

SOUTH AFRICA / JUDGMENT

Impac Underwriting Managers (Pty) Ltd and Another v Du Plooy and Others (56401/2020) [2021] ZAGPPHC 597 (14 September 2021)

[2021] ZAGPPHC 597**COURT**

North Gauteng High Court, Pretoria

BEFORE

N Janse Van Nieuwenhuizen

CASE / FILE NUMBER

56401/2020

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Source record**IN THE****HIGH COURT OF SOUTH AFRICA(GAUTENG DIVISION, PRETORIA)****REPUBLIC****OF SOUTH AFRICA****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED****DATE:**

14 SEPTEMBER 2021

Case

Number: 56401/2020

IMPAC

UNDERWRITING MANAGERS (PTY) LTD

First

Applicant

IMPACT

CROPSURE (PTY) LTD

Second

Applicant

And

WILLEM

HENDRIK FREDERIK DU PLOOY

First

Respondent

CHANEL

CELESTE DE LA ROCHE-VIVIERS
Second
Respondent
WIHAN
GROENEWALD
Third
Respondent
OOPKOP
PROPRIETARY LIMITED
Fourth
Respondent
WILLEM
HENDRIK FREDERIK DU PLOOY
Fifth
Respondent
WWJ
AGRI (PTY) LTD
Sixth
Respondent
KING
PRICE INSURANCE COMPANY LTD
Seventh
Respondent
THE
FINANCIAL SERVICES CONDUCT AUTHORITY
Eighth
Respondent
ACUA
MAKELAARS
Ninth
Respondent
AGRIINVEST
(PTY) LTD
Tenth
Respondent
CERTISURE
BROKERS (PTY) LTD
Eleventh
Respondent
FINCO
FINANCE (PTY) LTD
Twelfth
Respondent
FIRST
NATIONAL BANK LTD
Thirteenth
Respondent
FORREST
FANTASY TRADING 76 CC
Fourteenth
Respondent

IP
MAKELAARS
Fifteenth
Respondent
OVK
MAKELAARS
Sixteenth
Respondent
PLATINUM
AGRI
Seventeenth
Respondent
PRICE
FORBES (PTY) LTD
Eighteenth
Respondent
RIGGSURE
BROKERS
Nineteenth
Respondent
RSFM
AGRI & COMMERCIAL
Twentieth
Respondent
STANDARD
BANK LTD
Twenty-First
Respondent
SUIDWES
MAKELAARS
Twenty-Second
Respondent
THARSEI
BROKERS
Twenty-Third
Respondent
TWK
AGRI (PTY) LTD
Twenty-Fourth
Respondent
UNIGRO
INSURANCE BROKERS
Twenty-Fifth
Respondent
VKB
BROKERS (PTY) LTD
Twenty-Sixth
Respondent
JOHAN
GEORG MEYER DU PLOOY
Twenty-Seventh

Respondent
PETRUS
HENDRIK TALJAARD
Twenty-Eighth
Respondent
SCHALKWYK
VAN DER MERWE
Twenty-Ninth
Respondent
PIETER
HENDRIK FAURE
Thirtieth
Respondent
GIDEON
GALLOWAY
Thirty-First
Respondent
GAUCHE
RADLEY
Thirty-Second
Respondent
CHARMAINE
LOUISE SMITH
Thirty-Third
Respondent
LAMBERTUS
JOHANNES VAN DER NEST
Thirty-Fourth
Respondent
NICOLAAS
JACOBUS VIVIERS
Thirty-Fifth
Respondent
RHETT
JAMES PEARSON FINCH
Thirty-Sixth
Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] This is an application for an interim interdict ordering and restraining the first to seventh respondents from utilising the applicants' confidential information pending an action for final relief.

