



**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**CASE NO: 12601/23**

In the matter of:

**PATRICK JOHN VOLKAR N.O.**

**FIRST APPLICANT**

(in his capacity as co-trustee of the Volkar  
Recoverable Trust)

**SANDRA ANN VOLKAR N.O.**

**SECOND APPLICANT**

(in her capacity as co-trustee of the Volkar  
Recoverable Trust)

**SWISS SAFARI AND ECO TOURS (PTY) LTD**

**THIRD APPLICANT**

(Registration Number: 1995/001321/07)

and

**BIG SKY TRADING 219 CC**

**FIRST RESPONDENT**

**(IN BUSINESS RESCUE)**

(Registration Number: 2002/079700/23)

**KARUN NAIDOO N.O.**

**SECOND RESPONDENT**

(in his capacity as Business Rescue Practitioner  
of Big Sky Trading 219 CC)

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**ORDER**

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The following order is granted:

1. The rule *nisi* issued on 24 August 2023 is discharged.
2. The applicants are directed to pay the costs of this application, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel, where so employed.

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## JUDGMENT

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**PIETERSEN AJ:**

### **Introduction**

[1] The applicants approached this court on an urgent basis and obtained an order against the respondents in their absence. The matter is now before court for reconsideration of the order, at the request of the respondents, in terms of rule 6(12)(c) of the Uniform Rules of Court.

[2] The following order granted by this court on 24 August 2023 is now the subject of reconsideration:

- '1. A rule nisi do issue calling on the respondents and any interested parties to show cause on or before 29 September 2023 why an order in the following terms should not be made final:
  - 1.1 to the extent required, the applicants are granted leave to institute this application in terms of Section 133(1)(b) of the Companies Act, 71 of 2008;
  - 1.2 pending a determination of the applicants' claims as against the first respondent and their voting interest in respect of the business rescue proceedings of the first respondent, the respondents are interdicted from proceeding with the reconvened meeting of creditors in terms of Section 151 of the Companies Act, scheduled to be held on Friday 25 August 2023 for the purposes of tabling and voting on the business rescue plan published on 30 June 2023 (the "BR Plan") and the amendments to the BR

Plan which were published on 15 August 2023, or any further meeting in terms of Section 151 of the Companies Act intended to be held thereafter; and

- 1.3 the respondents are directed to pay the costs of the application on the attorney and client scale.
2. Paragraphs 1.1 and 1.2 above shall operate as interim relief with immediate effect pending the final determination of this application.'

### **The background**

[3] The applicants approached the court as affected persons in their capacities as creditors of the first respondent ('Big Sky'). The applicants, being the Volkar Revocable Trust ('the Trust'), represented by the first and second applicants in their capacities as the trustees of the Trust, and Swiss Safari and Eco Tours (Pty) Ltd ('Swiss Safari') allege that their respective claims are recorded in Big Sky's management accounts for the year ending 28 February 2022. The applicants are disgruntled with the decision of Big Sky's business rescue practitioner (the second respondent) not to recognise their claims in the business rescue plan.

[4] The Trust alleges that it has a claim against Big Sky in the sum of R10 664 925 in respect of capital and R4 618 123 in respect of interest. Swiss Safari alleges that it has a claim against Big Sky in the sum of R3 505 828, arising from a loan advanced by Swiss Safari to Big Sky.

[5] On 20 February 2023, Big Sky commenced business rescue proceedings by way of a resolution filed in terms of section 129 of the Companies Act 71 of 2008 ('the Act'). On 22 February 2023, the second respondent was appointed as the business rescue practitioner of Big Sky and on 24 February 2023, the notice to commence business rescue in terms of section 129(3) of the Act, and a notice of appointment of the business rescue practitioner in terms of section 129(4) of the Act, were sent to all affected persons.

[6] Approximately two months later, on 26 April 2023, an exchange of correspondence commenced between the attorneys acting for the applicants and the

business rescue practitioner. The applicants' attorneys requested extensive information from the business rescue practitioner, which included a request to confirm that the claim of the Trust has been recognised.

