IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case Number: 1278/2009
3211/2023

In the matter of:

DANIEL JOHANNES DU TOIT	Applicant
and	
ABSA BANK LIMITED	First Respondent
CVR BOERDERY CC	Second Respondent
THE REGISTRAR OF DEEDS, BLOEMFONTEIN	Third Respondent

IN RE:	Case No.: 278/2009
ABSA BANK LIMITED	Plaintiff
and	
DANIEL JOHANNES DU TOIT	Defendant

IN RE:	Case No.: 3211/2023
CVR BOERDERY	Applicant

and

DANIEL JOHANNES DU TOIT	**First Respondent**
MADELEINE ANTOINETTE DU TOIT	**Second Respondent**
ANY OTHER UNLAWFUL OCCUPIERS OF REMAINDER OF THE FARM WASCHBANK 921, DISTRICT BRANDFORT, FREE STATE PROVINCE	**Third Respondent**
MASILONYANA LOCAL MUNICIPALITY	**Fourth Respondent**

CORAM: **NAIDOO, J**

HEARD ON: **29 FEBRUARY 2024**

DELIVERED ON: **7 JUNE 2024**

JUDGMENT - APPLICATION FOR CONDONATION AND RESCISSION OF JUDGMENT

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[1] There are two applications before me, the first being an application for rescission of an order, coupled with an application for condonation in respect of the late filing of the application for rescission. The second application is an application by the second respondent in this matter, for the eviction of the applicant and his wife from the property described as Remainder of the Farm Waschbank 921, District Brandfort, Free State Province. ("the property" or "the farm"). The application for condonation and rescission is opposed by the first and second respondents, while the applicant in this matter and his wife (second respondent in the eviction application) oppose the eviction application. Adv LA Roux represented the applicant, Adv R Van Der Merwe represented the

first respondent, ABSA Bank Limited (Absa or 'the bank") and Adv J Els the second respondent, CVR Boerdery CC (CVR). The third respondent, The Registrar of Deeds, Bloemfontein, furnished a report in this matter, but took no part in the proceedings. Similarly, the Masilonyana Local Municipality took no part in the eviction application. I mention that the applicant's Replying Affidavit was filed late, for which he applied for condonation. Such application for condonation was not opposed by the respondents and was accordingly granted.

Condonation and Rescission – Case Number 1278/2009

[2] The applicant sought an order in the following terms:

2.1 Condonation be granted, if necessary, for non-compliance with the Uniform Rules of Court in relation to time frames for the filing of the application for rescission;

2.2 The order by the Honourable Mhlambi J dated 29 April 2021 be rescinded and set aside.

2.3 The attachment, sale in execution by the Sheriff, transfer and registration of the immovable property known as the Remainder of the Farm Waschbank 921, District Brandfort, Province Free State (the property), is declared null and void and set aside;

2.4 The Third Respondent, the Registrar of Deeds, is directed to reverse the registration of transfer of the property in the name of the second respondent and revert the title in respect of the said property in the name of the applicant;

2.5 The first respondent and any other party opposing the application be ordered to pay the costs of the application.

[3] Absa's version is that the applicant owed monies to Absa in terms of a mortgage loan and an overdraft facility with the bank. The applicant failed to make due payments and Absa issued summons against him. The action was seemingly undefended and default judgment was granted, on 4 May 2009, against the applicant for payment of the amount of R185 547.05 together with interest thereon as well as an amount R68 036.62, together with interest thereon. The property, which is the subject matter of this application, being the Remainder of the Farm Waschbank 921, and two other properties were declared specially executable by the court. The latter two properties were subsequently sold in a sale in execution and transferred to the purchasers, while the property relevant to this matter, remained registered in the applicant's name. Absa alleges that this matter has its genesis in the default judgment that it obtained against the applicant on 4 May 2009.

[4] After the default judgment was granted, a further court order was obtained on 4 August 2016, declaring the property specially executable. The bank proceeded to arrange a sale in execution of the property, based on these two previous orders declaring the property executable. Before the sale was held in September 2017, the applicant requested Absa to hold over the sale in execution as he had received an offer to purchase a subdivided portion of the property.

