



IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE DIVISION, MAKHANDA]

CASE NO.: 260/2019

In the matter between: -

NATALLY SAMANTHA BASSON

APPLICANT

and

ASHLEY FRANCHWA BASSON

RESPONDENT

JUDGMENT

NORMAN J:

[1] This is an application wherein the applicant seeks an order declaring executable an immovable property situate at 4 Ayliff Street (“the property”), Makhanda. The applicant further seeks an order that a writ of execution be issued as envisaged in terms of Rule 46 (1) (a) of the Uniform Rules of Court. The applicant and the respondent were divorced from each other on 12 July 2016. They entered into a settlement agreement resolving all issues relating to, *inter alia*, parental obligations in relation to their minor child and proprietary rights.

- [2] It is also common cause that the respondent was found to be in contempt of court on, at least two occasions, in separate proceedings that emanated from his non-compliance with some of the divorce related orders as contained in the settlement agreement. He was not successful in seeking leave to appeal before the Supreme Court of Appeal and the Constitutional Court.
- [3] The long history of litigation between the parties is dealt with comprehensively in the contempt of court judgments of Jolwana J and Mfenyana AJ and I do not deem it necessary to repeat it herein. Mr Brown appeared for the applicant and Mr Basson appeared in person.

Condonation application

- [4] The applicant sought condonation for the late filing of the supplementary replying affidavit which attached the rates account in respect of the property from the Makana Municipality. The account reflected that the property in question was in arrears in the amount of R95 209.13. It further reflected the property value to be R1 502 900.00. The application for condonation was opposed by Mr Basson on the basis that the applicant sought to raise a new issue in reply and that should not be allowed. I have considered all the arguments in this regard and I am of the view that placing the rates account before court, is not a new issue and does not advance the case of the applicant, instead, it is the information that the court is obliged to consider in an application of this nature. The information relating to rates and property valuations are matters germane to the considerations where a relief of this nature is sought. The applicant tendered a plausible explanation for not

placing the updated information before court earlier. I find that there is no prejudice suffered by the respondent as a result of the late filing of that information. I accordingly grant condonation and I allow the supplementary affidavit together with the annexures thereto to form part of the evidence before me. I make no order as to costs.

The merits

- [5] The order sought herein is as a result of the respondent's failure to satisfy a debt caused by a taxed bill of costs in the amount of R215 404.49. The respondent accepted that he is indebted to the applicant for those costs. Subsequent thereto a writ of execution was issued.
- [6] On 8 July 2021 at 16h19 the Sheriff's return of service recorded, amongst others, that the respondent has a notice of motion interdict to oppose the writ and he claimed that he instituted legal proceedings in that regard. He attached the respondent's office equipment and the respondent said it belonged to the business. He attached the VW Tiguan with registration number JDB 853 EC and the respondent indicated that it belonged to the bank.
- [7] On 05 August 2021, the registrar re- issued a writ directing the sheriff to attach and take into execution the movable goods of the respondent at 4 Ayliff Street, Grahamstown. The applicant contends that the sheriff has not been able to execute the writ on the property as the respondent did not allow him access to the property. She submitted that she is registered as a 50 % joint owner of the property. She submitted that no reason exists why the property should not be declared executable.

[8] The respondent applied for the stay of the writ of execution pending the application for leave to appeal against the contempt of court decision before the Constitutional Court. As aforementioned, leave was refused by the Constitutional Court on 13 October 2021. On 21 October 2021 the respondent withdrew the application for the stay of the writ.

[9] On 02 December 2021, the sheriff executed the writ. In his return of service, he recorded the following:

“WARRANT OF EXECUTION: MOVABLE PROPERTY

ON THE 2ND DAY OF DECEMBER 2021 AT 10H30 TO 13H00, I SHERIFF REMOVED THE VEHICLE VW TIGUAN WITH REGISTRATION NUMBER JDB 853 EC FROM THE DEFENDANT TO SHERIFF'S CUSTODY.

AT 14H30 TO 15H00 VEHICLE HAS BEEN RELEASED INSTRUCTION FROM ATTORNEYS DUE TO INTERPLEADER (BELONG TO COMPANY).

