

SOUTH AFRICA / JUDGMENT

Pieters N.O v Pienaar and Others (15691/2023 ; 16769/2023 ; 13665/2016) [2025] ZAWCHC 70; [2025] 3 All SA 224 (WCC) (27 February 2025)

[2025] ZAWCHC 70

COURT

Western Cape High Court, Cape Town

BEFORE

P. S. Van Zyl

CASE / FILE NUMBER

15691/2023 ; 16769/2023 ; 13665/2016

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FLYNOTES: CIVIL PROCEDURE – Vexatious litigant – Persistent unmeritorious litigation – Repetitive applications – Challenging liquidation process – Claims consistently dismissed by courts – Reliance on evidence of CIPC investigator – Pending report is irrelevant to proceedings – Extensive unsuccessful litigation history and unpaid costs orders – Allegations of fraud and misconduct are unsupported – Lacks locus standi –

Declared a vexatious litigant – Vexatious Proceedings Act 3 of 1956, s 2(1)(b).

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case number: 15691/2023 RYNETTE PIETERS N.O. In her capacity as the liquidator of King Financial Holdings Ltd, formerly Biz Africa 1332 (Pty) Ltd (in liquidation) Applicant and DEON JOHAN PIENAAR Identity number 6[...] 1[...] V[...] B[...] Road, Parow North First respondent Married out of community of property to: Second respondent ELSABE ELISABETH PIENAAR Identity number 6[...] Case number: 16769/2023 RYNETTE PIETERS N.O. In her capacity as the liquidator of King Financial Holdings Ltd, formerly Biz Africa 1332 (Pty) Ltd (in liquidation) First applicant STEPHEN MALCOLM GORE N.O. Second applicant KEVIN KIEWITZ N.O. In their capacities as the joint liquidators of Midnight Storm Investments 386 Ltd (in liquidation) Third applicant BRYAN NEVILLE SHAW N.O. Fourth applicant SUMAIYA ABDOOL GAFAAR KHAMISSA N.O. In their capacities as the joint liquidators of Purple Rain Properties No. 15 (Pty) Ltd (in liquidation) Fifth applicant and DEON JOHAN PIENAAR Respondent Case number: 13665/2016 DEON JOHAN PIENAAR Applicant and King Financial Holdings Ltd (in liquidation) First respondent STEPHEN MALCOLM GORE N.O. Second respondent FINANCIAL SECTOR CONDUCT

AUTHORITY (formerly the Financial Services Board) Third respondent GERMAN EMMANUAL ANDERSON In his former capacity as the Deputy Chief Executive Officer of the Financial Services Board Fourth respondent NICOLAAS GERHARDUS WESSELS DUVENHAGE Fifth respondent THE MASTER OF THE HIGH COURT, WESTERN CAPE, DIVISION, CAPE TOWN Sixth respondent THE NATIONAL PROSECUTING AUTHORITIES Seventh respondent and ADRIAN WARREN KING First interested party STEPHEN ROBERT KING Second interested party THE SOUTH AFRICAN POLICE SERVICE (DPCI/CCIU) Third interested party THE FINANCIAL INTELLIGENCE CENTRE Fourth interested party THE SOUTH AFRICAN RESERVE BANK Fifth interested party THE PRUDENTIAL AUTHORITY Sixth interested party NEDBANK LTD Seventh interested party PRICEWATERHOUSECOOPERS INC. Eighth interested party THE DEPARTMENT OF TRADE AND INDUSTRY Ninth interested party THE PUBLIC PROTECTOR Tenth interested party THE HUMAN RIGHTS COMMISSION Eleventh interested party

JUDGMENT DELIVERED ON 27 FEBRUARY 2025

VAN ZYL AJ:

Introduction

1. There are three applications before this Court:

1.1 The first is an application[1] by Mr Deon Johan Pienaar to set aside, inter alia, the liquidation of all the entities in the so-called King Group of companies, as well as Mr Justice Binns-Ward's order of 14 December

2012[2] and Mr Acting Justice Sievers' judgment of 30 November 2018.[3] I shall refer to this application as the “second rescission application”.

1.2 The second is an application[4] by the liquidator of King Financial Holdings Ltd (formerly Biz Africa 1332 (Pty) Ltd) (in liquidation) ("KFH") to sequester Mr Pienaar's estate.

1.3 The third is an application[5] by the liquidators of various companies, namely KFH, Midnight Storm Investments 386 Ltd (in liquidation) ("Midnight Storm") and Purple Rain Properties No. 15 (Pty) Ltd (in liquidation) ("Purple Rain"), to declare Mr Pienaar a vexatious litigant under the provisions of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 (“the vexatious litigant application”).

2. The papers exchanged in the course of all of these proceedings are voluminous but the issues, properly considered, are fairly delineated. I commence with the consideration of the vexatious litigant application, because the background to all three applications is well-illustrated in that matter. It gives some insight into why the parties have found themselves in a legal quagmire which vies with the one chronicled by Dickens in Bleak House.[6]

The vexatious litigant application

The applicable principles

3. Section 2 of the Vexatious Proceedings Act provides as follows:

"Powers of court to impose restrictions on the institution of vexatious legal proceedings

(1)

(a) If, on an application made by a State Attorney

(b) If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons,[7] the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

(c) An order under paragraph (a) or (b) may be issued for an indefinite period or for such period as the court may determine, and the court may at any time, on good cause shown, rescind or vary any order so issued.

(2)

Any proceedings under subsection (1) shall be deemed to be civil proceedings

(3)

The registrar of the court in which an order under subsection (1) is made, shall cause a copy thereof to be published as soon as possible in the Gazette.

(4)

Any person against whom an order has been made under subsection (1) who institutes any legal proceedings against any person in any court or any inferior court without the leave of that court or a judge thereof or that inferior court, shall be guilty of contempt of court and be liable upon conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months."

4. The Act accordingly authorises the Court to prohibit legal proceedings - including future legal proceedings not yet instituted at the time of the application[8] - by any person who has persistently and without any reasonable ground instituted legal proceedings against the same person or against different persons.

5. South Africa has a constitutional dispensation, and access to justice is a hallmark of democracy. That is why section 34 of the Constitution of the Republic of South Africa, 1996, provides that “everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”.

6. The Act has nevertheless passed constitutional muster:[9]

“[15] ... This purpose is “to put a stop to persistent and ungrounded institution of legal proceedings.”¹ The Act does so by allowing a court to screen (as opposed to absolutely bar) a “person [who] has persistently and without any reasonable ground instituted legal proceedings in any Court or inferior court”. This screening mechanism is necessary to protect at least two important interests. These are the interests of the victims of the vexatious litigant who have repeatedly been subjected to the costs, harassment and embarrassment of unmeritorious litigation; and the public interest that the functioning of the courts and the administration of justice proceed unimpeded by the clog of groundless

proceedings.

- [16] The effect of section 2(1)(b) of the Act is to impose a procedural barrier to litigation on persons who are found to be vexatious litigants. This serves to restrict the access of such persons to courts. ... The barrier which may be imposed under section 2(1)(b) therefore does limit the right of access to court protected in section 34 of the Constitution. But in my view such a limitation is reasonable and justifiable. ...

- [17] ... a restriction of access in the case of a vexatious litigant is in fact indispensable to protect and secure the right of access for those with meritorious disputes. ... the court is under a constitutional duty to protect bona fide litigants, the processes of the courts and the administration of justice against vexatious proceedings. Section 165(3) of the Constitution requires that “[n]o person or organ of state may interfere with the functioning of the courts.” The vexatious litigant is one who manipulates the functioning of the courts so as to achieve a purpose other than that for which the courts are designed. ...

- [18] ...

- [19] While such an order may well be far-reaching in relation to that person, it is not immutable. There is escape from the restriction as soon as a prima facie case is made in circumstances where the judge is satisfied that the proceedings so instituted will not constitute an abuse of the process of the court. ...The applicant’s right of access to courts is regulated and not prohibited. ... The procedure which the section

contemplates therefore allows for a flexible proportionality balancing to be done, ... to protect the interests of both applicant and the public.

[20] Requiring the potential litigant under these circumstances to discharge this evidentiary burden is not unreasonable. ... Having demonstrated a propensity to abuse the process of the courts, it hardly lies in the mouth of a vexatious litigant to complain that he or she is required first to demonstrate his or her bona fides. In this respect, the restriction is precisely tailored to meet its legitimate purpose.”

7. In the present application, the liquidators seek an order in terms of section 2(1)(b) of the Act that Mr Pienaar may not institute any legal proceedings against the persons and entities (including the liquidators) listed on annexures A1, A2 and A3 to the notice of motion ("the targeted parties") without the written consent of a High Court judge. The targeted parties are all related to or part of the King Group or the Realcor Group. They seek orders, further, that should such permission be granted, Mr Pienaar

would be obliged to provide security for costs. This is because the targeted parties have been on the receiving end of protracted,

mostly unsuccessful, proceedings instituted by Mr Pienaar over the years since the liquidation of the companies within these Groups had begun.

8. The liquidators also seek interdictory relief, namely that Mr Pienaar be interdicted from taking any further steps in relation to the second rescission application, and that he be interdicted from instituting and conducting private prosecutions against any of the targeted parties.

9. To obtain the relief they seek under the Act or the common law in relation to vexatious litigation, the liquidators must show that Mr Pienaar has persistently instituted legal proceedings without reasonable grounds. There is a "stringent onus" upon them.[10]

10. They must also establish the requirements for a final interdict to obtain the interdictory relief sought.

The liquidation of the companies in the King and Realcor Groups

11. The relevant facts as far as the vexatious litigant application is concerned – in particular, the litigation instituted by Mr Pienaar and the repeated unsuccessful outcomes thereof - are essentially common cause. The "disputes" on the papers arise from Mr Pienaar's own interpretation of events (his narrative, as he refers thereto), which will be referred to in more detail in the context of the second rescission application.

12. The applicants are liquidators of related companies in the King Group and the Realcor Group, which were property syndication schemes. Briefly stated, various companies in these Groups had solicited investments in commercial and residential property in South Africa from members of the public, who would supposedly benefit from the income generated by the properties. These property syndication schemes, despite attracting the investment of hundreds of millions of rands, became hopelessly insolvent, not least because they operated like pyramid schemes. They left thousands of investors out of pocket, some of them losing

their life savings.

