

SOUTH AFRICA / JUDGMENT

Ramkistan and Another v Standard Bank of South Africa (D2490/2022;D4744/2022) [2023] ZAKZDHC 55 (10 August 2023)

[2023] ZAKZDHC 55**COURT**

Kwazulu-Natal High Court, Durban

BEFORE

N.Z. Kuzwayo

CASE / FILE NUMBER

D2490/2022;D4744/2022

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****KWAZULU-NATAL****LOCAL DIVISION, DURBAN****CASE****NO: D2490/2022****D4744/2022****In****the matter between:**

AVINASH
RAMKISTAN
FIRST APPLICANT
REVIANS
INVESTMENTS CC
SECOND APPLICANT
and
STANDARD
BANK OF SOUTH AFRICA
RESPONDENT
AVINASH
RAMKISTAN
FIRST APPLICANT
REVIANS
INVESTMENTS
SECOND APPLICANT
FINANCIAL
SERVICES CONDUCT AUTHORITY
RESPONDENT
ORDER

Both
applications are dismissed with costs.

JUDGMENT

KUZWAYO AJ:

- [1] This judgment deals with two applications by the same applicants are against two different respondents. The first application is against Standard Bank of South Africa ("Standard Bank") and it was heard on 17 May 2023. The second application is against Financial Services Conduct Authority ("FSCA") and was heard on 19 May 2023.
- [2] I have consolidated the two judgments as, in as much as the applications are against different respondents, they deal with the similar issues of law in respect of the locus standi of the first applicant ("Mr Ramkistan") in representing the second applicant and regarding their claim for damages against both respondents.
- [3] In respect of the Standard Bank matter, the applicants are seeking the following order:
- '1. That the respondent be ordered to pay costs to the applicants on 3 withdrawn cases of theirs to this court amounting to R98 325 (Ninety-Eight Thousand, Three Hundred and Twenty-Five Rands).
 2. That an interdict order be granted to the applicants against the respondent from lodging further cases against the applicants until case number D10425/2021 is heard by this court.
 3. That a protection order be granted in favour of the applicants against the respondent for harassment.
 4. That it is within public interest, and of this courts, that the respondent be ordered to withdraw all applications to any court, where it seeks to execute properties, both house or car, where the contracts have not been cancelled prior to the applications being lodged, or where the respondent has not produced valuations by a qualified person in ascertaining true value of the goods to protect the interest of the public.
 5. That the respondent pays costs to any respondents upon withdrawing of their applications.
 6. That the respondent be order to pay damages, aggravated damages and other relief to the applicants in the amount of R6 000 000.00 (Six Million Rands), for contravening the constitutional rights of the applicants, for harassment, for contravening the POPI Act, for contravening the FAIS Act, For Contravening the Legal Practice Act, for abusing the court process using devious methods to prejudice the applicants.
 7. That the respondent be order (sic) to pay costs of this application.
 8. Further, and or alternate relief.'

[4] In respect of the FSCA matter, the applicants are seeking an order in the following terms:

'1. That the following decisions and resolutions be declared invalid and unconstitutional;

- (a) That the decision of the respondent to debar the first applicant for a period of 10 years from working in the financial services industry be made invalid and unconstitutional.
 - (b) That the decision of the respondent to withdraw the licence to trade in its chosen field of expertise of the second applicant be made invalid and unconstitutional.
2. That the respondent be ordered to pay damages to the applicants amounting to R74 600 000.00 (Seventy-Four Million, Six Hundred Thousand Rands) plus 10% interest from thereon for causing irreparable damages to both applicants, by the negligence and failure to act within its empowering provisions, and serious transgressions of law by the respondent.
3. That the serious transgressions by the insurer amounts to fines in excess of R2,2 Million Rands, but the respondent waived this, with utter disregard to the requirements of the laws set by the minister of finance, that there must be some reason which raises serious suspicion of corruption where the respondents' key personnel holding

serious power within the Financial Services industry must be investigated and held accountable for such corruption or failure to

act. This is of public importance.

4. Further and or alternate relief."

[5] The joint statement of issues in respect of the Standard Bank matter (which was prepared by the respondent and not signed by the applicant) listed the following issues for determination by the court:

'1. Whether the applicants, in these proceedings, are entitled to costs of the default judgment applications instituted by the respondent and subsequently withdrawn due to the pending action proceedings becoming opposed.

