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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

CASE NO. 1324/2013

In the matter between:

CHARLES HENFRY PARSONS	Plaintiff / Applicant
and	
KEVIN JOHN EKE	First Defendant / Respondent
KEVIN JOHN EKE N.O	Second Defendant / Respondent
B S EKE N.O	Third Defendant / Respondent
R T McWILLIAMS N.O	Fourth Defendant / Respondent

JUDGMENT

NHLANGULELA ADJP:

[1] The trigger for these application proceedings is the complaint by the applicant that the respondents have breached the terms of an order granted by Schoeman J on 16 July 2013. The order reads as follows:

"IT IS ORDERED: (By Agreement)

1. That, in reaching the agreement set out herein, the Defendant acted both in his personal capacity as well as in his representative capacity as trustee and duly authorised representative of the Kevin Eke Family Trust (the "Trust").

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2. That the application be is hereby postponed *sine die*.

3. That the Plaintiff is granted leave to amend the particulars of claim within twenty one days of date hereof, to introduce the Trust (duly represented by its trustees for the time being), as a further Defendant in the matter; and to increase the sum claimed to the sum of R10.3 Million Rand, referred to below, together with interest at the rate of 9% per annum from date hereof.

4. That in settlement hereof the Defendant agrees to pay to the Plaintiff the sum of R10.3 Million Rand (Ten Million, Three Hundred Thousand Rand) in the manner set out below, together with interest hereon at 9% (nine percent) per annum from date hereof, plus the Plaintiff's cost hereof, as taxed or agreed.

5. That the Defendant shall pay to the Plaintiff the sum of R500 000,00 (Five Hundred Thousand Rand), within ten days of date hereof, such payment to be effected into the trust account of the Plaintiff's Johannesburg attorneys, Shannon Little Attorneys, Infinity office Park, Suit 2, Block G, Ground Floor, 2 Robin Close, Cnr Michelle & Hennie Albert Street, Meyersdal, particulars of which account are as follows:

   Nedbank, Park Town Branch, Account Number [redacted], Code 194405.

6. That the Defendant shall effect payment of a further sum of R500 000,00 (Five Hundred Thousand Rand), in the aforesaid manner, within thirty days of date of hereof.

7. That the Defendant shall make a further payment of R1 500 000.00 (One Million Five Hundred Thousand Rand), in the aforesaid manner, within sixty days of date hereof.

8. That the balance of the Defendant's outstanding indebtedness, as set out in the application for summary judgment, shall be paid at a rate of R500 000,00 (Five Hundred Thousand Rand) per month. The first instalment thereof shall be paid on the last day of the month following the due date for payment of the R1,5 million in terms of paragraph 7 above; thereafter, in the aforesaid manner, with each payment to be made before or on the last day of every successive month.

9. That as security for the said payments, the Defendant will procure and submit to the Plaintiff's attorneys, within fourteen days of date hereof, a deed of suretyship, on specific terms acceptable to the Plaintiff, of the entity known as East Cape Game Properties (Pty) Limited, of which the Defendant is the sole director.

10. That the Defendant will furthermore secure at his cost, as soon as the first erven in the Royalston Development becomes registrable (for the purpose of determining the meaning of "registrable" the definition in the Alienation of Land Act shall apply) that East Cape Game Properties register a covering mortgage bond in the Plaintiff's favour, over a sufficient number of unencumbered erven forming part of the Royalston Development in Port Elizabeth, to cover the Defendant's entire outstanding indebtedness to the Plaintiff. The Plaintiff's attorney shall approve the content of the bond prior to registration.

11. That for purposes of determining the number and values of the said properties to be encumbered, such numbers and values will be determined by agreement between the parties, alternatively, by an experienced estate agent in the Port Elizabeth area, such agent to be appointed by agreement between the parties, alternatively by the Chairman of the Institute of Estate Agents in the Eastern Cape.

12. That furthermore, in valuing the properties, only fifty percent (50%) of the agreed or determined valuation, per property, will be utilized for purposes of the aforesaid security.

