

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES.

(2) OF INTEREST TO OTHER JUDGES: YES.

(3) REVISED.

2022-11-07

DATE



SIGNATURE

Case Number: 5640/2022

In the matter between:

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

THE FINANCIAL SERVICES TRIBUNAL

First Respondent

JSE LIMITED

Second Respondent

JUDGMENT

POTTERILL J

- [1] The Applicant, Trustco Group Holdings Limited [Trustco] is seeking a review and setting aside of the reconsideration decision taken by the First Respondent, the Financial Services Tribunal [the FST] dated 22 November 2021 [the decision]. The decision is to be replaced with an order that Trustco's reconsideration application of the First Respondent, the JSE Limited [JSE] decision be upheld with costs including the costs of two counsel. In the alternative, the FST decision must be remitted to the chairman of the FST with directions that the chairman of the FST is to appoint a Panel in accordance with

s224(4) of the Financial Sector Regulation Act 2017 [the FSR-Act] with such Panel to include at least one person suitably qualified in, and having suitable working knowledge of accounting, accounting practices and the international financial reporting standards. Trustco is also seeking the review and setting aside of the JSE decision requiring that Trustco restate its group annual financial statement for the year ending 31 March 2019 and the interim results for the six months ending 30 September 2018.

Factual background

- [2] Trustco is a public Namibian company listed on the JSE with its shares offered for sale on the JSE. Dr van Rooyen is Trustco's CEO and majority shareholder and also the sole shareholder of Huso Investments Pty Limited. The crux of the dispute lies in Trustco's annual financial statements portrayal of three transactions for the year ending 31 March 2018 and its interim results for the six months ending 31 August 2018 [the financial statements].
- [3] The first transaction has as background that Dr van Rooyen loaned to Huso N\$ 546 million. In Huso's financial statements this loan was classified as equity in that Dr van Rooyen invested in Huso as a shareholder. In 2018 Trustco bought all the shares of Huso and then this loan was reclassified as a liability; Huso owed that money to Dr van Rooyen. Shortly after Trustco acquired Dr van Rooyen's Huso shares Dr van Rooyen forgave this N\$546 million loan. This resulted in Trustco reflecting this as a gain of N\$546 million in the financial statements and an earn-out mechanism in Dr van Rooyen's sale of shares agreement to his benefit [the first loan].
- [4] A second loan of up to N\$1 billion was advanced by Dr van Rooyen to Trustco. This loan was also within a few months forgave and reflected as a N\$1 billion gain for Trustco [the second loan] with also an earn out mechanism for Dr van Rooyen.

- [5] Trustco owns properties in Elisenheim development. These properties were reclassified from inventory to investment properties. The reason for this was that a decline in demand led it to believe that it would not sell the properties quickly. Trustco then revalued the properties upwards which increased its profitability. It was reflected as a N\$693 million gain in the profit and loss account in its financial statements [the property issue].

The JSE decision

- [6] The JSE reviews the financial statements of every listed company at least once in every five years and Trustco's financial statements were in this process audited. The JSE referred the two loans and the property issue to the Financial Reporting Investigation Panel [FRIP], the advisory body to the JSE. A further issue relating to the sale of properties was also in issue, but Trustco rectified this issue to the satisfaction of the JSE.
- [7] FRIP had consulted and obtained submissions from Trustco. On the information obtained it advised the JSE that Trustco's financial statements did not comply with the International Financial Reporting Standards [IFRS.] Trustco had an opportunity to comment on the FRIP report.
- [8] On 16 October 2020 the JSE decided that Trustco did not on the first and second loans and the property issue comply with the IFRS. Trustco objected to this decision, but on 11 November 2020 the JSE dismissed Trustco's objection and directed it to restate the financial statements by reversing the first and second loans as gains recognised in profit and loss. Trustco was on the property issues instructed to reverse the reclassification of the properties and reverse the gains recognised in the profit and loss.

- [9] I do not dwell on the pending suspension application and the Non-binding advisory vote published by Trustco's excepting to note that regrettably there is no love lost between Trustco and the JSE.