[7] The business rescue practitioner provided a response on 12 May 2023, and indicated that a business rescue plan was being prepared and that he was waiting for confirmation of valuations of certain assets belonging to Big Sky. The business rescue practitioner further indicated that certain matters had come to his attention, which may require a restatement of Big Sky's financial statements and that this information appeared to have a direct impact on the applicants' claims against Big Sky. The business rescue practitioner accordingly invited the applicants to a meeting for purposes of discussing these matters before finalising the business rescue plan.

[8] The meeting took place virtually on 22 May 2023. According to the applicants, the business rescue practitioner acknowledged the Trust's claim against Big Sky but indicated that there were certain inconsistencies recorded in Big Sky's financial statements and that it would appear that moveable assets belonging to Swiss Safari had unlawfully been removed by the sole director of Big Sky. The meeting ended with the business rescue practitioner undertaking to provide the applicants' attorneys with a copy of the draft business rescue plan.

[9] The business rescue practitioner provided the applicants' attorneys with a copy of the draft business rescue plan on 30 May 2023 and also advised that he was engaging with the sole director of Big Sky to obtain information and clarity on the improvements made by Big Sky on Swiss Safari's property.

[10] On 30 June 2023, the business rescue practitioner published the business rescue plan and on 5 July 2023, the business rescue practitioner circulated a notice to the affected persons advising that the business rescue plan would be tabled at a meeting convened in terms of section 151 of the Act on 11 July 2023.

[11] In terms of the published business rescue plan, the claim of the Trust was reduced from approximately R15 million to R100. As a result, the applicants' attorneys addressed further correspondence to the business rescue practitioner, requesting supporting documents as well as a response to certain queries previously raised. On the day of the meeting, 11 July 2023, the applicants made a settlement proposal. This resulted in the meeting being adjourned by the business rescue practitioner to consider the applicants' settlement proposal and to deal with various issues raised by affected persons, as well as to amend the business rescue plan, should it be necessary.

[12] A further virtual meeting took place on 18 July 2023 between the applicants' representatives and the business rescue practitioner. At this meeting, the applicants' settlement offer was discussed and the business rescue practitioner, *inter alia*, confirmed that he would reconvene the section 151 meeting on 25 August 2023.

[13] On 15 August 2023, the business rescue practitioner addressed a circular to the affected persons and advised of the proposed amendments to the business rescue plan. These amendments only dealt with the secured creditors of Big Sky and the securities which they hold, which may be exercised if their claims are not settled in full following on the implementation of the business rescue plan. The business rescue practitioner further proposed that if the creditors do not accept the amended business rescue plan, then he would implement a structured winding-down of the first respondent. The circular further advised that the reconvened section 151 meeting would be held on 25 August 2023.

[14] The applicants, aggrieved that the amended business rescue plan still did not record the alleged full value of their claims, addressed further correspondence to the business rescue practitioner on 19 August 2023. It recorded that the applicants would bring urgent proceedings to interdict the implementation of the business rescue plan should the plan, as tabled, still not record the alleged full value of the applicants' claims.

[15] The business rescue practitioner responded on 22 August 2023 and advised the applicants to present their proposed amendments to the published business rescue plan at the section 151 meeting, which was to be held on 25 August 2023. The business rescue practitioner indicated that once these proposed amendments were seconded, same would then be voted on by the affected persons attending the section 151 meeting.

[16] The applicants were not satisfied with this response. Their attorneys again addressed correspondence to the practitioner and demanded that the meeting scheduled for 25 August 2023 be postponed to deal with the applicants' requested amendments, which involved the recordal of the alleged full value of the applicants' claims, failing which the applicants intend to approach the court on an urgent basis to interdict the section 151 meeting.

[17] The business rescue practitioner did not adhere to the applicants' attorneys demands and the application was subsequently issued and enrolled for hearing on 24 August 2023.

[18] In their founding affidavit, the applicants submit that they satisfy the requirements for interim relief as the business rescue practitioner has not fulfilled his obligations by failing and/or refusing to recognise the applicants' legitimate claims and rights in terms of the Act. The applicants argue that unless they obtain an interim order interdicting the section 151 meeting pending the amendment of the business rescue plan, the applicants' rights to participate at the section 151 meeting, to the full extent of their legitimate voting interests, would be lost. The applicants submit that, as creditors of Big Sky, they have a right to participate in the business rescue proceedings and to exercise their voting interests equal to the full value of their claims, at the section 151 meeting. The applicants further submit that their voting interests have been diluted because the business rescue practitioner has, for no apparent reason, refused to recognise the applicants' full claims and corresponding voting interests.

