IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number: 87167/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: **YES**

E.M. KUBUSHI **DATE: 17 MARCH 2023**

In the matter between:

CHARLES THEU **FIRST APPLICANT**
(ID: [redacted])

CONSOLATION THEU **SECOND APPLICANT**
(ID: [redacted])

and

SB GUARANTEE COMPANY (RF) PTY LIMITED **FIRST RESPONDENT**
(REGISTRATION NO: 2006/021576/07)

SHERIFF CENTURION WEST **SECOND RESPONDENT**

In re:

CASE NO: 7666/2021

SB GUARANTEE COMPANY (RF) PTY LIMITED **FIRST RESPONDENT**
(REGISTRATION NO: 2006/021576/07)

and

CHARLES THEU **FIRST APPLICANT**
(ID: [redacted])

CONSOLATION THEU **SECOND APPLICANT**
(ID: [redacted])

JUDGMENT

KUBUSHI J

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on 17 March 2023.

INTRODUCTION

[1] This is an application for the rescission of a Summary Judgment obtained by the First Respondent, the Standard Bank of South Africa Limited, against the First and the Second Applicants ("the Applicants").

[2] The application was initially launched in two parts, namely Part A in which the Applicants sought to set aside the warrant of execution for the attachment and sale of the Applicants' immovable property, and that it be stayed pending the final determination of the relief sought in Part B of the application. Part A of the application has since been disposed of by an undertaking made by the First Respondent that the arrangement of a sale in execution of the immovable property will not be proceeded with, pending the finalisation of Part B of the application. Part "B" relates to the rescission of the Summary Judgment, which is the application now before this Court.

[3] The First Respondent's main action, in which the Summary Judgment was granted, was launched in this Court under case number 87167/2019 but the current Rescission Application is launched under case number 7666/2021. The First Respondent submits that this is an irregularity as a rescission application is an interlocutory application to the main case, and the case number used should be the same as that of the main case. The First Respondent seems not to be taking issue with this alleged irregularity as it had proceeded to argue the application.

[4] The application is opposed only by the First Respondent as the party who was granted the Summary Judgment. From the perusal of the documents uploaded on Caselines, as well as, the First Respondent's Chronology Table, it seems that the Applicants did not file the Replying Affidavit and, as such, only the Founding Affidavit and the First Respondent's Answering Affidavit serve before this Court.

RELIEF SOUGHT

[5] The relief sought by the Applicants in Part B of the application is for an order, amongst others, in the following terms:

5.1 Declaring that the judgement was erroneously sought or erroneously granted and should be set aside. Rule 42(1)(a) and (b)

5.2 The First Respondent did not comply with the notice requirements of section 29(1) and the relevant provisions of section 130 of the National Credit Act 34 of 2005.

5.3 The non-compliance of the First Respondent with Section 129(1) Notice requirements resulted in erroneous and ambiguous judgment by the Court in terms of Rule 42(1)(a) and (b).

5.4 Setting aside the Writ and the default judgement.

[6] In order to contextualise the issues in this application, the synopsis to the factual background is set out hereunder.

BACKGROUND

[7] The First Respondent and the Applicants, concluded a written Home Loan Agreement ("the Loan Agreement"). The terms and conditions of the Loan Agreement, as well as, the description of the immovable property, as recorded in the First Respondent's Particulars of Claim are not disputed.

[8] In terms of the Loan Agreement, the Applicants chose X51 Highveld 18 Lemonwood Street, Pretoria as their *domicilium* address (notice address) for service of legal notices in terms of the Loan Agreement. The Applicants were obliged in terms of the Loan Agreement to give the First Respondent written notice of change of their notice address.

[9] As security for the Loan Agreement, the Applicants caused to be registered a First Covering Continuing Mortgage Bond over their immovable property, in favour of the First Respondent. In the Continuing Covering Mortgage Bond, the Applicants

chose 203 Claystone Street Monavani Centurion, being the property forming the subject matter in the application, as their *domicilium* address.

[10] In due course, the Applicants fell in breach of the terms and conditions of the Loan Agreement in that they failed to pay the monthly instalments due in terms thereof, which breach is said to be material. As at 31 October 2019, the monthly instalments due, were in arrears in the amount of R428 610.60 (Four Hundred and Twenty-Eight Thousand Six Hundred and Ten Rand and Sixty Cents). In effect the Applicants were indebted to the First Respondent in the amount of R3 970,941.70 (Three Million Nine Hundred and Seventy Thousand Nine Hundred and Forty-One Rand and Seventy Cents).