Signed: Sheriff: S W NTSHOKOMA.”

[10] On the same day, the sheriff issued another return of service. It reads:

“Address as specified: 100 HIGH STREET, GRAHAMSTOWN

WARRANT OF EXECUTION AGAINST PROPERTY

RETURN OF SERVICE: PERSONAL SERVICE: NULLA BONA

ON 2ND day of December 2021 at 10h30 I served this WARRANT OF EXECUTION: MOVABLE PROPERTY as follows:

After explaining the nature and content of this document, I demanded from the DEFENDANT at the above address the amount of R215 404 .49 and my costs in satisfaction of this writ. The DEFENDANT informed me that HE has no money or disposable assets or property inter alia wherewith to satisfy this Warrant or any portion thereof. No moveable assets or disposable property were either pointed out or could be found by me after a diligent search.

NB: ATTEMPTED EXECUTION MADE – 28/10/21 – PREMISES FOUND LOCKED

ATTEMPTED EXECUTION MADE – 10/11/21 – PREMISES FOUND LOCKED

ATTEMPTED EXECUTION MADE – 18/11 /21 – PREMISES FOUND LOCKED

Signed: SHERIFF: SW NTSHOKOMA”

[11] On 3 December 2021, the Registrar issued a writ, directing the sheriff to attach and take into execution the sum of R215 404.49, together with interest thereon at the legal rate per annum as from the 8th July 2021 to date of payment in respect of taxed costs and charges in terms of the order dated 15

January 2019. In terms of that writ the sheriff was directed to attach and take into execution the incorporeal property, being the right, title and interest in and to the respondent's shares in Billegro Legal Costs Consultants (Pty) Ltd ((2013/013549/07), a private company with address 53 African Street, Makhanda.

- [12] On 10 December 2021, the deputy sheriff, Mr Sydney Gesha filed a return of service recording:

"On the 10th of December 2021, at 11h05, I tried to serve the attached WRIT upon Mr Ashley Franchwa Basson at 53 African Street, Grahamstown. I was unable to effect service as the share certificate could not be found at the registered address of Billegro.

DEPUTY SHERIFF

Signed: Sydney Gesha "

- [13] The respondent opposed the application on the basis that he has released the applicant from the bond obligations because he paid an amount of R547 000.00 due to the bondholder. He has limited his opposition to two main grounds, first, that the applicant has failed to comply with the mandatory provisions of rule 45(1). Second, he contended that he resides at the property. He submitted that he has a live-in domestic worker from King Williams Town who lives permanently at the property with her granddaughter, a toddler, who is two years old. He denied that the sheriff, Mr Ntshokoma, demanded payment from him. He confirmed that, the sheriff, Mr Gesha demanded payment from him on 08 July 2021 and he advised Mr Gesha that there were proceedings underway to interdict the execution.

- [14] He confirmed that on 02 December 2021, the sheriff, Mr Ntshokoma visited his workplace armed with a writ of attachment of a vehicle, the VW Tiguan.

The sheriff advised him that he was acting on instructions of the applicant's attorney of record. He demanded the keys. He arranged for a towing truck and removed the vehicle. The respondent prepared an interpleader affidavit on behalf of the owner of the vehicle, Billegro Legal Costs Consultants (Pty) Ltd, as its Director. Later, on the same day, the sheriff released the vehicle to him. He denied that the sheriff demanded payment because the sheriff's focus was on the vehicle. He denied that he had refused the sheriff access to the property as stated by the applicant. He prayed for the dismissal of the application with costs.

Applicant's argument

[15] Mr Brown submitted that the respondent has failed to point out movable assets to the Sheriff hence a *nulla bona* return was filed by the Sheriff. It was further argued that having regard to and the extent of the orders granted before, the respondent is a tricky debtor as was found by the Supreme Court of Appeal in *Nkola v Argent Steel Group (Pty) Ltd trading as Phoenix Steel*¹ with specific reference to paragraph 2 where the court said:

[2] *He proffers no explanation as to why he has not released these assets in order to pay his admitted liability. His argument assumes that the creditor, Argent, must find these assets and that he is under no obligation to make them available for execution.'*

[16] Mr Brown further relied on *Silva v Transcape Transport Consultants and Another and Another*² and also referred to the Nkola judgment at paragraph F page 562 , wherein the SCA stated:

¹ [2018] JOL 40204 (SCA).