[19] The applicants further claim that they have a well-grounded apprehension of irreparable harm if the interim relief sought is not granted, as they would be prevented from exercising their voting interests equal to their full claim amounts at the section 151 meeting. The applicants submit that their right to participate in the section 151 meeting would be ignored and undermined and they stand to lose their entire claims against Big Sky.

[20] The applicants conclude that they have no suitable alternative remedy available to them.

[21] In their notice of reconsideration, the respondents submit that the court order be reconsidered and set aside on the grounds that the order is unenforceable as the business rescue practitioner had made his determination in terms of the Act when the business rescue plan was published, with the result that the business rescue practitioner is *functus officio*. An amendment can only be authorised by creditors at the section 151 meeting. The respondents further submit that the voting rights stand to be determined in terms of the provisions of section 145(4) of the Act and, accordingly, by the value of the claim of the Trust, being R100. Such voting rights automatically follow the recognition of the claim and, in particular, its quantum by the business rescue practitioner. There is no further statutory provision, save for section 151, providing for any person or body to determine the quantum of the claim and the value of the vote prior to the publication of the business rescue plan, except for the business rescue practitioner, who has already done so.

[22] In addition, the respondents argue that the order granted is void for vagueness in that, *inter alia*, it does not provide for any person or body to make the determination and it does not provide a period in which such determination is to be made.

[23] The respondents further took issue with the non-joinder of known creditors. The respondents submit that all creditors are directly and substantially affected by the grant of the interim order and that the failure to join these creditors is fatal to the application.

[24] The respondents further submit that the applicants had alternative remedies available to them. The respondents rely on the content of the business rescue plan, which provides that any party affected by the decision of the business rescue practitioner to reject a claim, can apply to the high court to review such decision. In addition, the respondents submit that the Trust ought to have taken the matter to the section 151 meeting and exercised their rights in terms of the Act.

[25] The respondents also raised further procedural points pertaining to the commissioning of affidavits, the authentication of foreign documents, urgency and an abuse of process, but these matters were not persisted with in argument and do not require further consideration due to my findings hereinbelow.

### **Principles applicable to a reconsideration application**

[26] Rule 6(12)(c) does not prescribe how an application for reconsideration is to be made. In *Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkers A/S (in liquidation)*<sup>1</sup> the Supreme Court of Appeal held that:

'The absence of prescription was intentional and the procedure will vary depending upon the basis on which the party applying for reconsideration seeks relief against the order granted ex parte and in its absence. A party wishing to have the order set aside, on the ground that the papers did not make a case for that relief, may deliver a notice to this effect and set the matter down, for argument and reconsideration, on those papers.'

[27] In *ISDN Solutions (Pty) Ltd v CSDN Solutions CC*<sup>2</sup> it was held that:

'The Rule has been widely formulated. It permits an aggrieved person against whom an order was granted in an urgent application to have that order reconsidered, provided only that it was granted in his absence. The underlying pivot to which the exercise of the power is coupled is

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<sup>1</sup> *Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkers A/S (in liquidation) and others* [2019] ZASCA 67; [2019] 3 All SA 321 (SCA) para 12.

<sup>2</sup> *ISDN Solutions (Pty) Ltd v CSDN Solutions CC and others* 1996 (4) SA 484 (W) at 486H-J.



the absence of the aggrieved party at the time of the grant of the order. Given this, the dominant purpose of the Rule seems relatively plain. It affords to an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from, an order granted as a matter of urgency in his absence. In circumstances of urgency where an affected party is not present, factors which might conceivably impact on the content and form of an order may not be known to either the applicant for urgent relief or the Judge required to determine it.’

[28] It has further been held in *Industrial Development Corporation of South Africa v Sooliman* that:<sup>3</sup>

‘The rationale is to address the potential or actual prejudice because of an absence of *audi alterem partem* when the ex parte order was granted.’