13. That if at the time of the release of any of the said securities pursuant to a sale and execution of a transfer, 30% (thirty percent) of the net selling price of that particular property will be paid to the Plaintiff, into the said bank account, in reduction of the Defendant's indebtedness (for the purpose of this clause, the net selling price is defined as the gross selling price less the value added tax and agent's commission).

14. That the Plaintiff undertakes to release such erf from the bond against payment of the above, provided that the ratio of the Defendant's outstanding indebtedness to the remaining security does not exceed 30% (thirty percent).

15. That the payment referred to in paragraph 13 above will be in addition to the scheduled payments referred to in paragraphs 5, 6, 7 and 8 above.

16. That should the Defendant fail to comply timeously with any of his obligations set out herein, both in respect of the payments to be made and in respect of the securities to be supplied and registered, the Plaintiff will be entitled to enrol the summary judgment application for hearing forthwith, claiming from both the Defendant and the Trust, then the outstanding balance, interest and costs.

17. That the outstanding sum payable for purposes of the said application shall be proven by way of a supplementary affidavit by the plaintiff, indicating the outstanding balance at the time.

18. That the Defendant agrees, in both aforesaid capacities, not to oppose the said application for summary judgment.

19. That the parties agree that neither the Plaintiff's amendment of the particulars of claim, nor this settlement (which shall not constitute a novation), nor the filing of the further supplementary affidavit referred to above, will compromise the Plaintiff's entitlement to seek the order for summary judgment in terms of clause 16 above."

[2] It would appear from the order as aforementioned that the order was made pursuant to the action that had been initiated by the applicant against the first respondent, Kevin John Eke. For that reason it will be helpful to set out in brief the circumstances under which the order was issued.

[3] On 14 May 2013 the applicant instituted action proceedings against the first respondent claiming payment of about R5 000 000,00, being an outstanding amount of the purchase price (R7 775 000,00) fixed for the applicant's membership interest in and claims against Chezel Trading No. 4 CC sold to the first respondent in terms of a written agreement of sale dated 02 February 2010. As part-payment of the purchase price the first respondent was obliged, in terms of the agreement of sale, to deliver to the applicant 13 plots situated in the development known as Stromekraal, the property which was owned by the East Cape Game Properties (Pty) Ltd in which the first respondent was the sole shareholder. The value attached to the plots was a total sum of R3 775 000,00. Both the cash payment and delivery of the plots had to be made within time periods that were stipulated in the agreement of sale.

[4] In breach of the terms of the agreement of sale the first respondent failed to pay the purchase price in full, and to remedy the breach as asked to do so in terms of a letter of demand dated 18 April 2013. As a result the applicant instituted the action to enforce payment of the balance of the purchase price. During this time the first respondent had already nominated the Kevin Eke Trust, in which B. S. Eke and R. T. McWilliams are the trustees together with the first respondent, as the purchaser of the applicant's membership interest in Chezel.

[5] Upon receipt of a notice of intention to defend the action on 10 June 2013 the applicant launched an application for summary judgment and set it down for

hearing on 25 June 2013. Mageza AJ, before whom the matter served for the first time, postponed the hearing to 16 July 2013. Before the parties appeared before Schoeman J on 16 July 2013 for hearing, they spent some time negotiating terms that would be suitable for the purpose of settling their disputes. Having found those terms they reduced them into writing, whereafter they approached Schoeman J to convert them into an order of the court.

[6] The practice of making an agreement between the parties to litigation in civil matters an order of court is trite. In *Van Schalkwyk v Van Schalkwyk* 1947(4) SA 86 (O) at 95 Van Heerden J stated that:

> "... the tradition of such orders is very strong in our legal system".

This tradition has been followed in this division from time immemorial.

