IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Case No: 324/18 & 409/2018

Heard on: 08/08/2018

Delivered on: 22/11/2018

In the matter between

MICHIEL DANIëL BURGER N.O.	**First Applicant/Respondent**
CAROLINA JOHANNA BURGER N.O.	**Second Applicant/Respondent**
ESTHER BURGER N.O.	**Third Applicant/Respondent**
MICHIEL DANIëL BURGER	**Fourth Applicant/Respondent**
CAROLINA JOHANNA BURGER	**Fifth Applicant/Respondent**
ESTHER BURGER	**Sixth Applicant/Respondent**
And	
THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA	**Respondent/Applicant**

JUDGMENT

PAKATI J

[1] There are two main applications before court. Regarding the first one, the applicant, Land and Agricultural Development Bank of South Africa ("Land Bank"), approached this Court on an urgent basis and without notice to the respondents, MD Burger, CJ

Burger and E Burger, the first to third respondents in their representative capacities as trustees of Michiele Burger Boerdery Trust, and as fourth to sixth respondents in their personal capacities as sureties and co-principal debtors ("the respondents"), on 13 February 2018 under Case Number 324/2018, and was granted a *rule nisi* returnable on 06 March 2018 for the perfection of a notarial bond and an order authorising the Sheriff to attach all movable assets of Michiele Burger Boerdery Trust duly represented by the respondents.

[2] In the second main application Land Bank seeks judgment against the respondents under Case Number 409/2018 in respect of the following amounts; R 14 541 346-35, R 1 663 978-60, R 295 811-83, R 222 598-33 and R 248 088-78 with interest calculated at 15.25% per annum calculated daily and capitalised and compounded from 01 November 2017 to date of payment. For convenience, I will refer to the parties as they appear in the main applications.

[3] In both applications Land Bank relies on written agreements, a sale agreement and a service level agreement. These agreements were not attached to the founding papers in order to avoid prolixity. The respondents oppose the applications.

[4] The respondents allege that the interim order granted on 13 February 2018 and application papers regarding the main applications were served on them on 22 February 2018, save for the first respondent who only became aware of the applications on 23 February 2018. On 28 February 2018 he consulted with his legal representative, Mr Steyn, and an arrangement to consult with counsel on 06 March 2018 was made. Before the said date the main applications were postponed to 08 June 2018 and on this date, to 08 August 2018.

[5] During the said consultation with counsel the first respondent was advised to obtain as of necessity the following documents as mentioned in paragraphs 31.1 to 31.3 of the founding affidavit for consideration before filing an answering affidavit:

> '31.1 Die gehele leêrinhoud van die prokureurs belas met die oordrag van die eiendom voormeld, synde Mnre De Villiers & Stenvert te Hertzogville;
>
> 31.2 Die kontrakte na verwys in die respondent se funderende verklaring; en

31.3 Alle state deur my ontvang van Suidwes Landbou aangande die lenings wat die onderwerp van die twee hoofaansoeke vorm.'

[6] On 08 March 2018 Mr Steyn addressed a letter to Land Bank's attorneys of record, Van de Waal Attorneys, requesting the documents mentioned above which were forwarded *via* email eighteen days later. The next day Mr Steyn arranged another consultation with counsel after receipt of the said documents. During such consultation it transpired that the documents forwarded were incomplete copies of the written sale and service level agreements and the annexures to the said agreements were not attached. The respondents discovered at that stage that the agreements relied upon by Land Bank in the main applications to establish *locus standi* were subject to suspensive conditions. Counsel then advised the first respondent to obtain complete copies of the agreements and prepare a notice in terms of Rule 35.[1]

[7] On 05 April 2018 the respondents filed a notice in terms of Rule 35 (12) and (14)[2] in respect of both cases. This rule provides thus:

'**35 Discovery, inspection and production of documents**

(12) Any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription thereof. Any party failing to comply with such notice shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

(14) After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within five days a clearly specified document or tape recording in his possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof.'