[29] Ultimately, ‘[i]n an application for reconsideration under rule 6(12)(c) the court considers the matter de novo’ and the applicant in the original application retains ‘the onus to justify the granting of the ex parte order’.<sup>4</sup>

[30] In *casu*, the respondents elected to deliver a notice setting out the grounds for a reconsideration of the order. The applicants’ case is set out in their founding affidavit and, in a nutshell, it is the applicants’ case that the section 151 meeting can only proceed when the applicants’ claims are acknowledged by the business rescue practitioner and correctly recorded in the business rescue plan.

### **Non-joinder of creditors**

[31] Mr Potgieter SC, who appeared for the respondents with Mr Van Der Walt, submitted that the relief sought by the applicants would prejudice all other creditors of the first respondent. The rights of these creditors, inclusive of their voting rights, are directly and substantially affected through the relief sought and granted, as the

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<sup>3</sup> *Industrial Development Corporation of South Africa v Sooliman and others* 2013 (5) SA 603 (GSJ) para 10.

<sup>4</sup> *Competition Commission v Wilmar Continental Edible Oils & Fats (Pty) Ltd and others* 2020 (4) SA 527 (KZP) para 20.

implementation of the business rescue plan will be delayed and the finalisation of the business rescue process will similarly be delayed.

[32] It was further submitted that the other creditors' claims will also be directly affected should the claims of the Trust be recognised, as these creditors would then receive substantially less than provided for in the existing business rescue plan. In addition, due to the vagueness of the order and the fact that it prevents the section 151 meeting from being held, it could have the result that the meeting will never occur, or at least not occur within the foreseeable future. On this basis, all existing creditors of Big Sky were entitled to and had to be joined to the application.

[33] Mr Aldworth, who appeared for the applicants, accepted that the order granted was vague but submitted that it is still enforceable in its current form. Mr Aldworth proposed an amendment to the order to cure its vagueness and argued that such amendment can limit any potential prejudice if the order is allowed to stand. On this basis, the applicants argued that there was no need to join other creditors to the proceedings.

[34] In *Absa Bank Ltd v Naude NO and others*<sup>5</sup> the Supreme Court of Appeal considered the issue of whether the non-joinder of creditors in an application to set aside a business rescue plan was fatal to the relief claimed in that application. The court held as follows:

'The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject-matter of the litigation which may prejudice the party that has not been joined.'

[35] The court in *Absa* relied on *Gordon v Department of Health, KwaZulu-Natal*<sup>6</sup> where it was held that 'if an order or judgment cannot be sustained without necessarily prejudicing the interests of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined'.<sup>7</sup>

<sup>5</sup> *Absa Bank Ltd v Naude NO and others* [2015] ZASCA 97; 2016 (6) SA 540 (SCA) ('*Absa*') para 10.

<sup>6</sup> *Gordon v Department of Health, KwaZulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA) para 9.

<sup>7</sup> *Absa* para 10.

[36] The court in *Absa* concluded:<sup>8</sup>

'That is the position here. If the creditors are not joined their position would be prejudicially affected: A business rescue plan that they had voted for would be set aside; money that they had anticipated they would receive for the following 10 years to extinguish debts owing to them, would not be paid; the money that they had received, for a period of 30 months, would have to be repaid; and according to the adopted business rescue plan the benefit that concurrent creditors would have received namely a proposed dividend of 100 % of the debts owing to them, might be slashed to a 5,5 % dividend if the company is liquidated.'

[37] In *Golden Dividend 339 (Pty) Ltd and Another v Absa Bank Limited*<sup>9</sup> the court similarly concluded that in litigation attempting to set aside a business rescue plan, the joinder of creditors is required.

[38] In *Kransfontein Beleggings (Pty) Ltd v Corlink Twenty Five (Pty) Ltd*<sup>10</sup> the issue was whether the non-joinder of creditors in an application to partly set aside and to amend a business rescue plan was fatal to the relief claimed in that application. The Supreme Court of Appeal endorsed its earlier decision in *Absa* and held:<sup>11</sup>

'As stated in *Absa v Naude*, if the creditors who voted for the business rescue plan are not joined, their position would be prejudicially affected in that a business rescue plan would be set aside, money that they had anticipated they would receive would not be paid and the money that they had received would have to be repaid. It thus follow that the non-joinder of Corlink's other creditors was fatal to the amended relief sought by the applicant for non-joinder. Since the question of joinder had been raised at the previous hearing and since the applicant had taken a deliberate decision not to join other creditors, I do not think that the court a quo was required to afford the applicant a further opportunity to join the other creditors.'

