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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION – MAHIKENG**

CASE NO : 303/2022

Reportable: YES/NO
Circulate to Judges: YES/NO
Circulate to Magistrates: YES/NO
Circulate to Regional Magistrates: YES/NO

In the matter between:

MORAPEDI DONALD SERIPE **APPLICANT**

and

WILLEM HERMANUS SWANEPOEL N.O **1st RESPONDENT**

BRENDAN HARMSE N.O **2nd RESPONDENT**

NICOLAAS BURGER KOTZE N.O **3rd RESPONDENT**

[in the capacities as the trustees of the Velocity Finance Issuer]

Trust number: IT20747/2014)

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **18 JUNE 2024 at 16h00.***

ORDER

- (i) The Notice in terms of Rule 30/30A of the Uniform Rules of Court is set aside as being void *ab initio*.
- (ii) The Notice of Removal is set aside as being void *ab initio*.
- (iii) Mr Seeletso and Advocate Riley are to arrange a date for hearing of the main application with the Secretary of the Office of Judge Reddy within five (5) days of this order.
- (iv) Costs are reserved.
- (v) Mr Seeletso is requested to prepare adequately to address this Court on the consideration of an order of costs *de bonis propriis* for the hearing of 07 March 2024.

JUDGMENT

REDDY J

- [1] The applicant sought an order in terms of Rule 32 (2)(b) and 42(1) (a) of the Uniform Rules of Court, (“the Rules”) that the judgment granted by **Djaie DJP** on 16 March 2023 be rescinded in terms of Rule 31 (2) (b) and 42 (1) (a). Further thereto that the respondents be ordered to pay the costs of this application on an attorney and client scale. In somewhat of an unusual process, the penultimate prayer in the Notice of Motion contains dictatory relief in that the applicant requests that the judgment be referred to the North West Legal Practice Council for the investigation of the conduct of Lion-Cachet Loxton for misleading the court. At the outset I lay this relief to rest by stating categorically that it is not for practitioners to prescribe to the court. In

instances where a court has factual found that legal practitioners have not conducted themselves in a manner that is unbecoming of the legal profession, a court may consider reporting the matter to the overseeing law body. Of course it is incumbent on a legal practitioner to report such conduct to the overseeing law body in the absence of an order of court for further investigation. In respect of the rescission application, it was opposed by all the respondents.

- [2] In the main action, the applicant is the defendant, with the respondents being the plaintiffs, in their capacities as the trustees of the Velocity Finance Issuer Trust. For purposes of brevity, I intend to follow the appellations of the parties as cited in this application.

- [3] The National Consumer Tribunal granted a Debt Restructuring Order, (“the DRO”), in favour of the applicant on 23 April 2021. The credit agreement that the respondents and the applicant entered into was included in the DRO. The DRO required of the applicant to tender monthly payments in the sum of R16 684.03, over a period of thirty-six (36) months at an interest rate of 8.25% per annum. The applicant failed to comply with the DRO and fell into arrears. As a result, the respondents sought an order for the return of a **2015 AUDI Q7 3.0 TDI V6, QUATTRO TIP**, bearing chassis number **W[...]** and engine number **C[...]**.

- [4] On 16 March 2023, **Djaje DJP** acquiesced to the default relief as sought by the respondents. The order which included ancillary relief in the main directed that the applicant was to return the **2015 AUDI Q7 3.0 TDI V6, QUATTRO TIP**. On 12 April 2023, the applicant filed a motion in terms of Rule 31 (2)(b) and Rule 41 (1) (a) of the Rules. The respondents opposed same. The usual exchange of affidavits followed which culminated in the application being set down for an opposed hearing on 07 March 2024.

- [5] On 04 March 2024, three (3) days prior to the hearing of the application, the applicant delivered a Notice in terms Rule 30/ 30A with an accompanying Notice of Removal of the rescission application. These combined notices were

delivered to the attorney of the respondents, Messrs Bruce Loxton on 04 March 2024. As context is paramount in the setting out the chronology of the application, the Rule 30 and Rule 30A provided as follows:

NOTICE IN TERMS OF RULE 30 AND 30A.

KINDLY TAKE NOTICE THAT the Applicant hereby notify the Respondent that he has noticed a non-compliance with Rule 27 of the Uniform Rules read with Practice Directive 14(1)(a) as follows:

1. The respondent has served its heads of argument on 01st March 2024 outside 15 days before the hearing as required by Practice directive 14(1)(a) which further constitutes a non-compliance with Rule 27 of the Uniform for failing to make an application for condonation of the late filing of the heads of arguments.
2. The conduct of the respondent constitutes a non-compliance and as such, remedial action is required before the respondent's heads of arguments may be served.
3. The Practice directives and the Uniform Rules are binding to all practitioners and must be obeyed.

