

SOUTH AFRICA / JUDGMENT

Ramusi v Minister of Justice and Correctional Services and Another (4097/2022) [2025] ZAECMHC 9 (18 February 2025) [2025] ZAECMHC 9

COURT

Eastern Cape High Court, Mthatha

BEFORE

L Rusi

CASE / FILE NUMBER

4097/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, MTHATHA)

CASE NO: 4097/2022

In

the matter between:

MORABA

STEPHEN RAMUSI

Applicant

and

MINISTER

OF JUSTICE AND

First respondent

CORRECTIONAL

SERVICES

GOVERNMENT

EMPLOYEES PENSION FUND

Second respondent

JUDGMENT

RUSI J

[1] The applicant is a former employee of the first respondent. He was employed as a Court Manager for the Bizana Magistrates' Court and resigned from this employment in August 2021. When his resignation benefits were not paid to him by the first and second respondents, he brought an application on 22 August 2022 in which he sought an order declaring the first respondent's failure to pay his leave gratuity and its failure to submit to the second respondent his pension benefit withdrawal forms unlawful. He further sought an order interdicting the first respondent from withholding the payment

of his leave gratuity.

[2] The applicant further sought an order directing the first respondent to pay his leave gratuity with interest at the legal rate of 7% per annum, from 01 September 2021 to date of payment. He also sought an order directing the first respondent to submit to the second respondent his pension withdrawal forms; and an order directing the second respondent to pay his pension benefit within 30 days of receipt of such pension withdrawal forms from the first respondent.

[3] On 25 October 2022, this Court granted an order by agreement between the parties in which it partially settled the dispute.[1] In the order, the court directed, inter alia, that the applicant's leave gratuity and a portion of his pension benefit be paid to him. Further in terms of the court order,

the second respondent was authorized to withhold an amount of R864 748.94 from the applicant's pension benefit. It appears from the papers filed of record that the first respondent had alleged that those pension benefits were withheld following the institution of an investigation into the applicant's alleged financial misconduct.

[4] A counter application was heralded by the first respondent, in which it would assert its entitlement to the withheld amount of R864 748.94. Hence, the court order also determined time frames for the filing of the said counter application. At the time of hearing this application, the first respondent had not filed the counter application.

[5] When the order of Majiki J was granted, Mr Manana represented the applicant and Mr Mapekula represented the first respondent. They still represent the applicant and the first respondent, respectively, in these proceedings. It is necessary, for reasons that will become clearer later on in this judgment, that I reproduce the terms of the court order, and they were as follows:

"1. The first respondent is directed to calculate and pay the applicant's leave gratuity to his chosen bank account within fifteen (15) days of this order.

2. The first respondent is hereby directed to forward and submit to the 2nd respondent the applicant's withdrawal documents, claim forms and/or any other document that would enable the second respondent to process the applicant's pension benefits; within fifteen days of this order.
3. The second respondent is hereby [directed] to freeze and/or withhold an amount of Eight Hundred and Sixty-Four Thousand Seven Hundred and Forty Eight Rand and Ninety-Four cents (R864 748.94) from the pension benefits which are due and payable to the applicant prior effecting any payment of pension benefits which are due and payable to the applicant pending the finalization of the main application and the counter application still to be launched.
4. The 2nd respondent is hereby directed to pay the applicant the remainder of his pension benefits (after having deducted and/or withholding the amount mentioned in paragraph 3 above) to his chosen banking account within fifteen (15) days after receiving the documents mentioned in paragraph 2 above.
5. The 1st respondent is hereby directed to deliver its answering affidavit(s), if any, and/or its counter application within thirty (30) days of this order.
6. The costs shall be reserved for determination by the court entertaining the main application and counter application."
- [6] The first respondent complied with the terms of the order in so far as it related to the submission of pension withdrawal forms to the second respondent and the processing and payment of the applicant's leave gratuity. The second respondent also paid the portion of the applicant's pension benefit which the court order directed it to pay. The amount of R864 748.94 is still withheld by the second respondent. No determination was made in the court order

regarding the interest of 7% per annum that the applicant sought on his leave gratuity.