- 2. Whether the applicants are entitled to stay of the legal proceedings pending the finalisation of an application instituted by the applicants against a third party.
- 3. Whether the Court has jurisdiction to grant a protection order against the respondent in terms of the Protection from Harassment Act 17 of 2011.
- 4. If so, whether the applicants have established harassment as against the respondent in terms of the said Act.
- 5. Whether it is competent for this Court to direct the respondent to withdraw all pending proceedings against the applicants until such time as the respondent has cancelled all agreements which form subject of those proceedings.

6. Whether the damages sought by the applicants for, inter alia, harassment by the respondent is a competent relief in motion proceedings.'
- [6] At the outset, it is of significance to affirm the second respondent is a Close Corporation ("CC"). Mr Ramkistan is the director and sole member of the second respondent. He was self-represented and also represented the second applicant in this application. Furthermore, no documents were placed before court as proof that the first applicant had been authorized to act on behalf of the CC. A CC is dealt with as a company. Therefore, even where the company is a single member company or has one director, that member or director must be authorised to represent the company in legal proceedings. However, the court may permit a one-person company to be represented at a court hearing by its member/director in exceptional circumstances.
- [7] In *Navy Two CC v Industrial Zone Ltd* [2005] ZASCA 92; [2006] 3 ALL SA 263 (SCA) paras 12-14, Mthiyane JA stated as follows:
- '[12] There is a lot to be said for the above criticism. It is clear that the rule limiting representation of a corporate entity to legal practitioners is not inflexible. In *Arbuthnot Leasing International Ltd v Havelet Leasing Ltd & others*, while accepting that the normal rule was that a body corporate must appear by counsel or solicitor, the court recognized that in certain exceptional circumstances, a director who is a party to litigation to which a company is also a party may be allowed to appear in person for purposes which are also those of the company.
- [8] In *California Spice Marinade (Pty) Ltd and others in re: Bankorp v California Spice and Marinade (Pty) Ltd v others; Fair O'Rama Property Investments CC v others; Tsaperas*; and *Tsaperas* after tracing the history of the rule in the English common law *Wunsch J* came to the conclusion that a court should be entitled, in an appropriate case and to avoid injustice, to allow at least a one-person company to be represented at a court hearing by its alter ego. The learned judge said that the inconvenience caused to the court as a result of an unqualified person appearing before it had to be weighed up against the injustice of a juristic person being denied access to the courts. In this regard I agree with the reasoning of *Wunsch J*.
- [9] Turning to the facts of this case it seems to me that very little of the court's time would have been taken up if *Brassey AJ* had allowed Mr Nannen to address him on the merits of the application for a postponement. The effect of his refusal was that the appellant was denied an opportunity to be heard. The defect was not remedied by the learned judge receiving the appellant's submissions through the respondent's counsel, Mr Konstantinides. In my view the refusal by *Brassey AJ* to exercise a discretion of granting Mr Nannen audience was a misdirection which entitles this court to interfere with his refusal to grant Mr Nannen audience and to consider the application for a postponement afresh. We have not been asked to remit the matter

to Brassey AJ but to deal with it in this court. In this regard the appellant was required to satisfy two requirements: first, it had to show that the delay or failure to file an answering affidavit was not wilful and secondly, that it has a bona fide defence to the main application. I discuss the two requirements in turn.' (Footnotes omitted.)

[10] Therefore, despite Mr Ramkistan's lack of capacity to represent the second applicant, this court exercised its discretion, in the interests of justice, and allowed Mr Ramkistan, as a sole member of the second applicant, to present submissions on behalf of the second applicant in both matters as the court was of the view that exceptional circumstances exist in this case.

A. Standard Bank

[11] As a point in limine, Mr Ramkistan submitted that Standard Bank was in default as it had failed to file its notice to oppose within the period stipulated in the rules and it also failed to file its answering affidavit timeously. He referred this court to the provisions of Uniform rule 6(5)(d)(ii) regarding the days within which the respondent was required to file its notice to oppose. He also contended that no good cause had been shown by the respondent for it to oppose this application.

[12] Regarding Standard Bank's delay in filing its answering affidavit Mr Long, who appeared on behalf of Standard Bank, submitted that Standard Bank had explained the reason for its delays in filing the answering affidavit on time (paras 29 to 35 of the answering affidavit). He further submitted that the delay was not wilful or mala fide as Standard Bank had issued a notice in terms of rule 35 requesting the applicants to produce some documents. The request was not complied with.

