duties of the executors.

25.3 It was contended that the first respondent's continuous litigation against the estate and its representative lies in his misreading the will and his position as heir. The only legacy that was bequeathed to the first respondent was the business and the assets of Cardio Fitness. He never held any interest in the legacy left to Ms Burgmer, the business known as the Ranch and the immovable property. He is not a legatee in the Estate. He has failed to assume the liabilities of Cardio. This led to the insolvency of Cardio. He will not receive any amount whatsoever from the Estate as heir.

The first respondent contends that the Estate is solvent while the applicants contend it is not. The applicants contend that even if the Estate was solvent, he would still not be entitled to receive any inheritance as the only asset available for distribution is the proceeds in respect of the sale of the Ranch, which was bequeathed to Ms Burgmer and not to him. Right of pre-emption in respect of the purchase of the Ranch and that the sale agreement concluded must be declared void. The first respondent contends that the sale should be set aside because his consent as executor is required for the sale of the property. The applicants contend that offers made by the first respondent were highly conditional and not of advantage to the estate. The Ranch has been sold and transferred to a third party who made a forced sale value of R20 million. The first respondent would not have raised such an amount. Certification by the Master. The applicants are adamant that the Master's certificate stands until set aside on review. The applicants further contend that the immovable properties of the Ranch have been transferred to the purchaser and should the sale agreement be set aside, same would have to be transferred back to the estate. This would result in a substantial damages claim from the purchasers who have since taken over the Ranch, expended millions in upgrading, renovating and repairing the Ranch. The first respondent's motives are not bona fide. The first respondent does not have a pecuniary interest in the outcome of the litigation. He has sustained a bitter animosity between the first applicant and Ms Burgmer who together with the creditors of the Estate are prejudiced by his conduct. The first respondent is impecunious. He could not satisfy a writ in respect of a taxed bill of costs in one of his failed applications in the amount of R50 000,00. The costs of litigation instituted by the first respondent cannot be recovered. Multiple costs orders granted against him are completely ineffective. They do not deter him from continuing to litigate against the estate. While the Estate continues to incur significant legal costs, he litigates in person with no legal costs in circumstances where there are no prospects of succeeding in any of the applications launched by him, causing significant prejudice to the Estate. Allegations of fraudulent conduct and potential reputational harm to the applicants. The first respondent accuses the applicants and their attorneys of negligence, fraud, maladministration, misleading the court and him. He accuses the second respondent of fraud, unlawful conduct, misrepresentation and conspiring with Ms Burgmer. He accuses Ms Burgmer of dishonesty and fraud, the testamentary executor of theft and unlawful conduct. There is an appeal judgment that exonerated the executor of all wrongdoing and reinstating him as executor. He also accuses the Master of fraud and unlawful conduct. It is contended that the first respondent makes the above allegations with complete immunity, knowing that he has no funds or assets with which to pay any order of damages resulting from his conduct. In the discovery application he advised the applicants and the second respondent

that he has laid criminal charges of fraud against them which allegations are baseless. He also threatened to lay further criminal charges against the applicants relating to the regularisation of the VAT affairs of the Ranch, which charges would be baseless. The applicants contend that the only remedy now available to them is to seek an interdict requiring the first respondent to obtain the consent of the Deputy Judge President, or the relevant lower court, prior to laying any further criminal charges. This would require him to establish a prima facie case of criminal conduct prior to laying such charges. The charges of fraud, it was contended, are highly defamatory and have the potential to cause extreme prejudice to professional people such as the executors and the second respondent being an attorney, chartered accountant and insolvency practitioner.