The reconsideration application before the FST

- [10] The FST's panel consisted of retired Judge Harms, and an advocate and an attorney. In its decision it restated that a reconsideration application is in *"the fullest sense - it is not restricted at all by the Registrar's decision and has the power to conduct a complete rehearing, reconsideration and fresh determination of the entire matter that was before the Registrar, with or without new evidence or information."* The decision also referred to the principle of deference which requires a court to show respect to bodies like the JSE.
- [11] Before the FST were the opinions of experts, Prof Maroun on behalf of the JSE and Mr T Njikizana on behalf of Trustco. FRIP's report was also before it.
- [12] The decision of the FST on the first loans was that "on balance, the loan reclassification, waiver and acquisition transaction(s) should not have been treated as separate and distinct transactions in order to reflect their economic substance and not merely their legal form.
- [13] Pertaining to the second loan much of what was said about the first loan the FST also found to apply to this loan. Here once again the legal form did not reflect the economic substance.
- [14] As for the property issue the FST found that there was no evidence of a change in use in relation to the property; the properties were underdeveloped and vacant and continued to be vacant and undeveloped. The expressed

intention for which the property was held was a different timetable and a deferment of projects not amounting to a change in use.

The review grounds to the re-consideration application

- [15] One of the review grounds initially raised have petered out; the lack of authority of the JSE's director Mr Visser. A ground of review still alive is whether the JSE had the power to issue a directive that Trustco had to restate its financial statements by making the corrections prescribed by the JSE Listing Requirements. Further grounds of review were raised that the JSE and the Panel did not give any consideration to the relevant business judgment rule; the employment by the Panel of the "*due deference principle*" was an irrelevant consideration and the failure to call Dr van Rooyen as a witness to explain certain inferences drawn by the panel rendered the process procedurally unfair. The issue addressed below was seen as the nub of the matter before me.

Was the Panel incorrectly constituted?

- [16] In oral argument this was argued as the crux of the matter. At the outset it must be noted that this ground was not raised with the Panel during the reconsideration hearing. The reason proffered why it is only raised before me is that Trustco only later realised that no member of the Panel had accounting experience.
- [17] The review has now been framed as that the Panel of the FST was incorrectly constituted because it lacked any person with financial or accounting qualifications and experience. The argument goes that it rendered the decision reviewable because the reconsideration application involved complex financial issues in relation to the correct interpretation and application of specific paragraphs of the IFRS and the appropriate accounting treatment of the transactions in accordance with such interpretation.

[18] In the supplementary affidavit it is submitted that Trustco had a legitimate expectation that the Panel members had the necessary qualifications and expertise and it is to be accepted that the Panel members had no personal benefit of expert financial knowledge. Without this expertise the fundamental flaw in the constitution and appointment process of the Panel led to an unreasonable and unfair process.

[19] It was argued that the Panel delivered a decision akin to a High Court judgment, adopting a lawyer's approach. In preferring the opinion of the JSE's expert they did so as lawyers. Therefore, the appointment of the Panel was both procedurally and substantively irrational in not complying with the provisions of s220(2) read with sections 224(4) and 225(2) of the FSR-Act.

The legislative framework

[20] Sections 220, 224 and 225 of the FSR-act provide as follows:

"220. Members of Tribunal –

- (1) The Tribunal consists of as many members, appointed by the Minister, as the Minister may determine.*
- (2) The Tribunal members must include –*
 - (a) at least two persons who are retired judges, or are persons with suitable expertise and experience in law; and*
 - (b) at least two other persons with experience or expert knowledge of financial products, financial services, financial instruments, market infrastructures or the financial system.*
- (3) A person may not be appointed to, or hold office as, a Tribunal member if the person –*

- (a) *is a disqualified person; or*
 - (b) *is not a citizen of the Republic or is not ordinarily resident in the Republic.*
- (4) *The Minister must appoint a Tribunal member referred to in subsection (2)(a) as the Chairperson and may appoint another Tribunal member as Deputy Chairperson.*
- (5) *The Chairperson –*
 - (a) *must preside at meetings of the Tribunal; and*
 - (b) *is responsible for managing the work of the Tribunal effectively.*
- (6) *The Deputy Chairperson performs the functions of the Chairperson on delegation by the Chairperson, or in the absence of the Chairperson, or if for any reason the office of the Chairperson is vacant.*