[13] First, the issue raised by Mr Ramkistan cannot be raised as a point in limine. Upon Standard Bank's failure to deliver its answering affidavit within the days prescribed by the rules, the applicants, as the litigating parties in these proceedings, had a duty in terms of rule 6(5)(f) to apply to the registrar to allocate a date for the hearing. The applicants failed to set the matter down, as required. Furthermore, there is no basis for Mr Ramkistan's submission that no good cause had been shown by Standard Bank to oppose this application. This submission is without merit.

[14] As a result, this court cannot entertain the first applicant's point in limine, and it is therefore dismissed.

First Order Prayed - Costs

[15] In the first order prayed, the applicants are asking that Standard Bank be ordered to pay costs in the amount of R98 325.00 in respect of three cases that were allegedly instituted by Standard Bank against the applicants and were later withdrawn. Full details of these cases were not provided by the applicants.

- [16] Mr Ramkistan based this order on the allegation that Standard Bank had secretly withdrew three cases that it had lodged against the applicants. He alleged that Standard Bank had failed to provide this court with the evidence pertaining to proof of service, notices of set down and withdrawals in respect of those applications. He contended that Standard Bank was abusing the court process as it had withdrawn its applications against the applicants, when the applicants filed its opposing papers in the said proceedings and alleged that Standard bank had done this to avoid paying costs in relation to those applications.
- [17] In response, Mr Long admitted that there were proceedings that were instituted by Standard Bank against the applicants based on their breach of the sale agreements that had been entered into between the parties. He submitted that there was a total of three sale agreements that were concluded between the applicants and Standard Bank which consist of one Vehicle Finance Agreement (concluded on 27 November 2017), and two Home Loan Agreements (concluded in 2014 and 2018, respectively). However, he denied that the three litigation proceedings were withdrawn and submitted that they are still pending. He further submitted, in respect of the Vehicle Finance Agreement, that the respondent had obtained a court order (under case no. KZN/DBN/RC4277/2020 dated 8 December 2021) cancelling the said agreement, which was annexed to the court papers.
- [18] He submitted that in terms of the said order, Mr Ramkistan was directed to restore possession of the motor vehicle, a 2015 Volkswagen Golf VII 2.0 TSI T DS to Standard Bank. The full details of the motor vehicle appear in the said court order. Mr Long submitted that, in this regard, Standard Bank had served Mr Ramkistan with the Notice in terms of s 129 of the National Credit Act 34 of 2005 ("the NCA"). He further submitted that the other two matters in respect of the home loan agreements are still pending.
- [19] According to Mr Long the costs claimed by the applicants in this regard were not quantified and at all material times, the applicants were self-represented. Therefore, they are not entitled to any costs.
- [20] In reply, Mr Ramkistan contended that the respondent's order (which is a default judgment) was obtained unlawfully. He submitted that the order is not valid as the application was opposed and the respondent does not want to disclose the order.
- [21] Firstly, the order referred to by the applicants was not granted by the high court, but it was granted by the regional court, Durban. It has therefore been irregular for the applicants to approach this court seeking costs in respect of that matter as well as the other two matters that are still pending. Secondly, it is clear that Mr Ramkistan did not make any attempts to file an application for the rescission of the said order. Therefore, this court has no jurisdiction to deal with this issue of costs and the applicants had no basis to come to the high court to claim costs in respect of a matter that was heard by the regional court. Regarding the other two matters that are still pending, the issue of costs is clearly premature and will be considered by the relevant court hearing those matters.

Second Order Prayed - Interdict preventing the respondent from lodging further cases against the applicants

- [22] Nothing much was presented by Mr Ramkistan in his argument regarding the order for an interdict to prevent Standard Bank from instituting further litigation proceedings against the applicants. The only reason appearing in his submissions is that Standard Bank is abusing the court process by instituting proceedings against its clients that are failing to repay their loans.
- [23] Mr Long submitted that the applicants have not made out a case for the purported relief for an interim interdict on the papers and they have not complied with the requirements for interim relief. He also argued that Standard Bank cannot be deprived from exercising its rights in respect of other contracts.
- [24] Regarding this order, the applicants failed to provide reasons upon which they are basing their interdict. They have also failed to meet the requirements for an interim interdict. The order sought by the applicants also appeared to be general as it intended to prevent Standard Bank from instituting further proceedings (which were not specified) against the applicants. As a result, this court cannot grant an interdict against the respondent in respect of non-existing future litigation between the parties. Therefore, this court finds no basis for this order and it is therefore dismissed.