[8] In response to the respondents' request Land Bank stated that the respondents were furnished with the sale and the service level agreements *via* email dated 26 March 2018 and refused to comply in terms of sub rule (14) contending that it was inapplicable to application proceedings. Land Bank states that it would only comply with the said request if it were directed by the court. The respondents then filed a

[1] Uniform Rules of Court
[2] Uniform Rules of Court

notice in terms of Rule 30A[3] on 07 May 2018 informing Land Bank that an application to compel would follow if it failed to comply with the said notice.

[9] On 15 May 2018 Land Bank, in response to the said notice, contended that the annexures to the agreements were privileged, irrelevant and unnecessary for the issues in dispute. The respondents argue that Land Bank's contention was without legal or factual basis, hence the interlocutory application.

[10] On 22 May 2018 the respondents filed an application for condonation for the late filing of their answering affidavit. They also apply for an extension of time for the filing of same, an order declaring Rule 35 (14) applicable to the main applications and also compelling compliance with paragraphs A (a) and (b) as well as Part B of the applicant's notice in terms of Rule 35 (12) and (14). The respondents allege that the application for condonation is based upon Land Bank's non-compliance with Rule 35 (12) which resulted in its failure to file its opposing affidavit timeously. This, according to the respondents, is the reason why they failed to comply with the court order dated 08 June 2018. Land Bank vehemently opposes the application.

[11] In order to decide whether condonation should be granted it is necessary to determine whether or not Land Bank failed to comply with Rule 35 (12). The respondents only seek condonation for its failure to file its answering affidavit in terms of the Court order which was granted by agreement.

[12] Land Bank contends that it had already furnished the respondents with the relevant agreements. Mr de Koning, for Land Bank, submits that the respondents failed to comply with their undertaking to file their answering affidavit in time as ordered by Court and now seek condonation. He submits further that the respondents play delaying tactics as what they seek from Land Bank has already been discovered. Mr Van Niekerk, for the respondents, contends that the respondents made no

[3] Uniform Rules of court dealing with non-compliance with rules. It provides: (1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out. (2) Failing compliance within 10 days, application may on notice be made to the court and the court may make such order thereon as to it seems meet.

undertaking as alleged by Land Bank and disputes that the respondents are playing for time.

[13] Rule 35 (12) authorises the production of documents referred to in general terms in a party's pleadings or affidavits. It does not refer to detailed or descriptive reference to such documents.[4] The entitlement to see a document or tape recording arises as soon as reference is made thereto in a pleading or affidavit and a party cannot ordinarily be told to draft and file his or her own pleadings or affidavits before he or she will be given an opportunity to inspect and copy, or transcribe, a document or tape recording referred to in his or her adversary's pleadings or affidavits.[5]

[14] Regarding the request in terms of Rule 35 (14) Mr de Koning submits that the respondents are not entitled to the documents that they seek discovery of. He submits further that seeking to invoke Rule 35 (14) in application proceedings and later realise that the respondents first need a court order to procure leave to render this sub-rule applicable is itself a delaying tactic. Despite having been warned unequivocally that sub-rule (14) could not be resorted to, the respondents were adamant and filed a notice in terms of Rule 30A accusing Land Bank of failing to comply with its obligations flowing from the rules of court, the argument goes.

[15] According to Mr de Koning the respondents require various documents to assist them to establish whether or not Land Bank acquired rights from Suidwesfin Landbou (Pty) Ltd ("Suidwes") and whether or not the suspensive condition has been fulfilled. He states further that if they would be able to establish that the suspensive condition was not, that would mean that Land Bank has not acquired rights from Suidwes and therefore lacks *locus standi*.

[16] Mr de Koning contends that Land Bank and Suidwes, the parties to the agreements (the sale agreement and the level service agreement), have acted according to the said agreements and have given full effect thereto. He contends further that there is

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[4] Holdsworth & Othersv Reunert Ltd 2013 (6) SA 244 (GNP) at 246 para 12 where Mothle J held: The court in *Penta Communications Services (Pty) Ltd v King and Another* 2007 (3) SA 471 (C) cautioned against attaching a wider meaning to the word 'document' in rule 35 (12). In particular, even though it need not be described in detail, a document need not be inferred, but rather be directly referred to in the pleading or affidavit.'

