REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING ON SPECIAL PLEA

Case No. I 1968/2014

In the matter between:

THEOFILLIUS UVANGA **PLAINTIFF**

And

CHRISTO STEENKAMP **DEFENDANT**
RICARDO VAN WYK **FIRST THIRD PARTY**
ELBY PERTO SNYDERS **SECOND THIRD PARTY**

Neutral citation: *Uvanga v Steenkamp* (I 1968-2014) [2015] NAHCMD 273 (13 November 2015)

CORAM: MASUKU A.J.

Heard: 5, 6, 7 & 8 October 2015

Delivered: 13 November 2015

Flynote: LAW OF PROPERTY – Ownership of a motor vehicle in terms of the common law and legislation; PRACTICE – special plea of *locus standi in judicio.*

Summary: The plaintiff sued the defendant and the third party for damages allegedly sustained by a motor vehicle he claimed as his. The defendant raised a special plea of *locus standi in judicio* seeking to non-suit the plaintiff on the grounds that the vehicle was not registered in his name but in the name of his brother and *adoptandus. Held* that registration of a vehicle in terms of the Road Traffic and Transport Act No. 22 of 1999 and the relevant Regulations and Government Gazettes does not detract from ownership at common law; *Held further* that on the facts, notwithstanding that the plaintiff was not the registered owner of the vehicle, on the evidence he had shown on a balance of probabilities that he was the owner at common law. Special plea dismissed with costs.

ORDER

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1. That the special plea is hereby dismissed with costs.
2. That the parties' representatives are to see me immediately in Chambers for the purpose of setting new trial dates for the continuation of the trial on the merits.

RULING ON SPECIAL PLEA

MASUKU AJ.,

[1] The crisp question for determination in this phase of the trial, simply put, is whether the plaintiff has the necessary *locus standi in judicio* or legal competence to institute the present proceedings against the defendant in this matter. Should the court find, as the defendant has submitted that the plaintiff does not have the necessary *locus standi,* then *cadit quaestio.*

[2] In order to understand the setting in which the present question arises, it is necessary to briefly sketch the facts giving rise to the question presently serving for determination. The facts acuminate to this: The plaintiff sued the defendant and the third parties, who were subsequently joined in the proceedings jointly and severally for payment of an amount of N$ 68 500. 00 representing loss allegedly suffered by the plaintiff as a result of damage sustained by a motor vehicle described as a BMW M3 sedan bearing registration number N 5842 OH, which sustained damages as a result, it is alleged, of the negligent conduct of the defendant and for transportation costs.

[3] In his plea, the defendant, in the first instance, raised the special plea of *locus standi* on the basis that from the documents discovered by the plaintiff, it was clear that the said motor vehicle was not registered in the name of the plaintiff but rather in the name of one Wald Hindjou, who it is common cause from the evidence, is the plaintiff's brother and a*doptandus.* It was therefor claimed that because the said vehicle, was registered in the said Wald's name, the plaintiff did not have the *locus standi* to initiate the action proceedings but the registered owner.

[4] In order to resolve the issue, oral evidence of the plaintiff and his a*doptandus* was led. The defendant did not call any witness but made submissions of law on the evidence led. It must be mentioned for the record that the third parties, represented by Mr. Phillander, did not participate in these preliminary proceedings. I shall chronicle the evidence led, the cross examination of the witnesses and make factual findings on the evidence. I shall conclude the ruling by making reference to the submissions of law made in relation to this matter and come to a conclusion on whether the special plea should be sustained.

The chronicle of evidence

[5] The first witness to be called was the plaintiff. Cut to the chase, his evidence was that in March 2013, he imported the vehicle described above from the United Kingdom,

via the Republic of Botswana. It was his evidence that the costs of shipping, taxes, customs duties, clearance fees and agent costs associated with the importation of the vehicle when it was landed in this Republic amounted to N$ 98, 000, 00. It was also his evidence that the vehicle was insured by Alexander Forbes to the value of N$ 191, 768.00, which was the market value of such vehicles in Namibia.

[6] It was his evidence that due to his estate planning requirements, he decided to have the vehicle registered in the name of his a*doptandus .* It was his evidence that the vehicle, though registered in Wald's name was owned by him. The primary reasons for the registration of the vehicle in Wald's name were that he owns two vehicles in Swakopmund registered in his name and it would have been difficult to register cars in different towns. Second, he mentioned that he is married in community of property and Wald is a beneficiary to him and if he happened to pass on, Wald could inherit the vehicle from him.