[5] The applicant entered into an agreement with Absa in September 2017, in terms of which he acknowledged his indebtedness to the bank and provided the bank with a signed power of attorney to sell the property. They agreed that the sale in execution would be cancelled and that the applicant would pay to Absa the proceeds of the sale of the property, in settlement of his debt to the bank, either wholly or partially. Although the applicant and the company purchasing the property concluded a written Deed of Sale, the sale did not take place, as the applicant was not able to pay the amount due to the bank from the proceeds of the sale. The applicant thereafter failed to pay the monies due to the bank. By 23 February 2021, the applicant owed a total sum of R 718 094,16.

[6] It was thereafter that Absa approached the court, for a third time, seeking a further order to declare the property specially executable, as by that time, the Rules of Court were amended and Rule 46A was enacted, requiring, *inter alia*, that a reserve price be set for the sale in execution of immovable property. According to the Sheriff's return of service, the Notice of Motion and annexures in terms of which the bank sought an order declaring the property specially executable, were served personally on the applicant on 7 April 2021. The applicant did not oppose the application. The order was consequently granted by Mhlambi J on 29 April 2021 (the Mhlambi order). A sale in execution, as authorised by the Mhlambi order, was scheduled for 2 December 2022, and the Notice of Sale, together with the Conditions of Sale were served on the applicant on 27 October 2022 by affixing it to the principal door/main entrance of the property. The Sheriff indicated that no other means of service was possible.

[7] The applicant's attorney corresponded with the bank's attorney on 25 November 2022 indicating, in essence, that the applicant is aware of the sale in execution to be held on 2 December 2022 and that he has lodged a complaint with the Banking Ombudsman, who was investigating the matter. In addition, he indicated that a store that was built on the farm encroaches upon a neighbouring farm, and it will be very difficult if not impossible to give transfer of such a property. For these reasons, he requested that the sale in execution be postponed or cancelled.

[8] The bank's attorneys were not amenable to this request and the sale went ahead. The applicant's wife, attended the sale on 2 December 2022 and was aware that the property was sold to CVR. She approached the bank's attorney on that day and advised him that she and the applicant had instructed their attorney to approach the High Court on the Monday, 5 December 2011, on an urgent basis, to set aside that sale. Such an application was never issued or served, and the transfer to CVR was registered on 14 March 2023.

[9] Thereafter CVR communicated with the applicant and his wife in April 2023, pointing out that they were aware that the property was sold in execution to CVR and that transfer of ownership had passed to CVR. The latter then demanded that the applicant and his wife vacate the property, which the applicant and his wife refused to do. CVR then issued an application, on 22 June 2023, for the eviction of the applicant, his wife and all those occupying the property through them. It seems this was the catalyst that spurred the applicant into bringing an application for the rescission of the

Mhlambi order and the other relief, which I set out earlier. The respondents opposed this application essentially on the basis that the appellant has not made out a case for condonation, in that he failed to sufficiently explain the delay in bringing this application. The further grounds of opposition are that there is no merit in the application for rescission, as the applicant does not enjoy any prospects of success. In short he has not met the requirements for condonation or rescission to be granted.

[10] The applicant's version is that he did not receive the Notice of Motion on 7 April 2021 and challenges the Sheriff's return on the basis that he was not at home at the time that the Sheriff alleges that he served the Notice of Motion. Therefore, there could not have been personal service of such process on him. He had work to do in and around Bloemfontein and was in Langenhoven Park for much of the day erecting a stall at the "Boeremark" (Farmer's Market), which trades on a Saturday. In support of this contention, the applicant attached to his Founding Affidavit a copy of his notes which he alleges are excerpts from his diary for the 6th, 7th and 8th April 2021. He also attached a cash sale receipt from a shop known as Handi in DIY, which he alleges is situated in Langenhoven Park in Bloemfontein. The date and time appear to be 7 April 2021 at 12.41.04. The applicant alleges that this receipt proves that he was in Bloemfontein at the time that the Sheriff allegedly served the application on him. The applicant further attached two unsigned confirmatory affidavits by his wife and one of his employees. The signed affidavits were only filed late in the afternoon of the day before the hearing. He asserts that, if he had received the notice of the application, he would have opposed the application.

[11] The applicant also took issue with the setting of the reserve price at R400 000.00, his contention being that the property is worth considerably more. If he had the opportunity to participate, he believes that the there would not have been a declaration of executability or the setting of that reserve price. In addition, the applicant alleges that at the time the order was granted and the sale in execution proceeded, he was not indebted to Absa. His former attorney allegedly instructed a specialist to audit the "statements" and found that the "amount" was settled. I mention that it was not clear which statements the applicant referred to or what amount he was referring to.

