

SOUTH AFRICA / JUDGMENT

Giyani Engineering & Consulting CC and Another v Jacobs and Others (542/2022) [2022] ZAGPPHC 821 (14 October 2022) [2022] ZAGPPHC 821

COURT

North Gauteng High Court, Pretoria

BEFORE

Munzhelele

CASE / FILE NUMBER

542/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 542 / 2022

Reportable:

No.

Of

interest to other judges: No

Revised.

14

October 2022

In

the matter between:

GIYANI
ENGINEERING & CONSULTING CC First
Applicant
CALVIN
MUTIZE Second
Applicant
and
ADVOCATE
GERRIT JACOBS First
Respondent
MR
EUCAN GWANANGURA
Second
Respondent
MR
AUBREY VAN
ECK Third
respondent
MR
ABEDNEGO VULINQONDO DUMA Fourth
Respondent
MR
MOSES
MAPOLISA Fifth
Respondent
MR
LAMECK
CHINDOVE Sixth
Respondent
LAW
SOCIETY OF NORTHERN PROVINCES
Seventh
Respondent
This
judgment has been handed down electronically and shall be circulated
to the parties via email. Its date and time of hand down
shall be
deemed to be 14 October 2022.

JUDGMENT

Munzhelele J

Background

of the case

[1] A trial regarding the validity of a joint venture between the first applicant and Map Civil in respect of a Vegetation Eradication Tender of the KZN Msunduzi Municipality worth millions of rands is still proceeding before the Honourable Judge Mphahlele, the present Deputy Judge President of Mpumalanga High Court on case number 6915/2016. In

6915/2016 trial, the applicants have already closed their case, and the respondents are supposed to proceed either with leading their evidence or closing their case. The applicants in this application (542 / 2022) are the respondents in the main trial on case 6915/2016. Before the applicants proceed with their trial case, they have decided to bring an application to compel the respondents to procure the relevant facts and supporting evidence for the main trial. The applicants allege that the respondents had refused to provide such particulars for quite a long time.

[2] The applicant requests the court to order the following orders:

1. Order the respondents to provide all information in their position and control as outlined below within seven days; where such information is not readily available, the Respondents are to provide affidavits within 7 days of this order.
2. The first, second and third respondents were to provide pre-trial minutes for case number 6915/16, wherein it was recorded that the applicants were disputing the signature of the second respondent under case number 6915/2016.
3. The first, second, third and fourth respondents should provide an affidavit highlighting the specific paragraphs of the first and the third respondent's affidavit under case number 6915/16 wherein the signature was disputed.
4. The first, second, third and fourth Respondents are to provide signed and served notices in terms of rule 36 and comply with order 7 of Judge Carrim under case number 6915/16 concerning appointment and signature of experts.
5. The first, second, third and fourth respondents are to provide signed and served notices in terms of rule 36, in full compliance to order 7 of Judge Carrim under case number 6915/16 concerning the appointment of computer experts.
6. The first, second, third and fourth Respondents are to provide the CVs, certificates and qualifications and Professional registrations of the alleged computer and signature experts as duly appointed in terms of rule 36 and full compliance to the order of Judge Carrim.
7. The first, second, third, and fourth respondents are to provide individual memorandum or minutes to clarify the extent of jurisdiction of the High Court for case number 6915/16.
8. The first, second, third, and fourth respondents are requested to provide a joint instruction signed by the third respondent, authorizing them to issue such an instruction to the trustees.

9. The first and second respondents shall provide a resolution from the members of Map civil and landscaping cc, authorizing them to approach the trustees individually in profound contrast to Judge Westhuizen's order and communicate directly with the trustees without joint instruction from applicants.
10. The first and second respondents should provide communication and agreement with the third respondent to continue with the trial in full view of a booked caesarean operation of the key witness.
11. The first and second respondents are to provide affidavits outlining reasons for the preferential date and if such crucial information was brought to the Deputy Judge President's attention and the response of the DJP thereof.
12. The first and second respondents are further required to provide communication of the caesarean dates to the third respondent and, most notably, his response and agreement that the matter should continue as a preferential date.
13. The first, second, and third respondents are to provide affidavits stating why such a pre-trial as per DJP was not convened; secondly,