[7] In cross-examination, PW1 testified that he is the owner and possessor of the vehicle in question. He admitted that when regard is had to the registration documents, it is clear that his name is not reflected in same but it was his evidence that the papers for the vehicle are with him. He further testified that if there was an accident involving the vehicle, and the other person sought to sue Wald, the latter would refer the said person to him, the plaintiff to deal with. It was also his evidence that Wald has no driver's licence.

[8] The plaintiff, with the leave of court, applied to introduce a further document being a policy document issued by Alexander Forbes. It is common cause that it reflects the plaintiff as the insured. In further cross-examination, the plaintiff testified that he registered the vehicle in Wald's name for no sinister purpose of disinheriting his wife of the vehicle, It was his evidence that he worked in Swakopmund and was on the road a lot of the time and that he discussed the issue of the registration of the vehicle in Wald's name and she would inherit other properties and knew that in the event of his death, the vehicle would devolve on Wald.

[9] When put to him that he could not do with the vehicle as he pleases because it is not registered in his name, the plaintiff testified that in the event he wished to sell the vehicle, he could talk to Wald who could sign the documents without any problems as he understands the situation regarding the vehicle.

[10] In re-examination, the plaintiff testified that the motor vehicle policy is paid for by him. It was also his evidence that although the vehicle in question is registered in Wald's, it was the plaintiff who paid the licence fees on an annual basis.

[11] The case took a strange twist which required that further evidence be led and the court granted the plaintiff leave to adduce further evidence and this related to the importation of the vehicle. The plaintiff testified that the vehicle in question from the United Kingdom. It was his evidence that he travelled to the United Kingdom and had the vehicle loaded on a tipper truck to cut costs of shipping. He testified that he paid the shipping costs in England and Hard Rock Investments paid those costs. It was his further evidence that importation of the vehicle was paid by him personally. He produced documents including a bill of lading, which reflected his name thereon. He also produced a copy of an invoice he paid to Chesi, the clearing Agents for the clearance of the vehicle.

[12] The plaintiff was taxed on a number of issues relating to the shipment of the vehicles and associated costs and the involvement of the outfit called Hard Rock together with the clearing agents. The long and short of his evidence was that he paid all duties and costs associated with the importation of the vehicle in question to Botswana, although for some aspects, he got financial assistance in terms of a loan from Hard Rock which he paid back.

[13] The next witness to be called was Mr. Waldi Hindjou, who adduced evidence under oath. A statement he made to the police dated 02 March 2015 was read into the record and constituted his evidence in chief. Therein, he stated that although the vehicle

in question is registered in his name it is however owned by the plaintiff his brother. He also stated that the plaintiff paid for this vehicle as he does not have the financial muscle, so to speak to afford purchasing such a vehicle, considering in particular that he is unemployed. He also stated that the plaintiff was the one who was responsible for maintaining him and paying for his tuition at the material time.

[14] In cross-examination, it was his evidence that when the vehicle in question was being registered, he was residing in Swakopmund. He confirmed that the plaintiff paid for the vehicle although he did not himself witness his brother paying the money for the vehicle. It was his further evidence that at the material time he was a student studying to be a diesel mechanic. That as the extent of the material portions of his evidence.

Analysis of evidence and findings of fact

[15] I must mention that the defendant did not call any witness in support of its case. As matters stand, there was before me, no evidence to contradict the evidence of the plaintiff's two witnesses that the vehicle was bought by the plaintiff and shipped to Namibia at his cost and that he, for reasons of estate planning decided to register the vehicle in the name of his a*doptandus.* It is also an uncontroverted fact that the vehicle licence fees were being paid by the plaintiff notwithstanding the registration of the vehicle in Wald's name.

[16] It would appear that before a decision was made to call Wald, he was sitting in court in the gallery as the plaintiff was being examined. This should not have happened. I have, however, considered Wald's evidence with the necessary caution and I find that there is nothing that he said which may have in any way been conceivably been influenced or jaundiced by the evidence of the plaintiff. He did nothing in his examination in chief than to merely read a statement he had made much earlier before the proceedings into the record. I have no reason, notwithstanding that he is related to the plaintiff, to reject his evidence, which was clear. He was not, in my view, in any

manner unhinged by the cross-examination. I could not detect that Wald had been coached to give evidence consistent with that adduced by his brother.