² 1999 (4) SA 556 (W) @ 563 referred to in *Nkola* and endorsed in *Tirepoint (Pty) Ltd v Patrew Transport CC* [2012] JOL 28716 (GSI)

'Generally the judgment debtor himself is asked to point out to the person making the execution the property which he wishes to be taken and sold off with a view to the securing of a judgment debt. If he refuses to do so or does so in a tricky manner or points out what is not enough, the court servant himself seizes at his discretion those things from which the money can most readily be made up. He does so up to the limit of the debt. Hence if a debtor should pay a good deal while the execution is pending fewer things would have to be sold off than those which had been originally seized.'

[17] Wunsch J, held in *Silva judgment* that Rule 45, did not remove the court's discretion. He considered that, because the debtor in the matter had not pointed out movable property that was available to satisfy the judgment debt, he had behaved in a tricky manner and had deliberately frustrated the creditor's efforts to obtain payment. He found as follows at 563 D-E:

'This is pre-eminently a case where the interests of justice do not dictate that the execution of the judgment should be stayed and a case where execution should proceed against the applicant's immovable properties.'

Respondent's submissions

[18] Mr Basson, on the other hand, submitted that the sheriff could not have returned an *nulla bona* return on the same day that he had removed the vehicle. He submitted that the applicant failed to comply with the mandatory provisions of Uniform Rule 45(1). He further contended that the fact that the property is his residential address wherein he resides with the domestic worker and a toddler, should militate against granting of the order. He denied that the Sheriff, Mr Ntshokoma executed the writ in respect of the movables on 2 December 2021. He further denied that on 8 July 2021 Mr Gesha,

executed the writ in respect of the movables. He further contended that both Mr Gesha and Mr Ntshokoma did not take an inventory of the goods allegedly attached and also failed to give to him such inventory.

[19] Relying on *Plascon-Evans Paints Ltd v Van Rensburg Paints (Pty) Ltd*³ the respondent submitted that the respondent's version of events should be accepted. He further submitted that Mr Gesha who executed the writ on 8 July 2021, did not file a confirmatory affidavit to the applicant's application. He further submitted that although Mr Ntshokoma filed a confirmatory affidavit, the facts he sought to confirm were not borne out by the objective facts.

[20] In reply, Mr Brown submitted that the respondent, as an officer of the court, is aware of his legal obligations, he ought to have pointed out the movables to the Sheriff. He submitted that the applicant has made out a case and that a reasonable reserve price in the amount of R482 290.87, would be appropriate. He submitted that this court must take into account the remarks of Jolwana J, in his judgment, where he sentenced the respondent in the contempt of court proceedings to 6 months imprisonment, wholly suspended for five years, on condition that the respondent is not found guilty of the crime of civil contempt of court committed during the period of suspension.

Discussion

[21] I conveyed to the parties that I was mindful of their respective positions in the matter but enquired from them, in an effort to put an end to the litigation, whether it would be appropriate to make certain orders to resolve the issue. Both parties agreed. Mr Basson suggested that a Directive from court may be

³ 1984 (3) SA 628 (A) at 634-635.

an appropriate way to deal with the matter where they may be directed to do certain things within specified time frames.

[22] After argument I reserved judgment but indicated that I would issue a Directive. Indeed, on 16 September 2022 I issued a Directive as follows:

'IT IS DIRECTED THAT:

1. *The parties are directed to make submissions on the following matters only:*
 - 1.1 *a reasonable amount to be paid by the Respondent towards the payment of the debt that is the subject of this application (R215 404.49); and*
 - 1.2 *a payment schedule to be adhered to.*
 - 1.3 *The parties are directed to discuss the matters raised in paragraphs 1.1 and 1.2 and submit a joint submission. In the event that the parties do not reach agreement on paragraphs 1.1 and 1.2, they must submit individual submissions, served on each other, by no later than 23 September 2022.*
 - 1.4 *Such submissions must be submitted electronically to Ms Grace De Villiers, email: GDevilliers@judiciary.org.za*
2. *The parties must agree on a date and time (between 20 and 23 September 2022) for the Sheriff to attend to the respondent's home at No.4 Ayliff Street, Grahamstown, for the purposes of executing the Writ.*
3. *The respondent is directed to point out to the Sheriff all movable property owned by him for the purposes of executing the writ.*
4. *The Sheriff shall compile an inventory, a copy of which must be made available to the respondent by no later than 16h00 on the day of execution.*
5. *A copy of the inventory must be delivered to this court together with the return of service within 3 days after date of execution.'*

