

SOUTH AFRICA / JUDGMENT

Van Wyk and Others v Van Der Merwe and Others (33476/2021) [2024] ZAGPPHC 1032 (7 October 2024) [2024] ZAGPPHC 1032

COURT

North Gauteng High Court, Pretoria

BEFORE

Retief

CASE / FILE NUMBER

33476/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****Case No: 33476/2021****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHERS JUDGES: NO****(3)****REVISED****DATE:**

07 OCTOBER 2024

SIGNATURE

In the application

between: JUSTUS
VAN WYK
First
Applicant
K.B.
BODIBE N.O.
Second
Applicant
B.
KEEVY N.O.
Third
Applicant
and
CORNELIUS
JANSEN VAN DER MERWE
First
Respondent
MINISTER
OF ROADS AND TRANSPORT, THE MEMBER OF THE EXECUTIVE COUNCIL
Second
Respondent
GAUTENG
PROVINCIAL DEPARTMENT
Third
Respondent
In

Re: CORNELIUS
JANSEN VAN DER MERWE
Applicant
and
K.B.
BODIBE N.O.
First
Respondent
B.
KEEVY N.O.
Second
Respondent
MINISTER
OF ROADS AND TRANSPORT, THE MEMBER OF THE EXECUTIVE COUNCIL
Third
Respondent
GAUTENG
PROVINCIAL DEPARTMENT
Fourth
Respondent
This
judgment is prepared and authored by the Judge whose name is
reflected as such and is handed down electronically by circulation
to the parties / their legal representatives by email and by

uploading it to the electronic file of this matter on CaseLines.
The date for handing down is deemed to be 07 October 2024.

JUDGMENT

RETIEF J

INTRODUCTION

- [1] The matter before this Court is a rescission of judgment alternatively, a reconsideration of an order granted by Le Grange AJ on the 31 October 2023 [the order]. The application giving rise to the order was launched by Cornelius Jansen Van Der Merwe [first respondent] in the urgent Court. The subject matter of the urgent application and order concerned a Lexus LX450 with vehicle identification number J[...] and engine number 1[...] [the vehicle]. The first respondent's dispossession of the vehicle by Justus Van Wyk [the first applicant] was, inter alia, a reason necessitating the urgent redress.
- [2] At the time of the order, the vehicle was duly registered in the name of VWT Services (Pty) Ltd [VWT], a company in liquidation. The first applicant being the sole director and shareholder of VWT and the second and third applicants cited as VWT's joint liquidators.
- [3] The first applicant has launched this present application in his personal capacity and in the name of the second and third applicants relying on section 32(1)(b) of the Insolvency Act 24 of 1936 [Insolvency Act]. He was not cited as a party in the urgent application nor was he given notice thereof contending, that the order should not have been taken by the first respondent.
- [4] The court file is littered with numerous litigious steps taken by both the first applicant and the first respondent against each, depicting a perpetual tug of war, both civil and criminal, over the entitlement to and/or lawful possession of the vehicle. A war which, in the urgent application, the first respondent wanted to finalise. At paragraph 11.10 of his founding papers in the urgent application he stated "11.10 Once this order is granted, it ought to be the end of all of the current proceedings, both civil and criminal."
- [5] To fully appreciate how the first respondent went about to achieve finality of his entitlement to and/or possession of the vehicle necessitates the consideration of certain material facts and procedural steps taken by the parties before the order was granted by Le Grange AJ.

MATERIAL FACTS AND ANALYSIS OF THE PROCEDURAL HISTORY

- [6] On the common cause facts, both the first applicant and first respondent agreed to register the vehicle in the name of VWT, the first respondent could use the vehicle and, the first applicant held the spare keys in his safe. At the material time, the first applicant had been providing accounting and tax services to a group of companies and trusts which were registered by the first respondent. These entities are referred to as 'the Van Der Merwe

Group of companies' in the papers. Over time, the relationship between the first applicant and first respondent soured and numerous disputes arose, inter alia, the payment of the first applicant's fees for work done for the Van der Merwe Group of companies and over the ownership of the reasons for the possession thereof.