- [7] The applicant has now approached this Court for an order directing the second respondent to pay to him the withheld amount of R864 748.94 and directing the first respondent to pay interest on the leave gratuity at the legal rate of 7% per annum from 01 September 2021 to date of payment. In substantiating this relief, he contends that since the first respondent has failed to file its counter application as directed in the court order, there is no legal basis on which the second respondent still withholds the amount of R864 748.94.
- [8] The second respondent did not participate in the hearing of this application when it served before me on 22 August 2024. Only the first respondent opposes the granting of the relief that the applicant seeks. Even though the founding affidavit suggests that the process initiating these proceedings would be served on the second respondent at the State Attorney's Office, the notice to oppose that was filed by the State Attorney's Office specifies that it was only in respect of the 1st respondent.

- [9] The first respondent's answering affidavit and heads of argument were out of time and it sought condonation of their late filing. Such condonation was granted. I set out hereunder a brief factual background and further litigation history to this application after the court order.

Factual background and further litigation history

- [10] During the subsistence of the employment of the applicant as Court Manager at the Bizana Magistrates' Court, the first respondent instituted an investigation following allegations that the applicant had committed financial misconduct. The alleged misconduct involved unauthorized use of a state vehicle; forgery of the signature on the forms authorizing the use of state vehicles; and irregular bookings on weekends at a Bed and Breakfast accommodation facility in Kokstad. The said bookings were further alleged to have been irregularly approved by a junior staff member of his office. The first respondent alleged that as a result of the applicant's alleged misconduct, it suffered loss in the sum of R864 748.94.
- [11] While the investigations were underway, the first respondent instituted disciplinary proceedings which could not be continued after the resignation of the applicant. Criminal proceedings were subsequently instituted against the applicant, and they are still pending in the Regional Court of Mthatha.
- [12] None of the applicant's resignation benefits were paid to him. The first respondent took a decision to put the payment of the applicant's leave gratuity on hold pending the finalization of the investigation, but it later overturned this decision and issued an instruction that the applicant's leave gratuity be paid to him.
- [13] Further delays in payment of his leave gratuity which subsequently arose impelled the applicant to bring an application before this Court on urgent basis on 22 August 2022 in which he sought an interdict that would compel the first respondent to pay his leave gratuity and to finalize the process entailed in paying out his pension benefit. The application was heard on 30 August 2022 and on that day, it was removed from the roll for lack of urgency.
- [14] After the order of Majiki J was granted, the applicant set the matter down for hearing on 30 May 2023. On this day, it was postponed sine die with the respondent being allowed to file its answering affidavit and counter application within 30 days of the court's order. The matter served before court again on 08 August 2023, whereupon it was postponed to 22 August 2023. It was again enrolled for hearing on 29 August 2023, on which date it was removed from the roll with the first respondent being ordered to pay the wasted costs.
- [15] An explanation given by the applicant in his replying affidavit regarding what transpired in court on 08 August 2023 suggests that on that day the application was postponed 'due challenges in the office of the Registrar'. These challenges have not been specified.
- [16] By notice dated 03 July 2024, the matter was eventually set down for hearing on 22 August 2024. On this day it served before me.

The case for the applicant

[17] In support of the relief that he now seeks, the applicant makes these principal assertions: since the first respondent has, as of the date of hearing of the application, not filed its counter application to assert its claim to the withheld amount of R864 748.94, there is no legal basis for the continued withholding of this portion of his pension benefit.

[18] It is worth mentioning that despite the evolution of the applicant's cause of action pursuant to the order of Majiki J, no amendment was at any stage made to the notice of motion nor were supplementary papers filed as would meet the exigencies of his case after the partial settlement of the matter. On 22 August 2023, the applicant delivered a four-paged document titled "notice of set down" (the notice of set down) and dated 21 August 2023, with the content that I reproduce below:

"BE PLEASED TO TAKE NOTICE that this matter is set down for hearing on Tuesday 29 August 2023 at 09H30 for a final order in terms of paragraphs 1, 2 and 4 as reflected below in that:

WHEREAS the first respondent delivered a notice of its intention to oppose on 30 August 2022 and subsequently failed to deliver its answering papers to the main application;

WHEREAS the matter served before this Honourable Court on Tuesday 25 October 2022 and stood down until 28 October at the instance of the first respondent which indicated that it wanted to consult and obtain instructions, and whereas the parties sought an order by consent with the first respondent having sought and obtained an indulgence to deliver its answering affidavit and a counter-application if any within 30 days of grating of the order;