Furthermore

4. The conduct of the respondent constitutes an irregular step as it attempts to advance the proceedings one step closer to its finality without firstly complying with Rule 27 of the Uniform Rules for its non-compliance.

TAKE FURTHER NOTICE THAT the plaintiff is hereby afforded 10 days to withdraw its Application for Summary Judgment with costs at attorney and client scale and to decide if it withdraws the Default judgment and tenders costs at attorney and client scale and proceed with same.

TAKE NOTICE FURTHER THAT should the Plaintiff fail to comply with the above request to cure the defect, the defendant will invoke rule 30A (1) read with (2) of the Uniform Rules of this Court.

[6] On 05 March 2024, Messer's Bruce Loxton attorneys addressed the following correspondence to Messer's TL Seeletso Attorneys:

On 04 March 2024, you served and filed what purports to be a notice in terms of Rule 30A and notice of removal from the roll under the cover of a filing notice

The rescission application has been enrolled for argument for 7 March 2024.

Notwithstanding the fact that you represent the Applicant herein, you have failed to take the necessary/any steps to enrol the matter and to ensure that the matter is finalized timeously.

You failed to enrol the matter when a date was allocated by the Registrar forcing the hand of the Respondents to take the necessary steps.

You failed to serve and file a practice note or heads of argument, late or at all.

In the Applicant's Rule 30A notice, you allege that the Respondent has taken an irregular step by serving their heads of argument late, whilst you have completely derelict the mandate of your client, without even attempting to comply with the rules and practice directives.

From a close reading of your Rule 30A notice, it is evident that the notice most likely does not even relate to this matter, and that you only changed the heading on what was probably a template and served same upon the respondents.

The notice refers to the Respondents as Plaintiffs and states that:

“....the plaintiff is hereby afforded 10 days to withdraw its application for summary judgment with costs at attorney and client scale and to decide if it withdraws the application for default judgment and tenders costs at attorney and client scale and proceed with same.”

From the above, it is evident that this notice is either not meant for this matter or the sole intention of this notice, is to maliciously and intentionally waste the Respondents and the Court's time.

You attempt to unilaterally remove the application for the rescission of judgment, which is what is before the Court, from the roll without following the practice directives you profess to the respondents are not following.

It is clear that you have no intention of finalising this matter and your only intent is to frustrate all the parties involved.

Your conduct is malicious, and we will not entertain same.

The notice of set down herein was served on your office on **14 November 2023**, and you chose to take no further action herein.

We do not accept your removal from the roll and will insist that the matter proceed as set down on **7 March 2024**.

Your notices are of no force or effect, and we will provide a copy of this letter to Court in support of a penalising cost order against you/ the Applicant.

We include a copy of the letter which will be communicated to the Registrar of the Court.”

- [7] On 07 March 2024, Mr Seeletso did not appear for the applicant. Mr Riley appeared for the respondents. Against the backdrop of the correspondence dated 04 March 2024 Mr Riley was of the view that the application ought to have proceeded. In this regard Mr Riley had more than one string to his bow.

He contended that the application must be fully ventilated in the absence of Mr Seeletso. Mr. Riley opined that the Notice delivered in terms of Rule 30/30A conflated with the Rules of Court. Moreover, Mr Riley placed much store on the content of the Rule 30/30A submitting that from a reading of it, the only ineluctable inference to be drawn was that this Notice was no more than a “cut and paste” exercise. It served to transport information from a previous legal document, which speaks of the withdrawal of a summary judgment application, so Mr Riley contended. Therefore, this Notice has no relevance to the application at hand. In sum, the Notice in terms of Rule30/ 30A was procedurally fatally defective and was void *ab initio*.

[8] In turning focus to the Practice Directives of the North West Division of the High Court, Mr Riley submitted that the Practice Directives provides the presiding Judge with a discretion whether to condone the late filing of heads of argument. This discretion is that of the presiding Judge, so Mr Riley persisted. Mr Riley concluded that given the procedural defects in the Rule 30/30A Notice of the applicant, the application could not have been competently removed from the roll.