REQUIREMENTS FOR AN INTERDICT Clear Right The applicants seek an interdict prohibiting the first respondent from laying further criminal charges. They contend that charges laid against them are false and malicious. They have a clear right to protect their good names and reputations from the conduct of the first respondent. They also contend that national prosecuting authority will decline to prosecute. The decision could take some time to obtain. The fact that the criminal charges have been laid has the potential to cause significant prejudice to them and the second respondent. The first respondent denies that the charges laid are false and malicious. He contends that the first and second applicants have

clearly ignored the provisions of the VAT Act 89 of 1991 as well as the Income Tax Act 58 of 1992. According to him the applicants have reworked the books of GF Burgmer trading as Heia Lodge and presented the reworked figures. What they did is fraudulent as no "consolidation" of the two Vat numbers has been forthcoming from SARS, so he contended. SARS has not re-opened the personal income tax assessments of Ms Burgmer, which includes her income trading as Heia Lodge and sanctioned the transfer of such income to the estate. He also denies that the applicants have a clear right to do what they did. **Absence of alternative remedy** The applicants contend that they have no alternative remedy available to them to stop the first respondent from instituting further

litigation in the Estate, which will further impoverish the estate, to stop the first respondent from laying further baseless criminal charges against them and to stop him from proceeding with the vexatious main application and the discovery application. They further contend that the first respondent is impecunious and unable to pay costs orders against him pertaining to the litigation instituted by him, any damages claims in respect of malicious prosecution proceedings which may be brought against him or any

damages claims in respect of defamation proceedings which may be brought against him. The first respondent denies that he seeks an advantage which he is not entitled to. **Balance of convenience** The applicants contend that the balance of convenience favours them. According to them the first respondent has demonstrated himself to be a malicious and vexatious litigant. They face reputational harm if the first respondent persists with his relentless and baseless accusation and the Estate stands to be further impoverished if the first respondent is permitted to continue with his relentless course of vexatious litigation in the Estate. The prejudice and potential prejudice to be suffered by them as applicants is far more severe than any right of the

first respondent to lay charges. The first respondent denies that the balance of convenience favours the applicants. He contends that given the revelations, the balance of convenience favour him. He maintains that the applicants and the second respondent have committed professional fraud, given their background in accounting and law. According to him the misrepresentation of the income of the Estate by the applicants and the second respondent still need to be added to the charges laid. He contends that he will be prejudiced should he be interdicted from laying further charges given the severity of the misrepresentation. Evaluation I find it prudent to test the contentions made by the first respondent in the main application with regard to the provisions of the will. The relevant provisions of the will read:

" 6.1 To my son, ALEXANDER FRANZ RICHTER, all of my shares in a company known as Cardio-Fitness Properties (Proprietary) Limited, Registration 1984/000472/07 ('Cardio-Fitness'), which company is the registered and beneficial owner of Portions 82 of the Farm Zwartkop 525, Registration Division JQ, Province of Northern Province and the business of Aloe Ridge Hotel which is conducted therefrom. This bequest is subject to the following provisions:-

it is strictly conditional upon my said son assuming all of my liabilities (including but without limitation, my liability on debit Joan account) to Cardio-Fitness; if my said son does not agree to and fully implement the condition contained in clause 6.1.1 above within 30 days after the date of issue of Letters of Executorship in respect of my estate, the entire bequest is to fall away and devolve in its entirety upon my daughter, GABRIELE

FRANZISKA, BURGMER (formerly SCHULTE, born RICHTER).

To my daughter, GABRIELE FRANZISKA BURGMER (formerly SCHULTE, born RICHTER), with representation per stirpes:- all of my shares in and all of my claims on loan account against a company known as Heia Safari Properties (Proprietary) Limited,

Registration No. 1970/007778/07 which company is the registered and beneficial owner of Portions 63 (a portion of Portion 3), 64 (a portion of Portion 3), 67 (a portion of Portion 3) and 69 (a portion of Portion 3 of the Farm Zwartkop 525, Registration

Division JQ, Province of the Northern Province;

Remaining Extent of Portion 4 and Portions 59, 62 (a portion of Portion 3), 65 (a portion of Portion 3), 66 (a portion of Portion 3), 68 (a portion of Portion 3), 70 (a portion of Portion 5), 71 (a portion of Portion 5 and Portion 90 (a consolidation of Portion 83 and 89) of the farm Zwartkop 525, Registration Division JQ, Province of the Northern Province; all of my right, title and interest in and to the business (and the underlying assets thereof) of Heia Safari Ranch which is conducted from the Properties described in clauses 6.2.1 and 6.2.2 above."