communication and approval from the DJP to disregard such a directive and thirdly, the agreement between the parties to disregard such a directive.
14. The first, second and third respondents are requested to provide proof and an affidavit with detail as follows:
 - (a) When the deponent filed such a file bundle
 - (b) Why such a file was not filed at least 15 days before trial in full compliance to rule 35 and following the pre-trial minutes
 - (c) Why such a file was not filed 7 days before the trial as per DJP directives
 - (d) If the Deputy Judge President was informed of this non-compliance to the rules and his response thereof
 - (e) Why did the parties fail to hold the second pre-trial meeting seven days before the matter was heard following the DJP's directive?
15. The first and second respondents are required to provide the permanent resident permit of their client Mr Moses Mapholisa in terms of the Immigration Act of the republic as their submissions.
16. The first respondent is required to provide an affidavit stating that these paragraphs were typed in error and to provide the proper and correct facts to the Court as this new submission is now in contradiction to the submissions in the founding affidavits.

17. The first and fourth respondents will be required to provide monthly bank balances from the date of investment to the date of this order, showing all interest accrued thereof or, in the alternative, a signed bank letter providing monthly reconciliation of funds held in the call account from the date of the investment to the date of the order specific to this amount.
18. The first, second, fourth and fifth respondents should provide proof of investment of security from the date of investment to the date of this order. Such proof shall be in the form of monthly statements showing monthly interest accrued therein or, in the alternative, a signed bank letter providing a reconciliation of funds held in the call account specific to this amount.
19. Concerning the order above, the second respondent will then be required to provide a Court order permitting him to allow security for the cost to be preserved in his client's account and not to be placed in a trust account as per norms.
20. The first and second respondents must provide the CK1, CK2 and share certificates supporting this allegation as per their due diligence search before releasing the official letter to the applicants.
21. The first respondent is requested to clear all paragraphs of typographical error as per his objections for the applicants to bear this in mind whilst preparing for their trial.
22. The first and second respondents are requested to provide joint minutes and individual legal memorandum that subsequently led to the agreement, providing a list of all items agreed upon.
23. Suppose such minutes for agreements above are unavailable; the first and second respondents shall provide affidavits highlighting all issues agreed upon and those that remained in dispute.
24. The first and second respondents must provide affidavits about when they became aware of the application to temporarily stay proceedings for the main trial.
25. The first, second and fourth respondents should provide an individual affidavit to confirm if the setting and continuation of the main trial pending finalization of interlocutory applications like rule 47(3) and temporary stay for proceedings was not an irregularity.
26. The fifth and sixth respondents must provide the signed employment contract for the sixth respondent as the operations manager for Map civil, as pleaded under oath at the main trial hearing in 2017
27. The sixth respondent must provide an affidavit outlining details of the verbal employment contract as the project manager between himself and Ms Gloria Mhlanga as per his police affidavit dated December 2021

28. The fifth respondent should comply with a Court order and provide a copy of the passport or ID that was used to register Map Civils in 2009 as per details appearing on the founding statement, for the same can be obtained from the registrar of companies in the event he is no longer in the position of such records.
29. The fifth respondent should provide his work permits when registering his company and entering into the alleged MOU/JV.
30. The first, second, fourth, fifth and sixth respondents should provide all other information as requested in terms of rule 35 already served during the dispute for the applicants to prepare for the finalization of the main trial as directed by the trial Judge.
31. The first and fourth respondents shall provide a copy of the absolution order as per their submission at the judicial case management meeting of 2 November 2021 and effect proper service of the order to the applicants, in addition to an affidavit outlining when and how they received such an order and why such an order has not been given to the applicants to date.
32. In the event that the first respondent cannot provide all the relevant information as per the trial Judge's directive and as per the above orders within 7 days, the first respondent will automatically become a material witness and should be recused from the main trial and be called in to testify on behalf of the applicants.
33. The fifth respondent is ordered to forward the original email containing the alleged MOU of 01 August 2014 to the applicants. The fourth respondent and the trial Judge's secretary in its original form
34. In the event that the fifth respondent cannot forward such an original email for whatever reasons, the first, second, and third respondents shall be ordered to forward the original email trailing that they received from the fifth respondent
to the applicants, the fourth respondent and the trial Judge.
35. The first, fourth, & fifth respondents are to provide the list of all claims that they wish to proceed with and provide a specific reference to the terms of the MOU to which they seek to rely on
36. The first and second respondents shall be liable to pay for the commercial loss and damages of R600 000,00 (six hundred thousand rands) a month from the date of the dispute until the finalization of the contract, including interest of 10% per annum.
37. To the extent that the first respondents have a conflict of interest on this matter, he is, as a result, recused from the matter.
38. In the event that the first to the sixth respondent cannot provide all the information requested within 7 days of this order, The main application under case number 6915/16 must be dismissed with prejudice.