13. All of this started as follows: In about 2004 three brothers, Messrs Adrian, Paul, and Stephen King, set up a group of companies which came to be known as the King Group. The brothers used the companies to market investments in commercial and residential immovable property. As indicated, they did so by soliciting funds from investors in the form of share purchases and compulsory loans. In all, about R671 million in investments were made by thousands of investors in 41 companies in the King Group. KFH was the overall holding company.
14. The core assets and business in the Realcor Group was an immovable property known as Erf 1[...], Blaauwberg, Milnerton, owned by Midnight Storm, and upon which the Blaauwberg Beach Hotel was being constructed. During December 2007 Purple Rain, acting as promoter, began soliciting investments from members of the public to raise capital for this hotel development. The services of various brokers, who concluded agreements with Purple Rain, were used for this purpose.
15. Prior to its collapse, the Realcor Group raised in the region of R640 million from about 3 000 members of the public in this manner to fund the operations of the Realcor Group, particularly the hotel development. The investment companies involved in turn lent the money to Midnight Storm to finance the construction costs of the hotel development.
16. Purple Rain's only source of income was a construction contract concluded between it and Midnight Storm, and the "promoter's fees" payable to it by the individual investment companies. The scheme was doomed to fail. The liquidators of Purple Rain and Midnight Storm[11] are of the view that the soliciting of funds from the public to fund the hotel development and the manner in which the scheme was conducted was reckless and carried out with the intent to defraud creditors.
17. The hotel development was never completed in the Realcor Group, but had to be sold in 2013 by the liquidators of Midnight Storm. Mr Pienaar and one Mr Van Zyl attempted to interdict the sale, but their application was dismissed on 20 May 2013, the Court finding that they lacked locus standi, and had not established the requirements for an interim interdict.
18. The companies in the group went into liquidation (a series of liquidation applications had been brought and granted between 2009 and 2011), leaving a shortfall in Purple Rain and Midnight Storm of some R92 million.
19. Going back in time, in early 2008 the activities of the Group attracted the attention of the then Financial Services Board (FSB").[12] It conducted an inspection of the records of the Group and prepared a report which indicated widespread irregularities in the way in which the business of the Group was conducted. These are best described in the Binns-Ward judgement[13] as follows:

"....the affairs of the group were in material respects conducted in a manner that maintained no distinguishable corporate identity between the various constituent companies in the group. The entire group was operated, in effect, as one entity through the holding company. Funds solicited from investors were transferred by the controllers of the holding company between the various companies in the group at will, with no effectual regard to the individual identity of the companies concerned, and with grossly inadequate record-keeping. The investigations bore out the admission by the King brothers that they 'treated all their companies as one'".[14]

20. During 2009 one of the investors, a Mrs Zera, instituted proceedings in this Court for the liquidation of KFH.[15] She was a retired woman who had invested all of her savings, amounting to R1.4 million, in the King Group. In her founding affidavit the basis for her application was expressly stated to be the inability of KFH to meet its financial commitments to its creditors. She made the allegation that KFH was insolvent, or in any event commercially insolvent, and unable to pay its debts. Five other applicants joined in her application.
21. Mrs Zera's application was supported by the FSB. At the time Mr Anderson[16] of the FSB deposed to an affidavit, which Mr Pienaar has placed before this Court in the present proceedings. In the affidavit Mr Anderson referred to a letter dated 3 July 2009 addressed to investors by the attorneys then representing the King Group. Mr Anderson pointed out that the letter states that, if the Group was to be liquidated, it would have a negative asset value of approximately R650 million. Mr Anderson also referred to the inability of the Group to pay its creditors as a result of a monthly deficit of R3.3 million. He stated that the FSB had concluded that there was no hope of resuscitating the financial services business of the King Group, and that the appointment of a curator to such business would not be appropriate. He concluded his affidavit by stating that the FSB supported the liquidation application in the circumstances.
22. The Court granted the application, and KFH was liquidated. It goes without saying that Mrs Zera had satisfied the Court that KFH was insolvent and unable to pay its debts. It was for this reason, and no other, that KFH was placed in liquidation.
23. The liquidation of KFH led to the liquidation of all of the 40 subsidiary companies in the group. The liquidators of these companies were faced with an intractable problem. It was difficult, because of the chaotic administration of the affairs of the Group, for the liquidators to identify the companies against which individual creditors had claims. The affairs of the companies were so intermingled that it was impossible to separate them.
24. To solve this problem, 38 applicants, being the liquidators of the 41 companies which constituted the King Group, obtained an order on 14 December 2012 under case number 18127/2012 (the Honourable Justice Binns-Ward presiding) in terms of section 20(9) of the Companies Act 71 of 2008.[17] Reasons were given on 13 February 2013. The effect of the judgment was that all the companies in the King Group were deemed not to be juristic persons in respect of any obligation owed by them to investors. This meant that, after the

payment of secured and trade creditors, the surplus funds in each entity were pooled with those of the other companies in the Group to generate a dividend for all investors across the Group.

25. Given the admission made by the King brothers about the fact that they had treated all of the companies in the King Group as one, the order was undoubtedly correctly made.
26. As will become clear when I address the second rescission application, in seeking to rescind inter alia the Binns-Ward and Sievers judgments in that application, Mr Pienaar is in truth seeking to overturn the liquidation of these companies, which commenced in 2009, and which would have been finalized by now but for the repeated institution of litigation by Mr Pienaar. This is despite the fact that all of the liquidation proceedings proceeded pursuant to court orders validly and lawfully obtained.
27. In this regard, the final business of KFH in liquidation is the finalisation and confirmation by the Master of the High Court of a seventh liquidation and distribution account. The liquidators are unable to proceed until such time as the litigation with Mr Pienaar has been finalized (in particular the second rescission application, which seeks to undo a swathe of liquidations). They submit that Mr Pienaar's ability freely to institute further litigation in frustration of the liquidation process must be curtailed. This will also put an end to the running up of millions of rands in unpaid costs orders against him.
28. The liquidators submit further that they are entitled not to have their professional reputations being impugned recklessly and without cause in the court papers delivered by Mr Pienaar. It is clear from the realms of affidavit delivered that Mr Pienaar pours onto paper exactly what is in his mind. The liquidators face, in addition, constant threats of criminal prosecution made by Mr Pienaar against them.
29. The liquidators' case is amply supported by the papers before this Court.

Mr Pienaar's litigation track record

30. Over the years, Mr Pienaar has immersed himself fully into the circle of those formerly in control of the King and Realcor Groups. He previously made a livelihood by being a broker or promoter for the property syndication schemes involved in these proceedings, and with whose liquidators he has been at loggerheads for years.
31. Mr Pienaar himself explains how he took up the cudgels:

"When I read to see what happened to Brokers who had marketed Krion financial products, and read in the media, that the same was going to happen to Brokers who had marketed PSPC [property syndication schemes] investments, I knew I had to investigate the truth myself.

It was here that I realised, that nobody was going to defend me, and I would have to do so myself I would have to do my investigations myself as well.

I knew, I had given all my clients the same advice, and if I was guilty of being negligent for one, the same would apply for all the others. If this was to be established, I knew I would not be able to repay all my investors, and for this reason I realised no matter what, I had to establish the real causation of PSPC implosions.

This I could not do, as an independent Broker, and soon it started taking up all my time."

32. Mr Pienaar is no longer employed, and his living costs are wholly funded by his wife and from donations that he solicits from former investors. He writes regular newsletters or circulars in relation to the liquidation and related processes, and has asked the investors to pay donations in support of his services directly into his bank account. In return for these donations, he speaks on the investors' behalf in the litigation that he instigates.

33. His activities have led to him being declared a vexatious litigant under section (2)(1)(b) of the Act in respect of PriceWaterhouseCoopers

("PwC"), including PwC employees and related parties. In a judgment delivered[18] on 10 September 2021 (the Honourable Acting Justice[19] Nziweni presiding) this Court recorded that PwC had incurred legal costs against Mr Pienaar of more than R12.5 million since 2014, all of which had gone unpaid. The Court found that Mr Pienaar had litigated with impunity, running up cost orders against him exceeding R50 million on his own version.

34. Mr Pienaar does not deny this, and has not been deterred As counsel for the liquidators in the present matter put it: "Pienaar flogged property syndication investments to members of the public; in full knowledge of the damage done and that he himself may be liable for some of the damage done, he nevertheless accepts donations from hapless investors in order to pursue various litigious proceedings and to fund his own livelihood; in so doing, he has run up millions of rands in legal costs without suffering any consequence; and he has no standing in the litigation he brings".

35. In email correspondence addressed to the then Acting Judge President of this Division during 2023, Mr Pienaar attached a list of the matters in which he had been involved, entitled "Litigation where I incurred costs in order to show actions and conduct of SARB / FSB unlawful and ultra vires, but without success".

36. The list is telling. It shows 17 separate civil cases from 2013 onwards, most of them launched by Mr Pienaar, and each one "without success" as far as he is concerned. The cases relate mainly to Realcor and the King Groups.[20] These cases, comprising more than 37 000 pages of documents, have resulted in 23 orders or judgments. On Mr Pienaar's own version, in the course of these cases an estimated R50 million in legal fees have been incurred. He has laid criminal charges in six different cases involving inter alia Realcor and King companies.

37. Mr Pienaar has, in addition, furnished this Court with a comprehensive chronology, carefully setting out details which include the rise and fall of the Groups and the liquidation applications brought, as well as his own litigious activities. The history is impressive.

38. Having had regard to the papers filed of record in all three of the applications before this Court, I agree with the submission made by counsel for the liquidators that, by his own admission, Mr Pienaar has litigated without any substantive success whatsoever. He is litigating vexatiously and without reasonable grounds:[21]

"In its legal sense vexatious means frivolous, improper: instituted without sufficient ground, to serve solely as an annoyance to the defendant Vexatious proceedings would also no doubt include proceedings which, although properly instituted, are continued with the sole purpose of causing annoyance to the defendant; abuse connotes a mis-use, an improper use, a use mala fide, a use for an ulterior motive."

39. In the Nziweni judgment[22] to which I have referred earlier, the Court remarked as follows:

"[50] ... the first respondent [Mr Pienaar] views the courts with impunity. He further takes the courts as his playground."

- [51] The repeated attempts by the first respondent to have findings against him set aside failed dismally, yet, he was barely fazed or deterred by that. The first respondent is showing no appetite for stopping the litigations against the applicants and SARB, even though he loses every case he throws against the applicant. Instead, the first respondent demonstrates determination in his quest. His assertion that he will continue until the cause of his action is recognised further demonstrates his unyielding

determination.

- [52] Another vexing aspect about the litigation of the first respondent is that it knows no boundaries, and he does not accept defeat. Interestingly, the first respondent states ... that it is time for the court to see how these Masters of manipulation misrepresent the Court. The following assertion by the respondent also plainly illustrates the point:

'The court cannot expect him just to roll over and pretend to be dead. It is the view of the first respondent that the court has made no attempt to adjudicate the merits and for this reason there is still a scope for much litigation if the applicant and SARB continue to misrepresent the court with diversions.' (my own emphasis and underlining.)

- [53] Under the circumstances, it is quite bizarre that the first respondent who has been unsuccessful with his applications in the past; keeps on filing further proceedings against the applicant. The persistence of the first respondent to litigate against the applicant is highly illuminating. I get the distinct impression that the first respondent harbours a strong view that in his quest of incessant litigation, he is only losing the battles but he will ultimately win the war because of his persistence. Accordingly, to the first respondent the ends justify the means. Unfortunately, when regard is had to the history of litigation between the parties, this belief by the first respondent is deeply flawed and short-sighted and happens to be very costly.

- [54] Gleaning from the papers, it appears that the first respondent has self-proclaimed himself as a champion for fighting the causes of other citizens' in the so-called Property Syndicate Schemes. I am however, not convinced that the litigation by the first respondent is motivated by just cause."
40. This Court can but echo these sentiments. The history of litigation set out in the Nziweni judgment and in the affidavits filed of record illustrates that Mr Pienaar is not deterred by losing in court. In fact, his inability to accept defeat is well-illustrated by his conduct in instituting the second rescission application.