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<sup>8</sup> Ibid.

<sup>9</sup> *Golden Dividend 339 (Pty) Ltd and another v Absa Bank Limited* [2016] ZASCA 78 para 10 ('*Golden Dividend*').

<sup>10</sup> *Kransfontein Beleggings (Pty) Ltd v Corlink Twenty Five (Pty) Ltd and others* [2017] ZASCA 131 ('*Kransfontein Beleggings*').

<sup>11</sup> Ibid para 16.

[39] In *Industrial Development Corporation of South Africa Ltd v Van den Steen NO and others*<sup>12</sup> the applicant also sought an order that a meeting in terms of sections 151 and 152 of the Act, convened by the business rescue practitioners, be stayed. In that matter, the stay was sought pending the final determination of the application and/or an application for the removal of the business rescue practitioners, which application was to be launched within a certain period of time. The learned judge considered the judgments of the Supreme Court of Appeal in *Absa, Kransfontein Beleggings* and *Golden Dividend* and concluded as follows:

'[10] If the creditors who are entitled to consider, debate and vote on the approval of the business rescue plan at the s 151 meeting are not joined, their position would be prejudicially affected if the meeting is postponed and the holding of the meeting is stayed pending the final determination of the application and/or an application for the removal of the practitioners. A business rescue practitioner, in terms of s 150(5) of the Companies Act, has only 25 business days from the date of his or her appointment to publish the proposed business plan. This is a very short turnaround period...

[11] A postponement and stay of the s 151 meeting directly impact on the rights and interests of creditors and shareholders. The Companies Act recognises that all affected parties have a legal interest in a business rescue plan. Creditors, in particular, have statutory rights: to have the s 151 meeting convened and held; to have it held within the prescribed period of time after publication of the business rescue plan; to participate in debating the business rescue plan at the s 151 meeting and to vote on it; to have the outcome as soon as possible; and to participate in the consequences of its approval or rejection. These are legal rights. The relief sought by IDC had a direct impact on these rights.

[12] It follows, therefore, that the non-joinder of Heric's creditors was fatal to the relief sought by IDC.'

[40] The facts and circumstances in this matter are substantially similar to the facts and circumstances in *IDC*. The creditors of Big Sky are in the same position as the creditors of Heric in *IDC*. Similarly, Big Sky's creditors are entitled to consider, debate and vote on the approval of the business rescue plan as provided for in the Act. Any postponement or stay of the section 151 meeting will directly affect the rights and

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<sup>12</sup> *Industrial Development Corporation of South Africa Ltd v Van den Steen NO and others* [2018] ZAGPJHC 70 ('*IDC*').

interests of Big Sky's creditors. The creditors' statutory rights, as set out in *IDC*, to have the section 151 meeting convened and held; to have it held within the prescribed time period after publication of the business rescue plan; to participate in debating the business rescue plan at the section 151 meeting and to vote on it; to have the outcome as soon as possible; and to participate in the consequences of its approval or rejection, also extend to the creditors of Big Sky.

[41] As a result, it follows that the non-joinder of Big Sky's creditors is fatal to the application and the rule *nisi* must be discharged.

### **Absence of another remedy**

[42] It was not disputed in argument before me that the granting of an interlocutory interdict requires the absence of another adequate ordinary remedy.<sup>13</sup> It is therefore necessary to consider whether any other satisfactory remedies were at the disposal of the applicants.

[43] It has been held in *Hotz v UCT*<sup>14</sup> that '...the alternative remedy must be a legal remedy, that is, a remedy that a court may grant and, if need be, enforce, either by the process of execution or by way of proceedings for contempt of court.'

[44] The respondents submitted that the business rescue plan provides for an adequate remedy in the event of the business rescue practitioner's decision to reject a claim. The respondents relied on the following paragraph under clause 4.1.6.9 of the plan:

'The business rescue practitioner's decision to reject a claim shall be subject to review by the High Court of South Africa upon the application of any party affected thereby, provided that any such review proceedings shall be brought within 90 (ninety) days of receipt of advice of that decision in writing from the business rescue practitioner, acting in that capacity. Should the affected party fail to make such an application, they shall be deemed to have waived their

<sup>13</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227.

