

SOUTH AFRICA / JUDGMENT

Engen Petroleum Limited v Moodley NO and Another (2016/00276) [2017] ZAGPJHC 78 (16 March 2017)

[2017] ZAGPJHC 78

COURT

South Gauteng High Court, Johannesburg

BEFORE

Roland Sutherland

CASE / FILE NUMBER

2016/00276

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REPUBLIC

OF SOUTH AFRICA

THE

HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Reportable: No

Of interest to other judges: NO

CASE

NO: 2016/00276

CASE

NO: 2016/3066

IN

THE MATTER BETWEEN:

ENGEN

PETROLEUM

LIMITED APPLICANT

and

KRISHNA

MOODLEY NO

(OBO

DECEASED ESTATE D. MOODLEY) FIRST

RESPONDENT

ROYAL

WHOLESALE PARAFFIN

DISTRIBUTORS

(PTY)

LTD SECOND
RESPONDENT

JUDGMENT

HEADNOTE

SQUESTRATION OF A TRADER – PEFECTION OF CREDITORS SECURITY IN TERMS OF NOTARIAL BONDS – APPLICATIONS TO MAKE RULES NISI FINAL – DECIDED ON THE FACTS THAT RESPONDENT CLEARLY INSOLVENT – RULES CONFIRMED – OWING TO MERITLESS SCATTERGUN RESISTANCE, COSTS AWARDED ON ATTORNEY AND CLIENT

CIVIL PROCEDURE AND PRACTICE OF JOHANNESBURH HIGH COURT – ON RETURN DAY FOR THE RULES NISI INITIALLY SET DOWN ON OPPOSED MOTION ROLL – OWING TO DEATH OF RESPONDENT AND DELAY IN SUBSTITUTING HIS EXECUTOR PRESCRIPTS OF THE PRACTICE MANUAL NOT FULFILLED TO RENDER MATTER RIPE FOR HEARING – APPLICANT UNILATERALLY REMOVING MATTER TO THE UNOPPOSED ROLL TO EXTEND RULES – RESPONDENT BEINGING APPLICATION TO RESCIND SUCH EXTENSIONS ON GROUNDS THAT THEY LAPSED – APPLICATIONS MISCONCEIVED – THE ‘ENROLLMENT’ OF A CASE ON ONE OR OTHER ‘ROLL’ DOES NOT EQUATE TO SETTING A MATTER DOWN IN A DIFFERENT COURT – FURTHERMORE, A RULE THAT IS EXTENDED TO A DATE IS BEFORE THE COURT ON THE RETURN DATE WITHOUT ANY OTHER FORMALITY BEING REQUIRED – RULE CANNOT LAPSE UNDER SUCH CIRCUMSTANCES – PREPOSTEROUS APPLICATION – DILITORY STRATEGY- WARRANTING ATTORNEY TO BEAR COSTS DE BONIS PROPRIIS

SUTHERLAND J:

INTRODUCTION

[1] The parties herein, who are called by their names, Engen, Moodley, (by which name both the deceased and his executor are known) and Royal, have been engaged in multiple overlapping litigation.

[2] The relevant background is thus:

2.1. Engen is a supplier of fuel. Draharama Moodley, now deceased, was a customer of Engen, who traded as ‘Royal Paraffin Distributors’ and was also the sole shareholder and director of Royal.

2.2. As a result of claims by Engen that debts were overdue for payment, Engen purported to exercise its rights in terms of three notarial bonds in respect of which it procured perfection of security orders on 7 January 2016 against Draharama Moodley, then still alive, and against Royal.

2.3. Furthermore, liquidation proceedings against Royal and sequestration proceedings against Draharama were instituted. A provisional sequestration order was obtained on 16 February 2016. Royal was wound up on 13 June 2016.

2.4. During the elapse of time leading up to this hearing, the disputes concerning Royal have become settled with its liquidator, and it plays no further role; a consent having been granted at the hearing.

[3] Several distinct applications were instituted after the perfection order and provisional sequestration order had been obtained.

3.1. First, there were two applications by Moodley to rescind the provisional orders granted to perfect the notarial bonds and to sequester the estate. These applications were disposed of during the hearing and an order was granted dismissing the applications with costs to be borne by Moodley's attorney of record *de bonis propriis*, including the costs of two counsel. The reasons for those orders are furnished hereafter.

3.2. As a result of that decision, a provisional application to reinstate the two *rules nisi*, instituted by Engen to cater for the eventuality that the rescissions might be granted, fell away.