The second rescission application as an example of vexatious litigation

41. In the "first" rescission application, issued on 1 August 2016, Mr Pienaar attempted, inter alia, to have the Binns-Ward judgment rescinded, to declare the actions of the FSB in relation to their investigations into the King Group unlawful, and to obtain a declaration that "all liquidation and/or sequestration applications of the Consolidated KFH be nullified and that all unlawful proceeds that persons have benefitted from as a result of these unlawful benefits form part of the Restitution process as prescribed by Chapter 6 of POCA."
42. The first rescission application was dismissed on 30 November 2018, the Honourable Acting Justice Sievers presiding. The Court found that, while Mr Pienaar purported to act on behalf of shareholders and investors, he was not entitled as a layperson to do so. On the facts, he did not act in his own interest or seek to protect or enforce his own rights; and he did not represent others as contemplated in section 38 of the Constitution.[23] The Court found further that the application for rescission was wholly without merit. Proper cases had at the relevant times been made out for the liquidation of the companies in the Group, and no basis was established to set aside the Binns-Ward judgment.[24]
43. The Court remarked that Mr Pienaar had impugned the integrity of the respondents in the first rescission application in his heads of argument, and in court, without any legitimate basis to doing so. This was a vexatious abuse of process, and his application was dismissed with costs on a punitive scale.[25] Leave to appeal was refused. Applications for leave to appeal to the Supreme Court of Appeal and the Constitutional Court suffered the same fate, inter alia on the basis that there was no reasonable prospect of success on appeal.
44. In the face of these rejections Mr Pienaar launched the second rescission application in March 2021. As will be dealt with in more detail below, the effect of the relief sought in that application would be to reverse the winding-up of the King Group through the rescission of all liquidation and sequestration "orders/judgments/determinations" that placed the Group and its controllers (or the estates of its controllers) in liquidation or sequestration approximately 14 years ago, and the rescission of the Binns-Ward and the Sievers judgments. Mr Pienaar wants to set the clock back to 2009, when the liquidation of the King Group began.

45. Mr Pienaar denies that this is the case, but the second rescission application aims to re-litigate the first rescission application

(dealing as it does with identical issues and the same parties, albeit casting a wider net).

Additionally, he now seeks the

rescission of the Sievers judgment, and asks for relief under the Financial Intelligence Centre Act 38 of 2001 ("FICA") and the Prevention of Organised Crime Act 121 of 1998 ("POCA"). He has joined eleven "interested parties" to the litigation, including the South African Reserve Bank, the Prudential Authority, Nedbank, PwC, the Department of Trade and Industry, the Public Protector, and the Human Rights Commission.[26]

46. The first and second respondents in the second rescission application delivered their answering affidavit in April 2021, and Mr Pienaar replied in May 2021. The application was therefore ripe to be set down for hearing. Yet, Mr Pienaar failed to prosecute the application for more than three years. He alleged that the second rescission application could not be enrolled because the FSB (one of the respondents who had initially indicated that it was opposing) failed to deliver an answering affidavit.

47. The failure of a respondent to deliver an answering affidavit of course does not prevent the applicant from setting the matter down.

The second rescission application therefore lurked in the background until it was set down for hearing together with the sequestration and the vexatious litigant applications.[27]

48. The inference to be drawn from this conduct is that Mr Pienaar was not bona fide in proceeding with the second rescission application. As counsel for the liquidators remarked, "one may appreciate his dilemma: he relies on 'investors' to simultaneously fund his litigation and his living costs

- so it simply does not avail him to have hopeless applications finalised, for if he gets to the end of that road, he comes to the end of his source of income".

The denigrating statements made in the papers

49. As indicated, the Sievers judgment commented on Mr Pienaar's unjustified attacks on his opponents' reputations. In his answering affidavit in the present application, Mr Pienaar accuses the applicants as liquidators, and the second applicant (Mr Gore) in particular, of being guilty of the following offenses or misconduct:

49.1 Fraudulent misrepresentation;

49.2 Concealment of court documents;

49.3 The liquidators' personnel benefited from the unlawful proceeds of crime;

49.4 The liquidators unlawfully captured the King Group;

49.5 Mr Gore illegally sold assets forming part of the liquidation;

49.6 Mr Gore obstructed the proper application of the law;

49.7 Mr Gore failed to adhere to his fiduciary duties;

49.8 Mr Gore is a corrupt liquidator, and not the only one;

49.9 Collusion between Mr Gore and the South African Reserve Bank;

49.10 Mr Gore lacks independence;

49.11 Fraudulent enquiry summonses were issued;

49.12 The liquidators and other persons are corrupt;

49.13 Money-laundering by the liquidators and by others;

49.14 Recklessness justifying criminal charges, including by the legal fraternity;

49.15 Perjury; and last but not least,

49.16 Extortion.

50. These are serious allegations, not to be laughed off. Neither Mr Pienaar's answering affidavit nor any of his other affidavits filed of record in the matters before this Court contain any facts that either constitute these offences or that show that the liquidators have acted wrongfully. The allegations are plainly defamatory.

51. Mr Pienaar also attacks various civil bodies, and is contemptuous of them. Of particular concern are his attacks on the courts:

51.1 He has complained that there have been "all these ambiguous orders and judgments, where the courts merely rubber stamp unopposed applications", and "The courts failure to deal fairly with my cases, is the reason as to why this litigation cannot reach finality".

51.2 He accuses the Honourable Deputy Judge President Traverso, now retired, of being influenced by the media and not by the merits of the case before her.

51.3 He has labelled the Nziweni judgment a "vexatious judgment ... made without considering the facts", and has made a complaint against the Honourable Justice Nziweni at the Judicial Conduct Committee for "a total unfair bias judgment, which will be rescinded soon".

51.4 Regarding this Court having declared him a vexatious litigant in relation to PwC, Mr Pienaar states: "The court was reckless to allegedly protect PwC against me. It is in fact, all the victims of this crime, that need protection against the criminal, inter alia PwC".

52. Mr Pienaar does not trust the Court:

52.1 "The court has become a draconic platform to violate citizen's Constitutional rights".

52.2 "Our fraud in the legal system in South Africa have fraudulently omitted to listen to my side of the story, and as a result of their own bias, allowed all this litigation to follow".

52.3 "Sievers J makes a mockery of my whole application, by justifying his unlawful conduct by accusing me of filing a confusing NOM".

52.4 "I cannot think of a more bias and unfair Judge than Sievers", and stating that the Sievers judgment is an "unfair"

judgment.

52.5 "I have placed all the Judges who had any say in my Realcor proceedings, before the JSC." [28]

53. These statements were made in answer to the vexatious litigant application. - even the fact that such an application was contemplated had not given Mr Pienaar pause for thought. His allegations are defamatory and contemptuous, and devoid of supporting facts. They demonstrate that Mr Pienaar does not care about substantiating his emotive responses to the repeatedly unsuccessful outcomes of his court cases. Those cases were unsuccessful because they, too, were unsubstantiated.

The criminal charges brought, and threatened, by Mr Pienaar

54. Mr Pienaar does not confine his activities to the civil court, but has also laid criminal charges against the second applicant, Mr Gore. The charges included perjury, obstructing the course of justice, failing in his fiduciary duties, and collusion. They were all unsubstantiated.

55. Mr Pienaar has since obtained the representations made to the National Prosecuting Authority ("NPA") on Mr Gore's behalf, and has been advised that Mr Gore will not be prosecuted. That is not the end of the road for Mr Pienaar. In the answering affidavit in the vexatious litigant application he states that he intends to institute fresh criminal proceedings against Mr Gore, notwithstanding the NPA's decision not to prosecute. He plans, further, to obtain nolle prosequi certificates to enable him to bring private prosecutions against "all of the accused adversaries". It is these threatened private prosecutions which the liquidators seek to interdict. [29]

Mr Pienaar's defence to the relief sought in the vexatious litigant application

56. It is difficult to discern Mr Pienaar's defences to the relief sought against him from his 317-page answering affidavit. [30] The issues are unfortunately clouded by a myriad of irrelevant and wide-ranging extraneous information, cast in emotive language.

Throughout the affidavit he labels the winding- up of the King and Realcor Groups and the conduct of the liquidators, the courts,

and other parties as corrupt, abusive, criminal, and fraudulent. These allegations do not serve as a defence. On the contrary, they emphasise the need for the grant of the relief sought. Mr Pienaar views himself as a "whistle-blower", probably in an attempt to overcome the hurdle that - as the Sievers judgment found – Mr Pienaar had no locus standi in the first rescission application.[31]

57. Mr Pienaar's central defence to the vexatious litigant application is that he submits that his narrative will be proved to be correct through the evidence of an investigator at the Companies and Intellectual Properties Commission ("CIPC")

by the surname of Zwane. According to Mr Pienaar, he is awaiting a report from Mr Zwane, which report would endorse Mr Pienaar's allegations of malfeasance committed by the various authorities, the courts, and the liquidators of the property syndication schemes. He says that his narrative, including the Zwane report, contains information which undoes a series of court orders granted since 2009, and that this Court must consider whether "with this information, the sword of Damocles can be held over my head with the sequestration and vexatious applications should [sic] continue. This will amount to extortion".

58. According to Mr Pienaar, Mr Zwane has already published a 26-page report on 25 July 2022. That report is not attached to any of Mr Pienaar's affidavits in the proceedings before this Court, and its content is unknown. Mr Pienaar is expecting another report from Mr Zwane.

59. Mr Zwane's involvement in the matter came about when he took up a complaint lodged by Ms Deonette De Ridder, the founder of the Realcor property syndicate. Having considered the complaint, Mr Zwane felt that it had some merit, and decided to investigate the activities of the South African Reserve Bank ("SARB") prior to 2012 in relation to the Realcor Group.

60. There are several problems with Mr Pienaar's Zwane defence. The first and overall issue is that CIPC, Ms De Ridder, and SARB, and their historic relationship with one another, are irrelevant to the applications presently before this Court.

These parties are not before the Court as respondents, and much of what is complained about by Ms De Ridder constitutes *res judicata*, having been dealt with by the courts over the years since 2012.

61. The second issue is that Ms De Ridder's complaint and CIPC's letter in reply to her, specifically, are irrelevant to the present applications. Mr Pienaar is correct in stating that Mr Zwane wrote a letter on 10 October 2023, which does form part of the papers, in reply to Ms De Ridder's complaint, and that the tone of the letter is a positive one. Mr Zwane appears to have

concluded that there may be something in the complaint, and he notifies her that he intends to undertake further investigations.

He cites section 41 of the Constitution, 1996, which provides that organs of State must co-operate with one another, and indicates that a preliminary and a final report from CIPC will be published after CIPC has consulted with the relevant bodies.

62. Mr Pienaar says in his answering affidavit that, as soon as this substantive CIPC report is to hand, he will put it before the Court, thus promising more litigation. In a “circular” addressed to his “clients” and followers, he predicts what the report will say:

"To us this report will be as good as a court order/ judgment. ... The findings of this report, I believe will show that the SARB BSD and/or FSB and/or others had acted unlawfully, *ma/a tides*, *ultra vires* and unconstitutionally. If we get this verdict, it will confirm all the merits I had asked the courts to confirm, over the past few years, but which they all failed to do.

This independent report will be enough to show that the Courts were biased; the WC NPA were corrupt not to investigate my allegations earlier; that the legal fraternity deliberately misled the courts; and that prior to now, the FIG had never been taken seriously.

I cannot think of a bigger case of corruption being exposed in South Africa's history, and the good part is, that the State will help us get restitution and compensation."

63. According to Mr Pienaar's circular, Mr Zwane's investigations were well underway and the inter-regulatory meetings between the organs of state like CIPC and SARB that he appeared to think were the nub of the matter, were expected to take place from January 2023 to March 2023. Two years later there is still nothing more from Mr Zwane.

64. It is, in my view, highly improbably that a substantive report will be produced by CIPC that can serve to reverse the decade-old history of the liquidation of the companies in the property syndication schemes. Having regard to the details set out in the papers regarding the financial state of the King and Realcor Groups, it appears that the companies forming part thereof were hopelessly insolvent, and fell to be wound up as a matter of law to pay creditors and salvage a dividend for investors. Whether

organs of State duly consulted one another at the relevant time in terms of section 41 of the Constitution is plainly irrelevant to the financial implosion of the groups.