[7] Kotze JA in *Schrierhout v Minister of Justice* 1925 AD 417 at 423 had the following to say:

> "There is no law preventing the parties to legal proceedings from coming to a voluntary compromise and settlement in regard to their various claims in a law suit. The law, in fact rather favours a compromise (*transactio*), or other agreement of this kind; for *interest reipublicae ut sit finis litium*. Accordingly, if there exists no objection in the nature or terms of such compromise or other agreement between the parties, embodied in a consent paper, the practice of the Courts is to confirm it, and make the agreement arrived at a rule or order of Court."

[8] In the case of *Le Grange and another In re: Le Grange v Le Grange* [2013] JOL 30645 (ECG) D. Van Zyl ADJP had the occasion to deal with a similar situation. The learned Judge had to deal with the purpose, nature and effect of a deed of settlement, albeit arising from a divorce action, made by parties in civil litigation. He said the following in paras [9] and [10] of his judgment:

> "[9] When a settlement agreement is concluded in the context of a civil action its aim is to relieve the Court from its duty to decide the issues in the action. Where it has the effect of disposing of the issues between the parties as raised by the action itself, it would in most instances constitute a compromise (*transactio*). A compromise is subject to the common-law principles of contract. The implication thereof is that the agreement may be enforced by any party thereto or resiled from by any party on the same grounds as those applicable to contracts in general . . .
>
> [10] The parties may . . . choose to agree to ask the Court to give judgment on the issues raised by the action in accordance with the terms of their settlement agreement. One of the advantages of this arrangement is that the Court retains jurisdiction over the matter in the sense that it has the inherent power or authority to ensure compliance with its own orders. This enables the parties, in the event of a failure by any one of them to honour the terms of the order, to return directly to the Court that made the order, and to seek the enforcement thereof without the necessity of commencing a new action."

The learned Judge then said at para [34]:

> "[34] . . . The settlement of matters in dispute in litigation without recourse to adjudication is generally favoured by our law and our courts. The substantive

law gives encouragement to parties to settle their disputes by allowing them to enter into a contract of compromise. A compromise is placed on an equal footing with a judgment. It puts an end to a lawsuit and renders the dispute between the parties *res judicata*. It encourages the parties to resolve their disputes rather than to litigate. As Ruber puts it:

'A compromise once lawfully struck is very powerfully supported by the law, since nothing is more salutary than the settlement of lawsuit.'

[9] The consent order of 16 July was taken on terms which permitted the applicant to effect certain amendments to the original particulars of claim. I have already alluded to the fact that the first respondent had later nominated the Kevin Eke Family Trust as the purchaser in terms as he had been permitted to do so in the agreement of sale. In paragraph 3 of the consent order, the nomination of the Trust accounts for the agreement reached that the applicant may amend the summons to introduce the second, third and fourth respondents as the necessary parties in these proceedings. A further amendment agreed to relates to the increase of the debt to ten million and three hundred thousand rand. The consent order also shows, in paragraph 17 thereof, that the applicant was allowed to file a supplementary affidavit indicating the outstanding balance in the event of it being necessary to ask the court to enforce payment thereof. The applicant had complied fully with the terms and conditions of the consent order when the matter was set down for hearing on 11 March 2014. On the contrary, the respondents had not so complied.

[10] The applicant's case is that the respondents have failed to fulfil their obligations in terms of the consent order, more particularly in that they had failed to pay the amount claimed in full with the result that as at 11 March 2014 they were indebted to the applicant in the sum of R7 300 000.00 plus interest thereon in the sum of R443 145.21. That the respondents are in breach of the terms and conditions of the consent order is not in dispute. The validity of the terms and conditions agreed to and contained in the order is not disputed by the respondent. However, it was contended by *Mr Scott SC*, who appeared on behalf of the respondent, that the intention of the parties as gleaned from the consent order is that the agreement reached is not enforceable to the extent that it did not constitute a final judgment or order upon being recorded in an order of court. Consequently, the applicant, upon breach of the agreement by the respondents, was entitled to do no more than proceed with his application for summary judgment. Counsel premised his contention on the case of *Tasima (Pty) Ltd v Department of Transport and Others* 2013(4) SA 134 at para [54] (GNP) where it was stated that the interim consent order merely recorded the terms of an agreement between the parties and did not constitute a direction by the court that one of the parties must implement that agreement on form of contempt. Counsel went further to submit that since the consent order is, on its wording, not capable of judicial enforcement the court is enjoined to adjudicate certain defences as put up in opposition to the application for summary judgment. I proceed to list the defences as follows:

(a) The claim brought by the applicant is pre-mature to the extent that the applicant, as a credit provider in terms of *s40(2) of the National Credit Act No. 34 of 2005* (the NCA), ought to have first issued a letter of demand as envisaged in s129 of the NCA.

(b) The terms of the consent order, which more than double the amount of R5 000 000.00 allegedly owing by the first respondent to the applicant, do not raise a cause of action against the first respondent because he bound himself as a surety for the indebtedness of the Trust in respect of its obligation to pay R5 000 000.00 to the applicant as provided in the sale agreement.

(c) The contents of the consent order, in so far as it is a subsidiary agreement to the main agreement of sale, do not disclose a cause of action against the second respondent. Alternatively, if the causa does exist the provisions of *s2(2) of the Conventional Penalties Act No. 15 of 1962* would apply such that the consent order is rendered unenforceable in law.

(d) The provisions of clause 18 of the consent order that the respondents shall not oppose the enforcement of the applicant's rights to recover outstanding balance of the debt, interests and costs by re-enrolment of the summary judgment application for hearing are *contra bonos mores* and, therefore, unenforceable.

(e) The applicant has filed a third supplementary affidavit which the applicant was neither entitled to place before this court in terms of

the consent order nor in terms of Rule 32 of the Uniform Rules of Court. Further, such affidavit fails to comply with Rule 32(2) that not only the amount owing be verified, but also the cause of action.

[11] I will deal with the defences raised in the course of the judgment. Without much ado I must address the issue raised, *inter alia*, on behalf of the respondents that relates to the executability of a consent order made in civil litigation generally. In this regard the following was said by Trengove AJA, as he was then, in the case of *Swardif (Pty) v Dyke N.O.* 1978(1) SA 928 (AD) at 944F:

> "... in a case like the present, where the only purpose of taking judgment was to enable the judgment creditor to enforce his right to payment of the debt under the mortgage bond, by means of execution, if need be, it seems realistic, and in accordance with the views of the Roman-Dutch writers, to regard the judgment not as novating the obligation under the bond, but rather as strengthening or reinforcing it. The right of action, as FANNIN J [in *Trust Bank of Africa Ltd v Dhooma* 1970(3) SA 304 (N) at 308], puts it, is replaced by the right to execute, but the enforceable right remains the same."

And Alkema J had the following to say in *Thutha v Thutha* 2008(3) SA 494(TK) at 505, paragraph [45]:

> "In my view contractual principles dogmatically should play no role in the enforcement of a court order. A court order very often constitutes a novation of all contractual rights and obligations which preceded it and which resulted in the order. When this happens, there is no longer any agreement in existence which can be interpreted, complied with, varied or amended or enforced. Only a court order is left for enforcement. Save for issues such as jurisdiction, service and *locus*

standi, the essential questions to be asked when a court is requested to enforce a court order are:

(a) Is there a valid court order? If not,

(b) Has the respondent complied with its terms? If not,

(c) Is the respondent in wilful or reckless default?

If the answer to the first and third questions is in the affirmative and to the second question in the negative, the order should be granted. See *Consolidated Fish Distributors (Pty) Ltd v Zive and Others* 1968(2) SA 517 (C) at 522 (and the authorities cited there); *Culverwell v Beira* 1992(4) SA 490 (W) at 493D."