- [7] In July 2021, the first applicant as the director of VWT caused VWT to institute a rei vindicatio, by way of action against the first respondent for the return of the vehicle [the main action]. The main action was defended and met with a counterclaim in which the first respondent sought declaratory relief declaring him the owner of the vehicle and requiring an order that the Department of Transport amend their records accordingly.
- [8] VWT was subsequently placed in liquidation and duly represented by the second and third applicants in the main action. The second and third applicants however failed to serve a plea to the counterclaim and were subsequently barred. The notice of bar dated the 17 May 2023 [the bar] was served on them via email. On the 28 June 2023 the first respondent's attorneys addressed an email to the second and third applicants seeking

confirmation that the bar had been received by them and required the necessary consent to serve documents and notices via email using the same email addresses. The attorney confirmed that absent such consent, service would occur at the physical addresses.

This consent was in all likelihood required because the second and third applicant's attorney of record had, as far back as the 15 October 2021, withdrawn by notice and, given the last known address for service on VWT as 4[...] G[...] Street, Waterkloof Ridge, Pretoria, 0181 and/or the Master of the High Court, Pretoria, SALU Building, 3[...] T[...] S[...] Street, Pretoria.

- [9] Only the third applicant responded to the email of the 28 June 2023 by confirming receipt of the bar but remained silent about the rule 4A consent. The second applicant failed to respond at all.
- [10] Subsequent upon the bar and on the 19 July 2023, the first respondent caused a Rule 31(2)(a) notice [31(2) notice] to be served again via email on the second and third applicant, informing them, inter alia, that:

"KINDLY TAKE NOTICE that the defendant (first respondent – own emphasis) intends to apply for judgment by default against the plaintiffs (the second and third applicant – own emphasis) five days after delivery of this notice."

- [11] Thereafter, and prior to the order, the first respondent on the 23 October 2023 filed a written request for default judgment addressed to the Registrar. Such written request is catered for in terms of Rule 31(5). The request was uploaded onto CaseLines and has not been withdrawn by notice nor in argument. In consequence, the outcome of the Registrar's decision remains unclear on the facts. Be that as it may, the procedural step relied on by the first respondent in the urgent application was his 31(2) notice and the provisions of Rule 31(2)(a) and (b). The sub-rules of Rule 31(2) states that:

“(a) Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or a liquidated demand and a defendant is in default of delivery of a notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (4) (own emphasis) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as to it seems meet.

- (b) A defendant may within 20 days after he has knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment as the court may, upon good cause shown, set aside the default judgment on terms as to it seems meet.”

[12] Sub-rule 4 requires 5 days’ notice in circumstances when failure to plea the cause of complaint. As discussed, the first respondent did not initially set the action down for hearing but requested his default relief from the Registrar. The procedural competency of this step has not been placed in issue, but a procedural step taken as a fact and as such, a factor for consideration. A day hereafter, and on the 24 October 2023, the first respondent, under oath stated at paragraph 10.7 of his founding papers in the urgent application that “The motor vehicle was in my undisturbed possession until Van Wyk based on a false premise and accusations sought to persuade the Police to attach the same.” It is a common cause fact that the vehicle, thereafter, was stored at the Pretoria West impound and thereafter released to the first applicant by the Police. The first applicant’s spoliation conduct was, inter alia, a basis upon which the first respondent relied to justify the urgency before Le Grange AJ.

[13] Against this backdrop, the urgent application was launched on the 26 October 2023. The first respondent cited the second and third applicants in the urgent application and provided them with notice, once again electronically via email. According to a service affidavit deposed to by Mr B.A. Kitching, an attorney employed by Raubenheimers Incorporated, the first respondent’s attorney at the time: “The application was then electronically served on the first and second respondent (the second and third applicants using their known emails as used in the main action proceedings and as directed that all correspondence should be directed to the joint liquidators directly.” The manner of this service by email on the second applicant was placed in issue at the hearing of this application and is dealt with in detail below.