65. It follows that Mr Zwane is not the saviour that Mr Pienaar makes him out to be, and his pending report - whether eventually published or not - is irrelevant to these proceedings.
66. The third issue is that, even if what Mr Pienaar says could remotely be correct, none of this assists him in the present applications. He has no *locus standi* in Ms De Ridder's complaint. Even if the final CIPC report was overwhelmingly in support of Ms De Ridder and it appeared (bearing in mind that such allegations would still have to be proved) that, in the opinion of CIPC, she was entitled to damages of some sort from SARB for their conduct in investigating the Realcor Group, Mr Pienaar would not be entitled to any such damages personally, nor would he have the necessary *locus standi* to claim them on behalf of anybody else.
67. Mr Pienaar has accordingly not raised a sustainable defence to this application.

Conclusion on the relief sought under the Vexatious Proceedings Act

68. It is clear from what is set out above that Mr Pienaar has persistently instituted proceedings without having reasonable grounds for believing that they would meet with success. The bases upon which he litigates are without merit, bad in fact and in law. The litigation is obviously unsustainable as a certainty, not merely on the probabilities.[32] No case is made out in any of his papers, which comprise of densely-composed conspiracy theories and defamatory allegations

against everyone who does not agree with him, including the courts.

69. As indicated earlier, the Constitutional Court in Beinash stated[33] that there are two categories of persons who fall to be protected in this type of matter. The first are the victims of the vexatious litigant, who are subjected to costs, harassment, and embarrassment in pleading. The second category is the public interest in having unimpeded access to functioning courts. The present case has an overlapping interest group that ought to be protected, namely the members of the public from whom Mr Pienaar continues to solicit funds to keep his livelihood and his litigation going.

70. As indicated at the outset of this judgment, an application for the sequestration of Mr Pienaar's estate has now been brought.[34] Sequestration will not, however, prevent him from launching or progressing further spurious litigation. In terms of section 23(6) of the Insolvency Act 24 of 1936, an insolvent may sue in his own name in matters that do not affect his estate. The applications which Mr Pienaar has launched, and the contemplated criminal proceedings, do not affect his estate but concern the affairs of the Realcor Group and King Group. A sequestration order would not be an impediment to continued litigation in these respects.

71. In all of these circumstances, I am of the view that a clear case has been established against Mr Pienaar, whether under section (2)(1)(b) of the Act or the common law, and that he falls to be declared a vexatious litigant.

Security for costs

72. The liquidators additionally seek an order that, should Mr Pienaar be given permission to litigate, he would be obliged to provide security for costs. In *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd*[35] the Supreme Court of Appeal endorsed the requirement of security for costs in litigation by vexatious litigants as follows:

"In *Western Assurance Co v Caldwell's Trustee* (1918 AD 262) this court laid down that a court of law had inherent jurisdiction to stop or prevent a vexatious action as being an abuse of the process of the court; one of the ways of doing so is by ordering the vexatious litigant to give security for the costs of the other side, and I know of no reason why the court below should not have [exercised] such an inherent jurisdiction."

73. Mr Pienaar litigates using other people's money, being that of the investors from whom he solicits funds. Considering the audience in court on the day of the hearing of this application, he has a committed group of followers who adhere to his advice and who

believe in his powers as litigator. He has run up millions of rands in costs orders that he does not and cannot pay. It appears that he is proud of the fact that he owes millions of rands in unpaid costs orders. It would, in my view, be in the interest of justice for this Court to exercise its inherent jurisdiction in ordering that Mr Pienaar must provide security for costs should he be granted permission to litigate. This will be reflected in the order granted at the end of this judgment.

The interdictory relief sought by the liquidators

74. Apart from relief under the Act, the liquidators seek interdictory relief against Mr Pienaar, to the effect that he be prohibited from taking any further steps in relation to the second rescission application; and further that he be interdicted from instituting and conducting private prosecutions against any of the targeted parties.
75. Mr Pienaar's past conduct suggests that should this Court decide the second rescission application against him, this will not deter him – he will seek to have the judgment rescinded or to apply for leave to appeal against it. Given the conclusion to which I have come in the vexatious litigant application, however, I do not think that interdictory relief is necessary in this respect. Mr Pienaar will have to comply with the terms of the order that declares him a vexatious litigant should he wish to pursue any further litigation, including the taking of further steps in respect of the second rescission application.[36]
76. The threatened private prosecutions are on a different footing. In *Zuma v Downer and another*[37] the Supreme Court of Appeal remarked:

“The mere decision to prosecute can have a far-reaching impact on an accused person’s life. It should not be lightly made, because even if an accused is ultimately acquitted, the harm already suffered could prove to be irreparable. As Howie P pointed out in S v Western Areas Ltd and Others: ‘A criminal trial cuts across a number of an accused person’s fundamental rights. Attendance at the trial, even if on bail, limits freedom of movement and even the right to liberty is curbed to an extent.’”
77. An application to interdict a private prosecution is competent in law. Where a prosecutor undertakes a prosecution with an ulterior purpose, and not with the object of having justice done, such prosecutor is able to harass the accused and fraudulently defeat their rights, allowing the courts to be used for the oppression of an adversary. In the context of a private prosecution, the question is thus whether the prosecution is instituted for some collateral purpose, rather than with the object of having criminal justice done.[38]
78. The Supreme Court of Appeal in *Zuma* confirmed[39] that a civil court will grant an interdict to set aside a private prosecution if it amounts to an abuse, or is vexatious or irregular.

The Court has the power - and the duty - to prevent abuse of its process. I agree with the liquidators that, given the

background

to this saga, Mr Pienaar's charges against Mr Gore are patently without substance. There is no reason to think that his other contemplated prosecutions will have merit. It would be vexatious and an abuse of process to allow the institution of proceedings that are obviously unsustainable as a certainty.[40]

79. The requirements for a final interdict are well-established:[41]

79.1 The liquidators and other targeted parties have a clear right to protect their reputations from criminal proceedings vexatiously launched. They have the right not to suffer the indignity of facing criminal charges and the threat of criminal charges.[42]

79.2 There is ongoing reputational harm inherent in the threat of private prosecution, especially given the blatantly defamatory manner in which Mr Pienaar frames his affidavits and other communications in his quest to prove his narrative. His constant interventions hamper the liquidators in the proper execution of their work, to the detriment of creditors and other stakeholders.

79.3 The liquidators have no alternative remedy available to stop the threatened private prosecutions.

80. Once the requirements for a final interdict are met, the Court nevertheless has a discretion (to be exercised judicially) to refuse

such relief.[43] In considering the matter, I do not think that there is scope for the refusal of the interdict against private prosecution sought in the present matter. Mr Pienaar has engaged in persistent and vexatious litigation over many years, without success. He has used other people's money, and has never paid a costs order. The NPA has refused to prosecute the criminal charges already brought, as those charges were without substance. Mr Pienaar intends to resurrect those charges by way of his planned private prosecutions.

81. I accordingly find that the liquidators have met the requirements for final interdictory relief in relation to the threatened private prosecutions, and that such relief should be granted against Mr Pienaar.

82. I turn, against this background, to consider the second rescission application.

The second rescission application

The nature of the second rescission application

83. As would by now be clear, Mr Pienaar's second rescission application is so called because he had previously instituted a "first" rescission application. In that application, issued in August 2016, Mr Pienaar attempted inter alia to rescind the Binns-Ward judgment, to declare the actions of the FSB[44] in relation to their investigations into the King Group unlawful, and to obtain a declaration that "all liquidation and/or sequestration applications of the Consolidated KFH be nullified and that all unlawful proceeds that persons have benefitted

from as a result of these unlawful benefits form part of the Restitution process as prescribed by Chapter 6 of POCA."

84. The first rescission application was dismissed on 30 November 2018 by the Sievers judgment. An application for leave to appeal was denied by the High Court as well as, subsequently, by the Supreme Court of Appeal and the Constitutional Court. Despite these dismissals, Mr Pienaar instituted the second rescission application in March 2021.
85. He describes^[45] the purpose of his resurrected application as follows: "My rescission application is brought primarily to declare that the court was fraudulently misrepresented in court cases in the past, and that my adversaries had acted unlawfully, ultra vires and mala fides. As a result, the court must establish the correct facts and law to establish the correct narrative, and grant applicant the relief sought, for this fraud, corruption and money laundering of his adversaries".
86. This description gives some idea of the scope of Mr Pienaar's argument, and the goal that he has in mind. I have anxiously considered Mr Pienaar's affidavits and his extensive heads of argument, and listened to the oral argument presented, to discern any basis upon which this Court should, or could, come to his assistance. None presented itself.
87. The striking feature of the second rescission application is that it is a rescission application brought by the party who was the applicant in the original application (against parties who are cited in the present application), who attended at the hearing of the matter – a hearing that was regular in every respect - and who had his application dismissed, with costs. Rescission of judgment is not a remedy available to such an applicant. He had appeal remedies, but he has exercised all of them, and failed.
88. Mr Pienaar is intent upon recycling his narrative. For example, in the founding papers in the second rescission application he makes scandalous and unsubstantiated remarks about the conduct of the FSB and of Mr Anderson. Stripped of the emotive verbiage, Mr Pienaar contends that the inspection of KFH conducted by the FSB was unlawful, and that the affidavit deposed to Mr Anderson in support of Mrs Zera's liquidation application contributed to the unjustified demise of the King Group.
89. These allegations are for the most part a repetition of those made against the FSB by Mr Pienaar in the first rescission application. The allegations were fully answered in that application, and were found by the Sievers judgment to be without merit. This is clear from the comments made by that Court in support of the punitive costs order he granted against Mr Pienaar:

"[34] Another unsatisfactory aspect is that [Mr Pienaar] impugned the integrity of the Respondents in his affidavits, his heads of argument and in argument before the court without any legitimate basis for doing so.

[35] This constitutes a vexatious abuse of process of court."

