IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION BLOEMFONTEIN

Case no: 5081/2014
4817/2014

In the matter between:

JDJ KNIPE	First Applicant
ABJ KNIPE	Second Applicant
JMD VIGNE	Third Applicant

and

CAROL JESSIE KATHLEEN LOTZ	First Respondent
ROBERT PETRUS JANSEN KNIPE	Second Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Third Respondent
OA NOORDMAN NO	Fourth Respondent
CB ST CLAIR COOPER NO	Fifth Respondent
SM RAMPORORO NO	Sixth Respondent
(in their capacity as provisional liquidators of Kameelhoek (Pty) Ltd)	
OA NOORDMAN NO	Seventh Respondent
CB ST CLAIR COOPER NO	Eighth Respondent
SM RAMPORORO NO	Ninth Respondent
(in their capacity as provisional liquidators of Schaapplaatz 978 (Pty) Ltd)	

JUDGMENT BY: G. J. M. WRIGHT, AJ

HEARD ON: 13 NOVEMBER 2015

DELIVERED ON: 11 FEBRUARY 2016

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[1] This is an application in terms of Rule 30. The application deals with steps taken in two separate applications for leave to appeal. The parties in the two applications for leave to appeal are essentially the same, even though the respondents were cited in a different order in the two applications. In the present application the citation in the heading follows the citation as in case 4817/2014. For the sake of convenience and to prevent possible confusion, I will refer to the relevant respondents by name in as far as it may be necessary.

[2] The Applicants are applying for an order in the following terms:

(i) declaring the notices of set-down in the applications for leave to appeal in cases 5081/2014 and 4817/2014 irregular steps;

(ii) setting aside the notices of set-down;

(iii) the Respondents to pay the costs of the application in terms of rule 30.

[3] In order to properly understand this application and the milieu in which it was launched, it is necessary to consider the relevant background facts. I list a few of these:

(i) The Applicants wish to appeal against my judgments in cases 5081/2014 and 4817/2014. The written judgments were delivered on 25 June 2015.

(ii) Applications for leave to appeal were filed on 17 July 2015. This was within the time periods allowed by Rule 49(1)(b).

(iii) The Applicants took no steps to enrol the matters for argument.

(iv) Van Zyl J was tasked to hear the applications for leave to appeal in my absence. Mr. Senekal, the attorney who represents the provisional liquidators in both applications, arranged a date for the hearing of the matters through contact with the secretary of Van Zyl J.

(v) Senekal filed and served notices of set-down for the applications for leave to appeal on or about 8 September 2015. In terms thereof the applications were to be heard on 23 September 2015 (the date arranged with Van Zyl J and her secretary). The notices were duly served on the attorneys for all the other parties.

(vi) Senekal was the only legal representative who was in communication with the office of Van Zyl J prior to the set-down of the matters.

(vii) Attorneys for the Applicants filed a notice in terms of Rule 30(2)(b), affording the provisional liquidators an opportunity to withdraw the notices of set-down within 20 days. The Applicants claimed that the notices were irregular steps. The Rule 30 notice is dated 17 September 2015. It was served on 18 September 2015 on some of the parties and/or their attorneys.

(viii) The notices of set-down were not withdrawn. This application in terms of Rule 30(2) is dated 22 September 2015. It was served on the attorneys for Carol on 22 September 2015 at 16h40. It was served on Pieter or his attorney (it is unclear which) on 23 September 2015 and on at least one of the provisional liquidators on 23 September 2015 at 9h05. It was not served on Senekal, the attorney for the liquidators.

(ix) The applications for leave to appeal did not proceed on 23 September 2015. The two applications, as well as the Rule 30 application, were by agreement postponed to 13 November 2013. All costs stood over for later adjudication.

(x) Opposing papers were filed on behalf of the provisional liquidators and the Rule 30 application was argued on 13 November 2015.

(xi) The two applications for leave to appeal were also argued on 13 November 2016.

[4] Even from a cursory reading of the founding papers it becomes apparent that the alleged irregularity is attributed squarely to Senekal, the attorney representing the provisional liquidators. The principal question is therefore whether the steps taken by Senekal (or the steps *not* taken by Senekal) were indeed irregular as envisaged by Rule 30.