[14] The purpose for seeking the order was set out by the first respondent at paragraph 3.1 of his founding papers filed in the urgent application. In this paragraph he stated that the purpose was twofold:

“3.1.1 First, Part A of the Notice of Motion, I seek default judgment in the current action (own emphasis). This relief is granted, the relief sought in Part B falls away. Because the relief sought in Part B is urgent (own emphasis), the relief sought in Part A is also urgent as it addresses the same problems highlighted in Part B (own-emphasis).

3.1.2 Second, in Part B of the Notice of Motion, and as an alternative to the relief sought in Part A, the applicant seeks an order that the status quo be restored and that the motor vehicle be returned to me, pending finalisation of the action.”

[15] As stated in paragraph 3.1.1 of the evidence before Le Grange AJ, the first respondent by means of his Part A relief sought to ‘addresses the same problems highlighted in Part B,’[1] Part B sought the return of the status quo and that the return of the vehicle. To address the same problem with the relief in Part A could logically not only be confined then to the declaratory relief sought by default in the counterclaim as, such did not cater for the return of the vehicle. This is why prayer 9 in the order highlights that, only prayers 1, 4 and 8 are consequent upon the default finding in the main action. The remaining prayers of Part A logically then, were granted not upon the default finding in the main action. The first respondent’s contention that the interpretation of Part A is only the default declaratory relief not borne out by his own evidence.

[16] To expand the fallacy of the first respondent’s interpretation yet further, the vehicle at the time of the formulation of the declaratory relief was in the possession of the first respondent and as such, no return was required nor sought. The non return of the vehicle was not in issue either when the written default judgment request was made to the Registrar. However, as a result of the first applicants spoliative conduct occurring thereafter, the only way the first respondent could “-address the same problems-” he wanted to in Part B, to remedy the disposition, was to secure the return of the vehicle with the use of prayers 5 and 6 in Part A. Such prayers, required the Sheriff to recover possession of the vehicle and directing the first applicant who, on the papers, was the person who had “unlawfully” disturbed the first respondents undisturbed possession to indicate to the Sheriff where the vehicle was and to hand over the keys. In that way, prayers 5 and 6 catered for the restoration of the status quo and the return of the vehicle in Part A. The same problem addressed. The problem being that of ownership and possession. Of significance

the content of prayers 5 and 6 are repeated in Part B, albeit not numerically the same.

[17] This is also why the first respondent could comfortably state under oath before Le Grange AJ that, if Part A was granted, the relief in Part B would fall away. Part B ostensibly the return relief pending the main action, Part A is final relief and a means to finally deal with all the issues. This objective outcome confirmed by the first respondent at paragraph 11.8 of his founding affidavit in the urgent application when he stated that:

“11.8 I simply cannot wait for the default judgment to be granted in the ordinary course.

11.9 Finally, the relief sought here aims to conclude the continuous vexatious proceedings against me.

11.10 Once this order is granted, it ought to be the end of all of the current proceedings, both civil and criminal.”

- [18] Part A and B were tailored in such a way as to cater for the first respondent's objectives. Part A was not simply the default relief as relied upon by the first respondent. The question which then arises is whether the first respondent was entitled to the final relief in Part A on the basis he sought it, in the first applicant's absence. The answer to be determined against this

background.