"8 . It is my wish that should my Executor find it necessary to realise any of my assets, he shall allow my aforesaid children the first option to purchase such assets from my estate. Each of my aforesaid children shall be given an opportunity to make a written offer to my Executor for the purchase of such assets, should they wish to do so. The decision of my Executor on the acceptance of any offer shall be final and binding on my estate and shall not be open to any

challenge by any party. In accepting any offer, my Executor shall not be obliged to necessarily accept the highest offer.

"9. It is my wish that should either of my aforesaid children wish to sell any of the assets which he or she may inherit in terms of this my will, such child (the offeror) shall first offer such asset/s to my remaining child in writing stating the price (which

shall sound in money) he or she is prepared to accept and all other forms and conditions of such offer. If within 30 (thirty) days after making the offer, it is not accepted in writing by my remaining child, the offeror shall be entitled to sell such asset/s to a third party but at a price not lower and on terms nor more favourable than the price and terms stated in the offer."

It is clear from clause 6 above that the only legacy that was bequeathed to the first respondent related to the business and assets of Cardio-Fitness. The first respondent never held any interest in the legacy left to Ms Burgmer being the immovable

property and business known as Heia Safari Ranch ("the Ranch"). In terms of clause 6.2 of the will the immovable properties and business of the Ranch have been bequeathed to his sister, Ms Burgmer. He is not a legatee in the Estate and will not receive any amount from the Estate as an heir. Among the many different applications launched by the first respondent, four to five of them related to either the setting aside of the sale of the immovable property forming part of the Ranch or seeking an urgent interdict against transfer of the immovable property of the Ranch. In my view after looking at clause 6 of the will, the first respondent does not have locus standi to bring applications against the Estate in relation to the property that was bequeathed to Ms Burgmer. His assertion that he has an interest in the estate is not correct. He inherited Cardio-Fitness and failed to assume its liabilities. Clause 6.1.2 provides that if he does not agree to and fully implement the condition of assuming the liabilities of Cardio-Fitness within 30 days after the date of issue of the Letters of Executorship relating to the Estate, the entire bequest is to fall away and devolve in its entirety upon Ms Burgmer. It therefore follows that his applications that relate to the setting aside of sale of the properties bequeathed to Ms Burgmer and/or interdicting transfer thereof have no basis. He contends that he is an executor in the Estate and that his consent was required for the sale to be effected. At paragraph 36 of his judgment, my brother Rabie J said the following:

"The provisions of the will gave the executor broad powers to run the affairs of Cardio-Fitness. Mr Richter was not Cardio's de facto shareholder as contended by him. He was not vested with the powers to administer the estate and the provisions of the will demonstrated that the deceased did not want Mr Richter to be executor or take any relevant decisions with respect to the administration of the estate."

It is clear from the above that it was never the intention of the testator to appoint the first respondent as an executor in the estate. The respondent has filed the letters of executorship in the main application stating that the applicants were appointed as executors in the estate. He has also filed the Master's report which states that he consented to his removal as executor and appointed the second applicant in his stead. The allegations that he is still an executor in the

estate and that his consent was required for the sale of the properties of the Ranch to be effected, are not supported by the documents he has attached to his papers. They are therefore vague and not substantiated. For the first respondent to persist with a declaratory order that he was never removed as executor, challenging his removal while he consented to his removal and also appointed the second applicant in his stead is in my view disingenuous and an abuse of the court processes. There is therefore no basis for his assertion that he remains an executor in the Estate. The assertion that the first respondent is entitled to have made an offer in terms of clause 8 of the will seems not to be correct.

Clause 8 does not create a right of pre-emption to the first respondent as alluded by him. There is no obligation on the applicants to accept the offer of the first respondent. Clause 8 provides that the executor's decision shall be regarded as binding and final and shall not be open to any challenge by any party. In any event he was invited to make an offer. It was considered and