3.3. What was then left for consideration were the applications for the confirmation of the *rule nisi* in respect of the perfection of security under the bonds and the confirmation of the provisional sequestration order as final.

[4] The defences offered to these applications overlap to a considerable extent. The most remarkable attribute of the defences is the absence of any substantive rebuttal to the critical controversy: could Moodley pay his debts? Rather, the defences are a scattering of criticisms of procedure and an accusation that Engen's conduct brought about an inability to pay what was owing; indeed, Moodley, paradoxically, concedes that the business is now defunct and cannot pay its debts.

THE APPLICATIONS

[5] It is common cause that Moodley was a customer of Engen for several years. Initially, the purchases made for fuel from Engen were cash deals. The parties also had parallel dealings in terms of which Moodley transported fuel for Engen at a fee, an arrangement which ended when, as a result of the perfection order, Moodley's vehicles were attached.

[6] In January 2013, a material change in their business dealings occurred. The purchases of fuel from then on were made on account,

payable on thirty day payment basis. This occurred in terms of a re-seller agreement concluded on 2 January 2013. Other material terms of this agreement included the reservation of ownership of the fuel delivered until payment had been received, submission by Moodley to a certificate of balance being *prima facie* proof of any outstanding balance owing to Engen, an acceleration of the due date for payment of all outstanding debts if a single default occurred in respect of any one payment, and the right of Engen to respond to any default by suspending its obligations to

deliver fuel. Among Moodley's grievances is that this model was the sole basis upon which Engen was willing to do business, and certain discount advantages he enjoyed during the 'cash-deal era' were forfeited.

[7] Engen had procured, both before and after the change in the manner of dealings the following securities from Moodley and from Royal:

7.1. Engen held a cession, dated 26 June 2002, over the book debts of Moodley.

7.2. Engen, through three bonds, held security for R17,5 million. These were:

7.2.1. A general notarial bond BN 46040/2004 for R6,700,000, from Moodley, dated 26 July 2004.

7.2.2. A special notarial bond BN 46041/2004, for R2,300,000.00, from Moodley, dated 27 July 2014.

7.2.3. A special notarial bond BN 6133/2013, for R8,500,000.00 from Royal, dated 13 March 2013. (this bond is no longer the subject matter of a live controversy.)

7.3. Engen held a suretyship from Royal for Moodley's indebtedness, dated 15 February 2013. (This security is no longer the subject matter of a live controversy.)

[8] The critical time period during which the present controversy was triggered is October 2015 to January 2016.

8.1. Moodley was, already at that time, indebted to Engen in terms of an Acknowledgement of Debt (AOD) concluded on 17 June 2010. The AOD provided for the payment of capital and interest, the capital to be all appropriated first, and thereafter the interest thereon, all to be paid in monthly instalments. The AOD provided for the outstanding indebtedness to be established prima facie by a certificate signed on behalf of Engen. In October 2015, Engen was of the view that the sum outstanding was R6,036,220.94, Moodley having defaulted by not making any payments after May 2015. On 12 October 2015, by reason thereof, Engen called the total outstanding sum up as payable immediately. (Later, in the perfection application, in respect of this indebtedness, a certificate of balance was issued stating the sum due on 6 January 2016, was R5,665,847.0). No payment was subsequently received.

8.2. Fuel to the value of R R23,589,320.21 was delivered in November, payable on 31 December. Fuel to the value of R 22,199,073.05 was delivered in December, payable on 31 January 2016. Neither payment was made. Engen was thus owed, in respect of this indebtedness, a total of R 45,706,219.66.

[9] Despite demands to purge the default to pay for the fuel, delivered in November, payable on 31 December, which demand was made on 4 January 2016, and again on 6 January 2016, no payments were forthcoming.

[10] No rebuttal of the hard facts described here is advanced by Moodley.