90. The FSB respondents have again answered the allegations made by Mr Pienaar and have set out the legislative framework within which their investigation and subsequent report had been conducted. There is nothing far-fetched or untenable in their version, and the disputes of fact between their version and Mr Pienaar's narrative therefore fell, and fall, to be decided on the version put up by the FSB respondents, in accordance with the Plascon-Evans rule. Mr Pienaar's extensive, but contested, allegations of fraud against the FSB and other persons should in any event not be determined on motion.[46]
91. Mr Pienaar is persistent in his contention that the present application is not an attempt to revisit the previous one because of the fact that he has incorporated additional relief (including relief under POCA and FICA) to the original relief requested, and by citing various "interested parties" in addition to the original respondents. He must also now apply not only for the rescission of the Binns-Ward judgment, but for the rescission of the Sievers judgment for any of this to make sense.
92. I am of the view that the dressing up of the original application by the incorporation of additional relief is a transparent abuse of process in the particular context of this litigation. The second rescission application is nothing but an appeal pretending to be something else, the legitimate avenue to appeal having already been closed. It is an attempt to relitigate the first rescission application. A party cannot seek to invoke the process of rescission to obtain a re-hearing on the merits.[47] These machinations alone constitute a basis upon which to dismiss the second rescission application.
93. The notice of motion serves as a stark illustration of the situation. Mr Pienaar seeks an order declaring the following:[48]
- "1.1 the Court has fraudulently been misrepresented in WCHC case 13665/2016[49] and others to believe that the Respondents were doing a bona fide and intra vires administrative inspection of the 1st Respondent and 'related' persons and entities; and/ or*
- 1.2 the 3rd and 4th Respondents (collectively referred to as the FSB Respondents) had in fact conducted an autocratic criminal investigation with effect from 18 December 2008 without adhering to the rule of law; and/ or
- 1.3 the FSB Respondents must be duly joined and severally liable, with the necessary resolution and authorities, confirming that they support the actions and conduct of the nomine officious cited and/ or their predecessors nomine officious, should they deny the allegations made by Applicant in this application; and/ or
- 1.4 The FSB Respondents and/ or others 'related' to this investigation, fraudulently concealed and misrepresented all other interested parties that it had acted according to the rule of law, albeit that they had in fact obstructed the course of justice and applied their own law; and/ or

1.5 Applicant has provided an investigation founding affidavit with regards to these fraudulent and unlawful actions and requests the court to confirm that the actions of these FSB Respondents, are in fact a criminal offences; and/ or

1.6 That the 7th Respondent and the 3rd and 4th Interested Parties can use this investigation in order to prepare the necessary Application in terms of Chapter 6 of POCA; and/ or

1.7 The prosecuting authorities, cited and provided with the evidence of these applications, are compelled in terms of their mandate to consider the fraud and corruption placed before it, and in the interest of justice and public interest, consider prosecuting the 2nd to 5th Respondents for their role in this money- laundering collusion; and/ or

1.8 Applicant wants to make sure that in the interest of the public, that criminal investigations are not delayed further, as the investors have been waiting for ten years for answers. The causation of the First Respondent (and related companies) implosion, which has prejudiced so many victims, can be determined by the evidence before court in these proceedings; and/ or

1.9 Should the 7th Respondent and the 3rd and 4th Interested Parties wish not to prosecute against the persons identified in this investigations affidavit, that Applicant be provided with the necessary nolle prosequi in order to take further actions; and/ or

1.10 As a result of the fact all 'related' orders/ judgments/ determinations related to Kings have been based on fraudulent misrepresentation which has been based on illegality, Applicant seeks the Court to rescind all related orders/ judgments/ determinations to be declared void ab initio; and/ or

1.11 Applicant has joined and/ or cited as many of the dominant interested parties as possible in these proceedings, as prescribed by Rule 42 of the rules of Court; and/ or

1.12 The Court accepts the interested Parties joined as sufficient insofar they are the only interested parties that are duly legally represented and should understand this complex saga; and/ or

1.13 That should the Court appoint a curator via the actions of the NDPP, that the curator be directed to coordinate all future proceedings with the Applicant; and/ or

1.14 Further and/ or alternative relief, which may include:-

14.1 Declaring that the 4th Interested Party (FIC) is hereby notified of this suspected unlawful conduct by the FSB Respondents and should intervene with the necessary Supervisory bodies. The merits have already been placed before them in this case.

14.2 Declaring that the NDPP (7th Respondent) should intervene and apply FICA and POCA to these proceedings, namely filing for a preservation order and restituting the captured fixed properties to the victims of this corruption and crime via the Asset Forfeiture unit.

14.3 Declaring that should the NDPP not wish to intervene, based on the merits placed before it and/ or with further investigations, that they issue a nolle prosequi in terms of the charges against the FSB respondents, without further delaying this matter.

14.4 Declaring that should a nolle prosequi be obtained, that Applicant may apply private prosecution.

1.15 Directing that costs of the case be considered in terms of the Bio watch principle.

C. ... as a result of the Respondents' patent errors, ambiguities and omissions of fact and law, apparently fraudulently

misleading the court, Applicant has prepared this Application in terms of Rule 42 for a rescission of the judgment in WCHC case no 13665/2016."

94. The formulation content of this relief speaks for itself.
95. The first and second respondents oppose, in particular, the relief sought in prayers 1.1, 1.7, 1.10, and paragraph C of the notice of motion, which is the relief that directly applies to them insofar as it seeks a rescission of the Sievers judgment, and relief that is dependent upon the rescission of the Sievers judgment. It appears that the relief sought in prayers 1.1 to 1.5 of the notice of motion pertains to the third and fourth respondents.
96. These respondents are all agreed that no case has been made out for any of the declaratory relief sought.
97. As indicated, I have considered the affidavits delivered in support of the relief sought. They rely heavily upon interpretations of the provisions of the Constitution and other legislation. These are weaved amidst allegations of ineffectiveness and criminality of the administrative authorities involved, and Mr Pienaar's inability to get redress because of the corrupt nature of the legal profession and the various institutions of justice, including the judges who have presided over his cases.
98. It is clear, sadly, that Mr Pienaar has been and will be dissatisfied with any finding made against what he perceives as the truth and as justice. He appears in this application to be "litigating" his allegations against whomever he can reach in the hope that it would give him a further bite at the cherry. He is frustrated with the law, and the way that the legal system operates.

Mr Pienaar's lack of locus standi

99. A further fundamental problem with the second rescission application is that Mr Pienaar clearly has no locus standi to act on behalf of the persons that he purports to represent. This issue was dealt with in detail in the Sievers judgment in 2018. The Court found that Mr Pienaar did not have locus standi in the litigation he had allegedly undertaken on behalf of the former investors. This was because he had no direct and substantial interest in the relief sought. He had been a broker of the property syndication schemes; not an investor who,

having lost money, had a claim in the liquidation of the group. He had no authority to represent thousands of investors, as he is a layman and therefore not entitled to represent other parties.

100. This situation persists in the second rescission application. Mr Pienaar states in his notice of motion that “the application is made by the Applicant on behalf of thousands of investors in terms of Section 38 of the Constitution as a result of the fact that they have had their Rights prejudiced and/ or infringed in terms of Sections 1(c), 8, 9, 22, 25, 32, 33, 34, 35 and 39 of the Bill of Rights. Constitutional matter has also been infringed regarding Sections 41, 165, 167(4), 172, 173, 178, 195, 205 and 223 to 225 of the Constitution”.
101. Simply invoking the Constitution does not clothe one with locus standi. There is no substantiation on the papers for Mr Pienaar’s contention that he falls within the categories provided for in section 38[50] of the Constitution in relation to those he represents, or for the contention that he is acting the public interest.[51]
102. Nowhere in Mr Pienaar's extensive founding affidavit does he set out how his rights are impacted by the KFH liquidation. On his own version he acts only "on behalf of thousands of investors". This is not sufficient:

“In terms of s 19(1)(a)(iii) of the Supreme Court Act 59 of 1959, an applicant for a declarator must show that he has an interest in an existing, future or contingent right. The right must attach to the applicant and not be a declaration of someone else's right. ... In the present case the right upon which a declarator is sought is that of the oil company and the applicant has only a derivative interest. The fact that the applicant is affected both commercially and financially does not convert his derivative interest into a legal right. See United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another 1972

(4) SA 409 (C) at 417B; ...” [52]

103. Mr Pienaar purports to act on behalf of other persons but is not a legal practitioner. Section 33(1) of the Legal Practice Act 28 of 2014 provides, in relevant part, as follows:

“(1) Subject to any other law, no person other than a practising legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward-

- (a) appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear; or
 - (b) draw up or execute any instruments or documents relating to or required or intended for use in any action, suit or other proceedings in a court of civil or criminal jurisdiction within the Republic.”
104. Mr Pienaar is in blatant contravention of these provisions. By his own admission he lives off the funds that he obtains from the persons whom he purports to represent.

105. He has not obtained the leave of the Court to represent these “clients” despite his status as a layperson. In *Manong & Associates (Pty) Ltd v Minister of Public Works and another* [53] the Supreme Court of Appeal held as follows in relation to the High Court’s inherent powers to regulate its own process:

“[14] I have expressly refrained from formulating a test for the exercise of the court's inherent power as I believe that such cases can confidently be left to the good sense of the judges concerned. Lest this be misconstrued as a tacit or general licence to unqualified agents, it needs be emphasised that in each such instance leave must be sought by way of a properly motivated, timeously lodged formal application showing good cause why, in that particular case, the rule prohibiting non-professional representation should be relaxed. Individual cases can thus be met by the exercise of the discretion in the circumstances of that case. It would thus be impermissible for a non-professional representative to take any step in the proceedings, including the signing of pleadings, notices or heads of argument ... without the requisite leave of the court concerned first having been sought and obtained.”

- [15] This approach, in my view, is consistent with the right enshrined in s 34 of the Constitution, which provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or, where appropriate, another independent and impartial tribunal or forum. Emphasising that the courts have a duty to protect bona fide litigants and the importance of untrammelled access to the courts, the right enshrined in s 34 has variously been described by the Constitutional Court as 'fundamental to a democratic society that cherishes the rule of law', 'of cardinal importance . . . that requires active protection', foundational for 'the stability of an orderly society', and a right that 'ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self help' and serves as 'a bulwark against vigilantism, and the chaos and anarchy which it causes'.”

106. It does not assist Mr Pienaar to say that he, as a layperson, was not aware of his lack of standing. The issue was raised squarely in the first rescission application, as well as in an application for security for costs[54] that preceded the first rescission application. The Sievers judgment dealt with the matter in no uncertain terms, concluding that:

“[17] The Applicant [Mr Pienaar] was made aware of the need for such an application [leave from the Court for a layman to represent another] in an interlocutory judgement handed down by Ndita J on 28 July 2017. He nevertheless failed to bring any such application. The present application must accordingly fail on this ground alone.”

107. As indicated, Mr Pienaar’s applications for leave to appeal against the Sievers judgment were dismissed, three times. It follows that Mr Pienaar has not demonstrated the requisite locus standi to seek any of the relief (insofar as the grant of such relief may be competent) set out in the notice of motion.[55] The second rescission application stands to be dismissed on this basis alone.

Rescission of the Sievers judgment

108. The issue of locus standi aside, when the requirements for the rescission are met, the Court may exercise its discretion in deciding whether it is in the interests of justice to rescind a judgment.[56] There is no general discretion to rescind a judgment.

109. The second rescission application fails at the first hurdle. There is no factual basis discernable from Mr Pienaar's papers to fulfil the requirements of any of the subrules of Rule 42.

109.1 The Constitutional Court has confirmed that "absence" is an essential requirement of Rule 42(1)(a).[57] It is common cause that Mr Pienaar was present at the hearing of his application before Acting Justice Sievers, and no judgment or order was erroneously sought or granted in Mr Pienaar's absence.

109.2 There is no support for the contention that the Sievers judgment contains an ambiguity or a patent error or omission as contemplated in Rule 42(1)(b).

109.3 There is also no basis to hold that the Sievers judgment was granted as a result of a mistake common to the parties, as provided for in Rule 42(1)(c).

110. It is not clear whether Mr Pienaar also seeks rescission under the common law but there is, in any event, no scope for such relief. The Supreme Court of Appeal has set out the relevant principles.[58] The guiding principle of the common law is the certainty of judgments. Once judgment is given in a matter, it is final. It may

not thereafter be altered by the judge who delivered it. He or she becomes functus officio and the court may not ordinarily vary or rescind its own judgment. That is the function of an appeal court.

111. There are exceptions. After evidence is led and the merits of the dispute have been determined, rescission is permissible only in the limited case of, firstly, a judgment obtained by fraud or, exceptionally, iustus error. Secondly, rescission of a judgment taken by default may be ordered where the party in default can show sufficient cause.[59] There are, thirdly, certain exceptions which do not relate to rescission as such but to the correction, alteration and supplementation of a judgment or order.

112. None of these grounds apply to the facts of the present matter. In particular, and despite Mr Pienaar's allegations, the Sievers judgment was not obtained by fraud or any error (iustus or otherwise) on the part of the Court. In this regard, Mr Pienaar frames his case for rescission as follows in his founding affidavit:

112.1 "The Court was fraudulently misrepresented to believe the correct legal application of law had been applied'.