[12] There are a number of other issues raised by the applicant, which appear to be his defences to the Mhlambi order. He alleged that the banks interest charges relevant to his account were contrary to the *in duplum* rule, that he made payments to a debt counsellor, which are not reflected in the statements rendered by Absa, that Absa "wrote off" the amount outstanding in respect of the overdraft facility, that he has sufficient movable assets to satisfy a substantial portion of the outstanding amount, which amount he, in any event, disputes and "their" eviction from the property will render "them" homeless and destitute.

[13] With regard to the explanation in a condonation application (as in the present matter), for failure to comply with the Rules of Court timeously, it is well settled in our law that the applicant is required to give a full and candid explanation in this regard. The remarks of the court in *Melane v Santam Insurance Co Ltd 1962(4) SA 531 (A)*, regarding the test for granting condonation, made over 60 years ago, are still relevant today:

"In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interests in finality must not be overlooked."

[14] A similar view was held in the matter of *United Plant Hire (Pty) Ltd v Hills 1990 (1) SA 717 (A) at 720 E-G,* where the court stated the position succinctly as follows:

"It is well settled that, in considering applications for condonation, the Court has a discretion to be exercised judicially upon a consideration of all the facts; and that in essence it is a question of fairness to both sides. In this enquiry, relevant considerations may include the degree of non-compliance with the relevant Rules, the explanation therefore, the prospects of success on appeal, the importance of the case, the respondent's interest in the finality of his judgment, the convenience of the Court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive. These factors are not individually decisive but are interrelated and must be weighed one against the other; thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong".

[15] The applicant did not mention in his Founding papers that after the default judgment was granted in May 2009, two of the properties

which were declared specially executable in that order were sold and transferred to the purchasers thereof. The applicant could not possibly have been unaware of the default judgment and the subsequent sales of the two properties. Similarly, he makes no mention of the further declaration of executability granted in August 2016 in respect of the farm that is the subject matter of this application. Arising from the August 2016 court order, a sale in execution was arranged for September 2017. Again, the applicant was clearly aware of the court order and the sale arising from that order, as he approached Absa and negotiated an arrangement with them to suspend or cancel the sale, as he has secured a purchaser for the farm.

[16] As I indicated earlier, to this end, he entered into the agreement in which he acknowledged his indebtedness to Absa and even signed a power of attorney in Absa's favour authorising them to sell the farm. They in turn agreed to cancel the sale in execution and not act upon the power of attorney for a period of six months. A purchase and sale agreement in respect of the property was indeed signed between the applicant and the prospective purchaser, but the sale did not proceed. The applicant's debt to Absa was in the meantime escalating.

[17] The applicant correctly points out that Rule 46A requires the notice of application to declare residential property executable be served personally upon the judgment debtor, but he denies the Sheriff's return of service reflecting that the application was served on him

personally. I deal now with the various annexures I mentioned earlier which the applicant alleges support his contention that he was not at his home when the application was served. Firstly, the notes allegedly from his diary are in manuscript, much of which is unreadable, and such of it that is readable, does not make much sense. No transcript, translation or further explanation was provided, so the court is not in a position to assess if these notes do support the applicant's contention. Additionally, he refers the court to the bottom of the page as evidence that he paid Mr Chekane for work on "that day". There are three pages with notes ostensibly from 6th - 8th April 2021. Each page has notes at the bottom which are unreadable. Therefore, his reference to "that day" could be any of those three days, which begs the question, what was Mr Chekane confirming in his confirmatory affidavit?

[18] With regard to the receipt from Handi in DIY, I mention that there is no indication on that cash sale receipt of where the shop is situated or who the purchaser is of the items listed thereon. The address reflected on the receipt is "PO Box 294 Virginia 9430". Similarly, the affidavit by Ms Estelle Combrinck does not assist the applicant. She was not present on the day when the applicant alleges that he worked at the "Boermark", and she did not issue the receipt that was attached to her affidavit. The receipt was issued on 7 April 2021 by someone called Ishmael, who is no longer employed by the Boeremark. The receipt bears the number "61" and was ostensibly issued to "*Stal No Donkie Ker*". Under that is the number "40" and further down the number "40" is written again and below that the word "krag" (power). The applicant's name appears nowhere on this

document, nor can Ms Combrinck's bald (and bold) statement that "*slip 61 in the electrical purchase book confirms that on 7 April 2021 the Applicant attended the Boeremark, paid R40 for his electrical use with Ishmael,...*" be accepted, as she has no personal knowledge of the correctness of the statement she made.