RELIEF

[2] In essence the relief claimed by the applicants is contained in prayer 2 of the notice of motion, to wit:

“2 Pending the outcome of an action to be instituted by the applicants for final relief within one month from the date of an order being granted, the first to seventh respondents be-

2.1 Interdicted and restrained from utilising the applicant’s confidential information and documentation in any manner or form, and in particular, but without limitation, any information relating to the applicants’ business, their clients, agents, suppliers, models, products, and pricing structures as set out in schedule “X” attached to the notice of motion;

2.2 Interdicted and restrained from unlawfully competing with the applicants;

2.3 Ordered forthwith to return to the applicants all and any copies of the confidential information of the applicants in the possession of the first to seventh respondents.”

[3] The applicants’ confidential information and documents and/or

electronic records are described in Annexure “X” as follows:

“

ANNEXURE "X"

The applicants’ confidential information and documents and/or electronic records

1. the applicants’ customer lists and lists of past, present, prospective, actual and potential customers of the applicants; as well as documents or records reflecting contact details and related business information of and concerning any past, present or prospective customer of the applicants;
2. all data reflecting past, present and anticipated future business conducted with past, present, future, actual or potential customers of the applicants (including details of requirements specified, proposals made, packages offered, quotations, invoices / statements rendered and amounts paid by or on behalf of such customers);
3. correspondence (including letters, faxes, emails, text messages, memoranda and file notes together with any spreadsheets or other attachments thereto) exchanged between the applicants (represented by the respondent and/or other past or present employee(s) of the applicants) (on the one hand) and the applicants’ past, present, prospective, actual and potential customers (on the other) at any time prior to execution of the order;
4. the applicants’ supplier lists and lists of their past, present, prospective, actual and potential suppliers; as well as documents or records reflecting contact details and related business information of and concerning any such supplier of the applicant;

5. data reflecting past, present and anticipated future business conducted with actual or potential customers and/or suppliers of the applicants (including details of requirements specified, proposals made, packages offered, services rendered, invoices / statements rendered and amounts paid by or to such suppliers);
6. correspondence (including letters, faxes, emails, text messages, memoranda and file notes together with any spreadsheets or other attachments thereto) exchanged between the applicants (represented by the respondent and/or any past or present employee of the applicants) (on the one hand) and the applicants' actual and potential customers and/or suppliers (on the other) at any time prior to execution of the order;
7. contracts and/or other terms and conditions regulating the applicants' business relationships with their customers, suppliers, business associates and/or employees at any time prior to execution of the order;
8. the applicants' costing inputs (including price lists, quotations, invoices and statements from suppliers);
9. the applicants' pricing outputs (including price lists, quotations, invoices and statements to customers);
10. strategic information pertaining to the applicants' business (including business plans, proposals, memoranda, marketing material, training material and budgets);
11. management information pertaining to the applicants' business (including minutes of meeting and resolutions as well as internal policies and procedures);
12. marketing information pertaining to the applicants' business (including advertisements, brochures, proposals, quotation and pamphlets) which had been prepared for the applicants' customers or clients or a particular customer or client of the applicant and which was not intended for distribution in the public domain;
13. financial information pertaining to the applicants' business (including financial statements, management accounts, creditors' and debtors' lists, forecasts and bank statements)."

PARTIES

- [4] Although relief is only claimed against the first to seventh respondents, the applicants have cited no less than twenty-nine further respondents. The ninth to the twenty-sixth respondents are insurance brokers who have been cited "as a consequence of the interest that they have in the subject matter of the litigation and so that the relief sought, and to be granted, together with the basis therefore, are placed within their personal knowledge."
- [5] The twenty-ninth to the thirty-sixth respondents are directors of the seventh respondent, who have been cited for the same reason as the insurance brokers.
- [6] I will deal with the citing of these respondents to the application

in more detail infra.