[12] As submitted, correctly so, by *Mr Huissamen SC*, counsel who appeared on behalf of the applicant, based on the *dicta* by D. Van Zyl ADJP in *Le Grange, supra*, by agreeing to make a settlement agreement an order of court both parties commit themselves to complying with the terms of the order and be subjected to sanction by the court should they fail to do so. The consent order brings about a change in the status of the parties as well as the obligations of the parties to a settlement. The order has the effect of converting the parties contractual rights into an executory order. It puts an end to the lawsuit and renders the dispute between the parties *res judicata*. Any actionable proceedings on the underlying settlement agreement become barred by the operation of the principle of *res judicata*. The judgment creditor will be at large to ask the court to ensure compliance with the order, and using any legal remedy available to it. And the jurisdiction of the court is retained over the matter in the sense that it has an inherent power and authority to ensure compliance with its own orders.

[13] In my view the consent order in this case is similar to the one that was discussed by D. Van Zyl ADJP in the case of *Le Grange*. I did not hear counsel for the parties to be contending otherwise. However, they differed as to the construction of the consent order, *Scott SC* contending that the order ought to be interpreted as a mere recordal of the settlement agreement between the parties. The respondents' reliance on the case of *Tasima, supra* indicates quite clearly that they are influenced by the judgment of Alkema J in the case of *Thutha, supra*, in which it was stated that the practice of incorporating the terms of a settlement agreement into an order of court should not be followed; and that no agreement should be made an order of court unless its provisions can be translated into an order upon which the parties thereto can proceed directly to execution without redress to further litigation. This approach to consent orders seem to have been predicated on the decision in *Mansell v Mansell* 1953(3) SA 716 (N) at 721 B - D where it was stated as follows:

> **"We have frequently pointed out that the court is not a registry of obligations. Where persons enter into an agreement, the obligee's remedy is to sue on it, obtain judgment and execute. If the agreement is made an order of Court, the obligee's remedy is to execute merely. The only merit in making such an agreement an order of Court is to cut out the necessity for instituting action and to enable the obligee to proceed direct to execution."**

[14] The approach adopted in *Thutha* was not followed in *Le Grange* by reason that it is unduly inflexible and restrictive on the inherent power of the court to enforce its own orders. The views expressed by D. Van Zyl ADJP (Mey AJ concurring) that even if the consent order is *ad fuctum praestandum* (permitting a committal of

the judgment debtor upon breach) or *ad pecuniam solvendam* (permitting issuance of writ upon breach) the court being asked to enforce compliance may, in the exercise of judicial discretion vested upon it, choose a less coercive method to enforce the order. The statement of the learned Acting Deputy Judge President, which appears in *Le Grange*, at para [40], commends itself to me. It reads:

> **"The ability of the Court to grant orders other than committal for contempt, or the levying of execution leaves it the scope to be innovative in the manner in which it compels compliance with its own orders. It is therefore not uncommon for the Court to first make an order compelling the judgment debtor to comply with the terms of the consent judgment on which order the judgment creditor may then subsequently base proceedings for contempt in the event of non-compliance. This may be necessary where the obligation in the settlement agreement was conditional upon some further events. There exists, accordingly, no reason why a right or an obligation in a consent judgment which is otherwise capable, in the absence of the judgment, of supporting a contractual claim for specific performance, should not also be capable of being translated in subsequent proceedings into an executory order."**

[15] In this case the respondents agreed, and they were duly ordered in clause 4 of the consent order, to pay the applicant the sum of R10 300 000.00 with interest thereon at 9% per annum and costs of suit over a period of time and further conditions as set out in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 thereof. It was also agreed, and duly ordered in clause 16 of the consent order, that the applicant would be entitled to approach the court for the purpose of enforcing payment in the event that the respondents are in breach of their

obligations. It is not in dispute that the respondents failed to comply with their obligations such that as at the time of enrolment of the summary judgment application for hearing they were in default of paying the balance of the debt which then stood at R7 300 000.00 plus interest in the sum of R443 145.21. I am satisfied that the method of proving the balance of the debt by affidavit was applied strictly in terms of the consent order. The order of enforcement that the court may grant will not invest the Sheriff with the task of determining the outstanding debt to be paid. The execution of the judgment will follow as soon as it has been granted in these proceedings.