[5] Protea Assurance Co Ltd & Another v Waverley Agencies CC and Others 1994 (3) SA 247 (C) at 249B

no dispute between Land Bank and Suidwes regarding the agreements as they regard the agreements as binding and operative between the parties. This, according to Land Bank leaves the respondents in limbo as they were not parties to the agreements. It argues further that as third parties, it is not open to the respondents to raise an issue whether or not a suspensive condition has been fulfilled.

[17] For this contention Mr de Koning relies on **ABSA BANK BPK v VON ABO FARMS BK & ANDERE**[6] where the question raised was whether or not the defendants, as outsiders, were entitled to rely on the non-fulfilment of the conditions in the agreement for its cancellation. In answering this question the following points had to be considered; (a) that the principle that courts had to endeavour to interpret commercial contracts as to render them effective was applicable; (b) that those who wanted the agreement set aside namely, the defendants had not been parties thereto, but outsiders, and years after the parties had fulfilled their obligations in terms thereof; (c) that the parties to the agreement had not been strangers, but for all intents and purposes members of one big family. The court held that it was obvious that the parties to the agreement had achieved that which they had intended. It held further that the defendant's attempt to have the agreement set aside was doomed to failure as there was no principle in law whereby a greater power to cancel an agreement was conferred on third parties than on the contracting parties themselves.

[18] Mr de Koning submits that there is no merit in the relief sought by the respondents and they have themselves to blame for not heeding to Land Bank's attorneys of record that they had to file their answering affidavit. He further relied on **NEDCOR INVESTMENT BANK LTD v VISSER NO AND OTHERS**[7] which referred to **Absa Bank** *supra* where it was said that it ill-behoves a third party to challenge an agreement where parties to the agreement with the authority of the regulatory authorities implemented and persisted with the implementation of the terms of the agreement.

[19] Mr Van Niekerk submits that the deponent to the founding affidavit, Mr Rudolph Nagel, gave a clear and unambiguous undertaking to provide complete copies of the

[6] 1999 (3) SA 262 (O) at 264D-G.
[7] 2002 (4) SA 588 (TPD) at 594 D-E.

relevant documents in the event of its request. However, Land Bank failed to discover the said documents thereby breaching the said undertaking. Paragraph 1.3 of Mr Rudolph Nagel's founding affidavit in Case Number 324/18 records:

'Suidwes is authorised to act as an agent of the Land and Agricultural Development Bank of South Africa in terms of a written sale agreement and the service level agreement. The said agreements are not annexed to this application in order to avoid prolixity. Copies of the agreements will be at all relevant times whilst the application is pending, be available at the offices of the applicant's attorneys for perusal and copies thereof will be available on request. The agreements will be bound and available in that form at the hearing of this application should it become necessary for any of the parties or the Court to have sight of the agreements and the contents thereof. To the extent that some of the clauses are relevant to the current proceedings, they are pertinently pleaded in this application.'

In paragraph 1.4 Mr Nagel added that he also has in his possession and control the loan agreement, security agreements and all related documents entered into between the respondents and Suidwes.

[20] The relevant paragraphs that Land Bank relies on in order to support the main applications are 3.7 and 3.8 of the founding affidavit which state:

'3.7 In terms of and pursuant to the aforesaid sale agreement, the applicant is the holder of all right, title and interest in and to all claims and related securities against the respondents;

3.8 The applicant as cessionary accordingly has *locus standi* with regards to all matters pertaining to the sale book debts and in particular the respondents' indebtedness to which this claim pertains.'

[21] Marais J in **PROTEA ASSURANCE CO LTD v WAVERLEY AGENCIES CC AND OTHERS**[8] laid down the fundamental principles regarding Rule 35 (12) as follows:

'[The] applicant's desire that second respondent should first have to file his affidavit in response to the allegations made by Roberts as to what second respondent said to him during the telephone conversations which were recorded on the tape before being allowed to listen to the tape is understandable as a forensic strategy, but to gratify it would be to defeat the object of Rule 35 (12). That Rule plainly entitles a litigant to see the whole of a document or tape recording and not just the portion of it upon which his adversary in the litigation has chosen to rely. That entitlement, unlike the entitlement to general discovery for which Rule 35 (1) provides, does not arise only after the close of pleadings in a trial action, or after both answering and replying affidavits have been filed in motion proceedings: it arises as soon as reference is made in the pleading or affidavit to a document or tape recording. It is inherent in that that a litigant cannot ordinarily be told to draft and file his own pleadings or affidavits before he will be given an opportunity to inspect and copy, or transcribe, a document or tape recording referred to in his adversary's pleading or affidavits.'