[17] Ms. Visser made a lot of play on the fact that the two witnesses are related and that the court should accept the evidence with a degree of caution. In response, Mr. Jones argued that the issue of the relationship between the two witnesses and any interest Wald may conceivably have was never put to him to deal with in cross-examination. I am of the considered view that Mr. Jones is correct on this score. Even if he is not, I am of the view, as I have stated above that there was no inherent danger in relying on the evidence of Wald in the circumstances. He was not in any way shaken by the cross-examination and stuck to his version as a postage stamp to an envelope.

[18] In the circumstances, I find for a fact that the vehicle in question was purchased by the plaintiff from the United Kingdom and imported into Namibia through Botswana. I also find for a fact that it is the plaintiff who paid all the costs associated with the registration of the vehicle as Wald testified that he was a student at the time and did not have the money to purchase the vehicle. His uncontested evidence was that he was a student and his brother decided to register the vehicle in his name. There is no reason to debunk the reasons provided by the plaintiff for registering the vehicle in the name of Wald as his evidence in this regard in uncontested and credible. I also find that although the vehicle was registered in the name of Wald, he had no financial or other interest in the said vehicle and he played no role whatsoever in its acquisition. He was only to be the registered owner without having played any role whatsoever in the purchase, shipping and registration of the vehicle.

[19] The question that now requires determination is whether on the evidence, particularly taking into account the findings of fact I have made above, the defendant's special plea should be upheld. In other words, has the plaintiff not shown on a balance of probability that he has the necessary *locus standi in judicio* to institute the present proceedings?

<u>The Law</u>

[20] It now opportune, having considered the evidence, to have applied thereto, the law applicable. In the first instance, I intend to deal with the whole concept of *locus standi in judicio.* I do so for the reason that it is the mainstay of the defendant's defence in this leg of the enquiry. It is trite that a litigant instituting or defending proceedings must have a legal right or recognized interest that is at stake in the proceedings in question. It was submitted by the defendant that *locus standi* concerns the sufficiency and directness of the said person's interest in the litigation in question. Once established, it duly qualifies that person to be regarded as a litigant for purposes of the matter in question.[1]

[21] I also accept without the demur the correctness of the defendant's submission that the general rule is that the party instituting proceedings, otherwise referred to as the *dominis litis* should allege and prove that he or she has the necessary *locus standi* in the manner described above. The sufficiency of the interest, it must also be accepted, is a matter that must be determined on a case by case basis, and is not the laws of the Medes and the Persians so to speak. Whether the interest is sufficient in a case will obviously turn on the facts of the case under scrutiny. It therefore means that what we have to determine in this case is whether in view of the allegations made and the evidence led which has been analysed above, it can be said that the plaintiff has established the right and interest in the case at hand.

[22] The other issue that I feel I am in duty bound to address relates to the concept of ownership and this will particularly be directed to the ownership of a motor vehicle. To the extent necessary, consideration and analysis of the relevant statutory regime may have to be resorted to in order to cut the Gordian Knot in this case.

[23] It is common cause that the plaintiff alleges that he was the owner of the vehicle in question and subsequent documents suggested that the vehicle is not registered in

[1] Jacobs v Waks 1992 (1) SA 521 (A) at 543 D and Gross v Pentz 1996 (4) SA 617 (SCA)

his name, which in turn led to the attack on the sufficiency of his interest in the current proceedings. The main basis for the challenge of the plaintiff's standing in this matter emanates from the fact that he alleges to be the owner of the vehicle, yet in the registration documents, the said vehicle's ownership is attributed to his a*doptandus.*

[24] Both parties are *ad idem* regarding the incidence of ownership and the authorities they cited coincide in this respect. I will, for that reason, state the basic nature and character of ownership. It is described as a most comprehensive right and one which embraces not only the power to use (*ius utendi)* but also the power to consume the thing (*ius abutendi)* and the right to possess the thing (*ius possedendi)* and the right to dispose of the thing (*ius disponendi*). This also includes the right to reclaim the thing from any person who wrongfully withholds it and or to resist any unlawful invasion of the thing (*ius negandi*). See for instance *Johannesburg Minicipal Council v Rand Township Registrar*[2]and *Chetty v Naidoo* [3]

[25] According to Lexis Nexis E-Publication Vol 27., 2nd ed at 134, the following appears:

> 'The powers enumerated above do not necessarily provide a complete list of the powers inherent in ownership. Even though an owner has disposed of all the aforementioned powers, he or she can still remain the owner of a thing. By granting third parties powers of use, enjoyment, and so on, he or she only suspends his or her power to exercise his or her ownership to that extent. Once the powers granted are extinguished, his or her ownership automatically becomes unencumbered again. This quality of ownership is referred as the "elasticity" of ownership and in this context ownership is sometimes called a "reversionary right".