[5] Van Zyl J would initially have heard the matter and her secretary, Hennie van Vuuren, was involved in the arrangements surrounding the set-down of the applications for 23 September 2015. There is a dispute as to what exactly transpired between Van Vuuren en Senekal. Van Vuuren was declared to be a witness for the court and he deposed to an affidavit, setting out his version of events and responding to the affidavits filed on behalf of the relevant parties. His version of events is also contained in an e-mail sent to Mr. Patel, attorney for the Applicants, attached to the founding papers.

[6] The version of Van Vuuren does not correspond with that of Senekal. The Applicants made much of this and based several of their arguments on the version provided by Van Vuuren. Senekal vehemently denies the facts set

out by Van Vuuren. During oral argument Mr. Rossouw, counsel for the provisional liquidators, submitted that the matter may be dealt with without making a finding on the credibility of either Van Vuuren or Senekal. It was further submitted that the affidavit of Van Vuuren should be disregarded and the matter decided purely on the version of Senekal. Counsel for the Applicants did not seriously oppose these submissions and all parties argued the matter without reference to Van Vuuren's affidavit.

[7] Senekal disputes firstly that he had an obligation to ensure that the date is suitable to all concerned, secondly that Van Vuuren requested him to ensure that the date suits all, and thirdly that he (that is Senekal) acted unilaterally in referring to dates for the filing of heads of argument.

[8] The object of Rule 30(1) had been stated as follows in SA METROPOLITAN LEWENSVERSEKERINGSMAATSKAPPY BPK v LOUW NO 1981 (4) SA 329 (O) at 333 G – H:

> ". . . . Rule 30(1) was intended as a procedure whereby a hindrance to the future conducting of the litigation, whether it is created by non-observance of what the Rules of Court intended or otherwise, is removed."

[9] A few general principles have been established through case law. Amongst these is the principle that the subrule does not apply to omissions, but to positive steps or proceedings (See: **Jyoti Structures Africa (Pty) Ltd V Krb Electrical Engineers; Masana Mavuthani Electrical & Plumbing Services (Pty) Ltd t/a Krb Masana** 2011 (3) SA 231 (GSJ) at 235 A – B). A court has a discretion whether or not to grant the application even if the irregularity is established (See: **Northern Assurance Co Ltd v Somdaka** 1960 (1) SA 588 (A) at 595 B). Courts often overlook an irregularity in procedure which does not work any substantial prejudice to the other side (See: **Uitenhage Municipality v Uys** 1974 (3) SA 800 (E) at 805 D – E). Proof of prejudice is a prerequisite to success in an application in terms of rule 30(1) (See: **SA Metropolitan Lewensversekerings-Maatskappy Bpk V Louw NO** 1981 (4) SA 329 (O) at 333 G – 334 G).

[10] The following facts are common cause:

(i) Senekal took the initiative to approach the secretary of Van Zyl J and request a date for the matter to be heard. He did not invite the legal representatives of any of the other parties to join him in this endeavour.

(ii) The legal representatives for the Applicants and the other respondents were not contacted by Van Zyl J or her secretary.

(iii) No-one enquired from the Applicants' legal representatives whether the date of 23 September is suitable to them.

(iv) The Applicants and their attorneys were not involved in any of the arrangements or the set-down of the matters. They only became aware of Senekal's dealings with Van Vuuren after arrangements for the hearing of the matter had already been made.

(v) The matters were set down with around 11 court days' notice to the Applicants and the other respondents. The applications for leave to appeal would have been heard during the court recess.

(vi) After the matters were set down for hearing, Senekal was informed that the date is not suitable to the Applicants and their legal representatives. He was so informed on or about 16 September by way of a letter addressed to his offices (thus six court days after the Applicants' attorneys became aware of Senekal's actions and the set-down of the matters).

(vii) Although the attorneys representing the Applicants and the provisional liquidators were in telephonic contact in the time period after the applications were set down for hearing, they did not discuss the applications for leave to appeal or the date of hearing.

[11] In the initial Rule 30 notice as well as this application, the Applicants base their objections against the notices of set-down on the wording of Rule 49(1)(d). It is essentially alleged that, as the registrar did not set the matter down, the notices of set-down are irregular. The subrule reads as follows:

> "The application . . . shall be set down on a date arranged by the registrar who shall give written notice thereof to the parties."