39. The first and second respondents shall pay the cost of this application, and any other party opposing thereof cost shall be De bonis propriis.
40. The seventh respondent must investigate the conduct of the first, second, third and fourth respondents concerning how they conducted the litigations between the applicants and their opponents as already reported and provide findings reports to the applicants within 6 months from the date of this order, after that the seventh respondent should launch to disbar any party found guilty within 90 days of their findings.

The Parties

- [3] The applicants are Giyani Engineering and Consulting CC (Reg No: 2007/228640/23), a close corporation duly registered and incorporated in terms of the Law of the Republic of South Africa and Calvin Mutize. The respondents Adv. Gerrit Jacobs, Mr. Eucan Gwanangura, Mr. Aubrey Van Eck and Mr. Abednego Vulinqondo Duma are practicing attorneys. The fifth respondent is Mr. Moses Mapolisa. The sixth respondent is Mr. Lameck Chindove. The seventh respondent is the Legal Practice Counsel, the body for all legal practitioners.
- [4] During the hearing of the application, the applicants informed the court that they were withdrawing their application against the third respondent. Against the fourth, fifth and sixth respondents, the applicants decided to withdraw its application because counsel had just joined in representing the fourth, fifth and sixth respondents. During the arguments by the second respondent, he mentioned that the file which the applicants were looking for had already been handed to the attorneys for the fourth to the sixth respondents. Counsel for the fourth to sixth respondents promised to provide the file to the applicants after consultation with his attorneys. The applicants then decided to no longer proceed against the fourth to six respondents. The application proceeded against the first and second respondents, respectively.
- [5] From the applicants' notice of motion the applicants seek the following prayers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31, 32, 34; 35, 36, 37, 38, 39 and 40 to be ordered against the first respondent. Against the second respondent the applicants are seeking the following prayers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 30, 36, 38, 39 and 40 to be ordered by the court. The third

respondent is not part of the application, and the fourth respondent is exempted because he has just been appointed as the new

representative for the fourth to the sixth respondents. The applicants seek this court to order the following prayers 1, 18, 26,

28, 29, 30, 33, 34, 35 and 38 against the fifth respondent. Further the applicants seek this court to order the following prayers 1, 26, 27, 30 and 38 against the sixth respondent.

- [6] The first, second, fourth to sixth respondents opposed the applicants' application, and the first respondent had raised six points in limine, which are the following:

1. That the applicant has sued the wrong party because the first respondent is an advocate in a part-heard matter where he was briefed to appear by the attorney on behalf of the first and third applicants in the main case. This point in limine also deals with the fact that the first respondent, together with the other legal representatives, cannot be able to attest to an affidavit.
2. The non-joinder of the first and second applicants (Map Civil and Landscaping CC and Bridget Thandeka Duma) in case no 6915/16.
3. The applicants' prayers namely 1, 2, 3, 4, 5, 6, 7, 10,11, 12, 13, 14,15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 37, and 38 are part of the main trial evidence.
4. Paragraph 8 and 9 of the notice of motion contains vague and embarrassing allegations.
5. Paragraphs 16, 17, 18, and 19 deals with security for costs in the part-heard case 6915/2016.
6. Prayer 36 of the applicants' notice of motion seeks damages from the first and second respondents with interest arising from the letters written by the first and second respondents.

The first point in law the misjoinder

- [7] On the first point in limine, the first respondent contends that he was briefed in a part-heard matter, therefore, cannot be joined in this application as a respondent because he is not a party to the main case but rather a counsel briefed by an attorney. Secondly, the first respondent argued that he could not attest to the affidavits that the applicants requested because there would be a conflict of interest. The applicants can request the documents from the attorneys who so briefed him. The applicants, on the other hand, submits that the first respondent, together with the second, third and fourth respondents, should provide such documents on the basis that, they would like to use the same information in their trial and that they cannot be prejudiced by giving such information because they have already closed their case and that such information is no longer privileged. Further, the applicants allege that they will be prejudiced because they will not be able to present their case adequately in the absence of this information. The applicants did not argue the point in limine of misjoinder.
- [8] Further, the first respondent argued that the legal representative could not testify in the case where he is representing the parties. To this point, he referred the court to the Principle of Evidence- (second edition) PJ Schwikkard et al. 2002 on page 395. Further, counsel submitted that the move to request the counsel to testify could compromise his involvement in a part-heard matter going forward. This cannot be in the interest of justice nor in the interest of the first respondent's clients to grant the relief as prayed for by the applicants.