WHEREAS the first respondent failed to deliver its answering affidavit and a counter application resulting to the applicant setting the matter down for hearing on 30 May 2023, and whereas the first respondent sought and obtained a further indulgence of 30 days within which to deliver its answering affidavit and a counter application, if any;

WHEREAS the first respondent has failed to deliver its answering affidavit and its counter application, with the applicant setting the matter down for hearing on Tuesday 08 August 2023;

WHEREAS the first respondent did not appear in Court on 08 August 2023 despite having been properly served with a notice of set down; and whereas the court having considered the fact that the matter has since evolved from its date of inception and advising and directing that because of this evolution the respondents should be notified regarding the order which the applicant intends seeking due to the first respondent's failure to deliver an answering affidavit and a counter application it indicated it intended to delivering and non-compliance with the directives of the Honourable Court; and

WHEREAS on 08 August 2023 the matter was postponed to 22 August 2023 and could not be enrolled on that date due to administrative challenges facing the office of the Registrar.

NOW THEREFORE BE PLEASED TO TAKE NOTICE that on Tuesday 29 August 2023 the applicant shall seek a final order in the following terms:

1. Directing the second respondent to release and pay to the applicant together with investment returns and interest, if any, that may have accrued, within (10) days of granting and service of this order upon it by applicant's attorneys, an amount of R864 748.94 Eight hundred and sixty four thousand seven hundred and forty eight rand and ninety four cents) being the amount the second respondent was directed to freeze and or withhold pending the finalization of the matter in terms of an order of this Court dated 25 October 2022.
2. Directing the first respondent within ten
(10) days of granting of this order and service of it upon it by applicant's attorneys to the first respondent's attorneys to pay interest to the applicant at a legal rate of 7% per annum on the amount of leave gratuity that became due, owing and payable to the applicant calculated with effect from 1 September 2021 to date of payment.
3. Directing the first respondent to pay costs of the application including costs that were reserved on 25 October 2022 including costs of 28 October 2022 being the date the matter was stood down up to at the instance of the first respondent at the scale as between attorney and client."

Case for the respondent

- [19] In its answering affidavit, the first respondent alleges that the interdictory relief that the applicant seeks has become moot since his leave gratuity and part of his pension benefit were paid to him in compliance with the court order. The first respondent further takes issue with the fact that even though his leave gratuity and a portion of the pension benefit were paid to him, the applicant set the matter down for hearing on several occasions. According to the first respondent, this amounts to an abuse of court process.

The issue to be determined

- [20] The primary issue that the parties invited this Court to determine is whether the applicant has made out a case for the relief he seeks. That being the case, the litigation history that I have set out above also raises procedural issues which equally require my attention. When the application served before me, Mr Manana and Mr Mapekula were invited to make submissions regarding these procedural issues as well.

The parties'

submissions

- [21] Mr Manana accepted that the relief that the applicant initially sought has evolved since the order of Majiki J, and therefore, a substantial part of it has become moot. I invited Mr Manana to make submissions regarding whether there was before me a proper application for the relief that the applicant seeks and which he has set out in the notice of set down dated 21 August 2023.
- [22] It was his submission in this regard that this Court must exercise its discretion and grant the relief that the applicant seeks as further or alternative relief in the light of ‘the alleged unfair and oppressive treatment’ that he has suffered because of the conduct of the first respondent. In short, Mr Manana asked this Court to overlook the unconventional manner in which the applicant persists with the relief that he seeks after the partial settlement of the dispute. In buttressing this argument, he further submitted that the notice of set down was filed pursuant to directions given by the court on 29 August 2023.
- [23] Mr Mapekula agreed that since the first respondent has complied with the order of Majiki J in so far as the payment of the applicant’s leave gratuity and a portion of his pension benefit is concerned, the interdictory relief sought has become moot. Regarding the applicant’s persistence with his claim of interest and the release of the withheld amount of R864 748.94, together with interest thereon and investment returns, Mr Mapekula submitted that since this relief only appears in the applicant’s replying affidavit, this Court must disregard it as it was not foreshadowed in a notice of motion and founding affidavit. He further submitted that it was open to the applicant to appropriately

supplement its papers in order to pursue the new relief.