[12] It is not in dispute that the registrar of the Bloemfontein High Court did not arrange the date, nor did the registrar give written notice of the date. Secretaries of judges are occasionally referred to as registrars (at least in this Division). Should the subrule then be interpreted and applied to the facts *in casu*, the registrar (being Van Vuuren, the judge's secretary) did arrange the date. He did not, however, give written notice of the date to any of the parties. The communication between Van Vuuren and Senekal was by telephone. Van Vuuren only had contact with the Applicants' attorney, Patel, after allegations were made of irregularities. Even on Senekal's version, Van Vuuren relied on Senekal to do the necessary. The Applicants and other respondents were in fact given written notice of the date that had been arranged.

[13] Rule 49(1)(d) does not prescribe that the date should be suitable to all. A literal reading of the subrule allows for a situation where the registrar arranges a date with the specific judge and then informs the parties thereof, regardless of the question whether the date suits the parties. It would then be for any of the parties who find the date unsuitable, to apply and / or arrange for a postponement.

[14] Coming back to the facts in this matter, the Applicants would not have had any reason for complaint if the registrar had arranged the date of 23 September with Van Zyl J and then informed the parties of the arrangement. If the date then did not suit them (for example because their counsel of choice was not available) they would have had to apply for a postponement. It appears to me overly technical to use the mere intervention of Senekal as reason to declare the notices of set-down as irregular.

[15] According to Van Vuuren he relied on assurances from Senekal that the date suits all concerned. Senekal denies this version. They both agree at least that Van Vuuren left it in Senekal's hands to inform the other parties of the date. This does not strictly conform to the wording of Rule 49(1)(d). The Applicants were indeed informed of the date.

[16] Nowhere in the Rule 30 application papers do the Applicants refer to Practice Rule 16 of this Division. Practice rule 16(3) reads as follows:

> "As soon as the judgment has been filed with the registrar, the registrar must within one week request suitable dates from the judge involved and thereafter arrange a date suitable to all and the matter must be set down by the applicant in accordance therewith."

[17] The practice rule does not prohibit the set down of the matter by a respondent. By way of analogy I refer to rule 49(6)(a) that allows for a situation where an appellant fails to apply for a date of hearing of an appeal. After expiry of the prescribed time period, the respondent may apply for a date. If only an applicant in an application for leave to appeal was allowed to proceed with the set-down of the matter, it may lead to a situation where the appeal process is unduly delayed by an applicant who is dissatisfied with an order that has been made against him. In situations where the execution of an order is suspended pending the outcome of the appeal process, an applicant may be tempted to procrastinate for as long as he or she gets away with the tactic. Logic dictates that a respondent may intervene and take the appeal process a step closer to finalization (such as arranging for the hearing of the application for leave to appeal).

[18] Pertinent to the practice rule is that the date arranged, must be suitable to all. In this regard the practice rule specifically differ from (and expand on) the wording of Rule 49(1)(d). The essence of the problem here is that the date of 23 September did not suit the Applicants and their legal representatives (at least this is what they say under oath) and that is what they are complaining about. The mere non-suitability of the date does not however render the notices of set-down irregular. It could possibly have entitled the Applicants to a postponement of the matter. The Applicants chose not to request a postponement and it would be improper to speculate on the outcome of an application for postponement, should that have been the course of action chosen by the Applicants.

[19] The founding affidavit contains no allegations regarding the non-suitability of the Applicants' counsel. The affidavit merely concludes with the submission that the suitability of the date was not canvassed with the Applicants' attorney. In Patel's letter of 16 September he complains first and foremost about the time period proposed for the filing of heads of argument. The letter also mentions that "Counsel has also indicated that due to other commitments he is in any event not available to argue the matter on the 23rd September 2015". The provisional liquidators do not attack this contention, except for stating that Patel should have contacted the advocate sooner.

[20] On a side note - neither the registrar of the High Court nor any judge's secretary requested suitable dates from me (being the judge against whose judgments the Applicants wish to appeal). My stint as acting judge had already come to an end at the time when the applications for leave to appeal were filed. I had no knowledge of the applications and could not initiate arrangements. I assume that the Judge-President requested Van Zyl J to deal with the matters in my absence. That will explain why her secretary, Van Vuuren, was tasked with arrangements. I cannot comment to what extent these unfortunate facts may have contributed to the delay in having the applications for leave to appeal heard. However, the Applicants still failed to explain what they did to advance finalization of the matters.