[9] The approach I adopt is to deal with the Notice as evinced in Rule 30/30A as this forms the basis of the unilateral removal by Mr Seeletso. This would necessitate an examination of the law that underpins the Rule 30/30A Notice and whether there has been compliance with same. A conclusive finding that the Rule 30/30A Notice as filed by Mr Seeletso was of no procedural effect would then constitute a finding that the application was irregularly removed from the court roll.

[10] The provisions of Uniform Rule 30 reads as follows:

‘30. Irregular proceedings. - (1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if-

(a) **the applicant has not himself taken a further step in the cause with knowledge of the irregularity;**

(b) **the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;**

(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).

(3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

(4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.'

[11] Rule 30 is intended to deal with matters of form not of substance. It is intended to deal with irregular steps taken by parties during litigation and where the irregularity emanates from the inappropriate **use of the Rules of Court**. D Harms *Civil Procedure in the Superior Courts* S1-69 at B30.3. It is not in my view to be used as a dilatory step that serves to prevent the speedy resolution of matters. The words of De Villiers CJ in *Le Roex v Prins* (1883-1884) 2 SC 405 at 407 quoted in *Singh v Vorkel* are still apposite:

'The tendency of recent rules of procedure in this Court has been to sweep away all unnecessary technicalities and hinderances to the speedy and effectual administration of justice'. *Singh v Vorkel* 1947 (3) SA 400 (C) at 406.

[12] A reading of the Rule 30/30A notice is clearly indicative of a lack of care in the drafting of this Notice and the absence of an understanding of the Rules of Court. I delineate these findings with the irrefutable facts. The Rule 30/30A notice bemoans the respondents' non-compliance with the Practice Directive 14(1) (a) of the North West Division of the High Court and as such, remedial action is required before the respondents' heads of arguments may be served. The Rule 30/30A notice informs the respondents' that the Practice Directives and the Rules are binding on all practitioner's and **must** be obeyed. The high esteem and the laudable approach of the applicant to these ancillary tools of civil procedure is creditable. It would have been more meaningful had the litigating conduct of the applicant demonstrated its subservience to the Rules and the Practice Directives.

[13] Practice Directive 14 provides as follows:

FILING AND SERVICE OF HEADS OF ARGUMENT IN MATTERS OTHER THAN CIVIL OR CRIMINAL APPEALS

1. In all matters except trials and civil or criminal appeals which have been set down for hearing or argument on a specific date by the Registrar, heads of argument as defined in paragraph 6 of Practice Directive 13 and clearly indicating the names of the parties, the number of the case and the date which is set down on the roll shall be delivered by counsel appearing on behalf of the parties as follows:

(a) **By the delivery of an appropriate number of copies of the heads of argument of the plaintiff, applicant or excipient (as the case may be) to the General Office of the office of the Registrar, not less than fifteen (15) days before the date upon which the matter is to be heard..."**

[14] Practice Directive 14 coheres compliance regarding the filing of heads of argument from both the applicant and respondents. In *casu*, the applicant did **not** file heads of argument as per the court file. Mr Riley confirmed that no

heads of argument were delivered. It follows that it was rather disingenuous for the applicant to file a Rule 30/30A notice with the implicit knowledge that the applicant had not filed the requisite heads of argument as demonstrated by Practice Directive 14.

[15] The failure by the respondents to have not complied with Practice Directive 14 was not decisive to the ventilation of the application. Practice Directive 14 would simply have eliminated the failure of the respondents to comply with the fifteen (15) day timeline as evinced by Practice Directive 14 to be raised. The reason for this is rudimentary. The applicant has skirted the contents of Practice Directive 20.3 which provides that a failure to file a practice note and/or heads of argument in accordance with the relevant Practice Directives, may result in the matter being struck from the roll.

[16] Whilst the significance of heads of argument cannot be underemphasized for the important role it plays in the administration of justice, in regard to the importance and function of heads of argument, the following was stated *S v Ntuli* 2003 (4) SA 258 (W) at paragraph [16]

“Heads of argument serve a critical purpose. They ought to articulate the best argument available to the appellant. They ought to engage fairly with the evidence and to advance submissions in relation thereto. They ought to deal with the case law. Where this is not done and the work is left to the Judges, justice cannot be seen to be done. Accordingly, it is essential that those who have the privilege of appearing in the Superior Courts do their duty scrupulously in this regard.”