<sup>14</sup> *Hotz and others v University of Cape Town* [2016] ZASCA 159; 2017 (2) SA 485 (SCA) para 36 ('Hotz').

right to dispute such decision and shall thereafter be debarred from bringing such review proceedings.’

[45] In the circumstances, the applicants would have been entitled to review the business practitioner’s decision not to recognise their claims. On the papers before me, no reason was advanced why this does not constitute an adequate alternative remedy.

[46] In addition, the aforesaid alternative remedy clearly provides for an instance where claims are rejected by the business rescue practitioner and allows an aggrieved creditor to exercise its rights in court. The alternative remedy therefore satisfies the requirements in *Hotz*.

[47] Furthermore, even if the business rescue plan did not contain adequate remedies in the event of a rejection of a creditor’s claim by the business rescue practitioner, the Act itself provides for remedies to be exercised by aggrieved affected persons. The applicants approached the matter from the premise that the vote in respect of their claims will go against them as other creditors are expected to act in their own interests. That may be so,<sup>15</sup> but the anticipated outcome of the meeting cannot serve as a justification for its indefinite postponement pending finalisation of litigation pertaining to the Trust’s claims. The applicants ought to have exercised their rights in terms of section 152(1)(d) of the Act by attending the meeting and bringing a motion to amend the proposed plan in order to provide for the full extent of their claims. Alternatively, the applicants could have brought a motion to direct the business rescue practitioner to adjourn the meeting in order to revise the plan for further consideration in terms of section 152(1)(d)(ii). The applicants failed to exercise these remedies.

[48] If the meeting proceeded and the business rescue plan was adopted, the applicants could further have applied under section 130(1)(a)(ii) to apply to set aside the resolution to commence business rescue on the basis that there is no reasonable

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<sup>15</sup> *FirstRand Bank Ltd v KJ Foods CC* [2017] ZASCA 50; 2017 (5) SA 40 (SCA) para 79.

prospect of rescuing the company, as the plan was not validly adopted in circumstances where the plan was approved on the strength of affected persons exercising a voting interest which they did not have.<sup>16</sup>

[49] In *Airports Co v Spain NO*,<sup>17</sup> Chetty J also made reference to this remedy:

‘Whatever the applicant’s concerns are in relation to the validity of the plan adopted on 23 July 2018 or the procedure which preceded its adoption, the plan was never challenged or set aside by a court. On that basis, I must assume that the plan adopted was in accordance with the Act and is therefore binding on all parties until set aside.’

[50] I am therefore satisfied that a number of alternative remedies were at the disposal of the applicants. The applicants have, therefore, failed to satisfy the requirements for interim relief, and the rule *nisi* thus stands to be discharged.

### **Costs**

[51] The respondents submitted that a punitive costs order should be granted against the applicants in the event of the rule *nisi* being discharged. The respondents submitted that the application was brought with virtually no notice and, as set out above, other affected persons were not joined in the proceedings and received no notice at all.

[52] The applicants can certainly be criticised for bringing the application on such short notice and for their failure to join all interested parties. The application further also fails on the merits.

[53] However, there is no evidence of any misconduct on the part of the applicants and, whilst the proceedings brought by the applicants were ultimately unsuccessful, it cannot be said that the proceedings were frivolous or vexatious. I accept the submission by Mr Aldworth that a punitive costs order is not justified as the applicants

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<sup>16</sup> *African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd and others* [2015] ZASCA 69; 2015 (5) SA 192 (SCA) para 54.

<sup>17</sup> *Airports Co SA Ltd v Spain NO and others* 2021 (1) SA 97 (KZD) para 12.

were simply seeking to ensure that they are able to exercise their voting rights at the meeting.

[54] I therefore find it unnecessary to show any disapproval<sup>18</sup> towards the applicants' conduct. In addition, the employment of two counsel was warranted considering the complexity of the issues.

### **Order**

[55] The following order is made:

1. The rule *nisi* issued on 24 August 2023 is discharged.
2. The applicants are directed to pay the costs of this application, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel, where so employed.

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**PIETERSEN AJ**

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<sup>18</sup> *Orr v Solomon* 1907 TS 281; *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (6) SA 253 (CC).



Date of Hearing: 20 October 2023  
Date of Judgment: 09 February 2024

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