[9] The general principle is that a legal representative is a competent witness for or against his client; however, it is undesirable for him to testify because he must retain his independence vis-à-vis his client and vis-à-vis the dispute, besides which his credibility may be affected. In *S v Boesman*[1] the court dismissed the state's application to call the accused's former advocates as witnesses. Even though the accused had renounced

their legal professional privileges, the court declared that it would be undesirable for advocates to give evidence against their former clients and dismissed the application on public policy considerations.

[10] The first respondent cannot fulfil the dual roles of being an advocate and a witness in this case without prejudice against one or the other in the circumstances. Fairness and justice to his clients will be compromised except on rare occasions where the testimony relates to an uncontested issue. However, in this case, there is nothing which is not in dispute. Therefore, I cannot order the first, second, third and fourth respondents to attest to affidavits. Further, I cannot order the first respondent to be part of this proceedings as a respondent based on the following crucial reasons which the applicants should have also known before joining the first respondent to this application:

1. The first respondent is a briefed counsel, not a party to the main case, acting on the attorney's instructions; the applicants joining the first respondent is inappropriate.
2. The applicants should have requested for the documents from the attorney of record and not from the first respondent because the first respondent is not the attorney of the record.
3. The first, second, third and fourth respondents cannot attest to an affidavit in this case without compromising their clients, which will be unfair to them.
4. If the first, second, third and fourth respondents were to testify or attest to affidavits, they should leave their cases to other counsels. The first, second, third and fourth respondents never indicated in their arguments that they would want to leave their cases into other people's hands. As such, on consideration of public policy, this point in limine should succeed and the applicants' prayers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31, 32, 34, 35, 36, 37, 38 against the first respondent are dismissed. The prayers 3, 7, 10, 11, 12, 13, 14, 23, 24, 25 against the second, third and fourth respondents where they are requested to attest to affidavits are also dismissed.
5. The applicants' prayer 39 for costs will be dealt with below
6. The applicants' prayer 40 for investigations to be held against the first, second, third, and fourth respondents by the legal practice council will be dealt with below.

The second point in law raised – non-joinder

[11] The first respondent contends that Map Civil and Landscaping CC, as well as Bridget Thandeka Duma, should have been joined in this application since the applicants seek to dismiss case 6915/16 for non-compliance with the applicants' request as per its prayer 38 of

the notice of motion. The first respondent argued that Map Civil and Landscaping CC and Bridget Thandeka Duma are the first and second applicants in the main case 6915/16, which is already a part-heard, and they have already closed their case. The applicants did not argue this point in law.

- [12] The Supreme Court of Appeal sets out the test for non-joinder in *Absa Bank Ltd v Naude NO*[2] at para 10;

“The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the

litigation which may prejudice the party that has not been joined. In Gordon v Department of Health, Kwazulu-Natal 2008 (6) SA 522 (SCA) para 9

it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined.”.

- [13] If the main case becomes dismissed, the judgment will affect Map Civil and Landscaping CC as well as Bridget Thandeka Duma because they have a vested interest in the outcome of their case as the applicants in the main case. The two parties the applicants did not join would have been deprived of their right to be heard (*Audi alteram partem* principle) in a matter in which their interest and rights would have been at stake if their case was to be dismissed. I agree with the first respondent that this point in limine has merits and should succeed. The applicants’ prayer 38 should be dismissed for non-joinder against all the respondents.

The third point in law raised – Merits of the part-heard

- [14] The first respondent submits that the majority of prayers, namely prayers 1 to 7, 10 to 16, 20 to 29, 31 to 34, 37 and 38 in the notice of motion read with the founding affidavit, deals with the procedure in and/or the merits of a part-heard hearing of the application in case 6915/16. This case is a part-heard before the current Deputy Judge President of the Mpumalanga Division, Justice Mphahlele, which commenced in this division when Judge Mphahlele was still a Judge within this division. As the matter became part-heard, when she got elevated to the division of Mpumalanga, she kept the matter with her and is in the process of finalization.
- [15] I agree with the first respondent that on reading the prayers, it is clear to me that prayers 1, 2, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 31, 32, 33, 34, 35, 36, 37 and 38 have to do with the merits of the part-heard. The applicants should proceed with the main trial, which he seems to avoid by bringing these applications. This court is not privy to the details of those prayers, and the only court which could assess better this merits at the end of the case is

the trial court. The point in limine is upheld and the applicants' prayers 1, 2, 8, 9,10,15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 31, 32, 33, 34, 35, 36, 37 and 38 are dismissed against all the respondents.