[8] (supra) at 249B-D; See also *Erasmus v Slomowitz* (2) 1938 TPD 242 at 244; and The Civil Practice of the High Courts of South Africa, Fifth edition , volume 1 at 788.

[22] In its response to the notice in terms of Rule 30A Land Bank indicated that *'more than sufficient particularity has been given regarding the agreement.* It states further that *'the agreement contains private and confidential information, and the portions not supplied are covered by privilege. Consequently the respondents are entitled to no more than what has already been granted to them.'*

[23] Thring J in **UNILEVER plc AND ANOTHER v POLAGRIC (PTY) LTD**[9] and also quoting dictum of Marais J, as he then was, **in Protea Assurance Co Ltd** *supra* stated thus:

> 'It is clear from these decisions that, otherwise than is the case with discovery under Rule 35 (1) and (2) read with Rule 35 (13), a defendant or respondent does not have to wait until the pleadings have been closed or his opposing affidavits have been delivered before exercising his right under Rule 35 (12): he may do so at any time before the hearing of the matter. It follows that he may do so before disclosing what his defence is, or even before he knows what his defence, if any, is going to be. He is entitled to have the documents 'for the specific purpose of considering his position' *(Erasmus v Slomowitz* (2) (supra at 244); see also *Gehle v McLoughlin* 1986 (4) SA 543 (W) at 546D-E). I conclude that the applicants' refusal to produce the documents sought cannot be justified on this ground.'

[24] It is of great significance to refer to sub rule (13) as well. It provides:

> '(13) The provisions of this rule relating to discovery shall mutatis mutandis apply, in so far as the court may direct, to applications.'

Clearly the purpose of this sub rule is to extend the provisions of Rule 35 which focuses on action proceedings to also apply to application proceedings.

[25] The issues for determination are whether or not Land Bank failed to discover in terms of Rule 35 (12) thereby allegedly rendering the respondents unable to file their answering affidavit timeously. The issue further is whether the provisions of Rule 35 (14) are applicable to the main applications. In **FIRSTRAND BANK LTD t/a WESBANK v MANHATTAN OPERATIONS (PTY) LTD AND OTHERS**[10] Molahlehi AJ held:

> '[17] The authorities are in agreement that, in general, discovery does not apply in application proceedings as a matter of course (African Bank Ltd v Buffalo City Municipality and Others 2006 (2) SA 130 (Ck HC) in para 6). In this respect the court in Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and Another (1979 (2) SA 457 (W) at 470D-E quoting Stuart v Ismail 1942 AD 327 at 332 – Eds) held that

[9] 2001 (2) SA 329 (C) at 336G-J.
[10] 2013 (5) SA 238 (GCJ) at paras [17] & [18].

'In application proceedings we know that discovery is a very, very rare and unusual procedure to be used and I have no doubt that is a sound practice and it is only in exceptional circumstances, in my view, that discovery should be ordered in application proceedings.'

[18] The exception to the general rule, that discovery does not apply in application proceedings, does not arise as a matter of course, but can only be by way of an application. Once an application is made, the court, in considering whether the exception to the general rule applies, has a discretion to exercise. In order to succeed, the applicant has to persuade the court that there exist exceptional circumstances that justify the departure from the general rule. In this respect the court in Krygkor Pensionfonds v Smith (1993 (3) SA 459 (A) at 467B-D) held:

'The answer to this contention is that the principle underlying the procedure sanctioned by the courts in these cases is that the courts have, as stated in the passage quoted above from [Hart v Stone (1883) Buch 309], "very large powers of ordering a disclosure of facts where justice would be defeated without such disclosure."