[7] The first applicant, Impac Underwriting Managers (Pty) Ltd (“Impac”),

is:

[7.1] a duly registered financial provider with the Financial Services Conduct Authority (FSCA);

[7.2] an underwriter that provides underwriting services in the short-term insurance of agriculture produce also known as crop insurance;

[7.3] a member of the Fairfax Group with Bryte Insurance Company Limited (“Bryte”), a registered insurer in terms of the Insurance Act 18 of 2017 (“the Insurance Act”).

[8] The second applicant, Impac Cropsure (Pty) Ltd (“Cropsure”),

is cited in its capacity as the erstwhile employer of the first, second and third respondents.

[9] The first respondent, Willem Hendrik Frederik du Plooy (“Du

Plooy junior”), has 11 years of experience in short-term crop insurance. Du Plooy junior is the only shareholder and a director of the fourth respondent and the son of the fifth respondent. Although Du Plooy junior is cited in his capacity as an erstwhile employee of Cropsure, the employment contract attached to the founding affidavit is between Du Plooy junior and Impac.

[10] The second respondent, Chanel Celeste de la Roche-Viviers (“Viviers”)

and the third respondent, Wiham Groenewald (“Groenewald”), are cited in their capacities as erstwhile employees of Cropsure and are presently in the employment of the Fourth Respondent. Although Viviers is cited as an erstwhile employee of Cropsure, her employment contract was, similar to that of Du Plooy junior, entered into with Impac. Although Cornelus Hendrik van Staden (“Van Staden”), the deponent to the founding affidavit, stated in the citation of the respondents that Groenewald was an employee of Cropsure, which allegation is confirmed by the employment contract attached to the founding affidavit, he later on, in the affidavit, changed his version and stated in paragraph 126 that Groenewald was employed by Impac.

[11] The fourth respondent is Oopkop (Pty) Ltd (“Oopkop”). Although not registered with the FSCA yet, Oopkop intends to operate as an underwriter in crop insurance.

[12] The fifth respondent, Willem Hendrik Frederik du Plooy (“Du Plooy senior”):

[12.1] has 39 years of experience in crop insurance;

[12.2] is a director of the sixth respondent and was appointed through the sixth respondent as a consultant to Impac to render particular consultancy services which included inter alia the management of Impac’s risk and damages’ assessors.

[13] The sixth respondent is WWJ Agri (Pty) Ltd (“WWJ”).

- [14] The seventh respondent, King Price Insurance Company Limited (“King Price”), is a registered insurer in terms of the Insurance Act.

IMPAC’S CASE

- [15] Impac entered the crop insurance market during 2018 and provides hail, hail top-up and multi revenue-based cover (“revenue-based cover”) insurance. Its revenue-based cover is the first revenue-based crop insurance in South Africa and according to Van Staden, the chief executive officer of Impac, is unique to Impac.
- [16] Impac alleges that its revenue-based cover, business model and specific pricing structures constitute highly secret and proprietary confidential information that synergistically constitute its goodwill and distinguish it with a competitive advantage over its competitors in the market.
- [17] Revenue-based cover is distinguishable from the minimum quantity yield of the crop to be harvested per hectare by the insured farmer (“yield cover”). Yield cover entails that inter alia a maize farmer’s crops, are insured on the basis that the farmer would harvest at least – for instance – four tonnes of maize per hectare. Should the maize be destroyed by drought the farmer is compensated at a rate that represents the multiple of insured value per tonne and insured tonnages.
- [18] Revenue-based cover differs from yield cover, in that it does not insure the physical crop, but rather a portion of the revenue a farmer stands to lose in the event that the assumed risk matures into the loss which the farmer would otherwise have derived from harvesting the crop.
- [19] Van Staden states that the revenue-based cover is modelled on a Doctoral Post-Graduate thesis undertaken by his co-founder, shareholder and director of Impac, Deon Scheepers (“Scheepers”). Scheepers has spent six years researching and writing his thesis on revenue-based cover. Van Staden, furthermore, states that pursuant to Scheepers development of the model for revenue-based cover, he personally drafted the necessary commercial instruments required to ultimately monetise and allow the commercialisation of the product.
- [20] These, according to Van Staden, includes policy contracts, policy wordings, terms and conditions, pricing structures, marketing material, data/information sheets, brochures and the like.
- [21] In explaining Impac’s proprietary information, Van Staden states that Impac has a complete database:
- [21.1] of their clients, the contact details of the clients, their needs which have over the past ten years have been meticulously kept and updated. I pause to mention that the allegation could, in view of the fact that Impac only entered the crop insurance market in 2018, not be correct;