[21] The Applicants did not make any effort to arrange for the matters to be heard. Senekal took the initiative on behalf of the provisional liquidators. He took over the duties of the Applicants, going as far as preparing notices of set-down for the date arranged with Van Zyl J. The Applicants gave no explanation for their failure to take steps to have the matters argued. During oral argument, Mr Rossouw on behalf of the provisional liquidators, was at pains to point out to what extent the Applicants themselves did not comply with the various provisions of Practice Rule 16. He almost went as far as to submit that the Applicants are approaching the court with unclean hands.

[22] It cannot be denied that the Applicants took none of the steps required by the practice rule. As presiding officer, I have been involved with several applications between the parties herein. The litigation between them appears endless. Senekal's frustration with the failure of the Applicants to move the matters forward is understandable. The legal representatives for Carol and Pieter may very well share in this frustration.

[23] Practice rule 16(3) was not complied with in that the date that had been arranged, was not suitable to all parties. It is common cause that no effort was made to ensure that the date suits the Applicants and the other respondents. On Van Vuuren's version, he acted on assurances provided by Senekal, with Senekal misrepresenting the facts. Although Van Vuuren then delegated to Senekal the duty of ensuring that the date suits all, it would have been understandable and happens frequently. Van Vuuren then relied on the word of an officer of the court. According to Senekal's version, however, he never considered the suitability of the date. Either way, it appears that Senekal had failed to ensure that (or even enquire whether) the Applicants and their legal representatives would be available to have the matters argued on 23 September.

[24] Both matters involve various parties, attorneys and advocates, some from out of town. Where oral arguments are to be heard, it is the availability of counsel that more often than not presents obstacles. Senekal should have considered this. Both applications run into several hundred pages. My judgment in the shareholding application is lengthy. The application for leave to appeal in the shareholding application alone lists about 53 grounds of appeal. In the premises, preparing for oral arguments would have taken time, even if the advocates who initially dealt with the matters were involved. This would have been an even more daunting task if counsel unfamiliar with the matters was to step in. Senekal himself explains the importance of the matters. All of these factors should have sensitized him to the importance of ensuring that the date is suitable to all concerned, regardless of whether Van Zyl J and / or her secretary were concerned with the availability of the legal representatives.

[25] Returning to the wording of practice rule 16(3), it may be argued that it was not Senekal's duty to ensure whether the dates are suitable to all. However, the prevailing circumstances did in fact place such a duty on him. ----------

[26] At the very least Senekal acted negligently in not enquiring whether the date is acceptable to all the relevant legal representatives. Making in a few enquiries would not have stalled the matters much longer. At all times Senekal ran the risk of some or other advocate not being available on three weeks' notice.

[27] I commend Senekal's commitment to the interests of his clients. The financial burden that these matters are placing on them must be strenuous. It is furthermore in the interests of justice in general, and the specific parties in particular, that the wheels keep turning and for the appeal process to continue efficiently. I cannot fault Senekal's initiative in making the first move (so to speak). He did not act improperly by making contact with Van Vuuren. His preparation of the notices of set-down in itself was also not irregular. In the light of the specific circumstances of these matters, however, he committed an error in judgment by not discussing the proposed date with the other legal representatives. He must have been aware of the fact that he is the only attorney in contact with Van Vuuren regarding the matter. He should have appreciated the possibility of the date not being acceptable to all concerned.

[28] A court hearing an application in terms of Rule 30 has very wide powers and may set the particular step aside or make an order as to it seems meet. This is of course if the step is indeed found to be irregular or improper. The court has a discretion and it is not intended that an irregular step should necessarily be set aside 9See: **Northern Assurance Co Ltd v Somdaka** 1960 (1) SA 588 (A) at 595; **Minister Van Wet en Orde v Jacobs** 1999 (1) SA 944 (O) at 958 F – I0.

[29] A court may also condone an irregularity. Thus, if a party has been given insufficient notice, then, instead of setting aside the procedural step, the court may cure the defect by a postponement so as to allow sufficient time to elapse (See: **Rampersadh v Pillay** 1963 (3) SA 320 (D)).