224. *Panels of Tribunal –*

- (1) *The Chairperson must constitute a panel of the Tribunal for each application for reconsideration of a decision.*
- (2) *The panel constituted to consider an application for the reconsideration of a decision is the decision-making body of the Tribunal, and the panel exercises any of the powers of the Tribunal relating to the reconsideration of the decision.*
- (3) *The decision of the panel is the decision of the Tribunal as referred to in sections 234, 235 and 236 in respect of an application for the reconsideration of a decision.*
- (4) *A panel consists of –*

- (a) *a person to preside over the panel, who must be a person referred to in section 220(2)(a) or 225(2)(a)(i); and*
 - (b) *two or more persons who are Tribunal members or persons on the panel list.*
- (5) *If, for any reason, a panel member is unable to complete proceedings for a reconsideration of a decision, the Chairperson may –*
- (a) *replace that member with a person referred to in subsection (4);*
 - (b) *direct that the proceedings continue before the remaining panel members; or*
 - (c) *constitute a new panel and direct the new panel to either continue the proceedings, or start new proceedings.*

225. Panel list –

- (1) *The Minister must establish and maintain a list of persons who are willing to serve as members of the Tribunal.*
- (2) *The persons included in the panel list must –*
 - (a) *have relevant experience in or expert knowledge –*
 - (i) *of law; or*
 - (ii) *of financial products, financial services, financial instruments, market infrastructures or the financial system; and*
 - (b) *be a fit and proper person to be included in the panel list.”*

Argument of behalf of Trustco on the legislative framework

- [21] On behalf of Trustco it was argued that s220(2)(b) provides that the Tribunal members must include “*at least two (other) persons with experience or expert knowledge of financial products, financial services, financial instruments, market infrastructures or the financial system.*” S224(4) regulates the constitution of a Panel to consider an application for reconsideration. It requires a person with suitable expertise and experience in law and two more persons who are Tribunal members or persons on the panel list. S225(2)(a)(ii) provides that as an alternative to two members who have relevant experience in law, the two Panel members can be persons who have relevant experience or expert knowledge of financial products, financial services, financial instruments, market infrastructures of the financial system. The conclusion submitted was that a Panel must in each case be appointed on a case-by-case basis and this matter required a member with accounting experience.
- [22] Because a reconsideration application involves decisions of financial sector regulators and a Panel can consider all relevant issues and facts before it afresh, it is necessary that the Panel be equipped of legally and financial experienced members.
- [23] Put another way, a Panel for reconsideration must be constituted with specific regard to the subject- matter before it from one or more persons of the one, and of the other two categories referred to in subsections 220(2)(a) or 220(2) (b) of the FSR-Act. The argument went that if a legal matter a legal persons or financial matters persons with financial expertise. This would be a sensible interpretation of s224(4). The JSE’s argument boiled down to interpreting s224 in isolation. This would lead to a Panel being appointed without considering the subject matter of a reconsideration. Due to the nature of the issues before the Panel, decisions made by financial sector regulators, a sensible interpretation of s224 was required. This would accord with the apparent purpose of sections

218 to 225 resulting in the purpose of s222(2) specifically requiring that two persons of each of the two distinct categories be appointed to the Tribunal.

The argument on behalf of the JSE

- [24] The argument went that the amended notice was aiming at the wrong target, because the relief sought does not seek to attack the decision on how to appoint the Panel. But, importantly it was never raised before the Panel and it is only raised now to avoid a defence of delay that would hit Trustco, be the review in terms of Promotion of Administrative Justice Act 3 of 2000 [PAJA] or legality. Trustco at the very least already in May, before the hearing, knew who the Panel members were and Trustco should not be allowed to raise this issue now.
- [25] It was not understood what in the process was unfair since retired Judge Harms in the Rule 53 “*reasons*” set out that he complied with the only statutory requirement that the persons on the Panel list must have an equal opportunity to be appointed to serve on the Panel of the Tribunal. He had no reason to exclude the two Panel members that sat with him on this Panel. He considered where the matter emanated from; the JSE. He did not have the record and cannot read through records before members of the Panel are appointed simply because it would be an unworkable situation.
- [26] S220(1) refers to the Tribunal as the broader concept. When the Minister appoints the Tribunal there must be at least two retired judges and at least two people with, in a nutshell, finance experience. Not all of these appointed members of the Tribunal hears an application. S224(4) requires that a Panel for reconsideration must have a presiding member who is a retired judge and at least two other members. These two members must either be members of the Tribunal or come from the panel list. S224(4) of the FSR Act does not require members of a Panel to have financial expertise. In any event not

“accounting, accounting practices” as prayer 3 of the amended notice seeks. Trustco thus confuses members of the Tribunal and a Panel of the Tribunal.