[11] The First Respondent caused a notice in terms of Section 129(1) (as read with Section 130) of the National Credit Act ("the NCA"),[1] ("the Section 129(1) Notice"), to be sent to both *domicilium* addresses set out in the Loan Agreement and the Continuing Covering Mortgage Bond. Notwithstanding the Section 129(1) Notice, the Applicants failed to make payment of the arrear amount which had become due and payable.

[12] The First Respondent then instituted action against the Applicants, the summons of which was served upon the Applicants by way of affixing at both aforementioned addresses. In due course, the Applicants filed a Notice of Intention to Defend and served their Plea. This triggered the launch of the Application for Summary Judgment by the First Respondent. The Applicants filed their Answering Affidavit in opposition to the application for Summary Judgment. Judgment was granted in favour of the First Respondent.

[13] The Applicants are aggrieved by the Summary Judgment granted and have approached this Court for relief.

THE ISSUE

[14] The crux of the application is whether in these circumstances the judgment can properly and justifiably be rescinded in terms of Uniform Rule 42(1)(a) and (b).

[1] Act No. 34 of 2005.

LEGISLATIVE FRAMEWORK

[15] Although from the relief sought by the Applicants it appears that their case is based on Rule 42(1)(a) and (b), in oral argument in Court, only subrule 42(1)(a) became the subject of contention. Therefore, for purposes of this judgment, only subrule 42(1)(a) will be referred to.

[16] The salient provisions of Uniform Rule 42(1)(a) reads thus –

> *"(1) The court may, in addition to any other 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 any party affected thereby; . . ."*

[17] There are two jurisdictional factors that must be established before it can be said that Rule 42(1)(a) has been satisfied. Firstly, the judgment must have been granted in default. Secondly, the judgment must have been erroneously sought or erroneously granted. The requirement of default, that is, that the judgement was granted in default, is not at issue in this matter, as it is not seriously disputed by the First Respondent. This judgment will, therefore, be based on the second requirement that the judgment is erroneously sought or erroneously granted.

[18] The question of what constitutes error for the purposes of Rule 42(1)(a) has been the subject matter of a number of decided cases. It has been held that a judgment has been erroneously granted if there existed at the time of its issue a fact of which the Court was unaware, which would have precluded the granting of the judgment and which would have induced the Judge, if aware of it, not to grant the judgment.[2]

[19] The Court in the reportable judgment in *National Pride Trading 452 (Pty) Ltd v Media 24 Ltd* [3] expressed itself as follows when dealing with the requirements of Rule 42(1)(a):

> "It has often been held that where the Rules prescribe a particular procedure, and that procedure is not followed, then such procedural error renders the judgment sought and granted *"erroneous"* within the meaning of Rule 42(1)(a). Effectively, what is being rescinded is the procedure in terms of which the judgment was granted, and therefore, by necessary implication; also the judgment."

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[2] Berea v De Wet NO 2017 (5) SA 346 (CC) at 366E – 367A.

[3] Case No. 227/2010 (Eastern Cape High Court, Port Elizabeth) at paragraph 27.

[20] And, in *Lodhi 2 Properties Investments CC and Another v Bondev Developments*,[4] Streicher JA remarked as follows:

> "Where notice of proceedings to a party is required and judgment is granted against such party in his absence without notice of the proceedings having been given to him such judgment is granted erroneously. That is so not only if the absence of proper notice appears from the record of the proceedings as it exists when judgment is granted but also if, contrary to what appears from such record, proper notice of the proceedings has in fact not been given. That would be the case if the sheriff's return of service wrongly indicates that the relevant document has been served as required by the Rules whereas there has for some or other reason not been service of the document. In such a case, the party in whose favour the judgment is given is not entitled to judgment because of an error in the proceedings. If, in these circumstances, judgment is granted in the absence of the party concerned the judgment is granted erroneously."

[21] On the basis of the aforesaid, it means that Rule 42(1)(a*)* is a procedural step designed to correct an irregularity and to restore the parties to the position they were in before the order was granted. The question that would then follow is whether there was any procedural irregularity which would render the judgment granted defective.