[19] The Sheriff's return of service is *prima facie* proof that such service was effected in the manner indicated therein. The applicant is required to present clear, cogent and credible evidence that such return is incorrect or untrue. The sheriff also signed a confirmatory affidavit that the contents of the impugned return of service are true. For this reason and the more important reason that such evidence as the applicant tendered to establish that he was not at his home when the Sheriff served the application to declare the property executable, falls short of proving such contention. I have pointed out the problems with such documents, leaving this court in the position that it is unable to accept this version of the applicant. He has failed to successfully challenge the correctness of the Sheriff's return of service dated 7 April 2021. The purpose of Rule 46A requiring personal service on the judgment debtor is to ensure that he has knowledge of the application and is acts in accordance with that knowledge. From what I have set out and what follows, it is clear that the applicant had knowledge of the application and the proceedings arising therefrom. He certainly acted in accordance with that knowledge.

[20] I turn now to deal with the delay in bringing the application for rescission and the explanation in respect thereof. The applicant alleges that he only learnt of the order in terms of Rule 46A on 2 December 2022. I accept that his reference to "the order" is a reference to the Mhlambi order, which was granted on 29 April 2021. However, this cannot be true, as notice of the sale in execution was served on the applicant on 27 October 2022. He has not taken issue with this service nor has he alleged that he did not receive such notice. In fact, his attorney wrote a letter on 25 November 2022 to Absa's attorney in which he indicated that it was brought to his attention that an auction was to be held on 2 December 2022. That fact could only have been brought to his attention by the applicant. He would surely have advised the applicant that a sale in execution is based on a court order granted against the applicant, and as such is ancillary to a court order authorising such sale. No mention was made that the applicant was not served with the application to declare the property executable, or that the attorney was instructed to apply to rescind the court order.

[21] In addition, the auctioneer mandated to conduct the sale in execution is himself a practising attorney, and confirmed that he met with the applicant's wife prior to the sale which was scheduled to take place on 2 December 2022, and explained the process that would be followed, leading up to the sale in execution. He also confirmed that Mrs Du Toit, the applicant's wife, attended the sale in execution on 2 December 2022, and was aware that the property was sold to CVR. The applicant himself confirms that his wife attended the sale. Therefore the applicant and his wife were clearly

aware of the Mhlambi order as well as the process that would be followed to sell the property. If the applicant's version in respect of service of the application to declare the property executable is to be believed, then no explanation whatsoever is tendered for the failure to bring the rescission application even before 2 December 2022.

[22] Absa alleges that Mrs Du Toit approached its attorney on the day of the sale and advised that she and the applicant had instructed their attorney to apply to the High Court on an urgent basis to set aside the sale. It seems that the intention to bring such an application was formed as early as December 2022. However, the explanation for the delay tendered by the applicant for the period December 2022 to December 2023 (when he ostensibly had new legal representatives who gave him different advice to his former attorney), is that his former attorney undertook to bring the application for rescission and setting aside of the sale but did not do so. They were advised "at that stage" that any eviction application is without merit and that the rescission application would be dealt with after the eviction application was dismissed. The applicant provides no details, such as the date when this latter advice was given. He makes no mention of what effort he made to follow up with his attorney on the progress of the matter, especially as transfer of the property to the purchaser (CVR) would have been imminent.

[23] It is common cause that the transfer of the property to CVR took place in March 2023, and their eviction application against the applicant and his wife was issued on 22 June 2023. Therefore, the

applicant's reference to "at that stage" could surely only be a reference to June 2023, or at best April 2023, when a notice to vacate was sent to the applicant and his wife by CVR. It is unclear what the applicant did between December 2022 and June 2023 to rescind the Mhlambi order, as the intention to do so appears to have been formed in December 2022. No explanation is forthcoming from the applicant. As I indicated, CVR's evidence that it sent to the applicant and his wife, a notice to vacate the property, early in April 2023. It was only thereafter that the applicant and his wife appear to have been galvanised into action. Mrs Du Toit addressed a letter on 18 April 2023 to an employee of the bank, complaining about the behaviour of the "new owner" of the farm, referring to CVR, and complaining about other matters that are not necessary for me to deal with here. A few days thereafter, on 23 April 2023, the applicant's former attorney wrote to the bank's attorney setting forth, for the first time defences that were not previously raised, a few of which I mentioned earlier.