The Panel was constituted in terms of the legislative framework and was appointed procedurally fairly

- [27] It is palpable that this ground of review flows from this paragraph in the decision of the Panel:

“32 We find the opinion of Prof Maroun expressed as a chartered accountant convincing and logical for us as lawyers”

This ground of review was thus not raised earlier because the composition of the Panel was not problematic to Trustco despite it having knowledge of who sat on the Panel prior to the hearing and during the hearing. This ground is now raised because as *“lawyers”* the Panel did not have financial expertise and their decision is thus wrong and a new Panel with a member with *“accounting”* experience would have come to another decision. Review is not the vehicle to raise the merits of the decision and seek another outcome. Review is concerned with whether a decision was regular or irregular not whether it was right or wrong. On this ground alone this ground of review should be rejected.

- [28] But, in any event, I agree that the decision of retired Judge Harms to compose the Panel as he did in conjunction with the secretary cannot be attacked as a decision of the Panel. In the amended notice there is no attack against this decision. The rule 53- *“decision”* furnished by the deputy chair of the FSB and the chair of the reconsideration Panel, retired Judge Harms, set out that in fulfilling the administrative function of constituting the Panel for reconsideration he would not have a record and no Panel member would read the record before heads of argument are filed. Availability of a member plays a role in who is appointed to the Panel. He fulfilled the only statutory requirement that the persons in the Panel list must have an equal opportunity to be appointed to serve on the panel of the Tribunal. He had no reason to exclude the two panel

members that sat with him on this Panel. He considered that the matter emanated from the JSE. There was no procedural irregularity when the Panel was appointed.

[29] It was not gainsaid that this “*procedure*” followed is the protocol to constitute a Panel to hear a reconsideration, whether it is a Full Court constituted for the High Court or any other Tribunal hearing a re-consideration. The subject-matter cannot practically be before the person constituting the Panel before the heads are filed. I cannot find that the constitution of the Panel by retired Judge Harms was procedurally unfair or that the constitution of the Panel was a decision of the Panel and is reviewable. But, there is nothing preventing a party seeking reconsideration that is of the opinion that the subject matter would require a Panel member to have financial expertise, to on referral motivate and request that there should be a “*financial*” member on the Panel.

[30] If the review is based not on the decision to constitute the Panel as it was, but that it’s composition did not comply with the legislative requirements, this argument is rejected. In oral argument Counsel for Trustco conceded that s224 does not expressly require that on a Panel there must be a member with “*experience or expert knowledge of financial products, financial services, market infrastructures or the financial system.*”

[31] Considering the language used in the light of the ordinary rules of grammar and syntax and the context in which the provision appears there is no ambiguity or uncertainty about the content of sections 220,224 and 225. The Tribunal, as the broader concept, is appointed by the Minister with s220(2) requiring that in the Tribunal a pool of Tribunal members must include at least 2 retired judges and 2 people with broadly speaking financial experience. If for example the Minister appoints 5 or 10 Tribunal members only 2 need to have experience in finance. Similarly, on the Panel list there also need only be two persons with financial experience.

[32] The argument that in view of the nature of the reconsiderations brought before the Panel, the requirement of financial experience would be an apparent reason to at least have one Panellist to have such expertise is not unreasonable. But, a Panel consisting of lawyers is imminently suited to adjudicate a reconsideration in evaluating facts and evidence. If financial expertise to analyse is required, the “lawyers” rely on the experts’ opinions brought before it. This is not a foreign concept or practise and is done regularly by “lawyers.” If the Legislature intended to sidestep this established practise it could easily have expressed it in the FRS Act with a requirement that dependant on the subject matter each Panel had to have one member with financial background. A further problem however is that a person who has “*experience or expert knowledge of financial products, financial services, market infrastructures or the financial system*” may not have “*accounting*” experience as Trustco pleads for. Even if a person with such experience is appointed to the Panel the Panel would still be reliant on competing expert evidence. Put differently, having a person with financial knowledge as a Panel member will still require accepting the opinion of one expert on good grounds; as many experts as many opinions. However, this argument highlights the problem with this ground of review; the argument is in fact that the constitution of the Panel of “lawyers” rendered the decision of the Panel wrong. This is not a ground for review. The irony is not lost on the Court that in the amended notice of motion this Court, as a lawyer with no financial expertise, is asked to assess the merits of the JSE and Panel’s finding, set it aside and replace it.