The applicable legal principles

- [24] It is trite that a litigant who wishes to exercise the right of access to courts is required to follow certain defined procedures to enable the court to adjudicate the dispute. These procedures are in the main contained in the rules of each court. The Uniform Rules regulate form and process of the High Courts.[2] These rules confer procedural rights on litigants and also help in creating certainty in procedures to be followed if relief of a particular kind is sought.[3] Equally trite is the principle that giving the other party notice of proceedings that have been instituted against them is the cornerstone of our justice system.[4]
- [25] Application proceedings are initiated by notice of motion which must be as near as possible with Form 2(a). This is in terms of Rule 6(5) which provides, in part, as follows:
- ‘(5)
- (a) Every application other than one brought ex parte shall be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule and true copies of the notice, and all annexures thereto shall be served upon every party to whom notice thereof is to be given.

- (b) In a notice of motion the applicant shall—
- (i) appoint an address within 25 kilometres of the office of the registrar and an electronic mail address, if available to the applicant, at either of which addresses the applicant will accept notice and service of all documents in such proceedings;
 - (ii) state the applicant's postal or facsimile addresses where available; and
 - (iii) set forth a day, not less than 10 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice:

Provided that—

- (aa) for the purposes of this subrule, the days between 21 December and 7 January, both inclusive, shall not be counted in the time allowed for delivery of the notice of intention to oppose or delivery of any affidavit;
- (bb) the provisions of subparagraph (aa) shall not apply to applications brought under subrule 6(12) of this rule and applications brought under rule 43.
- (c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of an intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the same is to be heard.
- (d) ...'

[26] As held in *Gallacher v Norman's Transport Lines (Pty) Ltd* [5] the provisions of Rule 6(5) are peremptory.

[27] It is indeed so that in our constitutional dispensation, everyone is guaranteed access to a competent court to have their dispute resolved by the application of law and decided in a fair manner.[6] This guarantee does not include the right to choose the method of approaching and placing a dispute before a particular court. The determination of the process to be followed when litigants approach courts is left in the hands of the courts.[7]

Discussion

[28] Since Mr Manana and Mr Mapekula accepted that a substantial portion of the relief that the applicant sought in the notice of motion 22 August 2022 has been overtaken by events, I shall not have to pronounce on the mootness of that relief. In the discussion that follows, and in the light of the view I hold of this matter, I first deal with whether there is before me a proper application for the relief that the applicant now persists with.

- [29] The document dated 22 August 2023 titled “notice of set down” was indubitably meant by the applicant to initiate proceedings for the ‘evolved cause of action’, so to speak. The applicant confirms as much in the final supplementary heads of argument that were filed on his behalf.
- [30] I am not unmindful of the principle that the rules of courts are used as tools to facilitate access to courts rather than hindering it. Their primary function is the attainment of justice. I am equally alive to the duty of this Court to allow a measure of flexibility in its application of the procedural requirements set out in the Uniform Rules in the interests of justice.[8] This does not mean that the parties and their legal representatives are to be exonerated from their duty of assiduously observing the Rules of Court which are an important element in the machinery for the administration of justice. The present case is not one of those cases where circumstances permit a deviation from the procedural rules without causing prejudice to the other party. I elaborate below.
- [31] In the notice of set down, the applicant impermissibly conflates a notice of the proceedings, and the relief sought (a notice of motion) and the facts on which he relies for this relief (which would appropriately be stated in an affidavit).
- [32] Significantly, what the document that the applicant relies upon in pursuing his cause of action omits to do, is to give the first and second respondents an opportunity to oppose the relief by filing their notices of opposition and answering affidavits. The fact that the first respondent filed its answering affidavit, albeit out of time, does not detract from this fact. This I say because the said answering affidavit could only have been in answer to the applicant’s founding affidavit dated 22 August 2022 which culminated in the order of Majiki J. As I have already mentioned, the issues that arose from the applicant’s founding affidavit have since evolved into the relief that he seeks to pursue by the document titled “notice of set down”.
- [33] A reading of the Eastern Cape Practice Directives (Joint Rule 3(1)(c)) and Uniform Rules 6(5)(f)(iii) and 29(2)(b) suggests that a notice of set down is a document to be filed informing the opposite party of the date allocated by the Registrar on which the matter will be heard. It comes as no surprise that the first respondent did not pertinently deal with any of the matters set out in the notice of set down in its answering affidavit.
- [34] It is so that the first respondent failed to file its counter application. Two issues arise from this. The first one is that the counter application has a life of its own, hence, its non-filing by the first respondent would not bar this Court from determining the main application where that main application is properly before court. The first respondent’s failure to file its counter application could only be indicative of its disinterest in asserting its rights in the same proceedings.