[16] At the time of making of the consent order the respondent were properly before the court and duly legally represented. The terms and conditions as set out in the consent order seem to me to be linguistically clear and unambiguous I am satisfied that the order is final in its terms.

[17] The defence that the consent order is unenforceable by reason that clause 18 thereof is *contra bonos mores* lacks substance. The respondents concluded a deed of settlement with the applicant voluntarily and being fully informed of its full import and consequences. The rights and obligations flowing from the consent order are private and / or personal to the contracting parties, the order is directly connected to the parties and the dispute is based on the obligations of the respondents. And the validity of the order is not impugned. Consequently,

clause 18 is perfectly legitimate and is enforceable provision of the consent order. In *Schierhout supra*, Kotze JA stated appositely at 424 – 425 as follows:

> **"If the agreement arrived at had been of the nature contended for by the appellant, then I agree that the principle *nec privatorum pactionibus juri public derogari possit* would have applied. But here no public right was waived. All that the agreement amounts to is that it contains a renunciation by the appellant of certain rights connected with the particular matters in dispute between him and the Minister of Justice. As these rights are of a purely personal and private nature, they could be waived or renounced by the appellant without there being any violation of the public law of the land."**

[18] The amendment of the particulars of claim in terms of the consent order did not confuse the citation of the parties who are liable for the payment of the debt. Neither did the increase of the capital debt from R5 000 000.00 to R10 300 000.00 alter the cause of action upon which the applicant instituted the action. On 15 February 2010, before this application was set down for hearing, the Trust was nominated as the purchaser of the properties and its trustees were subsequently joined in the action as the second, third and fourth defendants. The first respondent was not excused from the obligations of the Trust because he had acted in the making of the consent order in his personal capacity as well as a trustee and surety representing the Trust. In these proceedings it was by agreement of the first respondent, together with the co-respondents, that the amount of debt be increased to R10 300 000.00. Both the amendments and consent order are inextricably connected to the original dispute which arose due to unlawful failure by the respondents to pay the full purchase price and comply

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with all the obligations connected therewith. As already stated in this judgment the consent order brought about a change in the status of the rights and obligations of the parties to the settlement agreement. The liability of the respondents to pay the debt is now determined by the terms of the consent order itself. The terms of the order delineate the cause of action. It is no longer available to the respondents to found a defence to the relief sought in this application by looking at the cause of action as set out in the original summons. The consent order is not a subsidiary agreement as contended for on behalf of the respondent. Neither is it proper for the consent order to be viewed as a contract governed by the provisions of the NCA. In this regard I am in agreement with the approach adopted by the Western Cape High Court in the case of *Investec Bank (Mauritius) Ltd v Mohan* (6713/2010) [2012] ZAWCHC 62 (20 March 2012), where Gangen AJ stated as follows:

> "[11] In interpreting paragraph 15 of the court order, there are two issues raised. The first one refers to the Respondent's submission that reference to the "papers duly supplemented" is to be read in that the Applicant ought to have in his supplemented papers dealt with compliance in terms of section 129(1) of the National Credit Act. In this regard, the Respondent contends that by making the settlement an order of court, it did not waive its rights in regard to the National Credit Act.
>
> [12] I am of the view that the Applicant was entitled to bring the application without notice in terms of s129 of the national Credit Act because the matter is being brought before Court to address Respondent's default of the terms of the court order. The Court order is not a credit agreement and s129 of the National Credit Act specifically makes reference to default of

> **the credit agreement. I do not believe that it can be read in 'papers duly supplemented' that the Applicant was to comply with s129 of the National Credit Act."**

[19] Consequently, the defences of the respondent as set out in paragraphs [9] (a), (b), (c) and (d) must fall to the grounds. The same goes for the argument that the consent order is unenforceable to the extent that the increased debt in the sum of R10 300 000.00 is an irrecoverable penalty claim, founded on respondents' failure to pay the purchase price in terms of the agreement of sale, that offends the provisions of s2(2) of the Conventional Penalties Act No. 15 of 1962.