[33] In *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at par [18] Wallis J found as follows:

*“A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. **Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a***

statute or statutory instrument is to cross the divide between interpretation and legislation.”[my emphasis]

In this matter to substitute the words actually used for, what is argued a businesslike result, would lead to a cross between interpretation and legislation

Does the JSE have the power to direct a restatement of the financial statements and make corrections thereto?

[34] Initially the JSE directed Trustco to “*re-issue*” the financial statements. In its final directive it directed Trustco to “*restate*” the financial statements. On behalf of Trustco it was argued that to re-issue financial information is a permissible remedy in terms of par 8.65(b) of the Listing requirements, but that a restatement making corrections in terms of International Accounting Standards [IAS] is not.

[35] The result of a restatement would have a ripple effect because errors must be retrospectively corrected and will also require the statutory external auditors to reconsider their audit opinion in the financial statements.

[36] The exercise of the JSE of a power it does not have infringes the principle of legality as it can only exercise powers conferred upon it by law. The JSE derives its powers from s10(2)(b) of the Financial Markets Act 19 of 2012 and exercising its discretion is an administrative function also for purposes of PAJA.

[37] In answer to this the JSE argued that par 8.65 of the Listing Requirements is broad enough to include restatement. It provides as follows:

“to instruct such issuer to publish or re-issue any information the JSE deems appropriate.”

But, in any event, s10(2)(b) of the Financial Markets Act 19 of 2012 is even broader giving the JSE the power to “*do all things that are necessary for, or incidental to the proper operation of an exchange.*” S11 prescribes that “*any other penalty that is appropriate in the circumstances.*”

- [38] I was also referred to the unreported matter of *Huge Group Ltd v Executive Officer: Financial Services Board* 15380/2015 delivered in the Gauteng Local Division on 21 July 2017:

“[62] *This then was the case made out by Huge in its affidavits. In essence, Huge contended that the JSE, on a proper construction of Listing Requirement 8.65, was not permitted to direct Huge to any restatement of its financial statements ...*”

The court therein found as follows:

“[69] *This then takes me back to the case made out by Huge in its affidavits. I am unable to agree with the case advanced by Huge that Listing Requirement 8.65 does not, on its proper construction, empower the JSE to require Huge to restate its AFSs, In my view, there is no basis to restrict the interpretation of Listing Requirement 8.65 in such a manner and consequently, the JSE did not, in its decision of 27 October 2014, act outside of the powers granted to it by Listing Requirement 8.65.*”

- [39] I agree that Listing requirement 8.65 is wide enough to include “*restate.*” The purpose of the directive of the JSE to Trustco is corrective action pertaining to its financial statements. Pertinently it directed Trustco to reverse the gains reflected in its financial statements after Dr van Rooyen waived the loans and reclassified the Elisenheim properties. If it is not restated, it is not corrected and the JSE has in fact no teeth to correct the position to protect the public with the

financial statements setting out the full picture.

[40] I understand the underlying reason for this ground of review as that Trustco acted *bona fide* in using the methodology it did when recording the financial transactions. The recording was done pursuant to engagement with expert IFRS advisors as well as independent external advisors. The Board of Directors of Trustco consist of imminent persons. This imminent Board made its business judgment decisions on the advice of Mr Njikizana. The JSE is interfering with the business judgment decisions of Trustco and it has no authority to do so.

[41] The FRIP report and the JSE both concluded pertaining to the N\$ 1 billion gain as follows: “... suggests that the structure has been contrived to increase QvR’s equity shareholding.” I find it puzzling that Mr van Rooyen has to date not put his version to anybody. It may have enlightened all and have cleared the air. Having said this, I need not decide the bona fides, or lack thereof, and it has not influenced me in any way. The aspect is addressed because I can understand that would-be-interference in bona fide actions result in frustration and anger. But, the reality is, we live in a necessary controlled world. A company listed on the JSE has to comply with the JSE regulatory framework. The JSE provides a safe market for buying and selling securities and prevents fraud and protects investors by applying strict rules regarding trading. The financial statements of a listed company communicate with the public and it must tell a full story. The JSE and the FST found that the “*accounting*” was not telling the whole story and did not comply with the IFRS. Trustco must adhere to these decisions and restate accordingly.