I will revert to deal with the above excerpt in due course.

[26] Turning to the statutory regime, the defendant quoted the Regulation 15 A 1 of the Regulations promulgated under Government Notice No. 95 of 1967 as amended by Government Notice No. 20 of 1998. It defines an owner in the following terms:

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[2] 1910 TPD 1314-19.

[3] 1974 (3) SA 12 () at 20.

> ‘(a) the person having the right to the use and enjoyment of the vehicle in terms of the common law;
> (b) the person having the right to the use and enjoyment of the vehicle under a contract with the title holder thereof including for any period during which such person fails to return the vehicle to the title holder when required to do so in terms of any conditions of such contract;
> (c) a motor vehicle dealer who is in possession of the vehicle for the purpose of sale,
>
> and who is indicated as the owner of the vehicle in any document of registration issued in accordance with this Chapter.’

[27] On the other hand, Regulation 15 A of the Regulations promulgated in terms of Government Gazette No. 95 of 1967, as amended by Government Gazette No. 20 of 1998, define title holder in relation to a motor vehicle as:

> ‘ . . . the person who –
> (a) is vested with the right to alienate such vehicle in terms of the common law;
> (b) is required to give permission for its alienation in terms of any contract with a person who is the owner of the vehicle as contemplated in paragraph (b) of the definition of ‘owner’.

[28] Mr. Jones, for the plaintiff pertinently referred the court to GN 53 in Government Gazette 2503 dated 30 March 2001 (as amended) particularly at regulation 382, where the following in relation to ‘title-holder’ and owner appears:

> ‘Until a date determined by the Minister in the Gazette, the owner of a motor vehicle must assume the duties of the title-holder of that motor vehicle’.

This reflects, Mr. Jones, forcefully argued, that the concepts of title-holder and owner are, in terms of the law, one. I would agree with the said statement, because it does not appear that the Minister has at the date of this judgment, from my research, changed the position in relation to the two concepts.

[29] The question to determine, in my view, is whether or not the plaintiff, in terms of the evidence chronicled above, fits the description of 'owner' as defined in the Road Traffic and Transport Act[4] and regulation 15 A, namely, a person who has the right to the use and enjoyment of the vehicle in terms of the common law and who is indicated as the owner in any document of registration issued in accordance with the regulations under section 20?

[30] On a proper analysis of the evidence, I am of the view that the plaintiff does meet the first part of the requirements as his evidence points to the conclusion that he purchased the vehicle in question, imported the vehicle into the country and also had the vehicle insured and paid its licence fees. It was also his uncontested evidence that used the vehicle exclusively and the that Wald did not hold a driver's licence and did not in fact drive the vehicle notwithstanding that it was registered in his name. It would appear to me that the plaintiff falls at the second hurdle, namely the fact that the vehicle in question is not registered in his name, which is an important requirement, as evidenced by the use of 'and' at the end of the provision in question after (c) thereof.

[31] In *Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd and Another,*[5] it was held that ownership at common law passes upon full payment and delivery of the *merx.* I am of the considered view, in the context, that the plaintiff was an owner of the vehicle at common law for the reason that from his uncontested evidence, he paid the full purchase price for the vehicle in question and it was delivered to him, with the vehicle ultimately landing on the shores of Namibia from the United Kingdom.

[32] The fact that the plaintiff does not fully meet the requirements of ownership of the vehicle in terms of statute law does not in my view affect or detract from his right to ownership in terms of the common law. In the circumstances, as earlier indicated, Wald was an 'owner' for convenience and had no real proprietary interest in the vehicle. He incurred no expense whatsoever in the purchase, and eventual delivery of the vehicle to

[4] Act No. 22 of 1999.
[5] 2003 NR 183 (HC) at 188 E.