[26] Plasket AJ in **PREMIER FREIGHT (PTY) LTD v BREATHETEX CORPORATION (PTY) LTD**[11] stated:

'…[C]ertain important constitutional values must also be borne in mind. The founding constitutional value of the rule of law, enshrined in s 1 (c) of the Constitution of the Republic of South Africa Act 108 of 1996, and the right to access to court, entrenched in s 34 of the Constitution, encapsulate a commitment by the State to make available to the public for the resolution of disputes courts that function according to fair procedures. Secondly, while South Africa could once be described as a closed and secretive society, that too has been changed by a constitutional commitment to openness, not only in government but also in the private sphere: s 32 of the Constitution provides for access to information held by the State, or by private bodies if it is required for the exercise or protection of a right. Section 39 (2) of the Constitution requires me to interpret Rule 35 (13) in such a way that the spirit, purport and objects of the Bill of Rights is promoted.'

[27] It is not in dispute that the respondents were not parties to the contract between Suidwes and Land Bank. Mr de Koning argues that the respondents' application is ill conceived, irrelevant and constitutes an abuse of process. He argues further that the respondents were not entitled to raise as an issue an argument that the suspensive condition in the agreement between Suidwes and Land Bank was not fulfilled. Therefore their request to discovery does not exonerate them from filing the opposed affidavit as ordered on 06 April 2018. He relies on **POTPALE INVESTMENTS (PTY) LTD v MKIZE**[12] where Govern J held:

'[22]…It is clear that the court did not regard the bringing of the application (let alone the request for further particulars) as suspending the time period under rule 26.

[23] This reasoning commends itself to me as applying equally to the present matter. The delivery of rule 35 notices did not suspend the period in which the defendant was obliged to deliver a plea or

[11] 2003 (6) SA 190 (SE) at para [8].
[12] 2016 (5) SA 96 (KZP) at 105 paras [22] and [23]

other document referred to in rule 22. When he was confronted with a rule 26 notice, he was put to an election. He could either have done his best to plead and so have defeated the bar or he could have applied to extend the time within which to plead and to compel production of the documents for that purpose.'

[28] Importantly, in *Protea Assurance* it is stated that Rule 35 (12) plainly entitles a litigant to see the whole document or tape recording and not just the portion of it upon which his adversary in the litigation has chosen to rely. This entitlement arises as soon as reference is made in the pleading or affidavit to a document or tape recording as alluded to in the cases *supra*. A litigant has to be given an opportunity to inspect and copy or transcribe such document or tape recording before drafting and filing his own pleading.

[29] Even though it has been stated in **MOULDED COMPONENTS AND ROTOMOULDING SOUTH AFRICA (PTY) LTD v COUCOURAKIS AND ANOTHER** that in application proceedings discovery is a rare and unusual procedure to be used[13] but because of the fact that motion proceedings have been instituted the respondent is called upon not only to plead to the claim set out in the founding affidavit and the notice of motion but is obliged to place before court its evidence.[14]

[30] *In casu* Land Bank does not only refer to the agreements it relies on but undertakes to make copies of the agreements to be *'at all times available at the offices of the applicant's attorneys whilst the application is pending for perusal and copies thereof will be available on request.'* In its founding affidavit it did not mention that parts of the agreements were confidential and or privileged or that only parts would be made available. Its allegation was unsubstantiated either legally or factually. It was revealed for the first time in response to the respondents' notice in terms of Rule 30A. My emphasis

[31] The entitlement and the obligation to produce the documents arise as soon as reference is made thereto in the pleadings or affidavit. Rule 30A provisions apply to a failure to comply with a notice under sub rule (12) of Rule 35 despite that the sub rule itself provides a sanction for non-compliance.[15] It is inherent in the instant case

[13] 1979 (2) SA 457 (W) at 470D.
14 Saunders Vave Co Ltd v Insamcor (Pty) Ltd 1985 (1) SA 146 (T) at 149.
[15] Machingawuta and Others v Mogale Alloys (Pty) Ltd and Others2012 (4) SA 113 (GSJ) at para [13].

too that the respondents cannot ordinarily be told to draft and file their own pleadings or affidavits before they are given an opportunity to inspect and copy, or transcribe, the requested documents referred to in Land Bank's founding affidavit. Therefore Rule 35 (12) plainly entitles the respondents to see the requested documents. In the circumstances it would be safe to infer that the applicant waived its right to privilege due to non-communication.