[30] The mere fact that the date for which the matters were set down was not suitable to the Applicants does not lead to the notices of set-down themselves to be irregular. As intimated before, the fact that an attorney took over certain of the duties of the judge's secretary / registrar is in itself also not irregular or improper. It cannot be said that Senekal acted for any reason other than the advancement of his clients' interests. I had previously dealt with other matters concerning the same parties and I am well aware of the complex nature of the disputes between the parties as well as the costs involved. I cannot find that Senekal attempted to mislead the Applicants or their attorneys in any way. But as stated before, in the light of all the prevailing circumstances, he failed to properly take into account the necessity of ensuring that the Applicants and their legal representatives would be ready for argument within relatively short time period between the set-down and the date of 23 September.

[31] It was argued on behalf of the provisional liquidators that the Applicants were not prejudiced as a result of the set down of the applications for leave to appeal. The Applicants allege in their replying affidavit that they suffered prejudice as a result of Senekal's unilateral conduct in that their legal representatives were not available to argue the matter on 23 September nor were they in a position to prepare heads of argument on timeously. Taking into consideration the volume of paper involved in the two matters and the relative short period between the set-down and the initial date of hearing, this appears to have been a valid concern. In light thereof that I have a discretion in Rule 30 applications I would be remiss in my duty if I did not take all prevailing factors and circumstances into account (along with a good dose of fairness and common sense). It would have been difficult for any advocate to take over the applications on short notice and be ready to properly argue the matters. However, the availability of their erstwhile

counsel, Mr Newton, appears not to have played a role in the discussions regarding a later suitable date. Mr Van Rensburg appeared on both the 23rd of September as the date of hearing of the applications. His job was of course made easier by the fact that the parties eventually agreed to a postponement, thereby allowing him time to get up to speed. I do not know to what extent he would have been able to argue the applications if they were not postponed on 23rd of September.

[32] The Applicants' main complaint throughout has been Senekal's conduct. One has only to one of the leading paragraphs in Patel's letter of 16 September:

> "As you are aware our clients are *dominus litis* in these matters and first of all we take umbrage to the fact that you hastened to have a date allocated without having had the courtesy to consult with us regarding whether such date was suitable to us or not."

[33] Much of the rest of the letter is then used to complain about the short period left in which to prepare heads of argument. The non-availability of counsel for 23 September has been thrown in almost as an afterthought. Any prejudice this may have caused does not render the notices of set-down irregular.

[34] I had already alluded to the fact that the Applicants base their application on Rule 49(1)(d) and not Practice Rule 16(3). It took some time, but counsel for the Applicants finally conceded during the oral arguments that the application is directed at the wrong rule. He then requested me to amend the notice of application to also allow for non-compliance with the practice rule. This request did not sit well with counsel for the provisional liquidators. I can understand his attitude. The Applicants brought a comprehensive application on the basis of the alleged non-compliance with a specific rule. This caused them some embarrassment (at least) during argument, leading counsel to pin his sails to the wind. Allowing an amendment at such a late stage and merely on a request from the bar would be inappropriate. An

amendment of the prayers in the Notice of Motion would in any event not suffice. The notice in terms of rule 30(2)(b) also referred exclusively to rule 49. The same goes for the founding affidavit. In the premises, I decline to amend the prayers to allow for references to Practice Rule 16(3).

[35] The essence of the Rule 30 application is contained in prayer 3 of the notice of motion. The wording is not such as to constitute a prayer. It is however significant. Prayer 3 reads:

> "*The Notices of set down are not in accordance with the above Rule* [that is, Rule 49(1)(d)]."

[36] Practice rule 16(3) is applicable in the circumstances. In as far as the Applicants request relief following from non-compliance with Rule 49(1)(d), I do not grant any relief.

[37] In terms of Rule 30(2)(b) the Applicants had to afford the liquidators an opportunity of removing the cause of complaint within 10 days. The Applicants' notices indeed indicate the allowance of such an opportunity. The circumstances of the matter of course were such that the notices were served on a date leaving far less than the requisite ten days to withdraw the set-down. A proper appreciation for this dilemma may have convinced the Applicants to indicate a shorter period within which to withdraw the notices of set-down (where after they could have applied for condonation for such shorter period). In appropriate cases courts have even condoned non-compliance with the requirement of affording time to remove the cause of complaint (Compare: **Khunou v M Fihrer & Son (Pty) Ltd** 1982 (3) SA 353 (W) at 361 A). The Applicants could immediately have proceeded with the actual application in terms of Rule 30 and then apply for condonation.