[21.2] of the identity of Impac's suppliers, business associates, brokers, underwriters and their contact details. Bearing in mind that Impac itself is an underwriter, the allegation does not make sense;

[21.3] of the precise and confidential trading terms on which Impac commerce with its service providers, brokers and customers;

[21.4] of the precise needs and spend of each Impact customer, which entails intricate know-how of the otherwise confidential aspects of their respective farming enterprises;

[21.5] of Impac's risk rating information and pricing tables which are specifically particularised relative to each commodity, historic commodity yield performance data, the scale at which a farmer farms such commodity as well as past performance statistics and essentially comprise and inform Impac's entire exposure/risk/profit and effectively its complete business model;

[21.6] of the training material that Impac issues to its brokers affiliated to it, copies of the agreements that Impac concludes with such brokers, the wording of other documents utilised by Impac in pursuance of its appointed brokers and documents of the like;

[21.7] of the insurance policy wordings and contracts, personally authored by Van Staden, which include the hail policy wording and the revenue policy wording.

[22] According to Van Staden, Impac's customer pricing structures are customised from client to client and all other costs and financial models concerning Impac's products, profit margins, costs structures and price compositions and the methods and formulae used by Impac to calculate these figures are inherently confidential and secret to Impac as they inform Impac's profit margins. Should this information fall into the hands of a competitor it would result in Impac suffering severe losses and irreparable harm.

[23] Van Staden, further states that Du Plooy junior, Viviers, Groenewald and Du Plooy senior had as a result of their employment with Impac, unrestricted access to the aforesaid confidential information.

[24] Du Plooy junior resigned from Impac with effective date 30 June 2020, Viviers resigned on 1 July 2020 and Groenewald on 28 July 2020. According to Van Staden, Du Plooy junior, Viviers and Groenewald then started their own crop insurance business, Oopkop. From the facts, it is clear that Du Plooy junior started Oopkop and that Oopkop wants to enter the crop insurance market as an underwriter and not as an insurer.

[25] Van Staden believed that Oopkop would utilise Impac's confidential information as a springboard to unlawfully commence trading and to compete with Impac. It apparently became evident later on that Impac's confidential information was misappropriated by employees of Du Plooy senior. Du Plooy senior emphatically stated that he has no employees.

[26] An Anton Pillar order was obtained to confiscate and access the information in the possession of respondents. The respondents brought applications to set aside and amend the Anton Pillar order, which resulted in the matter being settled between the parties.

[27] In execution of the order, Impac's full financial results for the 2018/2019 crop season were found on the hard drive of Du Plooy senior's computer. Van Staden refers to other documentation containing Impac's clients' information and its pricing structure that was found in possession of the respondents and summarises the position as follows:

"Again, I reiterate, that Oopkop is a start-up enterprise which has unlawfully acquired and copied the business of Impac and it is manifestly to conduct an Insurance Enterprise on this unlawful basis that necessitated it to apply for a licence to conduct an insurance business to be issued to it by the Prudential Authority and for the FSCA to issue its concurrence in that respect. Accordingly, the central underlying basis upon which it has applied for a licence to be issued to it is an unlawful modus operandi and inherently

unlawful."