Third Order Prayed - Protection Order for harassment

- [25] On this issue, Mr Ramkistan submitted that Standard Bank had instructed investigators and tracing agents to contact him, thus invading his right to privacy. He further contended that he was telephonically contacted by a third party (misrepresenting themselves as Standard Bank). They unlawfully tried to deprive the applicants of their assets, claiming that they had a warrant to attach the applicants' property, as they had obtained a default judgment against them. The third party also instigated acts of violence against him and threatened to assault him physically. This disregarded the first applicant's right to privacy conferred to him by s 14(c) and (d) of the Constitution. In this regard, he referred the court to s 5 of the Protection of Personal Information Act 4 of 2013.
- [26] On this point, Mr Long submitted that in terms of the definition provided in the Protection from Harassment Act 17 of 2011 ("the Harassment Act"), a court means 'any magistrate's court for a district referred to in the Magistrate's Court Act, 1944 (Act No. 32 of 1944)'. Resultantly, this court lacks jurisdiction to deal with the issue of the alleged harassment. Furthermore, he submitted that Standard Bank, as a party that is alleged to have harassed Mr Ramkistan, is not a person but an entity. The Harassment Act contemplates a respondent as 'any person against whom proceedings are instituted in terms of this Act'. Mr Long further submitted that Standard Bank had forwarded an apology to Mr Ramkistan for the alleged conduct.

- [27] While our rights to privacy are protected by both common law and the Constitution, I agree with Mr Long's submission that this court does not have jurisdiction to grant a protection order against harassment. Furthermore, it was Mr Ramkistan's submission that the third party had misrepresented himself Standard Bank. (My emphasis.)
- [28] Based on the provisions of the Harassment Act, I am convinced that this court does not have jurisdiction to entertain this claim and the Magistrate's Court is the proper forum to deal with the issue. Nevertheless, I find no basis for this order where it is clear that it is not Standard Bank that had harassed Mr Ramkistan. Furthermore, Standard Bank had gone out of its way and tendered an apology to Mr Ramkistan for the mischievous behaviour of the third party.

Fourth Order Prayed -withdrawal of applications

- [29] Mr Ramkistan contended that prayer 4 of the notice of motion, is not sought only on behalf of the applicants but it incorporates the public at large. He further contended that any litigation to repossess or execute the property without cancellation of the agreement has to comply with the provisions of the NCA. In this regard, he referred this court to ss 127 and 129 of the NCA and the case of Absa Bank limited v De Villiers and Others [2008] ZAWCHC 66; 2009 (5) SA 40 (C). He further relied on Standard Bank of South Africa Limited v Young and Another [2022] ZAKZDHC 30. The details of the two cases will be dealt with more fully below. He confirmed that he was seeking the said order on behalf of all the citizens of this country.
- [30] Mr Long submitted that Standard Bank had instituted proceedings and given the notice of cancellation to the applicants. He argued that there is no precedent for the banks to ask for cancellation of the contract in the notice of motion. He further argued that when the bank has got an order, rescission is the proper way to deal with a default judgment and submitted that even when the bank has got an order, once the debtor pays the outstanding amount, the contract is reinstated. In the premises, prior cancellation of the contract deprives the debtor of the opportunity to have the contract reinstated.
- [31] First, it is not clear in what capacity Mr Ramkistan is representing the public in respect of pending proceedings that Standard Bank has against its clients. Each matter has to be decided on its facts. The contracts in respect of which the applicant is requesting the court to make an interdict have not been placed before court. Neither has details and/or facts of such proceedings been placed before court.

Fifth Order Prayed - That the respondent pays costs to any respondents upon withdrawal of their applications.

- [32] Similarly, this order appears to be on behalf of the public at large. Considering the findings on the preceding order prayed, there is no costs order that will be awarded to the applicants in this regard.

Sixth Order Prayed - Damages of R6 000 000.00

[33] The first applicant argued that the respondent does not have any bona fide defence in this application and requested this court to strike off the respondent's defence in this regard. No submissions were made by the first applicant regarding the claimed damages of R6 000 000.

[34] Mr Long submitted that the applicants' affidavit was scant in this regard as there was no particularity. The R6 000 000 claimed was not quantified and there was no factual or evidential basis to support the relief sought. According to him, the damages claim is not

suitable for motion proceedings and this was the applicants' last attempt to delay the proceedings that were instituted by the

respondent. He further submitted that the applicants' allegations are farfetched. He referred this court to *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 26 and contended that the applicant had lodged the application for the sole reason of delaying the respondent's claim against the applicants. He requested the costs to follow the outcome.