Namibia. Furthermore, he did not pay for the licence fees nor the insurance of the vehicle. The evidence also pointed, as mentioned earlier, to the fact that not only did he not have the money to purchase the vehicle, he also did not have a driver's licence and more importantly, mentioned that the vehicle belonged to his brother, though registered in his name.

[33] As a cue to the position, Frank A.J. in the *Standard Bank* case, found that it is possible to have a vehicle registered in one person's name but ownership thereof vesting in somebody else. At page 189 the learned Judge dealt with the provisions of the Motor Vehicle Theft Act[6] and said:

> 'The purpose of the Act is to deal with matters relating to motor vehicle theft and not to arrange or deal with the passing of ownership of vehicles. The Act creates new offences and facilitates prosecutions. Nowhere can one glean an intention to change the common law concept of ownership or even to deal with the issue of ownership. The clearance certificate is issued so as to confirm ownership (definition section) and not to confer ownership. In these circumstances there is no basis to suggest that the non-compliance with the Act in any manner deprived the bank of ownership of the vehicle. Indeed, I am sure the dealer would have been very surprised if he had been informed that despite receiving the full purchase price and handing over of possession of the vehicle he was still owner and even more so where the authorities had registered the vehicle in the name of the first defendant.'

[34] In view of the foregoing, I am of the considered view that the fact that a vehicle is registered in the name of a particular person in terms of the Act and relevant regulations does not necessarily take away the right of ownership in terms of the common law. This is particularly the case in a case such as the present, where the evidence tendered before court explains the situation behind the scenes as it were. It is therefore possible that a person, though not registered in terms of the Act as an owner or title-holder, can still be the owner at common law, if the requisites of ownership at common law, as stipulated above can be met.

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[6] Act No. 12 of 1999.

[35] The court was also referred by the plaintiff's counsel to the case of *S v Levitt.*[7] In that case, Mr. Levitt, the respondent, who was married in community of property to his wife, entered into a written hire purchase agreement with a company called Malcomess Motors (Pty) Ltd in respect of a Peugeot motor vehicle. A vehicle owned by the respondent's wife was delivered to the company as a trade-in and the balance outstanding after taking into account the value of the vehicle traded in and the one for the car purchased, was to be paid in instalments. The new vehicle, the Peugeot, was registered in the respondent's wife's name.

[36] In dealing with the ownership of the Peugeot and the provisions of the Road Traffic Ordinance[8], the court, per Wessels J.A. had the following to say at p482:

> 'In my opinion, the registration of the Peugeot in the name of the appellant's wife was in conflict with the provisions of sec. 42 (2) of the Ordinance. On the evidence placed before the regional magistrate, the Peugeot ought to have been registered in the appellant's name. He had "possession" of the vehicle "by virtue of the hire purchase agreement" and was, therefore, the owner thereof for purposes of sec. 42 (2). In any event the registration of the vehicle in the name of the appellant's wife was devoid of any legal consequences whatsoever both in so far as the ownership of the Peugeot was concerned and also in respect of the transfer of the appellant's contingent rights in terms of the hire purchase agreement. Except for the purposes of registration of the Peugeot, appellant was not the owner thereof. He was, therefore, not in a position to make any disposition in the sense of transferring ownership from him to his wife. At all material times the ownership of the Peugeot remained vested in the seller, Malcomess Motors. Furthermore, appellant required the written consent of Malcomess Motors to the cession of his contingent rights to his wife."

[38] I am of the opinion that the thread that runs through both cases is that the ownership of a motor vehicle cannot always be properly inferred solely from the information contained in a registration document issued in terms of the law. The mere fact of registration may be said to constitute an *inducium* of ownership which may be

[7] 1976 (3) SA 476 (A).
[8] No. 21 of 1966.

rebutted by facts actually led in evidence properly when laid before court. I am of the view that the instant one is such a case.

[39] I agree with the submission made on behalf of the plaintiff that on a proper reading of the provisions of the Act and the relevant regulations, it would appear that the common law meaning and consequences of ownership have not in any way been watered down or abrogated. To the contrary, they have been imported into the legislative tapestry as can be seen from the legislative nomenclature in that regard.

[40] Having regard to all the foregoing, I am of the considered opinion that the defendant's special plea, considered in the circumstances of the evidence, cannot be sustained. It must, for that reason, be dismissed with costs, as I hereby do.