[38] More appropriately one would have expected the Applicants to act earlier and serve the Rule 30 notices at the earliest possible moment.

[39] The provisional liquidators, especially Senekal on their behalf, make much of the fact that the Rule 30 notices were not filed and served as soon as the Applicants realised that the date is not suitable to them. Furthermore, the notices (and the actual Rule 30 application) were not served on Senekal, the attorney acting for the provisional liquidators, but on the liquidators themselves. The Applicants do not explain this course of action. Parties to litigation appoint legal representatives for a reason. Other parties act improperly when they ignore this. The fact that the provisional liquidators happen to be attorneys does not change the situation. This conduct of the Applicants prejudiced the Respondents and their legal representatives.

[40] No explanation has been forthcoming as to why no provision was made for service of documents in the Rule 30 proceedings on the legal representatives for the provisional liquidators, especially Senekal whose conduct is severely attacked by the Applicants and their attorney. Senekal act for the six respondents who had set the applications for leave to appeal down for adjudication.

[41] The manner in which this application was served, and the timing of the service, allowed very little time, if any, for the respondents (and especially Senekal) to respond and prepare their opposition to the rule 30 application. As they understandably needed time to properly prepare their opposition, a postponement was inevitable. The postponement worked in the Applicants' favour, allowing them the opportunity of arranging a date that suited their legal representatives. Although I cannot make a definite finding on this aspect, it may have been what they had in mind all along.

[42] It may be argued that Senekal was informed of the allegations regarding the irregularity of the set-down at least some time before the Rule 30 application was issued. He may have expected such an application or at least an application for postponement. Even with such anticipation, however, the provisional liquidators could not have prepared for any application (whether it was a postponement or in terms of Rule 30) before it was actually served on them.

[43] A court may dismiss an application which is in fact little more than a stratagem to get the main matter postponed at the other party's costs (See: **Kmatt Properties (Pty) Ltd v Sandton Square Portion 8 (Pty) Ltd** 2007 (5) SA 475 (W) at 490 B – E). When the applications for leave to appeal were postponed to a date suitable to all the parties and their legal representatives, the Rule 30 application became academic, whatever the substance thereof. Through the postponement the Applicants achieved their goal, namely a new date that suits them and sufficient time to prepare for the oral arguments of the applications for leave to appeal.

[44] Considering all the circumstances of the matter, I exercise my discretion against granting the relief claimed by the Applicants.

[45] The theatrics flowing from the set-down of the matters may have been avoided if Senekal did not act unilaterally in arranging for (and accepting) a date (i) with fairly short notice when considered against the backdrop of the history and extent of the matters and (ii) without ensuring that the date is suitable to all. There is nothing to suggest that the Applicants' counsel of choice was available to argue the matter on 23 September. Mr. Van Rensburg who appeared on that day was to my knowledge not involved with the applications themselves. The nature and extent of the two applications are such as to justify their insistence on sufficient time to adequately prepare for oral arguments. This is the stronger argument in favour of the Applicants. Their decision to proceed with the Rule 30 application may have been ill-advised, but that does not minimize the fact that the date of 23 September was not suitable to all the parties concerned.

[46] The same facts and circumstances that justify the Applicants' insistence on a suitable time table are however the very reasons why one would have expected their attorney to act expediously. One would have expected a prudent and conscientious attorney to immediately address the non-suitability of the date. Patel should have reacted earlier than 16 September. On the Applicants' own version he knew of the set-down as early as 8

September. He must have realized from the communications between himself and Senekal that the provisional liquidators would insist on arguing the matter on 23 September. Although he may have been entitled to file the application as late as he did, but he must have known that it would force a postponement of the matters. The Applicants' insistence on circumventing Senekal, the attorney for the provisional liquidators, is incomprehensible. This further caused the provisional liquidators and their legal team inconvenience and embarrassment, increasing the necessity of a postponement.

[47] To summarize: Senekal may be blamed for a date that did not sit well with all the parties, but the manner in which Patel dealt with the situation greatly contributed to the eventual and unavoidable postponement of the matters. The postponement in fact suited both the Applicants and the provisional liquidators. The one group was not ready to proceed with arguments, while the other wanted to respond to the Rule 30 application.