[17] Whilst *Ntuli* might be relevant to a criminal appeal, the principle that is enunciated is analogous to the civil process. It bears mentioning that notwithstanding the critical role that heads of argument play, it is ultimately for the convenience of the court. In respect of the late filing of heads of argument in this Division, the presiding Judge would be best placed to exercise a judicial discretion as to whether to condone the late filing of a litigant's heads of argument. Simply put, the applicant was not enjoined with a discretion to

remove the application founded on the late filing of the respondents' heads of argument. Further to that, the respondents had set the recission application down notwithstanding the fact that the applicant had initiated same. It is doubtful whether the applicant could have removed the application in these circumstances more pertinently when the respondents had demonstrated a clear and unequivocal intention not to assent to the applicant's removal. The *imprimatur* of this Court had further not been sought.

[18] In the application that served before me, the applicant had not filed its written heads of argument. Clearly the phrase ‘ **that the Practice Directives and the Rules are binding to all practitioner's and must be obeyed**’ finds no application to the applicant. It is disconcerting that applicant did not bring this to the attention of the court but was eager to throw the respondents under the proverbial bus. It is unquestionable that there had been non-compliance with the timelines which regulated the filing of heads of argument in terms of the Practice Directives by both the applicant and respondents.

[19] The applicant further in its Rule 30/30A notice declares that “ **the plaintiff is hereby afforded 10 days to withdraw its Application for Summary Judgment with costs at attorney and client scale and to decide if it withdraws the Default judgment and tenders costs at attorney and client scale and proceed with same.**” This Court was not seized with any application for either summary nor default judgment. Moreover, the litigation history ventilates that at **no** point was this Court seized with a summary judgment application. The Rule 30/30A proposes that some judgment be withdrawn. The contention that a summary judgment and default judgment are interchangeable concepts illustrates a grave miscomprehension of the Rules. What seems to have escaped the applicant, was that it was the applicant who was petitioning this Court for a recission of judgment. This recission application was opposed the respondents.

[20] In correspondence that followed, the respondents alerted the applicant to the fatal shortcomings in the Rule 30/30A notice and declared a clear intent not to assent to the removal of the application. Mr Riley avows that to this end, there

was no response from the applicant. It is common cause that on the date of the hearing Mr. Seeletso was a no show.

[21] Cutting aside the verbiage of the Notice in terms Rule 30/30A, the respondents demonstrated a clear and unmistakeable intent not to acquiesce to the removal of the application. This was founded on the following:

- (i) Mr Seeletso had failed to set the recission of judgment application down.
- (ii) the respondents had to attend to same.
- (iii) a set down had been served on 14 November 2023 for the hearing of the applicant's recission of judgment application.
- (iv) On 04 March 2024, Mr Seeletso files a Notice in terms of Rule 30/30A with a simultaneous removal of the application.
- (v) On 05 March 2024, the erstwhile attorney for the respondents' retorts to the correspondence of 04 March 2024, noting its clear opposition to the removal.

[22] The conduct of Mr. Seeletso in this application fills me with disquiet, whilst Mr Loxton did not also cover himself in glory if the diction of his reply of the 05 March 2024 is considered. Legal representatives' foremost duty is to the court. It is apposite at this juncture to remind legal representatives of this duty and their role in the proper administration of justice. Our law is replete with authority which enunciates this principle. The reference to 'advocates' in some authorities cited would in my view apply equally to the role of attorneys as well.

[23] In *S v Khathutshelo and another* 2019 (1) SACR 480 (LT) paragraphs [20], [21], [22], [23] and [24] the court held as follows, after highlighting the exchange between counsel and the presiding magistrate:

[20] The words used by counsel were both unnecessary and unfortunate. They demonstrated acute lack of respect for the court and its role in the administration of justice. Judges and magistrates alike have been entrusted with the most difficult job: to find the truth and administer justice between man and man. They are fallible like all others and, in recognition of this weakness, there is a hierarchy of courts so that mistakes can be corrected on appeal or review. It does not serve any purpose for a practitioner to be theatrical and make demands which he knows the court is not in a position to accede to.

[21] The ethics of the legal profession say an advocate is an officer of the court. As an officer of the court he is required to assist the court in the administration of justice. Inasmuch as counsel has a duty to advance his/her client's case with zeal, vigour and determination, he should always remember that his primary duty is to the court. His role in court is not only to push his or her client's interests in the adversarial process . . .

[22] It is axiomatic therefore that an advocate should in the execution of his duties act with integrity and professionalism. He should always measure his words and be of good temperament. He should understand that he makes submissions to court with a view to persuading it to find in his client's favour. He does not make demands. Once the court has made a ruling, it becomes his duty as a person trained in law to advise a client on the remedies available to correct what he may regard as an error of fact, law or procedure.