[41] There is an issue that remains to be dealt with and it relates to costs allegedly incurred when the matter was stood down firstly for the purpose dealing with an objection to the line of questioning by the defendant's counsel and secondly to enable the plaintiff to produce documents relating to the purchase and importation of the vehicle from the United Kingdom to Namibia and the leading of further evidence. The defendant claims costs necessitated by the delay incurred as a result thereof.

[42] It is the plaintiff's submission that the aggregate of both adjournments resulted in a n entire day being wasted and that the plaintiff should therefor bear the costs wasted as a result. In regard to the first part, it is the defendant's contention that the plaintiff's objection was ill-founded as the plaintiff's counsel later conceded after considering authority that there was nothing untoward or amiss with the line of questioning.

[43] I am loath to penalize counsel for raising objections which are raised in good faith albeit unsuccessfully. This would cause practitioners to be afraid and not raise issues that they subjectively are of the view should be raised, fearing that if held against them, the court may be persuaded to wield the weapon of costs against their clients. It must be mentioned that the matter raised by Mr. Jones relating to the pleadings and the

permissible line of cross-examination was novel and involving. That he may not have been correct in the present circumstances does not justify the court inflicting a disabling order of costs on the plaintiff for that.

[44] I gathered no impression that the objection was raised for dilatory or improper purposes and it to give in to the entreaties of the defendant in this regard, would herald chilling effects on practitioners, with the fear of the sword Damocles in the nature of costs, landing on their client's heads. They would thus allow what may in some instances be inadmissible or improper evidence to be led. It must also be borne in mind that objections to question during examinations are not always easy matters to resolve and frequently, objections raised, I must add, at the spur of the moment, may prove to be wrong. It would be wrong in the extreme to then crucify litigants by mulcting them with costs for rulings on objections which have been unsuccessful. The costs incurred in this phase of the hearing were in my view legitimately expended and there is no need to punish the plaintiff therefor. And to his credit, once it became clear to Mr. Jones that his objection may not be sustained, he readily conceded and this must be encouraged and not punished by an adverse order for costs.

[45] In this regard, I will quote with approval the remarks made in *Australian Conservation Foundation and Others v Forestry Commission*[9]where the court expressed itself as follows in respect of a litigant being mulcted with costs on unsuccessful defences, reiterating the supremacy of the court's discretion on matters of costs in that regard:

> '. . . a party against whom an unsustainable claim is prosecuted is not to be forced, at his peril in respect of costs, to abandon every defence he is not sure of maintaining and oppose to his adversary only the barrier of one hopeful argument: he is entitled to raise his earthworks at every reasonable point along the path of assault. At the same time, if he multiplies issues unreasonably, he may suffer in costs. Ultimately, the question is one of discretion and judgment'.

I am of the firm view that the plaintiff cannot be accused of having raised his earthworks, to borrow from the language used, at unreasonable turns in the line of

[9] (1988) 81 ALR 166.

assault. It was a genuine attempt to raise an objection, but one that did not succeed. It would be harsh to penalize such a genuine attempt to object.

[46] Regarding the second claim for wasted costs occasioned by the matter standing over to the following day to enable the defendant to call Wald, I am of the view, even on the version of the defendant as stated in the heads of argument, that the said application cannot be sustained. I say so for the reason that the court postponed the matter to the following day at or about 16h00, which is the time that the court ends its court business in trials in any event. There was consequently not time lost as a result thereof and the defendant would have utilized the adjournment for the day, which had in any event arrived, to consult on the new evidence that was proposed and allowed by the court to be led.

[47] I am of the considered view that the application for wasted costs, in the context of this matter, are ill-founded and ought to be dismissed. I gathered the distinct impression that the defendant counsel was desirous of getting a favourable costs order against the plaintiff at all costs and this should not be. Such applications can and should be made but in appropriate and deserving cases, the present one excepted in my view.

[48] In the premises, I issue the following Order:

[48.1] The special plea is hereby dismissed with costs.

[48.2] The parties' representatives are to see me immediately in Chambers for the purpose of setting new trial dates for the continuation of the trial on the merits.

TS Masuku

Acting Judge

APPEARANCES:

PLAINTIFF:	JP Jones Instructed by
DEFENDANT:	I Visser Instructed by
THIRD PARTIES	R Philander Instructed by LorentzAngula Inc.