ISSUES

Preliminary issue of service

- [19] At the time of the hearing the second applicant was, per the Master's amended certificate, the only appointed liquidator for VWT. Bearing this in mind, during the hearing the applicants raised a procedural attack contending, for the first time, that the service of the bar and in consequence, the urgent application on the second and third applicants, did not occur in terms of the rule 4A due to lack of consent. In short, they contended that the service should have taken place at the last known physical address provided for by their erstwhile attorney as described in the notice of withdrawal or at an address duly consented. Both on the facts not occurring.
- [20] Nonservice of the bar disturbing the default request whether to the Court or to the Registrar and the procedural facts before Le Grange AJ when the order was taken.
- [21] The applicants contend that it was only the third applicant who confirmed receipt of the bar and only the third applicant who, through Commonwealth Trust, the company representing the third applicant, who filed a notice to abide in the urgent application. In consequence, the second applicant did not receive the bar nor the urgent application nor did he agree to abide by the Court's decision in the urgent application.
- [22] The first respondent argued that the physical address provided in the withdrawal notice was the address of the first applicant and not the liquidators and that they, as directed to by Commonwealth Trust, sent all correspondence directly to the liquidators as directed. This was factually achieved electronically. As to the meaning whether reference to 'correspondence' by Commonwealth Trust included court documents and notices was not argued nor expanded.
- [23] Setting that aside for the moment, the reason for service of documents is intrinsically linked to the necessity for a party to provide due notice to another party. Other than the delivery of a notice in terms of rule 26, the relevant notice time afforded to a party in terms of a Rule 31 is to be found at sub-rule 4 which is couched in mandatory terms. It was on this basis and for these reasons, that this Court allowed the applicant's Counsel to advance the argument. The Court noted that the first respondent's legal team did not receive prior warning that this procedural point would be taken on the date of the hearing. Notwithstanding, the first respondent's Counsels argued the point and later, expanded the argument by filing a written

reply by consent and with leave. In this way, the merits of this issue so raised at the hearing has been fully ventilated, both in oral and in written reply. No procedural prejudice, on this basis, has now been raised.

- [24] It is common cause that the last address given for the second and third applicants by notice, was a physical address, alternatively the office of the Master of the High Court. It too, is common cause that service of the bar and the urgent application occurred via to the respective email addresses of both the second and third applicants, the correctness of such email addresses not in dispute.

The first respondent correctly pointed out that service via email using the same respective addresses had previously been used in other interlocutory applications. This occurred repeatedly without objection. In fact, the second applicant filed evidence in this application by way of a confirmatory affidavit in which he confirmed the facts raised in reply by the first applicant. The first applicant did not raise the non-service in reply and as such, the second applicant did not bemoan lack of service of any documents on notices relied on by the first applicant under oath. The subject matter of this application surely known to him. He had ample opportunity to deal with this point and to explain if such service of the bar and /or urgent application or lack thereof prejudiced his ability to respond or to oppose the relief sought by the first respondent. This he did not do.

- [25] As to the letter to abide relied on by the first respondent which was sent by Darchelle Stiemme of Commonwealth Trust, it is of no moment as it does not advance the argument absent opposition. The point raised at the hearing appeared to be an afterthought, a technical point not supported by the evidence. No evidence before this Court exists that despite no consent in terms of rule 4A that the second applicant did not get notice of the bar nor the urgent applicant. He simply chose to ignore it by not responding

thereto, which he again did when he filed his evidence in this application.

- [26] Lastly, in so far as service of the urgent application is concerned, this Court has not lost sight of the procedural fact as far as the urgent application by brought by way of Rule 6(12) and sought in his first prayer that the Court condone the non-compliance of the rules and that the matter be heard as urgent in

terms of Rule 6(12). It is trite that Rule 6(12) speaks of a Court dispensing with forms and service provided for in the rules and that the disposal of a matter may occur in a manner as a court deems fit. Although Le Grange AJ did not specifically grant prayer 1 as prayed for, it is clear that the application was considered urgent and dispensed with in terms of Rule 6(12). This then, must have included the condonation of the short service of the application upon the second and third applicants. The urgent application was sent via email with less than 5 days' notice as provided for in terms of Rule 31(4). Nothing in the papers suggests that the second nor for that matter, the third applicant did not receive the application nor that they took issue with the short service thereof. They both failed to oppose the relief.