[23] He should always maintain the decorum of the court and protect its legitimacy in the eyes of the public, so that its confidence is not eroded in their eyes. More than 100 years ago, in the winter of 1908, Chief Justice Innes said the following about practitioners:

“Now practitioners, in the conduct of cases, play an important part in the administration of justice. Without importing, any knowledge or opinion of their own . . . they present the case of their clients by urging everything both in fact and in law, which can honourably and properly be said on his behalf.”

See *Incorporated Law Society v Bevan* 1908 TS 724 at 731.

[24] The paramountcy of the duty to the court is of the utmost importance to the effective functioning of the legal system. It is imperative that lawyers, clients and the public understand this. The integrity of the rule of law and the public interest in the administration of justice depend upon it. When lawyers fail to ensure that their duty to the court is at the forefront of their minds, they do a disservice to their clients, the profession and the public as a whole.'

[24] In *Van der Berg v General Council of the Bar of SA* [2007] 2 All SA 499 (SCA), at paragraph [14] the court held that:

'[14] Advocacy fulfils a necessary role in the proper administration of justice. (What is said in this judgment applies equally to attorneys to the extent that they play an equivalent role but for convenience I have referred to advocates). It is through the availability of the knowledge and skills of an advocate that a litigant is able to realise the right of every person to have a dispute resolved by a court of law. Its function in the administration of justice at the same time defines the duties of those who practise it. The right of every person to have a dispute resolved by a court of law would be seriously compromised if an advocate were to be required to believe the evidence of his client before being permitted to present it. That would mean that the rights of the litigant would be determined by the advocate rather than by the court. As David Pannick QC observes (in his book entitled *Advocates*) an advocate is required:

"to keep his personal opinions of the merits of the case (legal or otherwise) to himself and not make them the subject of his submissions. The advocate's duty to his client authorises and obliges the advocate to say all that the client would say for himself (were he able to do so) . . . He has no right to 'set himself up as a judge of his client's case' and should not 'forsake [his] client on any mere suspicion of [his] own or any view [he] might take as to the client's chances of ultimate success'. As Baron Bramwell explained in 1871, a 'man's rights are to be determined by the Court, not by his [solicitor] or

counsel . . . A client is entitled to say to his counsel, I want your advocacy, not your judgment; I prefer that of the Court.” (footnotes omitted)

[25] In a speech titled '*The Duty Owed to the Court - Sometimes Forgotten*' delivered by the Honourable Marilyn Warren AC at the Judicial Conference of Australia – Colloquium, Melbourne on 9 October 2009, the learned Justice spoke to the duties of counsel to the court in relation to its role in the proper administration of justice. The speech commences with the following quotation from the judgment of Lord Reid in the matter of *Rondel v Worsley* [1967] UKHL 5 at 2; [1969] 1 AC 191 at 227, [1967] 3 All ER 993 at 998 where the following is postulated:

'[A]s an officer of the court concerned in the administration of justice [a legal practitioner] has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests'

[26] Later on in her speech the learned Justice highlights a practitioner's duty to the court as follows:

'The Duty to the Court

The lawyer's duty to the court is an incident of the lawyer's duty to the proper administration of justice. This duty arises as a result of the position of the legal practitioner as an officer of the court and an integral participant in the administration of justice. The practitioner's role is not merely to push his or her client's interests in the adversarial process, rather the practitioner has a duty to "assist the court in the doing of justice according to law."

The duty requires that lawyers act with honesty, candour and competence, exercise independent judgment in the conduct of the case, and not engage in conduct that is an abuse of process. Importantly, lawyers must not mislead the court and must be frank in their responses and disclosures to it. In short,

lawyers “must do what they can to ensure that the law is applied correctly to the case.”

The lawyer’s duty to the administration of justice goes to ensuring the integrity of the rule of law. It is incumbent upon lawyers to bear in mind their role in the legal process and how the role might further the ultimate public interest in that process, that is, the proper administration of justice. As Brennan J states, “[t]he purpose of court proceedings is to do justice according to the law. That is the foundation of a civilized society.”