[35] The second issue, which in my view is paramount, is that once the court substantially settled the dispute, in part, as set out in the order of Majiki J, new rights and obligations were created for the parties, respectively. The first respondent's counter application could no longer be in relation to the relief that he initially sought in the notice of motion that was filed before the order of Majiki J. For practical intents and purposes, as well as logic, the applicant had to redefine its cause of action pursuant to the partial settlement. Having done so, it had to give proper notice of this new cause of action to the respondents and an opportunity for the respondents to fully deal with it. Mr Manana accepted that this was an appropriate course of action.

[36] The applicant mentions in the ostensible notice of set down that the court, on 29 August 20023, directed that the first respondent be given notice of his new cause of action after the partial settlement by the order of Majiki J. No record of proceedings of this day was produced at the hearing of this application. Even accepting that the court so directed, I hasten to state that what the court would have meant by that direction certainly did not entail the filing of the document titled "notice of set down" whose contents I have quoted above. The court certainly did not mean that a new cause of action and the factual basis in support of that cause of action could be set out in a document such the one that the applicant seeks to rely on.

[37] The notice of set down is patently anomalous, and it was filed in flagrant disregard of the Rules of Court which apply to applications of the kind that the applicant brought before this Court on 22 August

2022. It is difficult to fathom why no amendment was effected to the notice of motion in circumstances where the relief that is now persisted with is substantially no longer the same relief that the applicant initially sought. It is in a proper notice of motion (as amended to meet the exigences of the case) that the applicant should have set out the 'evolved cause of action' or relief. The

facts on which he seeks to rely for the relief that he now seeks would appropriately be set out in such further or supplementary

affidavits as would be permitted, to which the first and second respondents would have an opportunity to respond.

[38] All of this is apart from the fact that the relief that is delineated in the notice of set down seems inchoate to the extent that the interest and investment returns that the applicant seeks on the withheld amount have not been quantified. In fact, the applicant makes no assertion that such interest and investment returns have, based on one or more grounds, actually accrued. He merely asks, without more, that this Court makes an order for the payment of the withheld amount together with "investment returns and interest, if any, that may have accrued".

- [39] I turn to deal with Mr Manana's submission that I am entitled to grant the applicant the relief he now seeks as 'further or alternative relief'. It is trite law that for a party to be entitled to an order in terms other than those set out in the notice of motion or summons or declaration in the case of action proceedings, such an order must be clearly indicated in the founding affidavit (or in the pleadings) and it must be established by satisfactory evidence on the papers.[9]
- [40] As Tindall JA[10] once said (in the context of a review of action proceedings), asking for such other relief as the court may deem best for the plaintiff is of such effect that every right to which the plaintiff may in any way be entitled upon the allegations in his claim, is thereby considered to be included in the prayer.[11] This principle holds true in application proceedings.
- [41] The difficulty I have with the submission made by Mr Manana is that there is no notice of motion and supplementary papers before me and therefore no proper factual basis for the relief that the applicant persists with.
- [42] I note that in his replying affidavit, the applicant cursorily deals with his entitlement to the payment of the withheld amount "with such interest and investment returns as may have accrued". I have already mentioned that nothing further is alleged by the applicant as the basis for his entitlement to such relief. It must be emphasized that it is not in the replying affidavit that a party makes out his/her case. It is in the founding affidavit that an applicant is expected to disclose facts that would make out a case for the relief sought and sufficiently inform the other party of the case it is required to meet.[12] Furthermore, it is to the founding affidavit that the judge will look to determine what the complaint of a litigant is. [13]
- [43] The applicant had a period of nearly two years to properly prosecute the relief that remained after the order of Majiki J. While I agree with Mr Manana's submission that the new relief came about as a result of the court order, this did not exonerate the applicant from the duty to afford the respondents an opportunity to fully deal with it.
- [44] As regards the second respondent, in as much as it may be accepted that it has chosen not to oppose this application from the beginning, the applicant was bound by the Rules of this Court to notify it of the date on which the application was to be heard. Assuming that the applicant moved from the premise that the second respondent is an organ of state,, then, he was bound by Rule 23(m) of the Eastern Cape Practice Directives (the Joint Rules of Practice). In terms of this joint rule, in all cases in which judgment by default is sought against the State (which will include applications where the State has failed to timeously file either a notice of opposition or its opposing papers) a notice of set down is to be served on the State Attorney at least five days prior to the hearing.
- [45] On a proper reading of the papers and documents filed of record, the notice to oppose the application was filed by the Office of the State Attorney only in respect of the 1st respondent and it was signed by a legal representative from that office in his/her capacity as 'the