ARGUMENT

[22] The Applicants' argument is that the judgment granted was erroneously sought or granted in that:

[23] Firstly, there was a procedural irregularity in that the First Respondent obtained Summary Judgment against the Applicants without complying with the notice requirements of section 129(1) read with section 130 of the NCA. It is argued that the provisions of section 129(1) of the NCA stipulates that before a credit provider (being the First Respondent herein) can proceed with legal action, that is before proceeding with the issuing of summons, against the consumer (being the Applicants herein), the credit provider must first draw the attention of the consumer to the debt owed by serving the consumer with a Section 129(1) Notice. The complaint is that the Court granted Summary Judgment even though it was aware that the First Respondent did not serve the Applicants with a Section 129(1) Notice, in contravention of the requirements of section 129(1) of the NCA.

[4] 2007 (6) SA 87 (SCA) at 93H-94B (para 24).

[24] In essence, the Applicants' complaint in this regard is that there was uncontested evidence on record before the Court, which was provided by the Post Office Controller to the effect that the Section 129(1) Notice from the First Respondent, that was meant to be sent to the Applicants, was never delivered. It is argued that the said evidence should have convinced the Court granting the Summary Judgment that the First Respondent had not complied with the requirements of section 129(1) of the NCA and should not have, in the first place, issued summons against the Applicants. Hence, the Summary Judgment should not have been granted, and has, therefore, been erroneously granted.

[25] The further argument is that the Section 129(1) Notice, that was, apparently, served on another address as well, which is a different address, not the address that is in the agreement, should have been regarded as irrelevant for purposes of the Summary Judgment application. What should have been relevant, was that the parties agreed on an address and that is where the Section 129(1) Notice should have been served, as is required in law, so the argument goes. Therefore, the Court having relied on the delivery of the Section 129(1) Notice to this address, erroneously granted the Summary Judgment.

[26] The Applicants' counsel reinforced his argument by referring to the judgments in *Sebola & Another v Standard Bank of South Africa Limited & Another*,[5] and *Kubyana v Standard Bank of South Africa.*[6]

[27] Secondly, the Order granted in respect of the Summary Judgment in question, was erroneously granted by the Registrar instead of being granted by a Judge (Court), in contravention of section 130 of the NCA, which clearly stipulates that matters regulated by the NCA must be handled by the Court. This according to the Applicants' counsel, renders the Summary Judgment a nullity

[28] In support of this submission, the Applicants' counsel relied on the judgments in *Nomsa Nkata V Firstrand Bank Limited,*[7], *Master of the High Court North Gauteng*

[5] 2012 (5) SA 142 (CC).
[6] 2014 (3) SA 56 (CC).
[7] 2016 ZACC 12.

High Court Pretoria v Enver Mohamed Motala,[8] and *Theu Consolation v First Rand Auto Receivables (FS) Limited.*[9]

[29] The Applicants' counsel submitted in oral argument in Court that in order for the First Respondent to have been granted the Summary Judgment, it ought to have skipped over the two hurdles, namely, compliance with Rule 129(1) read with Rule 130 of the NCA, which hurdles, according to the Applicants, the First Respondent failed dismally to skip over.

DISCUSSION

[30] The error or procedural irregularity the Applicants are contending for is said to be in respect of the defective service of the Section 129 (1) Notice contemplated in section 129 (1) of the NCA, and the fact that the Order was issued by the Registrar of the Court in contravention of section 130 of the NCA. The two issues are dealt with hereunder, starting first with the issue of the Applicants' allegation that the Order was issued by the Registrar, as it may be dispositive of the matter.

Order Sought to be Rescinded was Issued by the Registrar

[31] In their papers, the Applicants premised their case on the allegation that the judgment was granted by the Court,[10] but later on made the allegation that the judgment was granted by the Registrar.[11] The two allegations are contradictory in that it is not clear on what basis is the order alleged to be erroneous.

[32] In oral argument in Court, the Applicants' counsel, in trying to rectify the contradiction, abandoned the allegation that the judgment was granted by the Court and pursued the application on the basis that the judgment was granted by the Registrar.

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[8] 2011 ZASCA 238 Para 14.

[9] Unreported judgment of the High Court Pretoria Case Number: 89371/19.

[10] See paragraph 4.3 of the Founding Affidavit which states as follows:

> "It is mind boggling that the Court even after the applicants provided proof from the Post Office indicating they never received the sec 129 Notice in terms of the National Credit Act, the Court still granted the Summary Judgement order against us." (own emphasis).