[24] Although the applicant's attorney indicated that he held instructions to bring an application to cancel the sale, nothing appears to have been done to advance this instruction. The applicant once again failed to give a full and candid explanation of what happened between 23 April 2023 and 18 January 2024, when the present application was issued. I am inclined to agree with the submissions of both Absa and CVR that the applicant has raised defences and other issues which lack merit and that his conduct in this matter is designed to delay his eviction from the property.

[25] If an application for condonation depended only on the explanation for the non-compliance with the timeframes set out in the Rules, the applicant would have fallen short of the required standard, as his explanation for the delay is not one that is detailed or one that covers the entire period of the delay. His explanations are very general in nature, lacking the detail that is required in applications for condonation. Such explanation is, however, only one of the factors to be considered by the court in deciding whether to grant, firstly, condonation for non-compliance with the Rules of Court and secondly rescission of the order. This court is obliged to consider the reasonableness and adequacy of the explanation for the delay, in conjunction with other factors in making an order that would achieve fairness to both parties.

[26] Prospects of success in the action is an important factor in determining whether condonation should be granted in the present matter. It is trite that the applicant will have to make out a case for condonation. In order to assess the strength of his prospects of success, traversing the merits to some extent, is necessary. I have dealt with the merits to the extent necessary for the consideration of the applications for condonation and rescission. I re-iterate that the applicant has failed to establish that he has any prospects of success should the Mhlambi order be set aside. He has not assailed or sought the rescission of the default judgment granted on 4 May 2009, which declared the property executable and subsequently authorised the sale in execution of the property. He has also failed to show any grounds upon which the sale of the property should be set aside, and in fact accepted that CVR is the owner of the property. The conduct of the applicant and his wife indicate that they

acquiesced in the sale, and the subsequent transfer of the property to CVR. It does not avail them now to seek the setting aside of the sale, in the absence of any legal grounds for doing so.

[27] Mr Roux argued that if condonation and rescission of the default judgment are not granted, the applicant will suffer great prejudice, in that he and his family will be left homeless and destitute. This then brings me to the considerations of fairness and the interests of justice. In the context of the history and chronology of events in this matter, the applicant belatedly raises the defences he does in this application, some three years after the Mhlambi order was granted. He alleges that he is not indebted to the bank but does not provide any acceptable evidence of this, except some vague assertion that a "specialist" audited the "statements" and concluded that the debt was settled. In my view there is no evidence to support this contention. If the applicant had produced the alleged statements, proof of payment or even a report by the so-called specialist which strongly indicated that the amount for which judgment was granted was incorrect, or that such evidence was before Mhlambi J but was not considered, I might have been persuaded to consider this submission more closely. In my view, the submission as it stands is without merit and cannot be sustained. The applicant himself sought to sell the property in 2017. If the property was sold, he would have had to have made alternate arrangements for his and his family's accommodation. It hardly lies in his mouth now to say that he would be homeless and destitute if evicted from the property.

[28] The applicant makes no tender of the costs incurred by CVR in the purchase and transfer of the property into its name. When confronted with this, Mr Roux submitted that this can be done later

and that Absa ought to pay these amounts to CVR. This is an untenable proposition and the consequences that would flow from such a situation would cause CVR and Absa extreme prejudice. The applicant has remained on the property and steadfastly refused to vacate the property. He and his family have lived on the premises, consumed utilities such as water and electricity and made no payments whatsoever in respect thereof, nor has the applicant paid the rates and taxes due on the property, which in my view is unconscionable. CVR has had to bear these costs, in addition to the amounts expended in obtaining the property, but has been unable to enjoy the use of the property.

[29] If rescission were to be granted, Absa would be in the position that it would not be able to recover the debt due to it by the applicant, or would have to wait several more years before it could do so. CVR stands to be out of pocket for a very large amount of money, even though it is a *bona fide* purchaser who has properly taken transfer of the property. Rescission of the Mhlambi order would, consequently, be grossly unfair to both Absa and CVR, and would, in turn, not be in the interests of justice. The applicant has through his own wilfulness and less than honest conduct, created the situation he finds himself in, and cannot expect the court to come to his rescue

[30] The lapse of three years before launching this application is unreasonable. The applicant has not tendered a reasonable or comprehensive explanation that is persuasive enough to grant condonation or rescission. Whichever Rule of Court the application is brought under (be it Rule 31(2)(b), Rule 42 or the common law),

the requirements of bringing the application within a reasonable time and showing good cause for condonation and rescission are still applicable. In my view, the applicant has failed to meet these requirements.