found not to be to the advantage of the Estate. In terms of Clause 9 should any one of the children of the deceased wish to sell any of the assets he or she may inherit in terms of the will, such child shall first offer such asset to the other remaining child in writing stating the price he or she is prepared to accept and all other forms and conditions of such offer. The first respondent contends that Ms Burgmer did not make an offer "sounding in money" to him as required by clause 9 of the will. He had to complete the terms of his offer by 19 October 2015, failing which the sale would pass to the buyer of the sale agreement on 22 June 2015. He has always been able to secure funding based on his right to make an offer to the Ranch. The applicants deny that a de facto distribution has taken place. They contend that they never intended to deliver the movable property of the Ranch to Ms Burgmer and that the immovable property remains registered in the Estate. They contended that the offers made by the first respondent were highly conditional and not to the advantage of the Estate. Despite his protests that he had a pre-emptive right, the executors have sold and transferred the Ranch to a third party who made an acceptable offer at forced sale value of R20 million. According to the applicants, the first respondent could not have raised the funds necessary to make a proper offer. In my view the applicants cannot be faulted for what they did. It was to the benefit of the Estate. The contentions by the first respondent are therefore without merit. Coupled with the above contentions there are also allegations made that the executors should be removed for failing to exercise their duties. It was contended that the executors have for four years allowed Ms Burgmer to trade on her own on the property for her own account and that two different VAT numbers were used in the process. There were also allegations that the applicants and the second respondent were fraudulently trying to resubmit the returns. These issues were properly explained in the papers by the applicants and the allegations of fraud have not been substantiated. The same also applies to the bold statement that the estate was solvent without attaching any proof to support the allegation. The applicants attached the financial statements in their papers to prove that the estate was indeed insolvent. The first respondent has in the past brought an application to remove the executors of the estate. He interfered with their running of the affairs of Cardio-Fitness. Despite all these and the judgment of the Full Court that reversed the order that removed the executors, he continues to interfere with the running of the administration of the estate bequeathed to his sister, Ms

Burgmer, by again seeking an order for the removal of the executors. He is not happy with everything that they do. Having found that the allegations made against the executors are not substantiated, I am not persuaded that there is any merit in bringing all these applications. The first respondent cannot always continue to launch baseless applications relentlessly as he does, to remove the executors who have been properly appointed to administer the estate. Some of the many applications that he had launched against the estate were consolidated and heard by one Judge. My brother Lamont J interdicted the first respondent and his wife from approaching the two divisions of the Gauteng High Court with any further applications in which the Estate and/or its executors were a party, until they were heard (case number 42111/2014). The fact that the first respondent has already been declared a vexatious litigant under case number 70730/2014 and has been restrained from instituting any further legal proceedings without obtaining the permission of the Deputy Judge President of this division clearly indicates that he has been abusing the processes of this court by launching the many applications against the estate which were baseless. He had launched a number of applications either to interdict the transfer of the immovable property of the Ranch or to set aside the sale of an immovable property forming part of the Ranch previously. Without first finalising the first applications he proceeds to launch further applications. In one of the applications where he sought to interdict the transfer of the immovable property of the Ranch in an urgent court, he was aware of the pending transfer of the immovable property for about six months but took no steps to interdict the transfer. The allegations made by the first respondent in the papers relating to the exercise of the applicants and the second respondent's duties are vague and unsubstantiated. All what he does in bringing these many applications and disregarding court orders which restrained him from proceeding with any further litigation without paying the costs awarded against him and also without seeking the permission of the Deputy Judge President is the animosity which had existed over a number of years between him and his sister, Ms Burgmer over their inheritances. In my view the launching of these many applications which never gets finalised are an abuse of the court processes. There are costs orders that have been ordered against him. In the application that came before Mashile J, which was dismissed (under case number 39883/2014), against the liquidators of Cardio-Fitness, an order was made that the costs were to be immediately taxable and payable. The first respondent was ordered not to approach the court until the costs have been paid. The costs have not been taxed or paid and the first respondent continues to bring more applications. I am persuaded that under the circumstances the first respondent has to provide security for costs before he continues with any further litigation. There can be no doubt that the applications launched under case numbers 99680/2015 and 648/2016 will not succeed given the way they have been launched as alluded to by the applicants. The fact that the main application was launched without obtaining the leave of the Deputy Judge President weighs heavily against the first respondent. I am persuaded that the claims made by the first respondent in all these applications have been persistent and are without any reasonable ground. They are improper, frivolous and are instituted without sufficient ground to serve as an annoyance to the applicants. I therefore have an inherent power at common law to strike them out as vexatious. The applicant is, in my view, a vexatious litigant. He should therefore be prevented from instituting any further legal proceedings against the estate and/ or its executors. I am satisfied

