IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC05/2015

Before: **The Honourable Acting Judge President Meer**

Heard on: 29 April 2019

Delivered on: 6 May 2019

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~
(3) REVISED: YES / ~~NO~~

6 May 2019 .....
DATE SIGNATURE

In the matter between:

THE EBENHAESER COMMUNAL PROPERTY ASSOCIATION	FIRST PLAINTIFF
THE INDIVIDUAL MEMBERS OF THE FIRST PLAINTIFF	SECOND PLAINTIFF
THE EBENHAESER COMMUNITY	THIRD PLAINTIFF

and

THE MINISTER OF DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	FIRST DEFENDANT
CHIEF LAND CLAIMS COMMISSIONER	SECOND DEFENDANT
THE OWNERS OF THE CLAIMED LAND	THIRD TO TWENTY SIXTH DEFENDANTS
THE VALUER GENERAL	TWENTY SEVENTH DEFENDANT

JUDGMENT

MEER AJP

Introduction

[1] This judgement addresses the question of costs *de bonis propriis*.More particularly it considers whether the Plaintiffs' erstwhile Attorneys, Rehana Khan Parker and Associates ("Parker") should be required to pay the costs occasioned by the postponement of a trial due to their failure to get the files in order and their failure to comply with the Rules, Practice Directions and various other directions of the Court. Secondly it considers whether the State Attorney should be awarded costs *de bonis propriis* for its failure to file a response by the First Defendant, the Minister of Rural Development and Land Reform ("the Minister"), to the referral

report filed by the Regional Land Claims Commission, Western Cape ("RLCC") in terms of section 14 of the Restitution of Land Rights Act No 22 of 1994 ("the Act").

[2] The Plaintiffs are the Claimants in the restitution claim which, by agreement, was to be heard over a three week period in February 2019. The First and Second Defendants support the claim. The Third to Twenty Sixth Defendants ("the Landowner Defendants") oppose the claim. The Twenty Seventh Defendant is cited because of aspects pertaining to the valuation of the claimed land.

[3] I *mero motu* raised the question of costs *de bonis propriis* at a pre-trial conference held on 23 January 2019 and gave notice to both Parker and the State Attorney to show cause why costs *de bonis propriis* should not be awarded against them. The parties were subsequently given a timetable for the filing of submissions and heads of argument for the determination of the issue of costs *de bonis propriis*. From submissions received, it is only the Landowner Defendants who claim such costs. They do so against Parker only on the basis that her non-compliance *inter alia* with the Practice Directions and her failure to get the files properly indexed, paginated and ready for trial, was the cause of the trial not proceeding.

Legal Framework

[4] Once a claim for restitution of rights in land is referred to the Court, the procedure to be followed by the parties is prescribed at Rule 38 of the Land Claims Court Rules ("Rules"). The Rule provides as follows:

"REFERRALS

38. Referrals under the Restitution of Land Rights Act.

(1) When the Commission refers any matter to the Court in terms of section 14 of the Restitution of Land Rights Act, it must initiate the case by a notice of referral –

(a) in cases where an agreement on how the claim should be finalised has been signed, based on form 3 of Schedule 1 to these rules; and

(b) in all other cases, based on form 4 of Schedule 1 to these rules.

(2) When filing the original notice of referral, the Commission must also file a bundle which must contain at least the information and documents listed in rule 39, to the extent that it may be applicable.

(3) Every notice of referral by the Commission, together with –

(a) a copy of the Commission's report in terms of section 14(2) or (3) of the Restitution of Land Rights Act; and

(b) a list of documents contained in the bundle filed with the Registrar,

must be served by the Commission on –

(i) every person (including the claimant) against whom an order is sought or whose rights or interests may be affected by the claim; and

(ii) all government departments and officials having an interest in the matter, including the Registrar of deeds concerned, if section 97 (1) of the Deeds of Registries Act applies;

(iii) the Department of Land Affairs, at both-

(*aa*) the office of the Chief Director: Restitution; and

(*bb*) the office of the head of provincial office concerned.

(3A) it is not necessary to effect service of the notice of referral on –

(a) any person (other than the first claimant) who has signed a request for an agreement on how the claim should be finalised to be made an order of the Court, unless the Court orders otherwise; or

(b) the owner of land, where no restoration is claimed in respect of such land.

(4) After service of the documents referred to in subrule (3) has been effected, the Commission must file a notice to that effect with the Registrar and submit proof of service.