[28] Insofar as King Price is concerned, Van Staden refers to a Binder and Underwriting Management Agreement that was entered into between King Price and Oopkop. In terms of the agreement, King Price contracted Oopkop to place policies, including revenue-based crop insurance, with King Price. In the result, Van Staden submits that Oopkop and King Price, in association with one another, pursue Impac's clients through the utilisation of the misappropriated propriety information of Impac.

[29] The agreement was superseded by negotiations between Du Plooy junior and a certain Kobus Stapelberg ("Stapelberg") from King Price. Emails were exchanged from April 2020 and it is clear from the emails that Du Plooy junior forwarded financial information pertaining to Impact's policies and more specifically premiums and claims of clients to Stapelberg. Stapelberg indicated that King Price needed the information to conduct a high-level feasibility study.

[30] The information is inter alia contained in a document known as a Bordereaux and contains according to Van Staden a detailed summary of Impact's financial affairs with specific references to the gross premium earned, the commissions paid, the Underwriting Management Fees paid, the nett premiums received and Impac's underwriting profit calculations.

[31] The Bordereaux details every policy number issued with reference to every broker and constitutes, according to Van Staden, extremely sensitive and confidential information of Impac.

[32] Various emails indicating that Oopkop has been contacting Impac's clients with a view to provide crop insurance to them are attached to the founding affidavit as well as evidence that Oopkop is utilising Impac's policy documents.

KING PRICE

- [33] Prior to dealing with the first to sixth respondents answer to Impac's case, it is apposite to have regard to Impac's case against King Price.
- [34] In terms of section 5(1) of the Insurance Act, no person may conduct an insurance business if such person is not registered in terms of the Act.
- [35] In casu King Price and Bryte are both registered Insurance Companies as envisaged in the Act and are as such competitors in the crop insurance market.
- [36] Impac is not a registered Insurance Company and crop revenue policies are issued by Bryte to clients. In the Bryte policy documents, Impac has referred to itself interchangeably as "underwriter" or "administrator".
- [37] Similarly the clients, client contact details and pricing structures contained in the Bordereaux are that of Bryte and do not belong to Impac.
- [38] In entering the crop insurance market, King Price became a competitor of Bryte and if Bryte was of the view that King Price, in doing so, is competing unlawfully with Bryte, Bryte must take the appropriate legal steps.
- [39] The relief claimed by Impac against King Price is, in the result, ill-conceived and stands to be dismissed.

FIRST TO SIXTH RESPONDENTS

- [40] The first question that arises is whether the first to six respondents are competitors of Impac, being in the business of underwriting. The answer in respect of the first, second, third, fifth and sixth respondents is a resounding no.
- [41] The only potential competitor is Oopkop, if and when it successfully registers as a financial provider with the Financial Services Conduct Authority (FSCA).
- [42] Accepting for the moment that Oopkop's registration is only a formality, the next step is to determine whether Oopkop has confidential information of Impac that will cause it to compete unlawfully with Impac.
- [43] Insofar as Impac claims that "the wording of the insurance policies and their clients" have been appropriated by Oopkop, the allegations are for the same reasons dealt with in respect of its claim against King Price legally unsustainable.
- [44] The question then arises, what exactly does Impac want to protect. Having established that the wording of the policies and the clients do not belong to Impac, the only conceivable basis for a claim based on unlawful competition, is the protection of a trade secret.