112.2 "Criminal proceedings should have been dealt with before proceeding with the civil actions".

112.3 "Lifting of the corporate veil judgment [i.e. the Binns-Ward judgment] should have preceded the unopposed liquidation applications".

112.4 "... reliance on the state to apply the rule of law"; and

112.5 An argument that the Court should provide restitution.

113. The second and third reasons above are not legally sustainable propositions - there is no set order in which the various court actions and applications had to proceed. Propositions four and five are vague legal statements and the contentions advanced under those headings in the affidavit do not provide grounds for rescission of judgment.
114. That leaves Mr Pienaar's contention that Acting Justice Sievers was "fraudulently misrepresented to".
115. A judgment may be set aside, at common law, on the grounds of fraud and iustus error for the good reason that a judgment procured by the fraud of one of the parties, whether by forgery, perjury or in any other way such as fraudulently withholding material documents, cannot be allowed to stand.[60] The successful party must have been privy to the fraud.[61]
116. Although Mr Pienaar alleges that this Court (and all of the courts that he wishes to implicate in the relief that he seeks) was "fraudulently misrepresented to" it is apparent that the hearing before Acting Justice Sievers was regular in all respects. The Court duly had regard to and weighed Mr Pienaar's case, including the allegations of fraud and corruption raised at that stage. There was no fraud or mistake or other irregularity in relation to the hearing itself, and Mr Pienaar has not alleged any. All of this was confirmed by the fact that his applications for leave to appeal were unsuccessful. There was no fraud or iustus error.
117. In the circumstances, an application for rescission under the common law - if in fact such relief has been sought - must fail.

The declaratory relief sought

118. The declaratory relief sought in prayers 1.1, 1.7, 1.10, and elsewhere in the notice of motion is dependent upon the rescission of the Sievers judgment. It is only upon rescission that Mr Pienaar would be entitled to bring a fresh application in which to make out his case for the declaratory relief sought. Absent rescission, the declaratory relief is sought in a vacuum.
119. As to the third and fourth respondents, in prayer 1.1 of the notice of motion Mr Pienaar seeks an order declaring that these respondents (the FSB respondents) made fraudulent misrepresentations to Acting Judge Sievers in the first rescission application (and other unidentified matters). In prayers 1.2 and 1.4 Mr Pienaar seek a declaration that the investigation conducted by the FSB respondents in 2008 was "an autocratic criminal investigation" conducted fraudulently and in violation of the rule of law. In prayer 1.3 Mr Pienaar asks for an order declaring that the FSB respondents must be "joined and severally liable". He clearly means "jointly" and severally, but no detail is given in relation to what the FSB respondents must be held liable for, or how such liability is to be determined. In prayer

1.5 Mr Pienaar seeks an order declaring that he (Mr Pienaar) has provided "an investigation founding affidavit" and that the conduct of the FSB respondents is a criminal offence.

120. However, nowhere in Mr Pienaar's founding affidavit of almost 600 pages, his 52-page supplementary affidavit, or his 132-page replying affidavit, are there facts which support the relief he seeks.
121. Declaratory relief may be granted in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013. A High Court may enquire into and determine any right notwithstanding that the applicant cannot claim any relief consequential upon such determination. However, such declaratory relief may only be claimed by an interested person with an identifiable right and courts will not decide abstract, academic, or hypothetical questions.[62]
122. The Supreme Court of Appeal recently reiterated the test for the grant of declaratory relief: [63]

"In terms of s 21(1)(c) of the Superior Courts Act 10 of 2013, a High Court may, in its discretion, and at the instance of any interested person, enquire into and determine any existing, future or contingent obligation, notwithstanding that such person cannot claim any relief consequential upon the determination. The applicant who seeks declaratory relief must satisfy the court that he or she is a person interested in an 'existing, future or contingent right or obligation' and then, if satisfied on that point, the court must decide whether the case is a proper one for the exercise of the discretion conferred on it. The question must be examined in two stages."

123. As to the first stage of the enquiry, it cannot be said that Mr Pienaar is a person interested in an "existing, future or contingent right or obligation" on the papers. It has already been found that he has no locus standi or interest in the matter. This was the finding, too, in the Sievers judgment.
124. Second, even if the Court were satisfied that Mr Pienaar had locus standi, this would not be a proper case for the exercise of the Court's discretion. The aim of Mr Pienaar's bid to overturn the Sievers judgment in the present application is to open the way to overturning the Binns-Ward judgment, and in turn the other liquidation

applications that had been brought in the King Group. These matters were all determined from about 2009 onwards, and are res judicata.[64] Mr Pienaar will therefore not be able to achieve what he hopes to achieve via the rescission of the Sievers judgment.

125. In this regard, the present matter is similar to the situation in Pasiya:[65]

"... this was not a case where the court ought to exercise its discretion in favour of granting the declaratory order sought. This was so, reasoned the High Court, because the appellants unduly delayed in approaching the court for their relief which they sought. The appellants only sought the court's intervention in 2020, imploring it to 'turn the wheels back to the position prevailing in 2009'. It found that whilst the appellants did nothing to vindicate their rights, LM and other shareholders proceeded to organise their lives, planned and conducted the business in accordance with the position after the dilution of the shares, and a number of decisions had been made since 2009. relying upon resolutions

which the appellants belatedly sought to be declared unlawful."

126. Mr Pienaar's attempt to undo more than 15 years of litigation through the declaratory relief sought is a non-starter. At this juncture the practical difficulties in setting aside and attempting to reverse the liquidation of the King Group are insurmountable. Courts do not make orders which cannot be enforced.
127. Third, there is, in any event, and apart from Mr Pienaar's narrative, no suggestion that any of the liquidation applications or the Binns-Ward judgment were improperly decided. There is no dispute that the companies in the King Group were hopelessly insolvent, and that they fell to be wound up as a matter of law. The relief sought in relation to the first and second respondents can therefore not be granted.
128. Fourth, I have already indicated that, in respect of the FSB respondents, no case is made out for the relief sought in the notice of motion. The complete lack of a factual basis for the relief sought makes the issues raised by Mr Pienaar abstract and nebulous, and militates against the exercise of this Court's discretion to grant any of the declaratory relief sought.
129. Fifth, Mr Pienaar has failed to join various parties who have an obvious legal interest in the relief that he seeks. The issue of non-joinder was raised in the first rescission application, and was expressly considered in the Sievers judgment: "Persons who may be directly or indirectly affected by the relief sought have not been joined and they have thus not had an opportunity to present evidence and argument to the court."
130. Parties interested in the outcome of the application include all the investors and creditors who have received dividends from the companies in liquidation over the years, third parties who purchased assets from the liquidators, and the liquidators of all the subsidiaries of KFH themselves. Given the wide-ranging nature of Mr Pienaar's allegations, there are many more interested parties.
131. These are all reasons why this Court is not a position to grant any of the declaratory relief sought. The second rescission application falls to be dismissed.

The application for a referral to oral evidence

132. In his heads of argument Mr Pienaar asks that, if the Court cannot decide "to grant me the relief sought", the application be referred to oral evidence under Rule 6(5)(g). He foresees the giving of oral evidence by a virtually open-ended array of persons who were involved in the saga over the past decade, on all of the aspects in relation to which his narrative deviates from the current status of the litigation history.
133. The factual disputes in the present matter were obviously glaringly foreseeable. Apart, moreover, from the obvious practical problems

that may be encountered in a referral to oral evidence on the facts of this matter, the fact remains that the second rescission

application does not meet the requirements for rescission, whether under Rule 42 or the common law. This, as well as Mr Pienaar's lack of locus standi and the issue of res iudicata, has been dealt with above. That is the end of the matter. There is no point in referring any of the multitude of (and

undefined) disputes of fact and other problematic issues on the papers to oral evidence. [66]

The costs of the vexatious litigant application and the second rescission application

134. It is necessary to deal with the issue of costs in the vexatious litigant application and the second rescission application in some detail. Mr Pienaar was unrepresented. He had clearly put much effort into compiling the papers and was serious about his cause, whatever the merit thereof. He initially tried to conduct himself respectfully in court, although he veered into the invective as the argument proceeded.
135. One does not lightly depart from the general rule that costs follow the result, but I did deliberate whether each party should pay their own costs, amongst other reasons because the liquidators in the vexatious litigant application and the respondents in the second rescission application would probably not be able to extract any funds from Mr Pienaar. The mere fact that a litigant cannot pay is, however (subject to the Court's discretion), not sufficient reason to avoid the making of a costs order against him.
136. Having considered the issues, I am of the view that Mr Pienaar should pay the costs of each of the applications in question on a punitive scale. This is so for four reasons.
137. First, Rule 6 of the Uniform Rules requires an applicant in motion proceedings to set out the material facts upon which he relies in chronological sequence, without argumentative matter, and in a lucid, logical and intelligible form. As indicated earlier, the affidavits upon which Mr Pienaar relied were lengthy documents filled with material that was argumentative and irrelevant for the purposes of the issues, such as they were. The relief sought in the second rescission application was obviously unsustainable. He failed clearly to indicate what his cause of action was, and what exactly the facts were upon which he relied in support of the relief claimed.
138. The manner in which the papers had been drafted made it difficult for the other parties and the Court to ascertain the precise relief sought or, in the case of the vexatious litigant application, what the defence was. It was prejudicial to the other parties to have to attempt to divine, from the mass of information on record, what case they had to meet.[67] As a result the Court was "given no clear context of facts which are common cause, and no clear guidance as to the dispute of facts which must be evaluated against the background of such a context".[68]

139. Second, Mr Pienaar makes much of the fact that he is a layperson. That argument has outlived its usefulness. Mr Pienaar is by now a seasoned litigator who has, unfortunately, abused the process of court. The glaring defects in the proceedings that he has instituted have expressly been conveyed to him time and again. He has deliberately chosen to ignore the advice because

it does not suit his narrative. He is not willing to admit defeat.

140. Third, in his many affidavits and the annexures thereto, as well as in the heads of argument, Mr Pienaar makes unsubstantiated and, frankly, scandalous comments about various persons and authorities, including the courts. There are too many examples to mention, but I have referred to a few instances earlier in this judgment. The allegations made in relation to these persons are argumentative expressions of Mr Pienaar's opinion. They are unsupported by objective facts and do not contribute in any way to the proper determination of the disputes between the parties.

141. Mr Pienaar relies on the principle in *Biowatch*[69] to escape the grant of a costs against him. The principle states that in constitutional matters against the state or organs of state the litigant, subject to exception, should not be made to pay the costs of the state. This is to avoid adverse costs orders against litigants seeking to assert constitutional rights.

142. This is, however, not a case in which the invocation of *Biowatch* can assist him, even if he did raise any constitutional issues. In *Biowatch* the following was stated as regards the approach to costs in constitutional cases:[70]

"[24] ... the general approach of this court to costs in litigation between private parties and the State, is not unqualified. If an application is frivolous or vexatious, or in any other way manifestly inappropriate, the applicant should not expect that the worthiness of its cause will immunise it against an adverse costs award. Nevertheless, for the reasons given above, courts should not lightly turn their backs on the general approach of not awarding costs against an unsuccessful litigant in proceedings against the State, where matters of genuine constitutional import arise. ..."

[25] Merely labelling the litigation as constitutional and dragging in specious references to sections of the Constitution would, of course, not be enough in itself to invoke the general rule The issues must be genuine and substantive, and truly raise constitutional considerations relevant to the adjudication. ..."