[23] The parties failed to reach agreement on the issues raised in the Directive. They each filed submissions. Upon consideration of those submissions it became clear to me that it will not be possible to resolve the issues soon, but instead, delivery of this judgment would be delayed unnecessarily. I decided to proceed to hand down the judgment as I hereby do.

The nulla bona return

[24] The sheriff, as foreshadowed in the preceding paragraphs, issued two returns on the same day (2 December 2021) in relation to a writ executed at the exact

same time (10h30) and both were in relation to 100 High Street. The one return relating to the removal of the vehicle recorded the time as 10h30 to 13h00. It also recorded the time for the release of the vehicle (14h30 to 15h00). The *nulla bona* return lists various dates and times where the premises (100 High Street) were locked. As apparent from the contents thereof, which are quoted fully above, the sheriff recorded that the respondent informed him that he had no money or disposable assets to satisfy the warrant. As aforementioned the events recorded on the *nulla bona* return are disputed by the respondent.

[25] Although it is contended that the respondent had refused to allow the sheriff access to the property (No. 4 Ayliff Street), there is no return of service confirming those allegations. Those allegations are contained in the founding affidavit.

[26] In an article published in the *Quarterly Law Review for People in Business*, penned by *Dr Alastair Smith, University of South Africa*, entitled: “*The finer points of a nulla bona return*”, Part 4, Volume 13 pages 175-177, where he analysed a Zimbabwean decision in **NMB Bank Ltd v Selemani [2005] JOL 14034 (ZH)**, a case that concerned a lawyer in financial trouble. The author stated that the court focused on the requirement of the failure to indicate disposable property, again emphasising a sentence in Hockly’s *Insolvency Law*, 6th Edition at 27: “*The demand to satisfy the judgment debt must be made of the debtor or his duly authorised agent, a demand made to some other party, e.g, the debtors wife, does not suffice (See: Rodrew (Pty) Ltd v Rossouw 1975 (3) SA 137 (O)).* To “indicate property”, the debtor should tell the sheriff what the property is and where it is with enough particularity to

enable him to attach and sell it (*Nathan & Co. v Sheonandan* 1963 (1) SA 179 (N).(*my emphasis*)

For example, a debtor does not indicate immovable property sufficiently if he merely states that he has property in a particular area or street (R v Tewari 1960 (20 SA 465 (D)). In the NMB case, the judge pointed out that Selemani did not deny telling the sheriff that he had no assets. All he said was that the property in his office belonged to others. He did not indicate he had other means to satisfy the debt, nor did he indicate any disposable property. The court found that as,a practising lawyer, Selemani ought to have known that him telling the sheriff he had no disposable assets , he was declaring himself insolvent.”

[27] This case is distinguishable from *Selemani* in that , the respondent disputes the *nulla bona* return because a vehicle was removed by the sheriff on that day. If the writ was executed at 10h30 and the sheriff at the very same time attached and removed a vehicle, that is not consistent with a *nulla bona* return.

[28] When the sheriff demanded the keys to the vehicle, the respondent handed them over. At that point, the sheriff had been placed in possession of a tangible asset and there would have been no basis to file a *nulla bona* return. It is a fact that later on that vehicle had to be returned because it did not belong to the respondent.

[29] The respondent denied that he conveyed to the sheriff that he had no disposable property. Mr Ntshokoma in his confirmatory affidavit does not deal at all with the attachment of the vehicle and yet he filed a return of service

relating thereto. Again if the vehicle was attached at the same time as the respondent was asked to point out movables, it is inconceivable that a *nulla bona* return would be appropriate.