[27] This however cannot be said of first applicant who, on the common cause did not receive notice of the urgent application. This common cause fact calls for the Court then to deal with the enquiry into whether, procedurally, the first applicant should have received notice of the urgent application by service and/or whether he should have been a party to the urgent application. The thrust of the recission and reconsideration relief.

Should the urgent application have been brought on notice to the first applicant?

[28] It is trite that an application must be addressed to a person against whom relief is sought. Where it is proper and necessary to give notice of an application to any person, such application should also be addressed, and notice should be provided.

[29] To answer the question requires scrutiny of the relief sought in the urgent application. From the formulation of Part A and Part B and from the facts, an inference can be drawn that it was always the intention of the first respondent to remedy his sudden dispossession of the vehicle without providing the first applicant with notice thereof and without affording him a means to place a contrary version justifying his possession before Court. This is so having regard to the fact that the first respondent, inter alia, sought final spoliative relief in Part A against the dispossessor who, on the evidence was the first applicant, without citing him as a party. Again, the first respondent in Part B, which was directed at the first applicant, the first respondent intentionally brought it on an ex parte basis and crafted in such a way that the first applicant was only provided with notice to argue costs on the return date and not the merits of the spoliative relief already granted.

[30] On the facts, the first respondent only deemed it necessary to cite the first applicant as a party to any proceedings regarding the vehicle and the subject matter necessitating the order when he sought contempt relief against the first applicant's non-compliance of prayer 6 in Part A of the order. This he did however under a different case number, number 114154/2023 in which he sought a contempt declarator and enforcement by committal. The interim order granted in the contempt application was by agreement as discussed below [interim order].

[31] As previously discussed, the urgent application was not only triggered by the necessity for the default relief (declarator) nor for that matter, was the urgency thereof wholly based or confined to it. The thrust of the urgency lay in the first respondent's sudden dispossession of the vehicle. A fact which required his immediate attention and the vehicle's return. Therefore, Part A as reasoned was directed at the first applicant for the return the vehicle. The relief granted which the first respondent stated under oath, 'addresses the same problems highlighted in Part B' therefore affected and disturbed the first applicant's possession of the vehicle and in consequence had a legal and direct

effect on his right to possession. Not just a financial interest as argued by the first respondent's Counsel.

[32] In consequence, the application should have been addressed to first applicant in respect of Part A and because Part A was couched as final relief, it was indeed proper and necessary that the first applicant received notice of the application.

[33] Part B was placed before Le Grange AJ in the alternative and brought ex parte based on an alleged fear that the first applicant may deal with the vehicle in an adverse way by selling it should notice be provided.

Without going into the merits of that assertion, the first respondent can't escape the fact that the application should have been addressed to the first applicant in respect of the relief sought in Part B.

[34] In consequence, the first applicant's argument must succeed on this basis and absence not excusable. Notwithstanding, the first respondent now argues that in any event, the first applicant does not possess the requisite locus standi to institute the present application for rescission nor reconsideration relief.

Preliminary issue of locus standi

Does the first applicant possess locus standi to institute the rescission or reconsideration relief?

[35] To unpack this proposition requires consideration of firstly a rescission application envisaged in terms of Rule 31(2)(b). The first respondent argues that the first applicant is not a party to the main action as envisaged in terms of Rule 31(2) and therefore precluded from bringing such relief in terms thereof. Without dealing with this point in full, this Court holds the view that because the order was a determination of both the declaratory and spoliative relief, the relief granted in the order could not have been regarded as simply, the default relief as envisaged in terms of Rule 31(2)(a). In consequence, as the rescission in Rule 31(2)(b) refers to the default relief sought on the premise of a failure to plea to a specific case, in casu, the declarator in the counterclaim, Rule 31(2)(b) then, is of little assistance.