[35] As indicated above, I shall deal with this claim (for damages) when I deal with the similar claim against the FSCA as my findings will be based on the same grounds and principles of law.

B. FSCA

[36] In this matter, the applicants are seeking an order declaring the decisions that were made by the FSCA against the applicants invalid and unconstitutional. The first decision is regarding the respondent's decision to debar Mr Ramkistan from working in the financial services industry for 10 years and the second decision involves the respondent's decision withdrawing the second applicant's licence to trade in the finance industry.

[37] The applicants are also seeking damages in the amount of R?4 000 000.00 plus 10% for allegedly causing irreparable damages to both applicants due to the FSCA's negligence and failure to act within its empowering provisions, and its serious transgressions of law. They also seek an order directing that the key personnel within the Financial Services industry be investigated and be held accountable for corruption or failure to act. This order was alleged to be of public importance.

Background

[38] In July 2018, Lions of Africa ("the insurer") and the second applicant (in respect of which Mr Ramkistan is the sole member and director) entered into Binder Contracts. In terms of these contracts, the second applicant was appointed as the insurer's underwriting manager who would perform binder activities and other activities incidental thereto. This entitled the second respondent to enter into, vary and renew policies, determine the premiums payable and settle claims on behalf of the insurer.

Applicants'

submissions

- [39] Regarding the FSCR's decision to debar him from working in the financial services industry for a period of ten years, Mr Ramkistan based his argument on the termination of the Binder Contracts which he avers were unlawfully terminated. He submitted that the Binder Contracts were not terminated by the insurer, who was entitled to terminate it.
- [40] Mr Ramkistan submitted that during November 2018, the insurer had gone to the media and published voluntary winding up of its operations. This caused the public to panic and resulted in the panel beaters holding hostage of the vehicles countrywide. He contended that the insurer could not take such a drastic step without prior authorisation by FSCA, the Master of the High Court or the Companies and Intellectual Properties Commission. However, the insurer had failed to seek such authority which he alleges was as a result of the FSCA's failure to play its role. According to him, the FSCA was the custodian of the contracts and it failed to take reasonable steps to prevent the insurer from liquidating the company which resulted in the Binder Contracts being cancelled. Hence, the FSCA is liable for the loss they have suffered.
- [41] He further submitted that in November 2018, the director of the Retail Motor Industry Organization (Sambra) had demanded payment from the applicants. As a result, violence ensued against the applicants, who had 30 days to pay the panel beaters. However, they could not undertake the same and this was during the festive season (November/December). People then started phoning and swearing at them. The applicants reported this matter to the respondent, being the custodian of the Binder Contracts and the Regulator, but the respondent took no action to resolve the problem.
- [42] He argued that s 48A of the Short-term Insurance Act 53 of 1998 was not adhered to. He further argued that 30 days' notice was supposed to be given regarding the cancellation of policies, which was not complied with and this tarnished their reputation with the brokers. Clause 30 required both parties to agree to cancel the contracts in writing which did not happen. He submitted that he had sought information from the FSCA in relation to the cancellation of contracts and it did not co-operate. Resultantly, their trading licence was suspended.
- [43] He conceded that the insurer was in serious financial strain. It breached its duty to protect the policy holders and left its clients in a significant loss and without cover. This was a result of the FSCA's failure to take control of the situation.
- [44] Mr Ramkistan further alleged that the respondent had debarred him from working in the finance industry as it accused him of being dishonest as he had been the key individual holding more than one licence. The FSCA had also accused him of misleading clients. He averred that the FSCA had authorised him to have those licences.