When lawyers fail to ensure their duty to the court is at the forefront of their minds, they do a disservice to their client, the profession and the public as a whole.’ (footnotes omitted)

- [27] I conclude on this aspect by reiterating cases can and should be fought fearlessly but they must be fought within the bounds of honour, propriety, dignity, and respect to the court and to practicing colleagues. Personal tirades have no place in our litigation culture.
- [28] I shift focus to consider the Rules of Court and the Practice Directives as a conduit in the achievement of expedient, efficient and cost-effective litigation. At its heart, the purpose of the Rules of Court is to oil the wheels of justice to attain the expeditious resolving of dispute with a minimisation of costs. Quibbling about trivial deviations from the Rules of Court retards, instead of enhancing the civil court process. See: *Louw v Grobler and Another* (3074/2016) [2016] ZAFSHC 206. The object of the rules is to secure the inexpensive and expeditious and for the completion of litigation before the courts: they are not an end to themselves. See: *Hudson v Hudson* 1927 AD 259 at 267, *Eke v Parsons* 2016 (3) SA 37 (CC) at 53 A-D, *Centre for Child Law v Hoerskool, Fochville* 2016 (2) SA 121 (SCA) at 131G. To this end, the rules should be interpreted and applied in a spirit which will facilitate the work of the courts and enable litigants to resolve disputes in a speedy and inexpensive manner. See: *Ncoweni v Bezuidenhout* 1927 AD 259 at 267.

[29] In *Mukaddam v Pioneer Foods Pty (Ltd)* 2013 (5) SA 89 (CC) the apex court commented on the purpose of the Rules of Court as follows:

“[31] However, a litigant who wishes to exercise the right of access to courts is required to follow certain defined procedures to enable the court to adjudicate a dispute. In the main these procedures are contained in the rules of court. The Uniform Rules regulate form and the process of the high court. The Supreme Court of Appeal and this court have their own rules. These rules confer procedural rights on litigants and also help creating certainty in the procedures to be followed if a relief of a particular kind is sought.

[32] It is important that the rule of court are used as tools to facilitate access to courts rather than hindering it. Hence rules are made for the courts and the courts are established for rules. Therefore, the primary function of the rules of court is the attainment of justice. But sometimes circumstances arise which are not provided for in the rules. The proper course in those circumstances is to approach the court itself for guidance. After all, in terms s173 each superior court is the master of its own process.

[33] Section 173 of the Constitution provides:

“ The Constitutional Court, Supreme Court of Appeal and the High Courts have inherent power to protect and regulate their own process, and to develop the common-law, taking into account the interests of justice.”

[30] In *Eke v Parsons*, 2016 (3) SA 37 (CC) the Constitutional Court said:

“[39] Without a doubt, rules governing the court process cannot be disregarded. They serve an undeniable important purpose. That, however, does not mean that courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be

adherence to the rules. Not surprisingly, courts have often said “[i]t is trite that rules exist for the courts, and not courts for the rules.”

[31] There must exist a synergy between the Rules of Court and Practice Directives of the High Courts to circumvent an inhibition of the civil process. It was impermissible for applicant to have unilaterally removed the application from the roll with or without the consent of the respondents. The removal was irregular and was of no force or effect. It would not have served the interests of justice for the applicant’s recission of judgment application to be adjudicated in the absence of Mr Seeletso. This application was opposed with several legal points being raised.

[32] In relation to costs, costs are at the discretion of the court. Given the direction that this application has taken and the order I propose, it would be just and equitable that costs be reserved. The conduct of Mr. Seeletso is unbecoming of a legal practitioner. A legal practitioner cannot simply remove a matter on whim of his own, more especially in this instance, where the application has been set down by the respondent. Mr. Seeletso did not come to court to present the applicant’s case while being alive to the fact that he had not filed his practice note and heads of argument. It was expected of Mr. Seeletso to have at least appeared in court to proffer a plausible explanation for his litigating conduct. As I see it, it is inexcusable that Mr Seeletso could simply have jettisoned the applicant in an opposed application in *lieu* of reasonable explanation.

Order

[33] In the premises, I make the following order:

- (i) The Notice in terms of Rule 30/30A of the Uniform Rules of Court is set aside as being void *ab initio*.
- (ii) The Notice of Removal is set aside as being void *ab initio*.

- (iii) Mr Seeletso and Advocate Riley are to arrange a date for hearing of the main application with the Secretary of the Office of Judge Reddy within five (5) days of this order.
- (iv) Costs are reserved.
- (v) Mr Seeletso is requested to be prepare adequately to address this Court on the consideration of an order of costs *de bonis propriis* for the hearing of the 07 March 2024.

A REDDY
JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

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Date of Hearing

07 March 2024

Date Judgment Reserved

07 March 2024

Date of Judgment

18 June 2024