[11] See paragraph 4.5 of the Founding Affidavit which states that

> "The said application was erroneously granted and upon closer inspection of the order, my attorneys realised that the order was granted by the Registrar and not by the Court as per the requirements of Section 130 of the National Credit Act."

[33] It is this Court's view that the submission by the Applicants that the Order sought to be rescinded was granted by the Registrar, is without merit.

[34] In the first place, the Applicant approached this Court in terms of Rule 42(1)(a), which as it has been said, requires that there should have been an error which the Judge when granting judgment was not aware of. The Applicant contends, in their founding papers, such error was occasioned in that section 129(1) of the NCA was not complied with and that if the Judge granting the Summary Judgment, was aware that there was non-compliance with section 129(1) of the NCA, he would not have granted the order. With this allegation, the Applicants specifically confirm that the judgment was granted by the Court and not by the Registrar. This admission has not been formally withdrawn, and as such still remains relevant.

[35] Secondly, the allegation that the Order was granted by the Registrar is said without any facts substantiating the said allegation. The Applicants' founding affidavit is devoid of any facts in support of this allegation. The allegation was substantiated by evidence proffered by the Applicants' counsel from the bar, which is inadmissible for obvious reasons.

[36] Lastly, this is a Summary Judgment that the Applicant allege was granted by the Registrar. All Summary Judgment applications in this Division, are allocated to Judges for adjudication, irrespective of whether they are about the NCA or not. The practice is that all Summary Judgments are placed on the roll in the Unopposed Motion Court, and when opposed, they are normally heard at the end of the roll of the Judge hearing that matter.

[37] It was brought to counsel's attention that it is the practice in this Division that a Judge hearing the matter, particularly if it is in the Unopposed Motion Court, like this Summary Judgment application was, would grant the order and sign or initial at the top of the Draft Order which would be provided by one of the parties, additionally, the Judge would then put a marking like "X" or "Y", next to the initials or signature and sometimes a date. The Draft Order so marked will then be handed to the Judge's Clerk who will then take it to one of the Registrar's for signature at the bottom of the page and date stamp it.

[38] In response, counsel contended that he is aware of the practice prevailing in this Court as far as Draft Orders are concerned. He referred to the Order itself, which was signed and initialled by the Registrar and argued that the said markings of the Registrar made the Applicants believe or assume that the Order was granted by the Registrar. Counsel submits that the Applicants could not make out that the marking, in the form of a signature, made at the top of the Order next to an "X" marking and the date, is that of Raulinga J. and, as such, there was nothing that would have made the Applicants to think that the Summary Judgment was granted by Raulinga J.

[39] Counsel, further, argued that he is, also, aware of the practice that sometimes Judges, when their roll is full, give matters to their Registrars to actually grant these orders. He submits that in the instance of the Summary Judgment application in this matter, Raulinga J delegated this matter to his Registrar, who by signing the Draft Order, granted the Order in contravention of section 130 of the NCA. He contends that the reasons for the Order (the judgment) that were later provided by Raulinga J, was an afterthought in trying to remedy what has happened or to provide some form of relief to what has already happened, which to him was illegal.

[40] Like as earlier indicated, these allegations by counsel argued from the bar without any facts in support thereof, are opportunistic. The allegations are not contained in the founding affidavit in the current application and/or the answering affidavit in the Summary Judgment application, and thus, remain allegations which are unsubstantiated, and fall to be ignored by this Court. The First Respondent was not even given an opportunity to respond thereto.

[41] As correctly argued by the First Respondent's counsel, the Draft Order which the Applicants' counsel referred to in his argument, is clearly a Draft Order prepared by the First Respondent and uploaded on Caselines together with the Summary Judgment application documents. It was printed and signed by the Judge and the Registrar. At the top of the page of the Draft Order there is an "X" mark, a date and signature, which is obviously that of Raulinga J. The Registrar has also signed the last page of the Draft Order and further initialled the pages. In addition, the Draft Order does not have the same case number as that of the present application, but, it has the numbering or lettering of the Summary Judgment application Caselines documents.

[42] This Court, has as a result, to rule that this ground should fail.