The fourth point in law raised – Paragraphs 8 and 9 are vague and embarrassing.

- [16] The first respondent submits that the applicants' prayers in paragraphs 8 and 9 are vague and embarrassing and that it is impossible to interpret what the applicants are asking the court to do. There is reference to trustees without specifying who they are and their roles. There is further reference to a court order, which is not annexed to the founding affidavit. Further, the relief is not supported by facts in the founding affidavit. The first respondent argues that the applicants failed to make a prima facie case of why this court should grant this relief.
- [17] I agree with the first respondent that the applicants' prayers 8 and 9 lack substance and is confusing. The applicants talk about the trustees and do not mention who these trustees are. The judgments that they have obtained from the Honorable Judge Tuchten and Honorable Judge van Niewenhuizen refers to the money to be deposited into the call account, which should be in the names of Map Civil and Landscaping CC and has nothing to do with the trustees. These prayers also form part of the merits in the main case, which the trial court must decide. On that basis, the point in limine is upheld, and prayers 8 and 9 are dismissed against all the respondents.

The fifth point in law raised – Security for costs.

- [18] The first respondent submits that the relief sought in paragraphs 16, 17, 18 and 19 deals with the relief about the alleged security for costs in case number 6915/16, which is a part-heard and should not be interfered with by any other Judge than the trial Judge dealing with the matter. He further submits that, even in as far as the applicants may argue that this is a quasi-attempt to enforce an order granting security for costs, the applicants failed to;
1. Furnish the court with the order ordering any party to do so
 2. Make out a case for non-compliance therewith.
 3. Give any indication of how that security was requested.

In the premise, the first respondent argued that the applicants failed to make out a prima facie case for the relief sought in prayers 16, 17, 18 and 19 and, therefore, the relief should be dismissed with costs. The applicants never answered this point in their arguments. However, their founding affidavit mentioned that the fifth respondent is a Zimbabwean and that the applicants in the main action should provide security for costs.

[19] The applicants had already requested the court to deal with the security of costs, and the Honorable Judge Mavundla dismissed the application. What the applicants are now doing is an abuse of court. They cannot be found repeating the applications dismissed by the court again. They should proceed and deal with their main case. The point in limine is upheld, and prayers 16, 17, 18 and 19 are dismissed against all the respondents.

The sixth point in law raised – Damages.

[20] The applicants withdrew this point during the hearing of the application. However, it is important to note that in *EFF & Others v Manuel*[3] the Supreme Court of Appeal said that the application procedure is inappropriate in a claim for damages. The point in limine is upheld, and the prayer for damages is dismissed against all the respondents.

The question regarding whether the applicants' application is an interlocutory application

[21] I will deal with the submissions by the applicants regarding their application, whether this is an interlocutory application or not. The fourth respondent denies that the applicants' application is interlocutory in form and in substance. I agree with the fourth respondent; the applicants' application is not an interlocutory application. Interlocutory application is a request made to the court to compel compliance with the procedure and periods to secure some end and purpose necessary and essential to the progress of a case. It should be collateral to the issues adjudicated at the trial.

[22] In their application, the applicants request damages; indeed, they should have known that on interlocutory application to compel, one cannot request damages, and such request is not related to the main trial. They further asked for the recusal of attorneys; one cannot be asking for the recusal of an attorney because the application requires more information for the applicants to succeed, and I do not see how this request is related to the furtherance of the main trial. There was also a request for investigations against the advocates and attorneys representing the applicants in the main case. Therefore, this application is not an interlocutory application in substance.