- [45] Before dealing with the merits, Mr Mbikiwa, for the respondent, first raised some preliminary issues of concern regarding the application. First, he submitted that on 14 May 2020, the FSCA withdrew the authorisation of the second applicant as a Financial Services Provider. On 22 May 2020, the FSCA debarred the first applicant from being involved in the provision of any financial services for ten years. The two decisions were administrative decisions in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). However, the applicants failed to exhaust the internal remedy afforded to them under s 230 of the Financial Sector Regulation Act 9 of 2017 ("FSR Act"), to apply for the reconsideration of the FSCA's decision. Instead, on 15 July 2020, the applicants wrote a letter to FSCA claiming to have been the innocent victims of conspiracy which they claimed was to cover up the unlawful acts on the part of various functionaries. As a result, they were demanding damages in the amount of R76,4 million.
- [46] When the FSCA refused to comply with their demand, in February 2021, the applicants directly approached the Constitutional Court for direct access, seeking the same relief as in this application. The said application was dismissed on 4 August 2021, and on 12 May 2022, the applicants lodged this application. He submitted that there has been an unreasonable delay in the institution of these proceedings by the applicants, whom he submitted, were abusing the court process.
- [47] Mr Mbikiwa submitted that the case before court does not involve the holding of vehicles in hostage by the panel beaters. He averred that prayers 1(a) and 1(b) appear to deal with the review of the decision of FSCA, but the application did not comply with the requirements for review. According to him, this application was defective. The FSCA's decision not to take any regulatory action against the insurer has got nothing to do with the applicants' debarment from working in the financial industry and the insurer's authorisation to cancel the policies. He submitted that there were many submissions that were made by Mr Ramkistan which do not deal with the case before court.
- [48] Mr Mbikiwa submitted that in deciding to withdraw the second applicant's authorisation to work as an Financial Services Provider ("FSP") and to debar Mr Ramkistan from providing financial services, the FSCA had based its decisions on the finding that the applicants had, amongst other things, contravened the "honesty and integrity" requirements of s 8A of the Financial Advisory and Intermediary Service Act 37 of 2002 ("FAIS") and ss 8(1)(a) and 9(2) of the Determination of Fit and Proper Requirements

for Financial Service Providers which caused the clients to believe that they were still covered by the insurer, whilst the applicants

knew that they were not. As a result of the applicants' actions, clients were left without cover.

- [49] He also submitted that part of the reasons for the debarring of Mr Ramkistan was that as the key representative of the second applicant, he had acted in two or more of the same capacities in respect of four other Financial Service Providers and had failed to co-operate with the FSCA during its engagement with him, as he was required in terms of s 9(1)(k) of the Determination of Fit and Proper Requirements.
- [50] On merits, Mr Mbikiwa submitted that there has been an inordinate delay in challenging the decisions of the FSCA. An application to review a decision must be instituted within 180 days. The decision was made in May 2020 and the applicants had only launched this application in May 2022. He also submitted that the application should been taken to the Financial Service Tribunal and not to this court.
- [51] In respect of review, Mr Mbikiwa submitted that the applicants laid no basis to criticise the FSCA's decisions on merits. He submitted that the decisions of the FSCA were justified as the applicants had continued to purport to clients that the binder agreements had not been cancelled. Clause 4 allows termination by the parties, and in circumstances where a termination is not consensual, there is no way to reach an agreement. The binder agreement was therefore interminable by agreement which resulted in the insurer terminating the Binder Contracts without consent of the second applicant.
- [52] Regarding the claim for damages, Mr Mbikiwa submitted that the application was defective as the application papers did not meet the requirements for pleadings. Affidavits constitute evidence in motion proceedings and the applicants' affidavit did not make out a case for the claimed damages. He further argued that the claim for R74 million was not quantified.
- [53] He submitted that the FSCA had acted in good faith, even if it was wrong in making those decisions. It therefore cannot be held to be delictually liable for its official decisions. He further submitted that a liquidated claim cannot be sought on motion. It must be instituted by action. In this regard, he referred the court to *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA). The applicants have failed to comply with the court rules regarding claims for damages.
- [54] In my view, this application is two-fold. In one side, it appears to be an application seeking to review the decisions of the FSCA. On the other side, it is a claim for damages and an order for an investigation to be instituted against the key personnel of the FSCA for the alleged unethical conduct.
- [55] As correctly pointed out by Mr Mbikiwa, the application to review the said decisions, in respect of prayers 1(a) and (b) of the notice of motion is out of time and no application for condonation was filed in this regard. Furthermore, the applicants failed to exhaust the internal remedies. Section 7(2)(a) of PAJA provides that 'no court or tribunal shall review an administrative action' unless the internal remedy provided for in any other law has first been exhausted. In *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining & Development Co Ltd and Others* 2014 (5) SA 138 (CC) para 122, the court stated as follows:

'[122] This Court proceeded to underscore the importance of internal remedies; that the failure to exhaust them renders an approach to a court on review premature; and that the pursuit of these remedies enhances procedural fairness. In this regard, the court said:

"Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before aggrieved parties resort to litigation. Although courts play a vital role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid.

First, approaching a court before the higher administrative body is given the opportunity to exhaust its own existing mechanisms undermines the autonomy of the administrative process. It renders the judicial process premature, effectively usurping the executive role and function. The scope of administrative action extends over a wide range of circumstances, and the crafting of specialist administrative procedures suited to the particular administrative action in question enhances procedural fairness as enshrined in our Constitution. Courts have often emphasised that what constitutes a fair procedure will depend on the nature of the administrative action and circumstances of the particular case. Thus, the need to allow executive agencies to utilise their own fair procedures is crucial in administrative action.'" (Footnote omitted.)