[36] This however cannot be said about a Rule 42 rescission consideration. The first respondent argues that it too does not assist the first applicant as he does not possess locus standi in that he has no direct and substantial legal interest in the vehicle or application which could have prejudicially affect him. This argument is not borne out by the facts relied on in the urgent application nor by the nature of the final relief in Part A as already dealt with. This Court has found that Part A was sought and granted to achieve the final objective in respect of ownership and possession. Without going into the merits of the matter, the first applicant's right to possess the vehicle on his version, at that time the order was sought and granted was disturbed and he is finally affected by the order. The first applicant's Constitutional right to freedom, which the first respondent wished to affect by the contempt relief was sought only because of the order, albeit the contempt thereof. Although not a definitive reason in this application, it is a factor for consideration. In consequence, the first applicant, possess locus standi as envisaged in terms of Rule 42.

- [37] Furthermore of significance, in general terms, are the terms of the interim order granted in the contempt relief which directs that the vehicle is to be stored at Route-X Auctioneers pending, inter alia, the first applicant who is to launch this rescission application in a given time. The first applicant brings the rescission application by Court order. The first applicant's dispossession of the vehicle to Route-X Auctioneers occurred by Court order. This is a fact known to the first respondent who de facto sought the contempt relief and now conversely relies on the same interim order to disavow the first applicant of his locus standi to launch this rescission application. This is disingenuous. Furthermore, this Court views the first respondent's reliance on the interim effect of the interim order to bolster its arguments advanced in respect of a final determination on the doctrine of pre-emption (self-resignation of unfavourable order), on the basis of the mootness now of prayer 6 and that such interim order actually finally varied the order sought to be rescinded or reconsidered astounding and, misplaced. In short, the interim order agreed to in the contempt relief appears to preserve the vehicle by placing it in safe keeping pending, inter alia, the outcome of the rescission application if instituted by the first applicant. The order of the 31 October 2023 itself is final in nature, is functus and until specifically set-aside or specifically varied stands. There is simply no basis for the first respondent's locus standi arguments raised on this basis and as such must fail. The Court finds that the first applicant possesses the requisite locus standi.
- [38] In so far as the argument is extended to include a lack the locus standi of the first applicant to institute this application in the name of the second applicant as the sole liquidator, at the time of the hearing, by relying on section 32(1)(b) of the Insolvency Act is a different matter. Reliance on this section not clearly set out, in particular whether the pre-emptive provisions referred to in section 32(1)(a) of the Insolvency Act have been met and how applied. The reliance thereon is hollow on the papers and not adequately addressed in argument. It is as if the first applicant launched this application on his own accord and tried to find a way to ensure that the second and third applicants were brought on board with him. The relevance of section 32 of the Insolvency Act not clear. The first respondent's Counsel too argued to the irrelevance of section 32 of the Insolvency Act. The reliance on section 32, as raised, has not been resurrected by the second applicant in his confirmatory affidavit, filed in reply.
- [39] In consequence, this application will be dealt with accepting that the first applicant possesses locus standi in his personal capacity to launch this application.

RECISSION RELIEF IN TERMS OF RULE 42 AND COMMON LAW

- [40] The thrust of the applicants' case is that the order was granted in the absence of the first and second applicant and, sought by the first respondent in circumstances when he was not procedurally nor substantively entitled to do so. Reliance on the absence of the second applicant by service, fails for the reasons already dealt with. Absence of the first applicant's common cause, necessity to receive notice, for all the reasons already dealt with are established.

[41] Considering the prayers of the interim order, directing that the first applicant is to bring a rescission application, this Court deals with the first applicant's case in respect of the rescission relief first. The necessity to deal with the alternate relief will be dictated by the outcome. It is trite that an applicant need not specifically deal with the exact provisions relied on in its application for rescission.[2] In argument, Rule 42 was advanced. Rule 42 makes provision for rescission and variation of an order under certain circumstances and reads as follows:

“(1) The court may, in addition to any powers it may have, mero motu or upon application of any party affected, rescind or vary:

- (a) An order or judgment erroneously sought or erroneously granted in the absence of a party affected thereby;
- (b) An order or judgment in which there is an ambiguity, error or omission;
- (c) An order or judgment granted as a result of a mistake, to both parties.