[23] Further, on the issue of this application as an interlocutory application, rule 35(6) dated 19 September 2019 and one dated 20 November 2021 contained a few orders which were requested, which are: Employment contract of Lameck, Mapolisa's work permit, Map Civil And Landscaping CK documents, computer experts joint minutes, CV and qualifications certificates for computer experts, list of new items raised on the arguments, transcription of page 11-14 of the September trial, itemized billing of quantities, bank statements showing proof of loaned funds in the tune of R413 000,00 (four hundred and thirteen thousand), bank statements which show proof that funds were loaned, competence certificates of Jeshua Paradza, competence certificate of Andrew Anasi, original ID for Calvin Mutize as reflected on the share certificate dated 24 October 2014, original CK of the ID no [...], original agreement dated 5 August 2019. From the above items, it is also clear that the following orders did not form part of the above items on the notice in terms of rule 35(6), which are order number 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 30, 31, 32, 33, 34, 35,

36, 37, 38, 39, and 40. All these orders were brought on this notice to compel without having been requested for such first, which is procedurally wrong. Consequently, on the argument by the fourth respondent that the application is not an interlocutory application to compel in substance and form, the applicants' application on all those orders should not succeed.

Issue of investigation and disbarment of legal practitioners

- [24] The second respondent avers that the applicants' application has no case for disbarment with all due respect, but at most is expressing its vindictiveness against the former attorney of Map Civil to wit the second respondent for resolutely and professionally litigating against Mr Mutize for the past six years in execution of an attorney-client's mandate.
- [25] On the other hand, the applicants aver that the first and second respondents should have known that the fifth respondent's claims were untrue based on publicly available information. The tender was for a government institution, published on public platforms, and successful bidders were also published in the public domain. The fifth respondent was an illegal immigrant at the time, without any business permit whosoever.
- [26] The applicants further submit that the first and third respondents had misleading facts to the trustees, that the parties would require project costs, Annexure E1 to prevent the trustees from investing the applicants' funds, thereby losing investment interest; however, when approached to release the project costs jointly, the first and second respondents refused. Therefore, the applicants request this court to order some investigations against the first and second respondents. This matter has already been in the hands of the LPC, and as such, they will proceed to investigate the matter if the applicants requests them to.

Costs

- [27] The first respondent submits that the relief sought by the applicants is not only misconstrued but inappropriate. Recklessly, the applicants seek another court to intervene in a pending trial without any merit or reason to do so. The applicants failed to deal with steps they could have taken in the trial court. They failed to explain why the trial Judge was not approached, notwithstanding active case management.
- [28] Further, the first respondent submits that this application is vexatious and without merit. Vital parties have not been cited nor served, including the trial Judge. It is submitted that this is an appropriate case where the respondents should not be out of pocket being dragged to court with ill-conceived and frivolous relief.
- [29] The dicta of *SA Druggists Ltd v Beecham Group plc*[4] should apply, and a costs order should be granted whether the matter is dismissed or struck from the roll on a scale between attorney and client. The applicants jointly and severally should pay the respondents' costs.
- [30] On reading of the prayers on this application, it is clear that the applicants are stalling in finalizing the main case. They are hiding behind this application. It does not make sense that the matter, which had pre-trial conferences before it could be heard, still has these

further particulars being requested. The applicants were part of the main trial proceedings and were allowed to cross-examine the witnesses; as such, all these issues should have been dealt with then. The applicants had been repeating applications for want of documents even when they already had the orders from different Judges

to that effect. This is an abuse of court, which this court frowns upon. I agree with the respondents that the applicants should pay costs on an attorney and own client scale.

Order

[31] In the circumstances, the following orders are made:

1. The six points in limine are upheld.
2. Prayers 1 to 40 are dismissed with costs on the attorney and client scale.
3. The applicants are jointly and severally liable to pay the respondents' costs.

M. Munzhelele

Judge of the High Court Pretoria

Virtually heard: 08

August 2022

Electronically Delivered: 14

October 2022

APPEARANCES

For the Applicants: Mr

Mutize (In person)

For the First Respondent: Adv.

M.C.C De Klerk SC

Instructed by: Verster

Attorneys

For the Second Respondent: Mr.

E Gwanangura

Instructed by: Gwanangura

Incorporated Attorneys

For the Fourth to Sixth Respondents: Adv. M.R Maphutha

Instructed by: Borman

Duma Zitha Attorneys

- [1] 1990
- (2) SACR 389 (E)
- [2] (20264/2014) [2015] ZASCA 97 (1 June 2015)
- [3] (711/2019 [2020] ZASCA 172 (17 December 2020)
- [4] 1987
- (4) SA 869 (T)

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