

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

CASE NO: 15172/2022

24 MAY 2022

FHD VAN OOSTEN

In the matter between

CHARLES WILLIAM SPRONG

APPLICANT

and

PURE LIGHT LED PRODUCTS (PTY) LTD

FIRST RESPONDENT

PURE LIGHT GROUP (PTY) LTD

SECOND RESPONDENT

SEAN SMITH

THIRD RESPONDENT

VASILI RATUSH

FOURTH RESPONDENT

NEIL IVAN STANDER

FIFTH RESPONDENT

WKH LANDGREBE

SIXTH RESPONDENT

LANDGREBE SECRETARIAL SERVICES

SEVENTH RESPONDENT

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIP C)**

EIGHTH RESPONDENT

J U D G M E N T

VAN OOSTEN J:**Introduction**

[1] This application comes before me by way of urgency. The notice of motion consists of Part A and Part B. In part A, which is now before me, the applicant seeks interim relief pending the final determination of Part B.

[2] The applicant, who holds 40% shareholding in the first respondent (Pure Light), seeks urgent temporary interdictory relief against the respondents, in essence prohibiting the issue, or procuring the issue of 10 million shares in respect of Pure Light, which the first to fifth respondents have authorised. The second respondent holds 60% of the issued shares in Pure Light. The third, fourth and fifth respondents are directors of the second respondent, while the fourth respondent is also a director of Pure Lighting.

[3] The application is opposed by the first to fifth respondents (the respondents) and the sixth and seventh respondents, respectively the auditors and secretaries of Pure Light, against whom no costs order is sought as they did not enter the fray, abide the decision of this court. The respondents have filed an answering affidavit and the applicant a reply thereto.

[4] The urgency of the application was hotly disputed and separately argued at the commencement of the hearing before me. Having heard and considered the arguments advanced by counsel, I ruled that the application was urgent, as is reflected in paragraph 1 of the order that was issued

[5] The hearing on the merits of the application then proceeded. Counsel for the applicant in a well-researched and capable argument, painstakingly analysed and addressed, with reference to the relevant provisions of sec 41 and 76 of the Companies Act, 2008, the procedure adopted by the fourth respondent, as the only director of Pure Light, in authorising the issuing of one million shares in respect of Pure Light, pretending it to be for the purpose of recapitalisation of the company, in support of the applicant's case that the procedure was not only unlawful but upon closer scrutiny, nothing but a deviously devised stratagem to dilute the value of the applicant's shareholding in Pure Light to almost valueless.

[6] Counsel for the respondents in response to the arguments advanced by counsel for the applicant, advised the court that she would not be advancing any argument on the merits of the application. This prompted counsel for the applicant to add the unexpected turn of events as a further ground for asking that costs on a punitive scale be awarded against the respondents. Respondents' heads of argument, I should add, likewise do not deal with the merits of the application.

[7] On 17 May 2022 the respondents' attorneys of record requested reasons for my judgment, 'specifically in relation to costs, as our instructions are to proceed with an application for leave to appeal the punitive costs order'. What follows are my reasons for ordering punitive costs.

Punitive costs

[8] The respondents were right from the outset warned in Part B of the notice of motion and more pertinently in regard to Part A, in counsel for the applicant's heads of argument, that an order for punitive costs would be sought at the hearing of the matter.

[9] Counsel for the respondents did not respond to nor challenged the arguments advanced by counsel for the applicant, in particular as to the unlawfulness of the procedures that were adopted and the devastating effect it would have had on the applicant's shareholding, had the auditors proceeded with registration and issuing of the 10 million shares in order to allegedly 'recapitalise' Pure Light.

[10] Counsel for the respondents in arguing urgency, strongly contended that the matter was of such complexity that the hearing thereof in the urgent court was not attainable. But when the occasion arose, much to the surprise of all concerned, no argument at all was addressed on behalf of the respondents. In particular, nothing was put before me as to the request for a punitive costs order.

[11] In the consideration of an appropriate costs order, I considered the facts of the matter clearly establishing reprehensible conduct deserving a mark of disapproval by this court. The opposition to the urgency of the matter was clearly to gain an advantage of procuring the registration and issuance of the shares, which would have irretrievably prejudiced the applicant. As it is often aptly referred to, had the registration proceeded it would have been impossible for the applicant to unscramble

the scrambled eggs. It goes further: had the meeting proceeded on the basis of this court's refusal to hear the matter on an urgent basis, an injustice resulting from unlawful conduct, which was neither challenged nor addressed, would have been perpetuated. This quite obviously seems to have been the strategy of respondent's counsel.

[12] In deciding the question of costs this court is vested with a wide discretion (see *Rondalia Assurance Corporation of SA Ltd v Page and Others* 1975 (1) SA 708 (A) 720A; *Ward v Sulzer* 1973 (3) SA 701 (A) 706). Having considered all the relevant circumstances and in the exercise of my discretion, I consider the award of punitive costs appropriate and in the interests of justice.

Order

[13] In the result the following order is made:

1. This application is heard as one of urgency in terms of rule 6(12)(a) of the Uniform Rules of Court.
2. Pending the final determination of Part B of this application:-
 - 2.1 The second, third, fourth, fifth, sixth and seventh respondents are interdicted and restrained from issuing and/or procuring the issue of any of the 10 000 000 (ten million) shares authorized by the purported amendment on 15 February 2022 of the first respondent's memorandum of incorporation; and
 - 2.2 To the extent that the respondents or any of them have issued and/or procured the issue of any further shares in the first respondent since 15 February 2022, the rights purportedly conferred by such issue are suspended.
3. The second, third, fourth and fifth respondents, jointly and severally, the one paying the other to be absolved, shall pay the costs of Part A of the application, on the scale as between attorney and client, such costs to include the costs consequent upon the employment of two counsel by the applicant.
4. Leave is granted to the parties to supplement the papers in regard to Part B of the application.

COUNSEL FOR APPLICANT

**ADV I MILTZ SC
ADV CJ BEKKER**

APPLICANT'S ATTORNEYS

BATE CHUBB & DICKSEN INC

**COUNSEL FOR 1ST – 5TH
RESPONDENTS**

ADV L DE WET

**1ST – 5TH RESPONDENTS'
ATTORNEYS**

MESSINA INC

DATE OF HEARING

11 MAY 2022

DATE OF ORDER

11 MAY 2022

DATE OF JUDGMENT

24 MAY 2022