- [11] The parties communicated with one another during January and meetings were held on 5 and 6 January 2016. The assurance that Moodley could and would pay was not forthcoming. An incoherent account was proffered by Moodley, or his staff, presenting contradictory records about the debtors' book, and unimpressive explanations for the discrepancies. The principal trigger for concern was the inability to convincingly explain why some R40 million in either stock on hand, or payments received, were unaccounted for. Engen drew the inference that Moodley was financially distressed.
- [12] In consequence Engen urgently obtained the order to perfect its security on 7 January 2016 in the form of a rule nisi returnable on 26 January 2016. Assets were attached on 8 January.
- [13] On 22 January 2016, Moodley deposed to an affidavit in which he sought to set the rule nisi aside. The case advanced by Moodley shall be addressed hereafter, but as already alluded to, no substantive rebuttal of the hard facts, described herein, is proffered.
- [14] On 29 January 2016, a sequestration order was also sought. On 5 February 2016 Moodley filed an answering affidavit. A provisional

order was granted on 16 February 2016. Moodley died on 29 March 2016. An executor was appointed on 5 May and the Rule 15(3) notice of the executor's substitution was given on 11 May 2016.

- [15] The Sequestration order self-evidently was sought on the same set of facts as already related in the perfection application, in addition to which allegations of insolvency were amplified.

- [16] The grounds advanced for the sequestration were that Moodley was actually insolvent, the business had lost its sub-stratum, (an admission by Moodley, made in the answer to the perfection application) and improper disposals of certain assets as contemplated

by section 8(c) and 8(d) of the Insolvency act 24 of 1936, had occurred. (The disposals per se are not in dispute)

- [17] The list of alleged illicit disposals related to what was discovered or not discovered when comparing assets found during the attachment process with a statement of Moodley's assets and Liabilities dated 23 September 2015, which had been given by him to Engen. In that statement total assets claimed, including trade debtors, of R82 million were alleged to exist. The 'missing assets' include:

17.1. A Mercedes 250 (which Moodley admitted to selling in the answer to the perfection application) and other cars, together, supposedly, worth supposedly R1.8million.

17.2. Watch collections supposedly worth R2.5million, (admitted by Moodley)

17.3. Kruger Rands supposedly worth R2.5million (admitted by Moodley)

17.4. Missing stock of about R55million. (the absence of stock is admitted by Moodley)

[18] As regards the question of a benefit to creditors, it was said by Engen that assets found hitherto included:

18.1. Seven fixed residential properties, the value estimated (perhaps not reliably) to be worth about R1, 315,000. (Moodley disclosed that there are mortgage bonds, totalling R360,00, 'on some' of the properties,)

18.2. Interests by Moodley in three companies in addition to Royal (which seem to be of little real value)

18.3. Cash of R1,000,000.

18.4. Sundry moveable assets valued at R2,682,125.00 (attached in pursuance of the order perfecting security)

18.5. Total value of estate as hitherto uncovered: R4,007,125.

[19] Engen contended a dividend was feasible and a proper search for hidden assets needed to be made.

MOODLEY'S RESISTANCE

[20] The affidavit put up to resist the sequestration application is a modification of the affidavit put up to resist the perfection

application, so there is substantial repetition.

[21] The so -called defences are a plethora of challenges, ranging from some so petty, (ie, the omission of Moodley's date of birth in the founding affidavit) which invites ridicule of the drafter, to stark and unsubstantiated allegations of a conspiracy by Engen to destroy his business, worth some R20 million a month to it, but no plausible motive is hinted at why the destruction of the business might suit a creditor in receipt of that sum of regular revenue.

[22] A vain effort is made to suggest that the transport agreement in terms of which Moodley conveyed fuel for Engen, at a fee, was wrongly terminated, thus reducing his regular revenue, which, as a result meant he has a damages claim which could be the subject of a set-off or somehow or other be relevant to the fact of his inability to pay debts incurred. The agreement, per se, Engen counters, was not formally ended. The collapse of that arrangement was the direct consequence of the attachment of vehicles which were formerly used to undertake the transport. If the attachment was not unlawful it's not apparent how a claim can flow from that occurrence.

[23] In another vain effort, the claim is made that the general notarial bond was not understood by him to be so and that he seeks

rectification to declare it a special notarial bond over specific assets. Apart from not indicating what might substantiate a claim for rectification per se, he does not formulate such a claim, identifying, of necessity facts to substantiate the gravamen of rectification; ie the common error. In any event, the sequestration controversy has overtaken that issue.