- [45] In order to prove a right to a trade secret on a prima facie basis for present purposes, Impact must inter alia, establish that the information pertaining to its revenue-based cover is in fact secret and confidential. (See: *Townsend Productions (Pty) Ltd v Leech* 2001 (4) SA 33 C).
- [46] Firstly and in answer to Impac's allegation that it introduced a unique product to the insurance market, Du Plooy explains that revenue-based cover is a well-established product that has existed for many years in the United States of America's crop industry. In support of the aforesaid, Du Plooy junior referred to publications by the IOWA State University during 2014 and 2017, entitled respectively "Revenue Protection Crop Insurance" and "Proven Yields and Insurance Units for Crop Insurance". The publications describe the wording of a revenue income product based on the futures market prices and a farmer's Actual Protection History yields to compute coverage and guarantee.
- [47] Secondly, Du Plooy junior explains in detail the history of crop insurance in South Africa and I paraphrase freely from his affidavit.
- [48] Crop insurance started in 1916 as a pool scheme in Piketberg in the Cape. In 1929 farmers in the Eastern Free State formed a Society for purposes of crop insurance, which culminated in 1970 in a full-fledged insurer, namely SENTRAOES.
- [49] The foundation and principles in the South African crop industry market as used today are based on the foundations laid down by SENTRAOES. The common and key elements of crop insurance include:
- 49.1 Policy wording [both hail and multi-peril]:
- The basic wording in earlier policies such as AGRICOLA (2004) is still being used today.
- 49.2 Insured perils:
- The main peril that was initially insured was hail, but was later extended to frost, fire, transit and other perils.
- 49.3 Assessment methodology;
- SENTRAOES developed the methodology that is still used in the market today.
- 49.4 Assessment procedures:
- With a few changes, the crop insurance market utilises the same assessment procedures.
- 49.5 Product type:
- Product types are for instance Hail and Multi-Peril Administration. The only element that has changed over the years is the development of IT systems to support and render administrative services.
- [50] Van Staden junior, further, explains that revenue-based cover and yield cover are based on the following data that is gathered per client:

50.1 Area planted per crop type per season.

50.2 Ten years of yield (tonnes) harvested per crop per season.

50.3 Soil analysis not older than 2 to 3 years.

50.4 GPS map of the fields which indicate the crop per type and the area of the land.

50.5 Planned plantings, namely farm details, land name, area predicted to plant and crop type.

[51] With the afore-mentioned information, the following standard calculations are undertaken to determine a guaranteed percentage:

51.1 Long term average yield ("LTAY"), which represents the total yield delivered for 10 years divided by the total area planted.

51.2 The coefficient of variation (cv), which indicates the deviation of the yield in ton per hectare per season.

[52] Once a guaranteed percentage has been determined, a premium calculation is, for example in maize insurance, determined as follows:

52.1 Yield cover: $\text{Area insured} \times \text{LTAY} \times \text{Safex price (minus transport differential)} \text{ or } \text{contract price} \times \text{tariff} = \text{premium}.$

52.2 Revenue-based cover: $\text{Area insured} \times \text{LTAY} \times \text{July next year Safex price} \times \text{tariff} = \text{premium}.$

[53] To determine the sum insured in yield policies, the following calculation is done:

$\text{Area insured} \times \text{LTAY} \times \text{guarantee \%} = \text{tonnes guarantee} \times (\text{Safex price minus transport differential}) \text{ or } \text{contract price} = \text{sum insured}.$

[54] In determining the guaranteed value in revenue-based cover, the calculation is as follows:

$\text{Area insured} \times \text{LTAY} \times \text{July next year Safex price} \times \text{guarantee \%} = \text{guarantee value}.$

[55] Du Plooy junior emphasised that the information set out supra was gained by him in his 12 years of experience in the crop insurance industry and is complimented by his father's 39 years of experience and know-how in the field.

[56] Taking the aforesaid into account, I am not able to find on the papers that the information relied upon by Impac is in fact prima facie "secret and confidential".

[57] Bearing in mind that the crop insurance business is a competitive market and that potential clients have the right to choose the best cover at a reasonable price, the following extract from *Masstores v (Pty) Ltd v Pick Retailers Ltd* 2017 (1) SA 613 CC at paragraphs

[33] and [34], is particularly apposite to the facts in casu:

“[33] ...the underlying purpose of the law of unlawful competition is to protect free competition, not to undermine it by making it less free. Our courts have often acknowledged the need for protection of free competition as an important policy consideration when assessing the unlawfulness of competitive conduct by confirming the need for free and active competition or by taking into account that by prohibiting competition an unlimited monopoly will be bestowed upon the complainant.