Should the FST have applied the business judgment rule and given deference to the Board’s decision to reflect the three contested entries in the statements as they did?

[42] This ground again reflects a tug-a-war between regulation and judgment of the

Board of a business. The IFRS sets the standards that has to be adhered to. Within those boundaries a Board can exercise its discretion, but a Board cannot sidestep the standards of the IFRS. Section 76(4) of the Companies Act has entrenched the business judgment rule in our Companies law, but to what end? It serves as a barrier against liability when a director has breached his or her fiduciary duties. *“There is always a link between good governance and compliance with law. Good governance is not something that exists separately from the law and it is entirely inappropriate to unhinge governance from the law.”*¹ The business judgment rule therefore becomes a protective measure for directors against liability imputations. It protects honest directors from liability where a decision turns out to have been an unsound one and at the same time prevents the stifling of innovation and venturesome business activity. It is also doubtful that Dr van Rooyen concedes that he had breached his fiduciary duty and must thus rely on this principle.

- [43] I am satisfied that the business judgment rule only addresses the liability of a director, it does not govern non-compliance with the IFRS.

Did the FST correctly refer to the due deference principle?

- [44] The FST referred to this principle under the heading of the “context” of the reconsideration application. This was seemingly done because there was *“some confusion during argument about the nature of reconsideration proceeding.”* The wide powers, appeal jurisdiction is then set out as well as the fact that *“Although the Tribunal is an ‘expert’ tribunal, it is obviously less qualified than the JSE to make multi-faceted and polycentric decisions ...”* and reference is then made to the dictum in *Staufen Investments (Pty) Ltd v The Minister of Public works, Eskom Holdings SOC Ltd & Registrar of Deeds, Cape Town* 2020 (4) SA 78 (SCA).

¹ Muswaka, L – *“Shielding Directors against Liability Imputations: The Business Judgment Rule and Good Corporate Governance”* [2013] SPECJU 2

- [45] This principle is entrenched and by analogy applicable in these matters. The argument that the reference to this principle supports the argument that the Panel is incompetent to hear this matter is again an argument on the merits and not a ground for review. The concept of “*Sufficient expertise*” raised could then never suffice with one member of the Panel having financial expertise as defined. At least two panel members will then have to have specific expertise as defined, which will not necessarily include auditors with knowledge of the IRPS and the workings of the JSE, to be able to override the “*lawyer*” on the Panel, that supposing that those two members do not have different views. This is simply untenable.
- [46] However, more importantly, the Panel did not sit back and defer to the JSE. They analysed the experts’ views and relied on the one view of the expert. Also recognising that Mr Nijikizana was not objective as he advised Trustco and was thus not independent; an important consideration. The FST did not take irrelevant considerations into consideration.

Must Dr van Rooyen have been called?

- [47] This ground needs little address. At any time in terms of the rules Trustco could have called Dr van Rooyen. Even if it is true that during the hearing goalposts shifted, retired Judge Harms specifically asked whether Dr van Rooyen should not be called to testify:

“But what I would like to know is this; if we believe that, or come to the conclusion that there is reason to believe that what is presented as discreet steps, was not discreet steps, but the single transaction. Would that not be a reason to apply section 3, 235, sub 5 of the FSRC Act, for me to direct Dr van Rooyen to appear before the panel, and to give evidence so that he can explain these waivers, which are not explained

on the papers?" This invitation was no accepted."

This ground of review is dismissed.

[48] I accordingly make the following order:

The application is dismissed with costs. Costs to include the cost of two counsel.



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 5640/2022

HEARD ON: 7 September 2022

FOR THE APPLICANT: ADV. C.M. ELOFF SC
ADV. S. SCOTT

INSTRUCTED BY: Norton Rose Fulbright South Africa Inc.

FOR THE 2nd RESPONDENT: ADV. I. GREEN SC
ADV. M. KRUGER

INSTRUCTED BY: Webber Wentzel Attorneys

DATE OF JUDGMENT: 7 November 2022