[56] I also agree with Mr Mbikiwa's submission that the application is out of time. No explanation was provided by the applicants in respect of the delay in instituting the proceedings. As a result, I see no need in elaborating on this issue as the applicants did not even file an application for condonation in this regard. Therefore, the application in respect of prayers 1(a) and (b) of the notice of motion falls to be dismissed.

[57] With regard to the order seeking an investigation against the key personnel of FSCA, the applicants also did not provide any details regarding the reasons upon which they based this order. In the circumstances, this court finds no reason to grant such an order without valid grounds to do the same.

[58] I now turn to deal with the applicants claim for damages in respect of both matters.

General Principles

[59] The applicants are claiming damages in the sum of R6 000 000 and R74 000 000 against Standard Bank and FSCA respectively. Both these claims were included in the application proceedings against the two respondents.

[60] A claim for damages requires particulars of claim for the very reason that the claimant needs to set out the facts that give rise to the claim as well as the facts the claimant relies on. This allows the defendant to know the case they are facing and to prepare their defence. The applicants disregarded both Rules 17 and 18 providing for claims against other parties and the pleadings in general. Rule 17(1) and 17(2) of the Uniform Rules read as follows:

'(1) Every person making a claim against any other person may, through the office of the registrar, issue out a summons or a combined summons addressed to the sheriff directing him to inform the defendant, inter alia, that if he disputes the claim and wishes to defend, he shall-

- (a) within the time stated therein, give notice of his intention to defend;
- (b) thereafter, if the summons is a combined summons, within twenty days after giving such notice, deliver a plea (with or without a claim in reconvention), an exception or an application to strike out.

(2)(a) In every case where the claim is not for a debt or liquidated demand the summons shall be as near as may be in accordance with Form 10 of the First Schedule, to which summons shall be annexed particulars of the material facts relied upon by the plaintiff in support of his claim, which particulars shall inter alia comply with rule 18.

- (b) In every case where the claim is for a debt or liquidated demand the summons shall be in accordance with Form 9 of the First Schedule.'

[61] Rule 18(4) requires the plaintiff to provide 'a clear and concise statement of the material facts upon which the pleader relies for his or her claim'. Rule 18(10) provides that 'a plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof.. '.

[62] The applicants herein completely failed to comply with the provisions of Rule 18 in their claim for damages. This is something that cannot even be cured by an amendment. The first applicant should have known that the respondents would dispute the claims, especially considering the amounts claimed and the fact that the FSCA had already refused to pay.

[63] In *Standard Bank of South Africa v Young and Another* [2022] ZAKZDHC 30 referred to by Mr Ramkistan, the court dealt with an application in terms of Rule 46A where the applicant was seeking default judgment against the defendants for payment of the sum of R381 918.59 and amongst other things, an order declaring the property (primary residence of the parties) executable.

[64] In paragraph 38 of the judgment, Henriques J states as follows:

'[38] Given the serious nature of these proceedings and the fact that defendants stand to lose their primary residence, one would expect a deponent to the affidavit to disclose all circumstances and to accurately disclose the circumstances in a founding affidavit. To say that this was a discrepancy pointed out by the court is factually incorrect and may well amount to an act of perjury. The deponent to the affidavit clearly deposed to an affidavit concerning allegations which were not true.'

[65] The facts of the above mentioned case are disparate from the current application. This matter does not deal with a default judgment. Neither does it deal with an application seeking an order declaring a property executable.

[66] Mr Ramkistan further referred this court to Absa Bank Limited v De Villiers and Others [2008] ZAWCHC 66; 2009 (5) SA 40 (C). This case pertained to a review application concerning certain aspects of a debt enforcement under the NCA. The court agreed with the finding of the court a quo that absent a claim for cancellation of the instalment agreement, the applicant was not entitled to a final order for the attachment of the vehicle in terms of s 131 of the NCA. Hence the application for review was dismissed.

[67] Unfortunately, the issues dealt with in the second case referred to by Mr Ramkistan are of no relevance to the issues before this court. The case before this court deals with costs pertaining to a matter that was heard in the regional court, harassment, an interdict regarding the institution of proceedings which have never been alleged to be in the process of being instituted (on behalf of all citizens in the country) and a claim for damages which have been claimed through motion proceedings. The matter also pertains to pending litigation before this court. To this end, I do not have details of the said contracts and/or proceedings in respect of the said claims. Mr Ramkistan also did not make any submissions regarding the reasons on which he bases his application to interdict Standard Bank from instituting further proceedings against the applicants until case number D10425/2021 is heard by this court.