[34] In *Taylor & Horne* the appellant sought to interdict a competitor who was distributing a product for which the appellant had earlier obtained (from a foreign manufacturer) the exclusive contractual right to market and distribute in South Africa. In the course of dismissing the appeal Van Heerden JA stated:

‘It has often been said that competition is the life blood of commerce. It is available of the same, or similar produces, from more than one source that results in the public paying a reasonable price therefore. Hence competition as such cannot be unlawful, no matter to what extent it injures the custom built up by a trader who first marketed a particular product or first ventured into a particular sphere of commerce.’”

PROPOSED AMENDMENT

[58] At the end of the hearing and after argument was presented on behalf of all the parties, Mr Puckrin SC, counsel for the applicants, moved for an amendment of the relief claimed by deleting prayer 2 in its entirety and substituting it with the following:

“2. Pending the outcome of the action to be instituted by First Applicant for final relief within one month from the date of an order being granted, the First to Seventh Respondents are interdicted from using information and methodology by which costs and premiums as exemplified in annexures “T” and “U” as appears in the affidavit of Mr Stapelberg (on behalf of the Seventh Respondent) were derived.”

[59] Both Mr Heystek SC, counsel on behalf of the first to sixth respondents and Mr Cilliers SC, counsel on behalf of King Price, objected to the amendment on the basis that it substantially altered the case the respondents had to meet.

[60] I agree. It would cause grave prejudice to the respondents should the amendment be granted at this late stage, more so in view of the fact that the facts presented by the respondents and the basis of the arguments on behalf of the respondents were directed at the relief claimed by the applicants prior to the amendment.

[61] In the premises the amendment is refused.

COSTS

[62] The costs of the application should follow the result.

- [63] Mr Cilliers submitted that the applicants should pay King Price's costs on an attorney and own client scale. The request is based on the applicants' baseless and vexatious allegations, i.e. that King Price acted unlawfully in collaboration with Oopkop, had "stolen the applicants' entire business", "...allows unlawful conduct ...to be perpetrated under its licence and in its name, with the obvious motivation for King Price's conduct being clear – it is only interested in money and it is manifestly blinded by greed".
- [64] The allegations are defamatory of King Price, are baseless, vexatious and to add insult to injury have been published to no less than 18 brokers that operate in the Insurance market. The joinder of these respondents has been wholly unnecessary and was aimed at embarrassing King Price.
- [65] In order to display my dismay with the applicants' conduct, I agree with Mr Cilliers that a punitive cost order is in the circumstances warranted.
- [66] Lastly, Mr Cilliers submitted that the costs of three counsel are justified in view of the voluminous papers, the complexity of the matter and the potential of reputational damage being suffered by King Price. Although the papers are voluminous and although I appreciate the importance of the matter to King Price, I am of the view that the complexity of the matter does not justify the costs of three counsel.

ORDER

[67] In the premises, I grant the following order:

1. The application is dismissed.
2. The applicants are ordered to pay the first to sixth respondents' costs, which costs include the costs of two counsel.
3. The applicants are ordered to pay the seventh respondent's costs on an attorney and own client scale, which costs include the costs of two counsel.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES: 4 and 5 August 2021

(Virtual hearing.)

DATE DELIVERED PER COVID19 DIRECTIVES: 14 September 2021

APPEARANCES

Counsel for the Applicants:

Advocate C.E. Puckrin SC and

Advocate H. Worthington

Instructed by:

Froneman-Roux & Streicher Attorneys

Counsel for the First to Sixth Respondents: Advocate A.M. Heystek SC and

Advocate B.H. Steyn

Instructed by:

Pieter Taljaard Attorneys

Counsel for the Seventh Respondent:

Advocate P.G. Cilliers SC,

Advocate B. Boot SC and

Advocate F.J. Labuschagne

Instructed by:

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