The Eviction Application – Case Number 3211/2023

[31] As I indicated, it is common cause that CVR purchased the property and that transfer thereof was registered in March 2023. CVR's right to claim eviction of the applicant and those occupying the property through him has not been seriously challenged. The court was not addressed on this by Mr Roux, who indicated that in respect of the eviction application, the only issue he had was the period of 20 days sought by CVR for the applicant to vacate the property. Mr Roux asserted that 90 days was a more reasonable period. I do not deem it necessary to deal with the CVR's case or the applicant's opposition thereto, as much of what is said in the eviction application has been covered in the rescission application.

[32] CVR sought an order in terms of Part B of the application for eviction, together with costs, as claimed, on an attorney and client scale. Absa likewise sought an order against the applicant for costs on an attorney and client scale. I point out, however that Absa did not seek costs on a punitive scale in its Answering Affidavit, or in its Heads of Argument. The award of costs is, however in the discretion of the court. The conduct of the applicant in this matter, in pursuing unmeritorious claims and in some instances being very sparing with the truth in order to secure the relief he seeks, has had the effect of bringing both respondents to court at great expense and

inconvenience. The applicant was fully aware that relief he sought would cause great prejudice to the respondents, and that some of the relief he claims is not permissible. He, nevertheless, proceeded doggedly on. In instances such as this, it would not be remiss of the court to exercise its discretion in respect of costs orders and express its displeasure at the manner in which the applicant has conducted the litigation in this matter, by making a punitive costs order against him.

[33] In the circumstances I make the following orders:

Case No. 1278/2009

33.1 The application for condonation is dismissed;

33.2 The application for rescission is dismissed;

33.3 The application to declare null and void, and set aside the attachment, sale in execution by the Sheriff, transfer and registration of the immovable property known as Remainder of the Farm Waschbank 921, District Brandfort, Free State Province, into the name of the second respondent, is dismissed;

33.4 The application to direct the third respondent, the Registrar of Deeds, to reverse the registration of transfer of the property into the name of the second respondent, and revert the title in respect of the said property into the name of the applicant, is dismissed;

33.5 The applicant is directed to pay the costs of the first respondent on a scale as between attorney and client;

Case No. 3211/2023

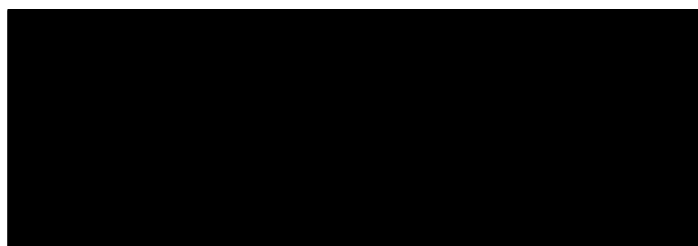
33.6 The first, second and third respondents are declared to be unlawful occupiers, within the meaning of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, of the property known as Remainder of the Farm Waschbank 921, district Brandfort, Free State Province;

33.7 The first, second and third respondents are ordered to vacate the property referred to in 33.6 above, no later than Sixty (60) days from the date of service of this order;

33.8 In the event that the first, second and third respondents failing to comply with the order in 33.7 above, the Sheriff of this court is authorised and directed to evict the first, second and third respondents from the property referred to in 33.6 above;

33.9 In the event of the Sheriff not being able to evict the first, second and third respondents from the property, he/she is authorised to obtain the assistance of the South African Police Service to do so;

33.10 The first and second respondents are ordered to pay the costs of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.



S NAIDOO J

On Behalf of the Applicant:	Adv LA Roux
Instructed by:	Lovius Block
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	Westdene
	Bloemfontein
	(Ref: JG Keyl/ke/JO2216)

On Behalf of the 1st Respondent:	Adv R Van der Merwe
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	(Ref: JPO/tp/271977)

On Behalf of the 2nd Respondent:	Adv J Els
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	Westdene
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	(Ref: 267195/E Ward/jc)