- [24] The National Credit Act 34 of 2005 (NCA) is invoked to suggest that the re-seller agreement was a credit agreement as defined, and that Engen, not being a registered credit provider, cannot recover moneys due to it. This contention seems to be based on unawareness that section 89(5)(c) of the NCA has been declared unconstitutional. (See *NCR v Opperman* 2013 (2) SA 1 (CC)). Further, he articulates a distorted idea that the sale of goods on account can constitute a credit agreement, despite no interest being levied except where default occurs (ie, Clause 14.1 of the re-seller agreement). Further, alternatively, he claims he was given credit recklessly. This contention is made in the face of his own evidence that there was a 16 year relationship and since 2013, for three years, the current arrangement had been in operation. The notion is meritless, even had the NCA applied.
- [25] These several wild allegations are the leading examples of the drift of the defences and serve to create the impression of a desperate strategy to procrastinate over a resolution of the core problem, ie the inability to pay what he owes.
- [26] This is all the more bizzare when there is taken into account the damaging admissions made by Moodley from which he cannot escape; ie that the business has ceased to exist, that it has no stock to sell or money with which to pay any of his debts, and that he has indeed sold his cars, his watches and his Kruger Rands, all within a few months after September 2015 when he claimed R82 million in assets. No substantiation of any actual 'sales' are tendered, still less, an indication of where or how the sales receipts were received and the money applied.
- [27] In the main, the further so-called defences are attempts to tease out of the papers procedural defects. Paradoxically, what seems not to be appreciated is that the admissions, plainly justified the granting of the provisional orders and nothing has been put on the record, since those orders were granted, to disturb that assessment.
- [28] I deal cursorily with the other defences which were pressed in argument, in turn.
- [29] Attacks concerning the re-seller agreement:
- 29.1. It is said that the agreement is invalid because suspensive condition (Clause 5.1) provided that the Engen board approve the agreement before it became binding and a notice to that effect was required to given to him. The delivery of such a notice has not been established. The counter argument is advanced that there must be an estoppel against raising such a point, as for over two years the parties treated the re-seller agreement as governing their dealings. I agree.
- 29.2. Moreover, the stipulation is for the benefit of Engen alone, which by these dealings, it has plainly waived.
- [30] Attacks against the Bonds:

30.1. The challenge to the formulation of the general notarial bond has already been alluded to; no case is made out on the papers.

30.2. The terms of the three bonds are said by Engen in its founding papers to be similar and only one is traversed in the affidavit. Moodley suggests that this can be twisted to mean only the general bond can be relied upon. It simply is not so.

30.3. The terms of the bonds have been set out, and there is nothing put up by Moodley to demonstrate that in the unrebutted circumstances described by Engen, the application to perfect the security was illegitimate.

30.4. It is alleged that, the signatory, one Bryce, of the certificate of balance on behalf of 'the company' does not properly identify Engen. The point is baseless, the identity of 'the company' is evident.

[31] Attacks against the deponent's authority:

31.1. Nit-picking complaints about the authority of a deponent to an affidavit filed in court papers occur from time to time in litigation. Why it is thought this sort of point can impress a court is a mystery. The rules of court provide a means to clarify any uncertainty about an action or application being properly authorised. The deponent's purported authority is an ancillary phenomenon.

31.2. There is never any justification to take such points unless there is a likelihood that the litigant will repudiate its purported deponent.

[32] Attacks against the notice to cure default:

32.1. The first letter putting Moodley on terms to pay for the fuel delivered during November and for which R23589,320 was due on 31 December 2015, of face or litigation to recover payment was sent on 4 January 2016. It stated that he was to cure the default within five days. However, a further letter on 6 January 2016, withdrew that demand and substituted a demand to pay in full by the next day. A positive response to that demand would have been to pay the debt. The application for the perfection of security was instituted on 7 January 2016. It is argued that by reason hereof the notice or notices were incapable of being complied with and thus the perfection application was illegitimate by being 'premature'. Engen counters this contention by arguing

that the perfection application was not premature, as the terms of the bonds entitle Engen to invoke their right to perfect their

security and procure relief from a court just as it did. This is correct. A suggestion was advanced that this implied a parate excutie clause. That is simply not so, as the judicially sanctioned attachment so obviously shows.

32.2. Indeed, ironically, if the money to pay the debt had been attached, the debt could have been extinguished. However, there was nothing found with which to pay. Nor did Moodley, within 5 days, or any other further period, pay up as was demanded, nor has sufficient money to pay up been found, as yet.

[33] Attacks against the AOD:

33.1. The purpose of AOD is to simplify the facts of an indebtedness. The default alleged is that no payments which were due in June, July, August, September, and October were made. Hence the notice of 12 October as alluded to earlier was sent calling up the balance as immediately due.

33.2. The defence is that no details are 'pleaded' of what the defaults were. That is simply incorrect. A schedule of the payments was attached. The notion that the detail be reproduced in the affidavit is misconceived.