Premature Enforcement of the Credit Agreement

[43] It is not in dispute that section 129(1)(b)[12] of the NCA, provides that if a consumer is in default under a credit agreement, the credit provider may not commence any legal proceedings to enforce that credit agreement before first providing notice to the consumer. It is, also, not in dispute that a judgment or Order granted without following that procedure has been erroneously sought or erroneously granted.

[44] On this aspect, the argument by the Applicants is that the enforcement of the agreement by the First Respondent was premature giving the fact that the Applicant had not been served with the Section 129(1) Notice. The submission is that before enforcing the credit agreement, the First Respondent should have, in terms of section 129(1) of the NCA, first delivered the Section 129(1) Notice to the Applicant. The contention is not disputed.

[45] However, the First Respondent submits, correctly so, that Raulinga J in his judgment found no procedural irregularities. The judgment, as the First Respondent submits, clearly and unambiguously sets out the reasons for the Order granted, and discusses the defences raised by the Applicants in their Opposing Affidavit resisting Summary Judgment, in detail.

[46] Besides, in his own words, the Applicants' counsel argues that once the onus shifts to the consumer, the consumer must then show that he did not receive the Section 129 Notice and the Court will then establish the truth of her or his claim and check if the credit provider had complied in terms of the NCA. This is exactly what happened in this instance. Based on the Applicants' Answering Affidavit that was before Raulinga J in the Summary Judgment application, which informed the Judge that the Applicants did not receive the Section 129(1) Notice, the Judge set out to establish the truth of the Applicants' claim and found that the Applicants were not truthful. The truth according to Raulinga J, as is set out in his judgment, is that the

[12] "129. (1) If the consumer is in default under a credit agreement, the credit provider –
(a) . . .
(b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before- (i) first providing notice to the consumer, as contemplated in paragraph *(a),* or in section 86(10), as the case may be; and (ii) meeting any further requirements set out in section 130.

Section 129(1) Notice was duly delivered to the Applicants at the second *domicilium* address stated in the First Covering Continuing Mortgage Bond. Whether Raulinga J in coming to such a decision was right or wrong, is not for this Court to decide.[13] However, Raulinga J having made such a decision, it means that he was aware of the fact, that is, that the Section 129(1) Notice, had been duly delivered to the Applicants. His judgment was, as a result, not erroneously sought or granted. It is correct, as suggested by the First Respondent, Raulinga J having made such a decision, this Court cannot reconsider it, as this will be tantamount to litigating the matter afresh.

[47] This Court is, thus, satisfied that the Applicants, in this matter, failed to establish one of the requirements of rule 42(1)(a), which is that there should be a fact or error which the Judge was not aware of at the time of granting the order sought to be rescinded. The First Respondent's counsel referred to the judgment *in Van der Merwe v Bonareiro Park (Edms) Bpk*,[14] with which this Court agrees, as support that if one of the requirements of Rule 42(1)(a) cannot be satisfied, the Court has no discretion to rescind the order. Therefore, the Applicants having been unable to establish one of the Rule 42(1)(a) requirements, this Court has no discretion to rescind the order granted by Raulinga J, and on this ruling alone the application for rescission, ought to be dismissed.

CONCLUSION

[48] It is this Court's view that the Applicants have failed to establish that the Order or the Summary Judgment in this matter was granted by the Registrar. There are no facts before this Court to prove that, except the evidence provided by their counsel from the bar. The contradictory evidence in their founding affidavit, does not assist their situation. In most of their oral argument, as well, the indication has been that the Summary Judgment was granted by the Court. The fact that they do admit in their founding papers that the Summary Judgment was granted even though the Court was made aware that the Applicants were not served with a Section 129(1) Notice, puts this argument to rest.

[13] See Seale v Van Rooyen; Provincal Government, North West Province v Van Rooyen NO 2008 (4) SA 43 (SCA) at 52B where it was held that the subrule does not cater for orders wrongly granted.
[14] 1998 (1) SA 697 (T) at 702H.