143. I have found that the second recission application constitutes an abuse of process. The relief sought is patently unsustainable. The papers in that application, as well as in the vexatious litigant application, are replete with defamatory and irrelevant material. I am of the view that this is a case where the *Biowatch* principle should not apply.

144. In all of these circumstances, justice dictates that Mr Pienaar bear the costs of these applications.

145. The established position regarding an award of attorney and client costs is set out in *Nel v Waterberg Landbouwers Ko-operative Vereeniging*:^[71]

"The true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special

considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the court in a particular case considers it just by means of such an order, to ensure more effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation."

146. In *MEC for Public Works, Roads and Transport, Free State v Esterhuizen and others*^[72] the Supreme Court of Appeal found that an award of attorney and client costs was warranted in a case in which unsubstantiated allegations

against the trial judge had been made. The Court held that "it is unacceptable that allegations of impropriety can be made against a judge in so cavalier a fashion...As a mark of opprobrium, I think a punitive costs order should be imposed on the scale as between attorney and client."

147. The Constitutional Court in *Mkhatshwa and others v Mkhatshwa and others*^[73] made a similar punitive costs order as a mark of its displeasure with the accusations levelled by the applicants against various judicial officers:

"It will not do for litigants to resort to unscrupulous tactics to succeed in this Court, especially when such tactics involve unjustifiable attempts at bringing shame and disrepute upon Judicial Officers. This is because the Judiciary, unlike other branches of government, must rely solely on the trust and support of the public in order to fulfil its functions. Consequently, any conduct that undermines and erodes the authority and integrity of the Judiciary must be prevented. Litigants who resort to the kind of tactics displayed in this matter must beware that they are unlikely to enjoy this Court's sympathies or be shown mercy in relation to costs. The only reasonable conclusion in the circumstances is that a punitive costs order is apposite."

148. On the basis of this precedent, and having considered the tenor of the documents filed of record as well as the history of the matters before me, I regard a punitive costs order as appropriate.

The sequestration application

149. This leaves the application for the sequestration of Mr Pienaar's estate, which is brought by the liquidator of KFH.^[74]

150. Section 10 of the Insolvency Act 24 of 1936 provides that, if a Court is of the opinion that prima facie the applicant has established a claim against the debtor for not less than R100, that the debtor has committed an act of insolvency or is insolvent; and that there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, the Court may provisionally sequester the debtor's estate.

151. In an opposed application for provisional sequestration or liquidation the applicant must establish her entitlement to an order on a prima facie basis, meaning that the applicant must show that the balance of probabilities on the affidavits is in her favour.[75] A distinction must be drawn between factual disputes relating to the respondent's liability to the applicant (i.e. relating to the

applicant's claim) and disputes relating to the other requirements. At the provisional stage,[76] the other requirements must be satisfied on a balance of probabilities with reference to the affidavits. In relation to the applicant's claim, however, the Court must consider not only where the balance of probabilities lies on the papers but also whether the claim is bona fide disputed on reasonable grounds.[77]

The applicant's claim

152. The applicant's claim arises from the fact that KFH is a judgment creditor of Mr Pienaar in the total amount of R351,329.34,10 in respect of taxed bills of costs. These bills are the following:

152.1 R298,215.23 plus interest from 26 October 2021 to date of payment;

152.2 R12,045.79 plus interest from 19 August 2020 until the date of payment; and

152.3 R41,068.32 plus interest from 31 August 2021 until the date of payment.

153. The claim is liquidated and prima facie established as contemplated in section 9(1) of the Insolvency Act. The applicant's locus standi is undisputed. The onus then shifts onto Mr Pienaar show that the claims are disputed on bona fide and reasonable grounds.[78] These are two distinct components, which must both be satisfied.[79]

154. The cost orders arise from the Sievers judgment, and Mr Pienaar's three failed applications for leave to appeal. The taxed costs orders are due and payable[80] judgment debts, and Mr Pienaar can therefore not genuinely dispute the applicant's claim, nor does he do so - the facts in the

sequestration application are mostly common cause.

155. The papers show that Mr Pienaar is also indebted to PwC in the total amount of R3,919,588.31 in respect of taxed legal costs. The amount does not include PwC's untaxed costs, and remains unpaid. I have earlier referred to the Nziweni

judgment

in which it was recorded that PwC had incurred over R12.5 million in legal costs against Mr Pienaar since 2014.

Mr Pienaar is insolvent

156. Mr Pienaar does not deny that he owes these costs. On the contrary, in a circular dated 7 March 2023 sent to his followers, he states that he has more than R50 million in costs orders against him.
157. For the purposes of the present application, the amount owed to KFH and PwC in respect of taxed costs is R4,270,917.65. Interest is accruing thereon. The PwC costs orders were taxed and have been due and payable since 2015 and 2018 respectively. The prescribed interest rate is approximately 10% per annum. On an almost R4 million debt accruing over at least 6 years and counting, this amounts to more than R2.5 million of interest owed on the PwC judgment debts. Interest at the prescribed rate has been accruing on the KFH taxed costs since 2020 and 2021 respectively.
158. The claims of Mr Pienaar's judgment-debt creditors (KFH and PwC) therefore exceed R4.2 million. With interest, the debts exceed R6.5 million.
159. It is common cause that Mr Pienaar's only significant asset is his residential property situated at Erf 1[...], Parow. He and the second respondent are co-owners of the property. As they are married out of community of property, only half of the value of the property accrues to Mr Pienaar.
160. The market-value of the property is approximately R4 million. The forced sale value is estimated to be at R3,250,000. There is a mortgage bond registered in favour of ABSA Bank Ltd over the property in the amount of R1,3 million. On the best case

scenario for Mr Pienaar, the mortgage bond has been paid off by now and he is entitled to R2 million on the market-value of the house for his half share. This is nowhere near the debt which he owes to his judgment creditors. He is plainly insolvent.

Mr Pienaar has committed an act of insolvency

161. In terms of section 8(b) of the Insolvency Act, a debtor commits an act of insolvency if "a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment."

162. On 12 January 2018 at the instance of PwC, the Bellville deputy Sheriff served a writ of execution on Mr Pienaar at his place of residence. The Sheriff certified that Mr Pienaar had informed him that he (Mr Pienaar) "has no money, disposable property or assets, inter alia, wherewith to satisfy the said warrant or any portion thereof No moveable assets were either pointed out or could be found by me after a diligent search and enquiry at the given address."
163. The Sheriff accordingly made a return of nulla bona. In the circumstances, Mr Pienaar has committed a section 8(b) act of insolvency. There is nothing on record to indicate that Mr Pienaar's situation has since improved. He has continued litigating with the assistance of the persons from whom he solicits funding.
164. Regarding his living costs, Mr Pienaar states that when he was a broker for the property syndication schemes in 2010 his standard of living was much higher. He now relies on donations for the work he does (his "investigations", and the litigation undertaken on the basis thereof). He says that, together with his wife's income, this is the way in which he funds his living expenses. Whilst he concedes that his standard of living has come down in the last few years, he maintains that he is not insolvent. This denial is plainly spurious, given the common cause facts.
165. In terms of section 10(b) of the Insolvency Act, Mr Pienaar's estate may be sequestrated on grounds of either his common cause factual insolvency or the section 8(b) act of insolvency.

Advantage to creditors

166. In *Stratford and others v Investec Bank Ltd and others*[81] the Constitutional Court confirmed the approach to the Insolvency Act's requirement of an advantage of creditors:

"[43] ...It is the petitioner who bears the onus of demonstrating that there is reason to believe that this is so. In Friedman the

Court held:

'[T]he facts put before the Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not too remote – that some pecuniary benefit will result to creditors. It is not necessary to prove that the insolvent has any assets. Even if there are none at all, but there are reasons for thinking that as a result of enquiry under the [Insolvency Act] some may be revealed or recovered for the benefit of creditors, that is sufficient'.

- [44] The meaning of the term "advantage" is broad and should not be rigidified. This includes the nebulous "not-negligible"

pecuniary benefit on which the appellants rely. To my mind, specifying the cents in the rand or "not-negligible"

benefit in the context of a hostile sequestration where there could be many creditors is unhelpful.

- [45] The correct approach in evaluating advantage to creditors is for a court to exercise its discretion guided by the dicta outlined in Friedman. For example, it is up to a court to assess whether the sequestration will result in some payment to the creditors as a body; that there is a substantial estate from which the creditors cannot get payment except through sequestration; or that some pecuniary benefit will result for the creditors.”
167. In the present matter there is, on the papers, sufficient free residue in the immovable property to provide for a dividend to concurrent creditors. On Mr Pienaar's version, moreover, he continues to solicit donations from "investors" into his ABSA bank account. These funds also contribute to establishing an advantage to creditors. The facts which indicate an advantage to creditors are accordingly common cause.
168. In the circumstances, the grant of a sequestration order would be to the advantage of the general body of creditors.

Mr Pienaar's defences to the sequestration application

169. Mr Pienaar raises various in limine points in relation to the sequestration application.
170. The first is that Mr Pienaar regards the change of KFH's name (it was formerly known as Biz Africa 1332 (Pty) Ltd) as creating a new entity which could be “plundered” for the benefit of the liquidators. This defence has no merit, as it is clear from the applicant's replying affidavit that the company's name had duly been changed after it had converted into a public company years ago.
171. The second point is based on Mr Pienaar's mistaken assumption that the delivery and service of the sequestration application resulted in the immediate issuing of a rule nisi against him. This is simply incorrect.
172. The third point is the citing of the second respondent. Mr Pienaar does not accept that this is a requirement of this Court's Practice Directives. He alleges that the "legal fraternity" recklessly failed to establish that the respondents are married out of community of property. He states that his wife should be left out of this litigation.
173. Mr Pienaar argues, fourthly, that the vexatious litigant application was brought "solely to be able to place that rule nisi case on the opposed roll". This is, again, plainly not correct.
174. As set out above, the jurisdictional requirements for provisional sequestration in the present matter have been met on common cause facts. None of the points in limine constitutes a defence to the sequestration application.
175. Mr Pienaar's only substantive defence to the sequestration application is his allegation that, if the second rescission application were to succeed, then the costs orders against him which arose from the Sievers judgment must be set aside. I have already found that the second rescission application has no merit. It is in any event not a defence to the sequestration application based on judgment debts (arising from the Sievers judgment, an

order of the Supreme Court of Appeal, and an order of the Constitutional Court) to argue that those costs orders will be rescinded and that that forms a basis upon which not to sequester his estate. A court order stands until set aside by a court of competent jurisdiction. Until then, the order (even if incorrect or invalid) must be obeyed.[82]

176. It follows that there no reasonable or bona fide defence to the applicant's claim appears from the papers.

Conclusion on the sequestration application

177. The required formalities prescribed in section 9(3)(b), 9(4) and 9(4A) of the Insolvency Act for the grant of a provisional sequestration order have been complied with.
178. Once the applicant for a provisional sequestration order has prima facie established the jurisdictional requirements for such an order, the Court has a discretion whether to grant the order. Where the conditions prescribed for the grant of a provisional order are satisfied then, in the absence of some special or unusual circumstances, the Court should grant the order.[83]
179. The onus is on Mr Pienaar to establish special or unusual circumstances that would justify the Court not sequestering his estate.[84] He has raised none; there are no circumstances that would justify a refusal of a provisional order. On the contrary, Mr Pienaar has incurred costs orders with impunity, and he unabashedly reports on this fact to his followers and "investors" from whom he seeks additional funds to pay for further litigation (none of it with any prospects of success) and to pay for his living expenses. In these circumstances, a concursus of Mr Pienaar's creditors is necessary and warrants the exercise of the Court's discretion in favour of the applicant.
180. I am accordingly satisfied that a proper case has been made out for the provisional sequestration of Mr Pienaar's estate.