(5) Where the parties concerned have submitted a request that an agreement on how the claim should be finalised be made an order of the Court, the Court may, after considering the matter in chambers or hearing the matter in open court (as the presiding judge may direct)-

(a) make the agreement an order of the Court; or

(b) reject the request that the agreement be made an order of the Court, in which event the Court may order that the case –

(i) revert to the Commission; or

(ii) proceed in the form of an action as described in subrule (9).

(6) The claimant before the Commission-

(a) will be deemed to have withdrawn his or her claim if he or she has not filed a notice of appearance under rule 25(1), unless the Court orders otherwise;

(b) will be the plaintiff in the case before the Court, and will have all the rights; and duties of a plaintiff; and

(c) must deliver a notice listing the participating parties as required under rule 25(3).

(7) Any party on whom a notice of referral was served and who wishes to appear in the case-

(a) must file a notice of appearance as prescribed in rule 25(1) and furnish a copy thereof to the plaintiff and to the Commission; and

(b) may, within fifteen days of receipt of notice listing the participating parties under rule 25(3), deliver a response to any report or document filed by the Commission.

(8) The Commission must deliver copies of any further report made by it in terms of section 32(3)(a) of the Restitution of Land Rights Act to every party, and every party may deliver a response to it within fifteen days of receipt.

(9) Unless the Court-

(a) has made an agreement on how the claim should be finalised an order of the Court under subrule (5); or

(b) has ordered that the case revert to the Commission,

the case proceeds in the form of an action. The rules relating to the preparation for and conduct of an action will apply, except that no statement of claim, plea or reply may be filed and no counter-claim is permissible, unless the Court orders otherwise.

[5] Practice Directions 8 and 10 specify the procedure for setting matters down for trial and for the preparation of Court files.

"PRACTICE DIRECTION NO. 8

Request for trial dates

1. Upon the close of pleadings the plaintiff's or applicant's attorney shall collate, index and paginate the court file as directed in Practice Direction No.10. Thereafter he/she may apply for a date of hearing.
2. Should the plaintiff/applicant not apply for a date of hearing with 21 days after pleadings have closed, the defendant/respondent may so apply.
3. The application for a trial date shall be in writing to the Registrar. It shall be accompanied by a short practice note which will be affixed to the file. The note shall state in brief:
   3.1 the nature of the matter, the issues to be determined as well as the names and telephone number of the legal representatives;
   3.2 the estimated duration of the hearing;
   3.3 the estimated number of witnesses to be called."

"PRACTICE DIRECTION NO. 10

Collating, indexing and paginating of court files.

1. As soon as pleading are closed and before a trial date is requested the applicants' or plaintiffs' attorney shall;

1.1 collate, number consecutively and suitably bind all the pleadings relating to the trial as a separate bundle and ensure that they are in the court file;

1.2 collate, number consecutively and suitably bind all notices relating to the trial as a separate bundle and ensure they are in the court file;

1.3 collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof;

1.4 collate, number consecutively and suitably bind all pre-trial minute/s and all documents relating thereto;

1.5 prepare and attach an index to the pleadings bundle, the notices bundle, the pre-amendment pleadings bundle and pre-trial bundle respectively. The index must describe each pleading, notice or document as a separate item.

2. In binding the pleadings, notices and documents, care must be taken to ensure that the method of binding does not hinder the turning of pages and the bundle should remain open without being held open.
3. The pleadings, notices and documents should not be found in volumes of more than 100 pages.
4. The pleadings bundle must only contain the original pleadings (as amended, if applicable). Filing notes must not be included in any of the bundles.
5. If a document or documents attached to the pleadings, or contained in the documents as referred to in paragraph 1, is or are-

5.1 in manuscript, or

5.2 not readily legible,

the party filing such documents shall ensure that legible typed copies of the documents are provided.

6. Interlocutory applications must be bound separately. Interlocutory applications must be indexed by the party bringing such application. If for the hearing of the interlocutory application the Court is required to have regard to the main proceeding, the plaintiff/applicant must index such pleadings.
7. Discovery affidavits and discovered documents must be collated in a separate bundle."