respondent's' attorney. Even though the second respondent was properly served with the notice of motion and founding papers upon its Legal Clerk at its offices in Pretoria, the notice of set down in which the applicant sets out the new relief, is directed to the Registrar of this Court and the Office of the State Attorney as 'Attorneys for the first respondent'. It makes no mention of the second respondent. Not only was the second respondent not informed of the date of hearing of 29 August 2023, but it was also not informed of the new or 'evolved cause of action'.

[46] Furthermore, it is not readily discernible that the second respondent was informed of the further date of hearing of 22 August 2023. The notice dated 03 July 2024 by which the matter was set down for hearing before me on 22 August 2024, though served on the Office of the State Attorney, makes no mention of the second respondent. On the face of it, it is directed to the Registrar of this Court and the Office of the State Attorney as "the defendant's attorneys." Even assuming that reference to "the defendant" was an error on the drafter of the notice of set down, it is still unclear whether such reference would be to the "respondents" in plural or a particular respondent. Taken as it is, the notice of set down relates to one opposing party.

[47] If I were to accept the invitation by Mr Manana and grant the relief that the applicant has set out in the so-called notice of set down, floodgates would be opened, and the fundamental rules of procedure in applications such as the present would be adulterated. Mr Manana's invitation must therefore be declined.

Costs

[48] When this matter appeared before Majiki J on 25 October 2022, the question of costs was reserved for determination by the court that would hear the application. The order I make below is not dispositive of the application on the merits. Therefore, it is not necessary to make an order regarding the costs that were reserved on 25 October 2022.

[49] This fact notwithstanding, Mr Mapekula submitted that since the applicant persisted with a relief that was not properly brought before Court, this Court ought to show its disapproval of the applicant's flagrant disregard of the Rules of Court to the extent set out in this judgment, by making an adverse cost order against him. There is merit in the submission made by Mr Mapekula in this regard.

[50] In the result, I make the following order:

1. The application is struck from the roll, with costs. Such costs will exclude the costs reserved on 25 October 2022.

L. RUSI

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the applicant : Adv MC Manana

Instructed by:

T. NDALA ATTORNEYS

c/o 43 Wesley Street

MTHATHA

Counsel for the first respondent : Adv. SST Mapekula

Instructed by:

THE OFFICE OF THE STATE ATTORNEY

94 Sisson Street, Old Broadcast House

Fortgale

Date heard : 22 August 2024

Date delivered : 18 February 2025

- [1] The order was granted by Majiki J and for the sake of brevity and convenience it will be referred to as “the order of Majiki J” or “the court order”.
- [2] *Mukaddam v Pioneer Foods (Pty) Ltd and Others* (CCT 131/12) [2013] ZACC 23; 2013 (5) SA 89 (CC); 2013 (10) BCLR 1135 (CC) (27 June 2013).
- [3] *Ibid*, para 31.
- [4] *Steinberg v Cosmopolitan National Bank of Chicago* 1973 (3) SA 885 (RA) 892B-C.
- [5] 1992 (3) SA 500 at 502D.
- [6] Section 34 of the Constitution, Act 108 of 1996.
- [7] *Mukkadam*, *supra*, paragraph 1.
- [8] *PFE International and Others v Industrial Department Corporation of South Africa Ltd* ([2012] ZACC 21; 2013 (1) SA 1 (CC); 2013 (1) BCLR 55 (CC), para 30.
- [9] *Port Nolloth Municipality v Xhalisa* 1991 (3) SA 98 (C) at 112D.
- [10] *Queensland Insurance Co Ltd v Banque Commerciale Africaine* 1946 AD 272 .
- [11] *Id* at 286.
- [12] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999

(2) SA 279 (T) at 323F – 324J.

[13] Director of Hospital Services v Mistry 1979(1) SA 626 at 635H – 636A.

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