[68] In Jan Hendrik Gerhardous Fourie N.O. and Others v The Land and Agricultural Development Bank [2022] ZANCHC 20 paras 22 and 23, Lever J referred to the reasoning of Botha J in SA Railways and Harbours v Deal Enterprises (Pty) Ltd 1975 (3) SA 944 (WLD) and stated as follows:

'22. The provisions of Rule 18(6) were considered by Swain J in the matter of Moosa v Hassam where he referred to the matter of South African Railways and Harbours v Deal Enterprises (Pty) Ltd, Swain J notes that whilst the said South African Railways and Harbours case dealt with the position before Rule 18(6) required true copies of written contracts or the excerpts relied upon had to be furnished, the reasoning of Botha J in the S.A. Railways and Harbours case was still relevant and instructive. The relevant passage in the S.A. Railways and Harbours case reads as follows:

"He is accordingly obliged to furnish the particulars mentioned in Rule 18(6) whenever the contract forms a part of the cause of action put forward by him, irrespective of whether the contract can be described as the 'basis' of the claim or not."

23. In the Moosa case, Swain J in referring to the passage from S.A. Railways and Harbours set out above, reasons:

"[17] This I consider to be the crux of the present enquiry. Rule 18(6) speaks of a party who in his pleadings 'relies' on a contract or 'part' thereof. A party clearly 'relies' on a contract when he uses it as a 'link in the chain of his cause of action.' (references omitted)

...

- [18] In the present case the respondents base their cause of action against the applicants upon the written agreements. The written agreement is a vital link in the chain of the respondents' cause of action against the applicants. In order for the respondents' cause of action to be properly pleaded, it is necessary for the written agreement relied upon to be annexed to the particulars of claim. In the absence of the written agreement the basis for the respondents' cause of action does not appear ex facie the pleadings." (Footnotes omitted.)
- [69] First, I agree with Mr Mbikiwa 's submissions that most of the issues that were raised by Mr Ramkistan in argument do not correlate with the orders sought in the notice of motion. Mr Ramkistan alleged that Standard Bank was abusing the court process and had tried to repossess their properties through litigation, which he alleged to be unlawful. There is no evidence or documents placed before this court in support of the alleged unlawful litigation. The applicants also base their claim on Standard Bank's failure to file its answering affidavit within 15 days. This issue has been dealt with above and I do not intend to repeat what I stated in this regard.
- [70] Considering the various grounds on which the applicants base their claims for damages (in both matters), being the contravention of their constitutional rights, harassment, contravention of the POPI Act, contravention of the FAIS Act, contravention of the Legal Practice Act and for abusing the court process using devious methods to prejudice the applicants, this court cannot exercise its discretion and condone the applicants' non-compliance with the rules, disregarding the prejudice that will be suffered by the respondent. The claim for damages proceeded without the detailed facts of the allegations against the respondent. It was not even supposed to be entertained by this court.
- [71] I disagree with Mr Ramkistan's submission that the respondents do not have any bona fide defence in these applications, which is the allegation that was made in respect of both respondents. I do not think that any respondent in his good and sober mind would have allowed these orders to be granted against him without a fight in court. Counsel submissions that the claim for damages is not suitable for motion proceedings is, in my view, appropriate. As stated above, no particulars were provided by the applicants in respect of the claims for damages and how the amounts were formulated. Therefore, I am satisfied that the applicants' claim for damages falls to be dismissed.

Costs

- [72] I am convinced that the costs in this matter should follow the result.

Order

- [73] In the result, the following order is issued:

- 1 . Both applications are dismissed with costs.

N.Z. KUZWAYO

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

Standard Bank matter

For the applicants: A. Ramkistan Instructed by: Self-represented For the respondent: P.R. Long
Instructed by: Van Hulsteyns Attorneys Date matter was heard: 17 May 2023 Date judgment was
delivered: 10 August 2023 FSCA For the applicants: A. Ramkistan Instructed by: Self-represented
For the respondent: M. Mbikiwa Instructed by: Fareed Jassat Attorneys Date matter was heard: 19
May 2023 Date judgment was delivered: 10 August 2023

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Prepared on 9 October 2026 · Esheria