under the circumstances that the applicants have made out a case for a final interdict. They have established a clear right for the granting of a final interdict. It is clear that the applications launched by the first respondent are vague and not substantiated and the balance of convenience favours the granting of the final interdict. The first respondent cannot continue to litigate relentlessly as he does, disregarding court orders. This has to stop. I am inclined to accept that the applicants have no alternative remedy to stop him from continuing with his actions. In my view all the files in which the first respondent is involved must be taken to the office of the Chief Registrar for supervision and before he places any matter on the roll, he must first approach the Deputy Judge President for leave. As regards the alleged criminal proceedings laid against the applicants and any future ones, I cannot make an order stopping him to lay such charges or stop pending criminal proceedings. The applicants need to consult the police with regard to the allegations. I cannot make an assessment as to the validity of the cases until the applicants present evidence to the police indicating that the charges are frivolous and vexatious. I was requested to award costs on a punitive scale which costs should include the costs of two counsels. Although I agree that the conduct of the first respondent warrants the granting of costs on a punitive scale, I am not inclined to award the costs of two counsels as I do not regard the matter as complex. In the result I make the following order:

71.1 that Alexander Frans Richter ("the first respondent") is hereby declared to be a vexatious litigant in terms of section 2(b) of the Vexatious Proceedings Act 3 of 1956;

71.2 no legal proceedings may be instituted by the first respondent against any of the applicants in their personal capacity and/or in their capacity as the executors of the Estate Late F X Richter and /or the estate in this division and or the Gauteng Local Division without having obtained the permission of that court, or any judge thereof and such permission shall not be granted unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court and there is a prima facie ground for the proceedings;

71.3 the first respondent is required, prior to:

71.3.1 proceeding with the existing applications instituted in the High Court under case numbers 99680/2015 and 64817/2016 ("the Existing Applications"); and/or

71.3.2 instituting any further legal proceedings against:

71.3.2.1 Sean Christensen ("the first applicant"); and/or

71.3.2.2 Leon Keyter ("the second applicant")

in their personal capacity and/or their capacity as the executors of the Estate late F X Richter ("the Estate") and/or in any other capacity (collectively referred to as "the applicants"

71.3.2.3 and/or the Estate

to first seek the leave of the Deputy Judge President of the relevant division in respect of which the first respondent intends to institute or continue proceedings;

71.4 that the first respondent is interdicted from:

71.4.1 instituting any further legal proceedings or continuing with the Existing Applications against the applicants (in whatever

capacity) as well as the Estate;

unless the first respondent has first obtained the written leave of the relevant Deputy Judge President to institute or proceed with such specified legal proceedings;

71.5 that prior to seeking the leave of the relevant Deputy Judge President to institute or proceed with any legal proceedings

(including the Existing Applications), that the first respondent shall furnish 48 hours written notice setting out in full his basis for seeking such leave to the relevant Deputy Judge President and any respondent or defendant to those proceedings of his intention to seek such leave, to enable such respondent or defendant to those proceedings to make written submissions to the relevant Deputy Judge President in response to the first respondent's intention to seek such leave;

71.6 All the files in which the first respondent is involved must be taken to the office of the Chief Registrar for supervision and before he places any matter on the roll, he must first approach the Deputy Judge President for leave to proceed with any litigation.

71.7 that in the event of the relevant Deputy Judge President granting leave to the first respondent to institute or proceed with

any litigation (including the Existing Applications) that the first respondent is ordered and hereby required to provide security for legal costs to the respondents or defendant in that litigation in an amount and form to be determined by the Registrar;

71.8 The first respondent is ordered to pay the costs on attorney and client scale.

MJ TEFFO

JUDGE OF THE HIGH COURT \

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APPEARANCES

Counsel for the Applicants J E SMIT

Instructed by Edward Nathan Sonnenbergs

Counsel for First Respondent None

Instructed by Not Applicable

Date of Hearing 06 March 2017

Date of Judgment 06 October 2017

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