[20] The defence listed in paragraph [9] (e) above has no merit. I am in agreement with *Mr Huisamen's* contention that since the relief sought in this application is based on the cause of action arising from respondents' default in respect of their obligations as set out in the consent order, there would have been no need to verify the order. In my view the *dicta* in the case of *Mohan, supra,* referred to hereinabove finds resonance on this defence.

[21] In my view all the defences raised on behalf of the respondents are misplaced. The applicant is entitled to an order in terms of the draft order as suggested by *Mr Huisamen.*

[22] In the result I grant an order in the following terms:

That summary judgment be granted against the first defendant / respondent in his personal capacity, jointly and severally with the second, third and fourth defendants / respondents, in their capacities as trustees for the time being of the Kevin Eke Family Trust, the one paying, the other to be absolved, in the following terms:

(a) Payment of the sum of R7 300 000.00;

(b) Interest in the sum of R443 145.21;

(c) Further interest on the said sums of R7 300 000.00 and R443 145.21, at the rate of 9% per annum, from 25 February 2014 to date of payment in full;

(d) Costs of suit.

[redacted]

Z M NHLANGULELA
ACTING DEPUTY JUDGE PRESIDENT
BHISHO

Counsel for the Plaintiff/Applicant: Adv J D Huisamen SC
Instructed by: Kaplan Blumberg Attorneys
Block A, First Floor
Southern Life Gardens
70 Avenue, Newton Park
PORT ELIZABETH, 6057
Ref: K Morris/Bronwynne/MAT10906

Counsel for the Defendant/Respondents:	Adv P W A Scott SC
Instructed by:	Liston, Brewis & Company
	35 Albany Road
	PORT ELIZABETH
	Ref: A S BREWIS/FAS

Heard on: 11 March 2014

Judgment delivered on: 08 May 2014

"C"

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

PORT ELIZABETH, FRIDAY, 5TH SEPTEMBER 2014

BEFORE The Honourable Mr Justice NHLANGULELA, ADJP

Case No. 1324/2013

In the matter between:

KEVIN JOHN EKE	**1ST DEFENDANT/APPELLANT**
KEVIN JOHN EKE N.O.	**2ND DEFENDANT/APPELLANT**
BS EKE N.O.	**3RD DEFENDANT/APPELLANT**
RT WILLIAMS N.O.	**4TH DEFENDANT/APPELLANT**

and

CHARLES HENRY PARSONS	**PLAINTIFF/RESPONDENT**

Having heard Advocate Scott (S.C.), Counsel for the Defendants/Appellants and Advocate Huisamen (S.C.), Counsel for the Plaintiff/Respondent and having read the documents filed of record.

IT IS ORDERED:

1. That the application for leave to appeal be and is hereby dismissed with costs.

BY ORDER OF THE COURT

[redacted]

B. LUCAS (MS)
pp REGISTRAR

LISTON, BREWIS & CO

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"D"

CASE NO. 1324/14

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

Date: 5 September 2014

In the matter between:

KEVIN JOHN EKE & 3 OTHERS — Applicants

and

CHARLES HENRY PARSONS — Respondent

JUDGMENT (Application for leave to appeal)

NHLANGULELA, ADJP:

1. I am not persuaded that the application for leave carries a prospect of success on the grounds as relied upon in that, in the main, in my considered and honest opinion, paragraph 16 of the order dated 16 July 2013 retains and/or captures rather than destroys the disputed issues of the respondent's claim for payment of a debt.
2. In my view the debate which I am confronted with is one of form rather than subetance.
3. The order of 16 July 2013 is quite capable of enforcement without a need of a further debate which was meant to be put at rest in the order as aforementioned. In the result I make the following order:
   (a) The application for leave to appeal be and is hereby dismissed with costs.

[redacted]

NHLANGULELA, ADJP

JUDGE OF THE HIGH COURT