The Background Facts

[6] In 1996 the Plaintiffs lodged a claim for restitution of rights in land in respect of some 1606 hectares along the Oliphant's River in the Western Cape, with the RLCC. Some eighteen years later, on 18 December 2014, the RLCC referred their claim to this Court. The reasons for the inordinate delay in referring the matter have not been explained, nor are they apparent. I pause to mention that this Court has on a number of occasions expressed its deep concern at delays

of this nature. They are prejudicial to claimants eager to have their claims adjudicated and to landowners of claimed land who are prohibited from selling, exchanging, donating, leasing, subdividing, rezoning or developing such land as stipulated at section 11(7) of the Act. The notice of referral included a comprehensive and detailed report indicating the support of the RLCC, and the Minister for the claim. In terms of the notice of referral the following were referred to the Court by the RLCC:

> 6.1 A written unsigned settlement agreement concluded between the Ebenhaeser Community, the Third Plaintiff, and the Government of South Africa indicating that the Minister supported the claim for the purpose of it being made an order of Court;
>
> 6.2 The claim in respect of those landowners who disputed the merits was referred for determination in terms of section 14 of the Act.
>
> In June 2015 a further settlement agreement between the Ebenhaeser Community, the Ebenhaeser Communal Property Association, the Minister and the Commission replaced all previous settlement agreements.

[7] The attorney representing the Plaintiffs at that stage was a Mr Smith ("Smith"). He did not comply with Rule 38(6)(c) of the Rules which requires the Plaintiff to file a notice listing the participating parties that had filed notices of appearance, and inviting them to file responses to the referral report in terms of Rule 38(7)(b). Nor was such a notice subsequently filed by Parker who replaced Smith as the Plaintiffs' attorney on 22 February 2017. In February 2015 notices of participation were delivered on behalf of the Plaintiffs and the Landowner Defendants in terms of Rule 38(7) read with Rule 25(1). On 21 October 2015 Smith filed a notice of action and statement of claim on behalf of the Plaintiffs, a step contrary to Rules 38 and 39 pertaining to referrals initiated by the

Commission. The Plaintiffs ought, in keeping with Rule 38, to have filed a response to the referral report. For the months thereafter it would appear that the parties engaged *inter alia* in settlement negotiations. When negotiations did not resolve the matter, the Landowner Defendants delivered a response to the referral report on 10 June 2016. In it, as aforementioned, they opposed the claim. As of that date pleadings were effectively closed.

[8] Correspondence (attached to the second supplementary affidavit of Johannes Mostert on behalf of the Landowner Defendants filed for this hearing), shows that the Landowner Defendants were persistently attempting since June 2016 to get the other parties to agree to a trial date. They initially filed a practice note requesting a trial date on 22 August 2016. A letter attached to that practice note complains that the Plaintiffs were delaying the matter and were only prepared to have the matter set down towards the end of 2017. Parker was appointed as the Plaintiffs' attorney on 22 February 2017 from a panel of attorneys who are funded by the State to represent litigants in land restitution and other land related matters. At a telephone conference on 29 March 2017 convened by the Court, the Plaintiffs expressed a preference for the trial to be held between 12 February to 2 March 2018 as opposed to dates in 2017 preferred by the Landowner Defendants, because Parker had recently been appointed to represent them. The matter was set down on the former dates.

[9] In a letter dated 19 April 2017, the Registrar instructed Parker to ensure that the files were in order and the Practice Directions complied with before proceedings begin. Parker did not comply. Thereafter, by agreement between all the parties the trial was postponed to enable the parties to negotiate a settlement. Negotiations broke down and the Landowner Defendants once again requested

the Plaintiffs and the State Attorney to provide dates when they were available for trial. On 10 August 2018 Parker wrote to the parties stating the Plaintiffs were available for trial from February 2019 onwards except for the period 6 to 9 May 2019. Thereafter the Landowner Defendants' attorneys filed a practice note on 7 September 2018 in which trial dates were requested on the basis that all parties were available from 1 February 2019. The practice note stated that the pleadings were complete although the Plaintiffs' attorneys indicated that they might file an amendment to their statement of claim. It recorded also that for all practical purposes the matter was trial ready.

[10] I pause here to state that the contention by Mr Van der Merwe, who represented the Plaintiffs at this hearing, that Parker did not believe that the matter was trial ready or that pleadings were not closed, must be rejected given her acquiescence to the trial dates. Nor is there any merit in Mr Van der Merwe's categorisation of the Landowner Defendants' practice note as being null and void for material non-compliance with Practice Direction 8, on the grounds *inter alia* that the file had not been indexed and paginated when the request for a trial date was made by the Landowner Defendants. Practice Note 8 clearly imposes an obligation upon the Plaintiff to index and paginate the Court file before the Plaintiff applies for a date. It however does not prevent the defendant from applying for a date, (should the plaintiff not so apply), until such time as the files are indexed and paginated, as contended by Mr Van der Merwe. Moreover, the fact that the practice note recorded the number of witnesses as unknown was probably an accurate response at that stage, and certainly not a reason to nullify the practice direction. In his criticisms, Mr Van der Merwe loses sight of the fact that the Landowner Defendants took the initiative in applying for a court date and filing the practice note because the Plaintiffs were not doing so.