[49] The issues that the Applicants are arguing before this Court and all the cases they have referred to in support of their argument, as far as their contention that they did not receive the Section 129(1) Notice, would have been better argued before the Court that granted the Summary Judgment. In the application before this Court, and as already stated earlier in the judgment, the issue is whether there existed a procedural error that that Court was not aware of at the time of granting the Summary Judgment. The Applicants, correctly argue that they made the Court that heard the Summary Judgment application, aware of the procedural irregularity. Their counsel, furthermore, in oral argument before this Court confirmed that that Court had to find the truthfulness of their allegation, which the Court did, and found no procedural irregularity to exist. This is not the same as where that Court would have been informed that the Section 129(1) Notice have been served, and without interrogating the truthfulness thereof, granted the Summary Judgment; and before this Court it is revealed that in fact the notice was never served. Then, in such an event, there would be a procedural irregularity that existed at the time the Order was granted, which is not the case in this matter.[15]

ALLEGATIONS THAT RAULINGA J DELAGATED THE GRANTING OF THE ORDER TO HIS REGISTRAR

[50] This Court opted to deal with the allegations made by the Applicants' counsel that Raulinga J did not grant the Summary Judgment application, but delegated it to his Registrar who granted the Order, because these allegations are viewed in a very serious light.

[51] These are baseless allegations that are not substantiated, at all. They are, furthermore, not contained either in the answering affidavit in the Summary Judgment application or founding affidavit in the current application, nor are they contained in any of the heads of argument filed in respect of the two applications. The allegations are made from the bar by counsel without any facts supporting them.

[52] The Applicants' counsel sought to deny what he said or what he, in fact, meant by these allegations, when he responded to the issues raised by the First

[15] See Kgomo v Standard Bank of South Africa Limited 2016 (2) SA 184 (GP).

Respondent's counsel, and further imputed, improperly so, on the First Respondent's counsel that she wanted to tarnish his name and poison the Judge's (this Court) mind.

[53] The about -turn he made when responding to the First Respondent's counsel, that the allegations were hypothetically speaking, and that he made an example and said that if he was a Judge and he has a serious caseload he can sometimes offload matters, which he cannot deal with, to the Registrar, is not the truth of what he actually said. Counsel informed this Court, in no uncertain terms, and repeatedly so, that Judge Raulinga did not make the Order and that he delegated the matter to his Registrar. The Order according to counsel, was signed by JM Shongwe who was the Registrar to Raulinga J, at the time because the Judge simply handed over the matter to the Registrar to make the Order.

[54] Even though he said that the allegations were hypothetical, he in any event ended, in conceding that this is basically what has happened in this case, that this matter was handed over to the Registrar to make an order, so that the Judge can deal with other issues.

[55] This he said against the background of him having intimated that he is aware of the practice that sometimes Judges when their roll is full, take matters and hand them over to their Registrars to actually grant the orders. He emphatically stated that such conduct by the Judges is illegal, absolutely illegal, he said. He never said it was unlawful as he stated when responding to the First Respondent's counsel.

[56] Even though in his argument he did not specifically use the phrase "cover up" but the impression that is left when he says 'the Judge comes back with the written judgment as if now he wants to remedy what has happened or to provide some form of relief', is in this Court's view same as saying the Judge was covering up. The argument that Raulinga J must have been overworked or overloaded with work and then delegated the matter to his Registrar, and later came back and wrote the judgment to rectify the mistake that he had done by delegating the matter to his Registrar, is farfetched and pure speculation at best.

[57] It is this Court's opinion that the allegations are, in essence, scathing, disrespectful to the Judge and bring him into disrepute and should not be countenanced. Allegations that have no basis, like these, which are so scathing and

puts a Judge's reputation into disrepute should never be uttered by a person of a stature of counsel. They are made more serious by the fact that they were uttered in Court by an advocate, who is an officer of the Court.

[58] In this Court's view the allegations should be brought to the attention of the Legal Practice Council.

COSTS

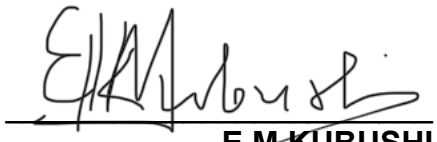
[59] The First Respondent has requested for a costs order on attorney and client scale in the event it is the successful party. The view of the Court is that a case has not been made out in these papers for costs on attorney and client scale.

ORDER

[60] Consequently, the following order is made:

1. The application is dismissed with costs.

2. The Registrar of this Division of the High Court is ordered to make the Legal Practice Council aware of this judgment.



E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

<u>APPEARANCES</u>:

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APPLICANTS' ATTORNEYS:	MASAWI ATTORNEYS
FIRST RESPONDENT'S COUNSEL:	ADV K REDDY
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