[30] The sheriff, Mr Ntshokoma has disputed the respondent's evidence. He relies on the handwritten note made by Mr Gesha as the events of what took place on 2 December 2021. Mr Gesha did not file a confirmatory affidavit. The note relied upon by Mr Ntshokoma makes no reference to the events of 02 December 2021, at all. It recorded the following: *"On 22/ 10/ 2021, the sheriff demanded payment of the taxed costs. The Constitutional Court proceedings were only finalised on 15/10 /2021 when the parties were advised. Payment is due on 04 /11/2021 being 14 days after finalisation of the Concourt processes."* The applicant is not in a position to deny the respondent's version as she was not present when the alleged execution was undertaken.

Has the applicant made out a case for the relief sought?

[31] The applicant seeks an order to declare the property executable. Rule 45 makes provision for various considerations to be taken into account before a court can make such an order. It is necessary to record the provisions of both rules 45 and 46 to the extent necessary.

"45 Execution - General and Movables

(1) A judgment creditor may, at his or her own risk, sue out of the office of the registrar one or more writs for execution thereof corresponding substantially with Form 18 of the First Schedule.

[Subrule (1) substituted by GN R181 of 28 January 1994 and substituted by GN R981 of 19 November 2010 (wef 24 December 2010).]

(2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not

lodged with the sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution.

[Subrule (2) amended by GN R2410 of 30 September 1991.]

(3) Whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there-

(a) demand satisfaction of the writ and, failing satisfaction,

(b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,

(c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of subrule (5), shall be taken into the custody of the sheriff: Provided-

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.

[Subrule (3) amended by GN R2410 of 30 September 1991.]

(4) The sheriff shall file with the registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

[Subrule (4) amended by GN R2410 of 30 September 1991.]

46 Execution - Immovables

(1) (a) No writ of execution against the immovable property of any judgment debtor shall issue until-

(i) a return shall have been made of any process which may have been issued against the movable property of the judgment debtor from which it appears that the said person has not sufficient movable property to satisfy the writ; or

(ii) such immovable property shall have been declared to be especially executable by the court or, in the case of a judgment granted in terms of rule 31 (5), by the registrar: Provided that where the property sought to be attached is the primary residence of the judgment debtor, no writ shall issue unless the court, having considered all the relevant circumstances, orders execution against such property.

(b) A writ of execution against immovable property shall contain a full description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the sheriff; and shall be accompanied by sufficient information to enable him or her to give effect to subrule (3) hereof.

[Subrule (1) amended by GN R2410 of 30 September 1991 and substituted by GN R981 of 19 November 2010 (wef 24 December 2010).] “

[32] I must state that there is merit in the objection by the respondent to the execution of his home. The fact that there has been no execution of the movables prior to the relief seeking execution of the immovable property does not accord with the constitutional scheme of our legal system. The respondent objected to the process adopted by the Sheriff in returning a *nulla bona* return.

[33] It is trite law that the Sheriff reports to the court hence the return of service is given the status of constituting *prima facie* proof in evidence.

[34] On 13 August 2021 the applicant's attorneys of record directed a letter to the Sheriff where they:

- (i) attached a signed indemnity in terms of Rule 45(3), signed by the applicant;
- (ii) requested the Sheriff to attach movable assets at the respondent's residence being 4 Ayliff Street, Grahamstown.

[35] Most importantly they stated that:

'We look forward to receiving your return of service and a date for the sale of movables.'

[36] As indicated above, there is no return of service, proving that the sheriff visited the property and executed the writ or was refused entry. Instead this is contained in the founding affidavit. The sheriff is obliged to file a return of service recording his visits to the property and the reaction to the writ by the respondent.

[37] The objective facts are that on 2 December 2021 at 10h30 the Sheriff could not have filed a *nulla bona* return because he, on his own return of service,

had removed a vehicle. It is inconceivable that at the same time that he removed the vehicle that he could simultaneously file a *nulla bona* return. He had executed the warrant against the vehicle at the same address at the same time in respect of the same debt.