[11] On 19 October 2018 at the request of the parties, the hearing of the restitution claim was set down during the following dates:

4 – 15 February 2019 and 25 February – 1 March 2019.

As is customary in this Court, the Registrar informed the parties of the dates allocated for the hearing and, as Parker had not complied with the previous direction of April 2017 to index and paginate the files, the Registrar yet again directed her to ensure that the files were in order and that the Court's Practice Directions are complied with before proceedings begin. In this regard Practice directions 8 and 10 quoted above, clearly record the obligation of the Plaintiffs' attorney. Practice direction 8 instructs the plaintiffs' attorney to collate index and paginate the court file as directed in Practice Direction No 10. The latter Practice Direction stipulates clearly the manner in which the court files should be indexed and paginated by the Plaintiffs' attorney. It was anticipated that with these directions the files would be ready for allocation to a judge before the end of term on 14 December 2018, so as to enable reading and preparation by the Judge and assessor during the long recess before the hearing. At no stage after the notification by the Registrar on 19 October 2019 did Parker communicate to the Registrar and parties that there were difficulties getting the matter trial ready, or that the dates allocated were not suitable.

[12] By the end of November 2018 the direction from the Registrar to Parker remained ignored. The Registrar at my request sent a letter to Parker on 28 November 2018 referring to the letter of 19 October 2018 pertaining to the preparation of the files in accordance with the Practice Directions, and requesting Parker to file a comprehensive practice note by 14 December 2018. The letter also directed Parker to file a statement of agreed facts and facts in dispute by 15

January 2019. All parties were requested to file a list of witnesses and a summary of their evidence by 15 January 2019 and a joint minute of experts was to be filed by 22 January 2019. The letter stated that failure to comply would result in the matter being struck from the roll.

[13] By that stage a perusal of the court files revealed that they were in a shambolic state, had not been indexed and paginated in accordance with the practice directions and the pleadings were in disarray. The Court researcher, Ms Vadachalam was asked to take charge. She telephoned Parker's office calling for action, and when there was none, she sent a letter to Parker on 7 December 2018 about the dire state of the files, detailing *inter alia* which pleadings appeared to be missing and requesting that the files be updated as soon as possible. It was also conveyed telephonically that the files should be prepared by 14 December 2018, (being the end of term, by when cases to be heard the following term are allocated to Judges), and guidance was given as to how this should be done. As the end of term approached, it soon became apparent that this request too was being ignored and the files would not be ready for allocation to a judge by 14 December 2018.

[14] Despite the warning in this regard, I decided not to strike the matter from the roll, a step which ordinarily would have been taken in accordance with Practice Direction No 13. This was because the Plaintiffs and Landowner Defendants had already been prejudiced by the delays in the matter being referred to Court, due to no fault of their own and it would be unfair to them if the matter was struck. An indulgence was therefore granted to Parker. On 11 December 2018 the Registrar addressed a letter to the parties directing Parker to ensure that the files are properly prepared by no later than 20 December 2018. The letter

impressed upon Parker to abide by all directions in order for the trial to proceed. At a telephonic conference between the parties on 12 December 2018 Parker undertook to index and paginate the court files by 19 December 2018. This did not occur.

[15] The Court Researcher, in a further indulgence, contacted Parker alerting her once again to the problem. Finally, representatives from Parker's office in Cape Town flew to the Court in Randburg on 20 and 21 December to prepare the files. It is not clear why the normal, more cost-effective employment of a correspondent was not employed for this purpose. Some thirteen, even more shambolic files materialised as a result of their efforts. The files were not properly indexed and paginated as specified in Practice Direction No 10. Indexes did not correlate with paginated bundles, there was no consolidated index, copies of files had been removed, pleadings Volume 3 was missing, as were two copies of the referral report, and the soft cover court file. On 7 January 2019 Ms Vadachalam wrote to Plaintiffs' attorney about the state of the files, and asked for the missing documents to be couriered to the Court. This was followed by a letter from the Registrar also on 7 January 2019, complaining about the Court files still not being indexed and paginated as required and cautioning that continued non-compliance could attract an award of costs *de bonis propriis*. This warning bore no fruit.