33.3. A complaint is made that the letter of demand is for a sum slightly more than the sum in the application; ie R6036,220.94 as compared with R5,665,847.99. As alluded to earlier, the latter figure is derived from a certificate of balance issued three months after the initial demand. The imputation is that there is an error. If so, it does not inure to Moodley's prejudice. This leads onto a further complaint that no computation is presented of the sum. The very purpose of an AOD is to determine a fixed sum and a formula for paying it. If the sum claimed is alleged to be wrong, then the facts indicating the error ought to be stated by the person who alleges it. The high point of the defence is a 'belief' that the capital had long been paid off. This point is irrelevant. The AOD provided that the capital sum would be appropriated first and thereafter interest at a fixed rate would be paid. The protestation is inadequate to rebut the allegation of default as illustrated in the schedule of transactions on the AOD attached to the papers.

33.4. When Engen filed, as annexures to its Reply, correspondence going back years showing the continual late payments on the AOD, including of payments tardily made of the tail-end interest component, Moodley complained that to supply this information in reply was impermissible to do so in reply. The complaint is misconceived; the reply was provoked by the answering affidavit's denials.

[34] Attacks against the allegation of delivery of goods, and absence of a statement for the fuel:

34.1. The argument is made that no proof of delivery is offered and thus the two applications were ill-conceived. The complaint is simply unfounded. Proof of the deliveries were annexed. However, over and above the question of the formalities of tracking the actual physical deliveries, there were the meetings and the correspondence in January 2016 which are not rebutted. In these exchanges, considerable energy was expended by Moodley, his family and his staff to convince Engen's representatives that money could be sourced to pay for the fuel. The challenge is meritless.

34.2. The notion that payment for fuel cannot become due unless a statement of account is presented is a complaint. Hence, so it is argued, the perfection application was premature and so forth. But a copy of the December statement was annexed to the Founding affidavit. Moodley's

affidavit claims no more than an unawareness of its delivery. Moreover, Moodley's attorney on 22 January 2016 acknowledged Moodley owed R51 million and proposed to pay it off in R1.3 million instalments in conjunction with a proposal in terms of which certain third parties would take an interest in Moodley's business and inject capital to fund the payments. Such conduct is incompatible with any honest belief that money was not due and payable.

[35] The explanations for absence of stock or money:

35.1. That there is no stock remaining from R45million worth of fuel, within weeks of delivery is plain. Where is, at least, the R23m for December's deliveries? If sold payments should have made. The explanation offered is fantastic. The business model alleged to be in play, so said Moodley, is that customers pay in advance, maybe 2 or three months in advance, so the R23m of stock was delivered to honour those commitments.

35.2. Even if that could be true, where is the evidence of the R23m advance payments and why is that money not in the bank? If it was in the bank where did it go to? The silliness of this vain excuse is apparent.

[36] The contention is that there is no advantage to creditors:

36.1. This complaint is twofold; first, there is not enough money in the estate to yield a dividend, and secondly, whatever assets exist are subject to Engen's attachment, and thus it is the only creditor who can benefit, if at all.

36.2. The dividend, modest as it may, seems to be established. Moodley's computation is 9c in the Rand. Engen's estimates are higher, and several scenarios were advanced in argument, ranging from 64c to 33c. However, strictly speaking, it is unnecessary to choose which possible dividend will eventuate, nor is it appropriate to anticipate what creditors might choose to do if they perceive a danger of a contribution. The attempt to talk up the costs of the sequestration are unimpressive.

36.3. Moreover, and importantly, the likelihood of there being concealed assets seems to me to strong, given the circumstances already related. Where is R45 million worth of fuel? The suggestion is made that the enquiry into the liquidated Royal found nothing (as yet), therefore why might a trustee do better. This approach has nothing to commend it. The plainly dubious business dealings practised by Moodley warrant thorough investigation.

[37] The attack on establishing his insolvency:

37.1. The ramblings are without purpose; Moodley has admitted his insolvency.

37.2. The dispositions are said to be innocent. Prima facie, the disgorging of assets, including personal assets, over a short period is exactly what the insolvency legislation is designed to second guess.

CONCLUSIONS ON THE APPLICATIONS

[38] The resistance put up is meritless. The applications must both succeed.

COSTS

[39] In view of the meritless opposition, which it seems has been indulged in purely to delay the inevitable, a costs order on the attorney and client scale is appropriate.