[48] All parties eventually filed heads of argument in the two applications for leave to appeal. The Applicants complained bitterly about the time allowed for the preparation of the heads. They filed theirs later. Senekal avers that Van Zyl J insisted on heads of argument. Van Vuuren makes it clear in his affidavit that that was not the case. The practice in this Division is that heads of argument need not be filed in applications for leave to appeal, unless the presiding judge insists on such. If indeed Van Zyl J did request heads of argument, one would have expected this topic to have formed part of the initial discussions between Van Vuuren and Senekal. If so, reference to the heads of argument should have appeared in the initial letters from Senekal.

[49] I am not going to make a finding on the question whether heads of argument was requested on Senekal's initiative; the reason being that the heads of argument did assist me in preparing for the oral arguments and the judgments. I should qualify this statement: the heads of argument prepared on behalf of the provisional liquidators, Carol and Pieter were of

assistance. The Applicants' heads of argument in both applications were an almost *verbatim* repetition of the notices of application for leave to appeal. It was of no help whatsoever.

COSTS OF RULE 30 APPLICATION

[50] Usually the losing party to an application carries the costs of the application. *In casu* the Applicants are the losing parties. I see no reason why they should not be held liable for the costs of the Rule 30 application, including the costs of opposition. It was argued on behalf of the provisional liquidators that the Applicants should be liable for costs on a punitive scale. The circumstances of the matter do not justify such an order.

WASTED COSTS OCCASIONED BY POSTPONEMENT

[51] All the parties and their legal representatives, except for those of Pieter, were at court on 23 September.

[52] Counsel for Pieter was not present at court on 23 September, following an arrangement made with me. I have not been made aware that any attorney representing Pieter was at court on that day. Mr Grewar, counsel for Pieter, had filed heads of argument beforehand. Similar to the situation during the initial arguments of the applicants, Pieter and his legal representatives associated themselves with the arguments of Carol and her legal representatives. The postponement caused no additional costs for Pieter and his legal representatives.

[53] I took great care in this judgment to highlight the reasons behind the postponement and the roles played by attorneys for the Applicants and the provisional liquidators. Both Senekal and Patel are to blame. It is difficult to calculate the exact ratio of blame to apportion to each of them. The attorneys represent specific parties. No party argued that the attorneys are to be held liable for costs *de bonis propriis*. The parties themselves are to stand and fall by the actions of their attorneys. I consider it fair that the

Applicants and the provisional liquidators each be held liable for their own wasted costs occasioned by the postponement.

[54] Counsel for Carol was not only present at court, but he was willing and able to proceed with argument in the two applications for leave to appeal. As a courtesy to the other parties, he did not oppose the request for a postponement. This accommodating attitude was of course subject to an appropriate order as to costs. Of necessity they had to incur costs as a result of the postponement. Carol and her legal representatives played no role whatsoever in the set-down of the matters or in the subsequent Rule 30 application. It cannot be expected of them to be liable for any of their own costs. The Rule 30 application directly caused the parties to postpone the applications for leave to appeal. As the losing parties, the Applicants should pay the costs wasted by Carol and her legal representatives as a result of the postponement on 23 September.

ORDER

[55] In the premises I make an order in the following terms:

1. The application in terms of Rule 30 is dismissed;

2. The Applicants are to pay the costs of the application, including the costs of opposition thereof by the provisional liquidators of Kameelhoek (Pty) Ltd and Schaapplaatz 978 (Pty) Ltd;

3. The wasted costs occasioned by the postponement of the applications for leave to appeal in cases 5081/2014 and 4817/2014 on 23 September 2015 shall be paid in the following manner:

3.1 the Applicants and the provisional liquidators of Kameelhoek (Pty) Ltd and Schaapplaatz 978 (Pty) Ltd are each liable for his or her own costs;

3.2 the Applicants shall pay the costs of CAROL JESSIE KATHLEEN LOTZ on the scale as between attorney and client.

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G.J.M. WRIGHT, AJ

On behalf of the applicants: Adv. F G Janse Van Rensburg
Instructed by: M J Van Rensburg
Horn & Van Rensburg Attorneys
BLOEMFONTEIN

On behalf of the first respondent: Adv. L Halgryn SC
Instructed by: L Strating
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On behalf of the second respondent: Adv. D M Grewar
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On behalf of the fourth to ninth respondents: Adv. P F Rossouw SC
Instructed by: K Senekal
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