[32] Upon interpretation of Rule 35 (12) a party called upon to comply with this rule is excused from doing so if he/she can show that the document requested is irrelevant to the issues at hand or is privileged but cannot refuse on the grounds of confidentiality.[16]

[33] The question is whether the documents in question are essential not merely useful, in order to enable the respondents to plead.[17] The respondents in their notice in terms of Rule 35 (12) & (14) state that the applicant failed to comply with Rule 35 (12) by not discovering documents referred to by Mr RM Nagel. The respondents know and believe that the said documents are in Land Bank's possession and control and are relevant to the issues. They have specified them with precision. Lack of these documents amongst those discovered by the applicant result in the respondents being unable to draft their answering affidavit thereby complying with the court order dated 06 March 2018.

[34] Land Bank discovered the sale agreement which contains 91 pages but from page 56 to 57 of 91 only signatures appear. Pages 58 to 91 are not included. Similarly, the service level agreement ends at page 73 of 95. Page 74 contains only signatures and pages 75 to 95 have not been attached. The respondents have clearly specified the documents which they allege are relevant for the purposes of putting their full defence. The respondents have, in my view, succeeded in showing that exceptional circumstances exist to exercise my discretion in their favour. Land Bank had an *onus* setting up facts relieving them of the duty to produce the documents requested by the respondents. All that Land Bank does is to oppose the application on the basis

[16] Centre for child Law v Governing Body Hoërskool Foscville and Another [2015] 4 All SA 571 (SCA) at 582.
[17] MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd 1999 (3) SA 500 (C) at 515C-I

that the respondents were not parties to the agreements and were therefore outsiders.

[35] Mr Van Niekerk argues that the validity of the agreements will be placed in issue thereby showing that the respondents have *prima facie* prospects of success in the main applications. The fact that Land Bank relies on the agreements but refuse to discover same puts the respondents at a disadvantage in conducting their case. Its refusal to disclose and failing to show that the undisclosed documents are privileged raises a concern.

[36] Having regard to the circumstances referred to above the respondents would be prejudiced if the interlocutory application is not granted by allowing Rule 35 (14) applicable in these proceedings so as to give the respondents an opportunity to decide what evidence should be placed before court in answer to the application against them. Filing an answering affidavit before such discovery is made would be prejudicial to them. It is only fair that they should be able to refer to and rely upon the agreements in preparation of their affidavits. I take into consideration that this matter involves millions and therefore it is in the interests of justice that issues be ventilated.

[37] I am satisfied that Land bank failed to discover in terms of Rule 35 (12) and that the respondents were entitled to the agreements hence the respondents, after consultation, requested for full disclosure in order to prepare and file their answering affidavit. If Land Bank had not breached the undertaking as set out in the founding affidavit the respondents could have been able to file their answering affidavit timeously. In the circumstances condonation should be granted.

In the circumstances I make the following order:

1. **The respondents, MD Burger No and 5 others' failure to file their answering affidavit in the main applications within the time given in the order dated 06 March 2018 is condoned.**

2. **The time within which the respondents should have filed the answering affidavits is extended to the date being 15 days after the date upon which the documents as specified in the respondents' notice in terms of Rule 35 (12) and (14), and also paragraphs A (a), A (b) and Part B, with subparagraphs thereof would have been made available to the respondents by the applicant for inspection.**
3. **It is declared that the provision of Rule 35 (14) is applicable in this application.**
4. **The applicant, The Land Bank and Agricultural Development Bank of South Africa, is ordered to make available as referred to paragraphs A (a), A (b), with subparagraphs of the respondents' notice in terms of Rule 35 (12) and (14) and allow the respondents' attorneys of record to make copies thereof within ten (10) days of this order.**
5. **The main application is postponed to 23 November 2018 for the parties to arrange a date for hearing in consultation with the Judge President and the Registrar of this Court.**
6. **Costs are reserved for determination in main application.**

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JUDGE BM PAKATI
NORTHERN CAPE DIVISION, KIMBERLEY

On behalf of the applicant:	**ADV J VAN NIEKERK (SC)** **DUNCAN & ROTHMAN INC.**
On behalf of the respondents:	**ADV L DE KONING (SC)** **VAN DE WALL INC.**