Orders

181. I grant orders as follows:

A. Case number 16769/2023 (vexatious litigant application)

1. The respondent is declared a vexatious litigant pursuant to the provisions of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 ("the Act").
2. The respondent is not allowed to institute any new proceedings, or take any further steps in the rescission application issued in March 2021 under case number 13665/2016 in this Court (in particular, in relation to any application for leave to appeal or rescission), in any Division of the High Court of South Africa or in any inferior court without the written leave of the inferior court or of the High Court or any judge of the High Court, as the case may be, as contemplated in section 2(1)(b) of the Act, against any of the persons and entities listed in annexures A1, A2 and A3 hereto, in respect of any issue relating any entity forming part of

the King Group or the Realcor Group which are listed on annexures A1, A2 and A3.

3. In the event that written permission is granted to the respondent to institute new proceedings or to proceed with the rescission application under case number 13665/2016, he shall be required to provide security for costs to the relevant respondent or respondents in an amount to be determined by the Registrar or the Clerk of the court in question.
4. The respondent is interdicted and restrained from instituting and conducting any private prosecution in terms of section 8 of the Criminal Procedure Act 51 of 1977 in respect of any of the persons listed in annexures A1, A2 and A3 hereto, and in respect of any issue relating to any entity forming part of the King Group or the Realcor Group.
5. The Registrar is directed to cause a copy of this order to be published in the Government Gazette, as contemplated in section 2(3) of the Act.
6. The respondent shall pay the costs of this application, including the costs of two counsel, on the scale as between attorney and client.

B. Case number 13665/2016 (second rescission application)

1. The application is dismissed.
2. The applicant shall pay the costs of the application, including the costs of two counsel where employed, on the scale as between attorney and client.

C. Case number 15691/2023 (sequestration application)

1. The first respondent's estate is placed in provisional sequestration in the hands of the Master of this Court.
2. A rule nisi is issued calling upon the respondents and all other interested parties to show cause, if any, to this Court on Tuesday, 15 April 2025 at 10:00 or as soon thereafter as counsel may be heard, why:
 - 2.1. The first respondent's estate should not be placed in final sequestration; and
 - 2.2. The costs of the sequestration application should not be costs in the sequestration.
3. Service of the provisional order of sequestration shall be effected:
 - 3.1. By the Sheriff on the first respondent at 1[...] V[...] B[...] Street, Parow North, Cape Town;
 - 3.2. By the Sheriff on the second respondent at 1[...] V[...] B[...] Street, Parow North, Cape Town;
 - 3.3. By the Sheriff on any employees of the first respondent, and any registered trade union representing such employees, at 1[...] V[...] B[...] Street, Parow North, Cape Town;
 - 3.4. By the applicant's attorney on the South African Revenue Service via its service email address at 1[...].

P. S. VAN ZYL

Acting judge of the High Court

Appearances:

Case number 16769/2023 (vexatious litigant application)

For the applicants:

G. Woodland SC and C. Morgan, instructed by Edward Nathan Sonnenbergs Inc.

The respondent in person

Case number 13665/2016 (second rescission application)

The applicant in person

For the first and second respondents:

For the third and fourth respondents:

S. J. Koen, Bisset Boehmke McBlain

No appearance for the remainder of the parties

Case number 15691/2023 (sequestration application)

For the applicant:

The first respondent in person

No appearance for the second respondent

[1] Under case number 13665/2016.

[2] Under case number 18127/2012 (“the Binns-Ward judgment”). Written reasons for the order were given on 13 February 2013.

[3] Under case number 13665/2016 (“the Sievers judgment”).

[4] Under case number 15691/2023.

[5] Under case number 16769/2023.

[6] Chapter 1: “Jarndyce and Jarndyce drones on. This scarecrow of a suit has, over the course of time, become so complicated, that no man alive knows what it means. ...Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce without knowing how or why; whole families have inherited legendary hatreds with the suit.”

[7] Emphasis added.

- [8] Under the common law the High Court has always had the inherent power to regulate its own procedure and to curtail frivolous and vexatious proceedings brought before it. The promulgation of the Act has not done away with this power: see *Department of Co-Operative Governance and Traditional Affairs v Maphanga* 2021
- (4) SA 131 (SCA) at paras [25]-[27].
- [9] *Beinash and another v Ernst & Young and others* 1999
- (2) SA 116 (CC) at paras [15]-[20]. Emphasis added.
- [10] *Department of Co-Operative Governance and Traditional Affairs v Maphanga* supra at para [26].
- [11] The second to fifth applicants in the vexatious litigant application.
- [12] As it was then called. The FSB is the third respondent in the second rescission application.
- [13] Delivered in 2013.
- [14] That the King brothers themselves admitted that they had treated the companies as one is borne out by the transcript of an interview which had been conducted as part of the FSB investigation.
- [15] Under case number 12756/2009.
- [16] The fourth respondent in the second rescission application.
- [17] A “piercing the corporate veil” provision: “(9) If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may- (a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and (b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph (a).”
- [17] A “piercing the corporate veil” provision:
- “(9) If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may-*

- (a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and
- (b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph (a).”

[18] Under case number 1845/2021 (“the Nziweni judgment”).

[19] As she then was.

[20] A few cases related to the Sharemax and Amatenda property syndication schemes.

[21] Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd 2015

(5) SA 38 (SCA) at para [17].

[22] At paras [50]-[54].

[23] At paras [26]-[27].

[24] At para [28].

[25] At paras [34]-[36].

[26] None of these parties have taken part in these proceedings.

[27] On application by the first and second respondents in the second rescission application, and by subsequent agreement with Mr Pienaar.

[28] All of these complaints have been dismissed by the Judicial Conduct Committee.

[29] The interdictory relief sought is dealt with in more detail below.

[30] Not counting the annexures.

[31] The respondents in the second rescission application have again raised the issue of locus standi.

[32] Department of Co-Operative Governance and Traditional Affairs v Maphanga supra at para [25], discussing the common law position: “It had to be shown that the respondent had ‘habitually and persistently instituted vexatious legal proceedings without reasonable grounds. Legal proceedings were vexatious and an abuse of the process of court if they were obviously unsustainable as a certainty and not merely on a preponderance of probability.”

[33] Beinash supra at para [15].

[34] The sequestration application is considered below.

[35] 2015

- (5) SA 38 (SCA) at para [15].
- [36] Reference has been made earlier in this judgment to the fact that the High Court has long had the inherent power to stop frivolous and vexatious proceedings pending before it.
- [37] 2024
- (2) SA 356 (SCA) at para [24].
- [38] Zuma v Downer and another supra at para [26].
- [39] At para [31].
- [40] Zuma supra at para [28].
- [41] Laskey and another v Showzone CC and others 2007
- (2) SA 48 (C) at para [41].
- [42] Zuma supra at paras [23]-[24].
- [43] See Laskey supra at paras [41]-[45].
- [44] As it was then called.
- [45] In a practice note dated 29 October 2024.
- [46] Prinsloo NO and others v Goldex 15 (Pty) Ltd and another 2014
- (5) SA 297 (SCA) at paras [18]- [19].
- [47] Zuma v The Judicial Commission of Inquiry and others 2021
- (11) BCLR 1263 (CC) at para [68].
- [48] Mr Pienaar's numbering, spelling, and use of grammar have been retained.
- [49] That is, the Sievers judgment.
- [50] "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are- (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members."
- [50] "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

- (a) anyone acting in their own interest;
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- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.”

[51] See *Ferreira v Levin NO and others* 1996

(1) SA 984 (CC) at para [233].

[52] *Unicorn Lines (Pty) Ltd v Commissioner of Customs and Excise and another* 1997

(1) SA 369 (D) at 375C-E.

[53] 2010

(2) SA 167 (SCA) at paras [14]-[15]. Emphasis added.

[54] Under case number 13665/2016.

[55] Mr Pienaar was questioned on this issue by the Court at the hearing. He relied on the argument that he had “peculiar knowledge of the matter” as a basis for locus standi.

[56] *Zuma supra* at para [50].

[57] *Zuma supra* at para [61].

[58] *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003

(6) SA 1 (SCA) at para [4].

[59] *Colyn supra* at para [11].

[60] *J.A.N v N.C.N* [2022] ZAECKMKHC 14 (17 May 2022) at para [30].

[61] *Fraai Uitzicht 1798 Farm (Pty) Limited v McCullough and others* [2020] ZASCA 60 (5 June 2020) at para [17].

[62] *Association for Voluntary Sterilization of South Africa v Standard Trust Limited and others* [2023] ZASCA 87 (7 June 2023) at paras [7]-[14].

[63] *Pasiya and others v Lithemba Gold Mining (Pty) Ltd and others* 2024

(4) SA 118 (SCA) at para [46]. Emphasis added.

[64] See *Board of Governors of Mitchell House School and others v Maluleke*

[2025] ZASCA 15 (25 February 2025) at para [8].

[65] *Pasyia supra* at paras [47]-[48]. Emphasis added.

- [66] See the discussion in Erasmus Superior Court Practice (online version, RS 23, 2024, D1) at Rule 6-33ff.
- [67] Reynolds NO v Mecklenberg (Pty) Ltd 1996
- (1) SA 75 (W) at 78I.
- [68] Reynolds NO supra at 83A–C.
- [69] Biowatch Trust v Registrar, Genetic Resources and others 2009
- (6) SA 232 (CC).
- [70] Emphasis added. See also Lawyers for Human Right v Minister of Home Affairs and others 2017
- (5) SA 480 (CC) at paras [17]-[21].
- [71] 1946 AD 597 at 607.
- [72] 2007
- (1) SA 201 (SCA) at para [9].
- [73] 2021
- (5) SA 447 (CC) at para [26].
- [74] No relief is sought against the second respondent in the sequestration application. She is married to Mr Pienaar out of community of property and is joined by virtue of the provisions of this Court's Practice Directives.
- [75] Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and another 2015
- (4) SA 449 (WCC) at para [7].
- [76] The test for a final order is different. At that stage the applicant must establish her case on a balance of probabilities. Where the facts are disputed, the Court is not permitted to determine the balance of probabilities on the affidavits but must instead apply the rule in Plascon Evans Paints (Tvl) Ltd v Van Riebeeck Paints (Pty) Ltd
- [1984] ZASCA 51; 1984
- (3) SA 623 (A) at 634E-635C (see Orestisolve supra at para [9]).
- [77] Orestisolve supra at para [8].
- [78] Afgri Operations Ltd v Hamba Fleet (Pty) Ltd 2022
- (1) SA 91 (SCA) at paras [6] and [17].

- [79] See Orestisolve supra at para [13] and GAP Merchant Recycling CC v Goal Reach Trading 55 CC 2016 (1) SA 261 (WCC) at paras [20] and [26].
- [80] The Taxing Master's allocatur has the effect of a court order: Sheriff of Pretoria North East v SA Taxi Development Finance (Pty) Limited and others [2023] ZAGPJHC 331 (14 April 2023) at para [11].
- [81] 2015
- (3) SA 1 (CC) at paras [43]-[45].
- [82] Department of Transport and others v Tasima (Pty) Ltd 2017 (2) SA 622 (CC) at para [180].
- [83] Firststrand Bank v Evans 2011
- (4) SA 597 (KZD) at para [27].
- [84] Firststrand Bank v Evans supra at para [27].

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