[38] In **Lotzof v Raubenheimer** 1959 (1) SA 90 (O) the following is stated on page 94 – D: -

“From the papers before me it appears that the respondent was a farmer in the Ficksburg District, and that as a result of severe farming losses he and his wife decided to give up farming and to return to Johannesburg to seek employment to enable them to pay off their debts. It is almost inconceivable that the respondent could have carried on farming operations, albeit unsuccessfully, without any assets. The prospect that an enquiry may reveal assets which may be recovered for the benefit of creditors, is therefore not too remote.

[15] *By no means can it be argued with conviction that the nulla bona return is perfect. The question is whether the imperfection of the nulla bona return is of such a nature that it is defective to the extent that it is impeachable. The onus is on the respondent to prove that it is impeachable. On the version of the respondent, he and Mr. Van Zyl met on the 20th and 23rd April 2018. The purpose was to serve the writ or execution. The assets listed by the respondent is insufficient to satisfy the judgment debt in terms of the warrant of execution. The Sheriff, quite correctly in my view, issued the nulla bona return. This is an act of insolvency in terms of section 8 (b) of the Insolvency Act referred to supra, which will entitle the applicant to an order of sequestration albeit provisionally, of the respondent’s estate. The respondent is factually insolvent.*

[39] The effect of the *nulla bona* return has the effect of, first, altering the status of a debtor (to that of insolvency) and second, of encroaching upon a debtor’s right not to be deprived of their home or property without due process (declaring immovable property executable). It is accordingly a gateway to the debtor losing his or her residential home. It is for that reason that, a *nulla bona* return may not be perfect but it must be reliable because of its power to affect one’s constitutional rights. It must evince that the sheriff adopted and followed the

correct process of execution prior to him or her returning a nulla bona return. That process is spelt out in Rule 45 (3) in relation to movables. The sheriff must demand satisfaction of the writ, demand that so much movables and disposable property be pointed out. If the debtor fails to point out movables or disposable property, the sheriff must search for such property. Where the sheriff had followed the correct process, as was the case in the *Nkola judgment*, it is easier for the court to determine, whether it is dealing with a tricky debtor or not. I am not able to make that finding herein. The sheriff in his confirmatory affidavit made allegations that are completely different from what is on the nulla bona return. He stated that what is contained on the nulla bona return is a true reflection of what occurred on 2 December 2021. Although he stated on the return that ‘*The Defendant informed me that HE has no money or disposable assets or property inter alia wherewith to satisfy this warrant.*’ In his affidavit he said something different. He stated: ‘*I served the writ of execution on Mr Basson at 100 High Street, Makhanda, and demanded payment of the judgment debt. Mr Basson refused to point out any movable assets to me and refused to sign on the back of the writ which was handed to him.*’ I find that the *nulla bona* return, on the applicant’s version is unreliable. In this regard, the version of the applicant supported by the sheriff is not in line with the objective facts. I accordingly reject it. I am accordingly, satisfied that the *nulla bona* return, is not supported by the objective facts and is defective and thus impeachable.

[40] It follows that where the creditor has not excused⁴ against movables it cannot succeed in the relief sought against immovable property. This is what is

⁴ Barclays Nasionale Bank Bpk v Badenhorst 1973 (1) SA 333 (N)

envisaged in rule 46. In this regard, the order that the applicant seeks against the immovable property cannot succeed.

Costs

[41] In so far as costs are concerned both parties submitted that if the applicant was successful, she should be entitled to costs on a punitive scale as it was found by the Constitutional Court in the *Public Protector case*. The respondent also submitted that if he is successful he should be entitled to costs. I do not have information at my disposal that would cause me, in relation to this application, to depart from the normal rule that costs should follow the result. I am also not inclined to grant costs on a punitive scale because both parties actively participated in this litigation to protect their respective rights.

[42] **I accordingly make the following Order:**

“The application is dismissed with costs.”

T.V NORMAN

JUDGE OF THE HIGH COURT

Date of Hearing : 15 September 2022

Date of Delivery : 25 October 2022

APPEARANCES:

FOR THE APPLICANT : Mr Brown

Instructed by: WHEELDON RUSHMERE & COLE INC.

119 High Street

Makhanda

FOR THE RESPONDENT : Mr Basson (In Person)

Instructed by: MGANGATHO ATTORNEYS

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Makhanda