(2)”

[42] It is trite that Rule 42 was introduced against the common law background, which imparts finality to judgments in the interest of certainty and Rule 42(1) caters for the procedure which was followed to obtain the judgment in the absence of a particular affected person and not the existence of a defence to the claim. The first applicant's locus standi already dealt with and established. Furthermore, no necessity exists to deal with the concept of 'good cause' as dealt with by the first applicant in his founding papers.

[43] In other words, the enquiry is confined to the procedure followed. For instance, when notice of proceedings to a party is required and judgment is granted against such person in its absence without notice of the proceedings having been given, such judgment is granted erroneously.[3] The error may arise either in the process of seeking the judgment on the party of the applicant in the process of granting default judgment on the part of the court.[4]

[44] This Court has established that the urgent application was to be addressed to the first applicant and that he required notice. It is common cause it was not. The Court has already established that the order affected the first applicant's right to possession by restoring the alleged unlawful disposition thereof to the first respondent and that he possessed locus standi in terms of Rule 42. Le Grange AJ too was not informed of all the relevant facts at the time. The first respondent did not deal with the fact that default

judgment

had already been sought by written application from the Registrar prior to the application being brought and, requesting a final determination on the same basis as prayers 1, 4 and 8 required that Le Grange AJ to consider all the procedural steps. In consequence, considering all the above, Part A was erroneously sought and erroneously granted. The first applicant succeeds with his

recission relief under Rule 42. There then appears to be no need for this Court at this stage then to deal with the common law principles governing recission of judgment, which in any event the first applicant did not deal with in his founding papers.

[45] The reconsideration relief was sought in the alternative to the rescission relief. As the recission relief is successful, the first applicant has complied with the terms of the interim order and as such effect may be given thereto. There is no need to consider the reconsideration relief and in any event on the papers, to be able to finally adjudicate the factual disputes on the merits on motion for a dismissal as sought, is not appropriate at this stage.

[46] The remaining issue is costs.

COSTS

[47] There is no reason why the trite principle that costs follow the result should not apply in this matter. The Court notes that the first applicant seeks punitive costs. Considering all the actions taken by both parties in this matter, the Court exercises its discretion and can find no reason why a punitive costs is justified.

The following order:

1. The order granted by Le Grange AJ on the 31 October 2023 is hereby rescinded and set aside.
2. The first respondent is ordered to pay the costs of the application, including the cost of two Counsel. Senior Counsel's costs to be taxed on scale C and Junior Counsel's fees to be taxed on scale

B.

L.A. RETIEF

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

For the 1st & 2nd Applicants: Adv R du Plessis SC Email: advr@brooklynadvocates.co.za Adv L van Gass Cell: 074 601 4758 Email: leon@clubadvocates.co.za Instructed by attorneys: John Walker Attorneys Tel: 012 991 1941 Email: jan@jwa-inc.co.za john@jwa-inc.co.za For the First Respondent Adv SS Maritz SC Cell: 082 333 8521 Email: stefan@clubadvocates.co.za Adv JF van der Merwe Cell: 082 375 4628 Email: francois@clubadvocates.co.za Instructed by attorneys: Raubenheimers Attorneys Inc Tel: 082 374 2478 Email: bryce@raulaw.co.za helgard@raulaw.co.za Date of hearing: 29 August 2024 Date of judgment: 07 October 2024

[1] See para [14].

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- [2] Colyn v Tiger Food Industries Limited t/a Meadow Feed Mills (Cape) 2003 (6) SA 1 (SCA); Kgomo v Standard Bank 2016 (2) SA 184 (GD).
- [3] Lodhi 2 Properties Investment CC v Bondev Developments 2007 (6) SA 87 (SCA) at 93H-94C.
- [4] Ibid; with footnote 2.
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