THE REASONS FOR THE ORDERS DISMISSING MOODLEY'S RESCISSION APPLICATIONS AT THE HEARING

[40] The rescission applications were a meritless side-show, which like the rest of the resistance strategy was aimed at delay.

[41] As already recounted, orders were granted in the perfection and the sequestration applications. Both orders were provisional, and rules nisi were issued returnable on future dates.

[42] The rules were extended twice. The second return day was 16 May 2016, on the opposed roll. Notionally, the matters could have been argued that day, all papers having been filed.

[43] However, the death of Moodley on 29 March 2016 had consequences for the conduct of the litigation as until an executor was appointed to represent the estate, no further steps could be taken to obtain a judgment. The effective date of that substitution was 11 May 2016.

[44] What happened on 16 May was that the rules were extended by Wepener J at the request of counsel acting for Engen. No representative of Moodley was present. Moreover, the matters were called in the 'unopposed court' before Wepener J, not in the 'opposed

court'. It is pertinent to clarify that the extension of a rule nisi to a determined date means that the matter is before the court on that designated date, purely by reason of the order, regardless of any other practice, custom, directive, or other law.

[45] These extensions are alleged by Moodley to be irregular and in terms of Rule 42(1)(a) of the Uniform Rules of Court, rescission

applications were brought, alleging that the orders of extension were 'erroneously sought or erroneously granted in the absence of any party effected thereby'.

[46] Because of the intrinsic hiatus in the proceedings created by the untimely death of the respondent party, the usual formalities

pursuant to the Johannesburg High Court Practice were not observed in the way that they ought to have been complied with. The result was that the ripeness of the matter to be argued on 16 May 2016, in accordance with the prescripts of the practice, was not achieved.

[47] What Engen's attorneys did, was set the matters down on the urgent roll and later set them down on the unopposed roll with a view to obtaining a further extension.

- [48] The case of Moodley is that because the matters were not set down in the ‘opposed court’, and all the formalities as ordained in the practice manual were not observed, the rules nisi ought to have been allowed to lapse. The rescission applications are built wholly upon this premise.
- [49] The notion is contemptible. The imputation made by Moodley is that the Engen counsel snatched an order behind his attorney’s back. There are disputes of fact about whether Moodley’s attorney was properly kept in touch with what Engen’s attorney and counsel intended to do that day. It is unnecessary to unravel the allegations and counter allegations. Indeed, the fuss made about this aspect seems only to have been highlighted in the vain expectation that a material dispute of fact could be manufactured. The tiff is not material.
- [50] By reason of the earlier extension of the rules they were both on the roll of this court on 16 May. No further formality or action by either side was required to bring about that fact. Whether they found their way into the opposed or unopposed roll is irrelevant. The argument that the division of work among judges in different court rooms somehow erects juristic barriers whereby they become different ‘courts’ is nonsense. The absence of the practice directives being adhered to so that the matters could be set down on the opposed roll is irrelevant because no substantive orders were sought; merely the extension of the rules nisi was effected.
- [51] The infantile premise for the two rescission applications was the rationale for the order being made that costs be borne on *de bonis propriis*. Plainly, the ruse was not thought of by the client. The nonsense is wholly the brainchild of Moodley’s legal advisers.
- [52] This escapade is an example of an attorney violating his obligations to respect the court process and support it. Presumably the motivation was the zealous representation of a client. It displays a naïve attitude towards what constitutes professional

responsibility. An attorney does not become the sycophantic agent of his client and thereby is bound to perform any antic that may advance the client’s interests. The attorney’s function is to dispassionately advise a client of his rights, of what redress is available, and diligently advance a case to achieve a favourable outcome. But that duty to the client never translates into the embarrassing charade of putting up silly points that are unarguable, harass opponents and waste the time of the Court. The courts nurse an appetite to curb these abuses which affront common sense and resolve litigation into base gamesmanship.

THE ORDER

- [53] The rule nisi in the perfection application is confirmed.
- [54] The provisional sequestration order is made final.
- [55] The respondent shall bear the costs of opposition on the attorney and client scale including the costs of two counsel.

Roland Sutherland

Judge of the High court,

Gauteng Local division, Johannesburg

Heard: 8 February 2017

Delivered: 16 March 2017

For Moodley N.O:

Adv L Leysath

Instructed by MF Martins Costa attorney

For Engen:

Adv M Hellens SC, with him, Adv S Aukamp

Instructed by Lanham -Love attorneys

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