[16] On 9 January 2019 Parker requested and was granted an extension for filing a list of witnesses and summaries of evidence until 18 January 2019, and until 28 January 2019 for the filing of the joint minute of experts. In a letter from the Registrar granting the extensions it was recorded that the files had still not been correctly paginated and indexed, there were still pleadings missing, a second

paginated and indexed copy for the assessor had not been prepared and once again they were warned about a punitive cost order.

[17] I thereafter requested the Registrar to courier the files in their problematic state to the Western Cape High Court where the matter was due to commence on 5 February 2019. On perusal of the files I was astounded at the chaotic state they still continued to be in. Such pleadings as were in them, still did not convey with clarity the stance of the parties, let alone the case that the Court was required to adjudicate. As Parker had not filed a practice note in accordance with the Practice Directions and had not filed a Rule 38(7) notice listing the participating parties, it was not clear who exactly these and their legal representatives were. The Government of South Africa for example was cited as a party, but the Minister was not, and there was no indication who represented the latter. Whilst a stance of the Minister was conveyed in the Commission's report, the Commission is a non-partisan party, and is not the Minister's spokesperson. As the official responsible for restitution, the Minister's independent voice and an indication as to who represented the Minister was absent from the files that were prepared by Parker's firm. I caused a letter to be sent by the Registrar to Parker and the other legal representatives specifying in detail what was remiss with the files.

[18] Although the matter warranted being struck, once again, out of consideration to the litigants, especially the Plaintiffs and the Landowner Defendants, who could not be blamed for the dire state of the files, I arranged to meet personally with representatives from Parker's office on 15 January 2019 in chambers and advised them how the files had to be prepared.

[19] Despite members of the Plaintiffs' attorney's staff spending 4 days in chambers thereafter, trying to get the files in order, the files continued at the end of the week to make no sense. In the words of Schutz JA when confronted with an analogous situation in the Supreme Court of Appeal:[1] "it would have required a mathematician deeply versed in chaos theory to work out the system" – in the 13 chaotic files, the product of their labour – that ensued. There was still no proper consolidated index which might have enabled the navigation of the chaos. My pleading files did not contain a full set of pleadings. Responses from the Landowner Defendants had disappeared. The contents of at least one of the judge's and assessor's files did not tally. Inexplicably files 6 to 8 contained heads of argument and documents which pertained to a previous application which had no bearing on the present case to be adjudicated. Files 9 to 13 contained historical documents with no indication as to what they related. I took the view that the files could not be inflicted on the assessor and the trial certainly could not commence, given their unacceptable state.

[20] On 17 January 2019 yet another email was sent to the parties by the Registrar recording the problems with the files, and stating that the trial cannot commence until these are rectified. The letter recorded that if needs be the first week of the trial when all the parties are present, can be productively used with a face-to-face conference and the files being sorted out. I pause to mention that this in no way was an acceptance that the nature and magnitude of the task to prepare the files went far beyond the capacity of any single attorney, as contended in heads by Mr Van der Merwe on behalf of the Plaintiffs. It was on the contrary an acceptance that Parker and her team appeared to be severely challenged in accomplishing the relatively uncomplicated task of preparing the files for trial, a task which is routinely undertaken by single attorneys, often preparing volumes

[1] *The Premier of the Free State Provincial Government and Others and Firechem Free State Pty Ltd* [2000] 3 All SA 247 (A) at para 42.

more numerous than those in this matter. It was furthermore an acknowledgment that the other parties had to come to Parker's rescue if there was any chance of the matter proceeding over some of the period allocated to it. By that stage, the parties had been notified of a telephonic conference to be convened by the Court on 23 January 2019 to assess the status of the matter.

[21] On 23 January 2019 I presided over a telephonic conference. For the first time I became aware that the Minister was represented when legal representatives for the Minister and Valuer General, who had just been appointed and were understandably not up to speed, attended. I noted that the trial could not commence on 4 February 2019 because Parker had still not prepared the files as required by the Practice Directions and numerous subsequent directions to do so, the files continued to be problematic, and Parker had ignored directions issued on 28 November 2018 for the filing of a statement of agreed facts and facts in dispute, a list of witnesses and a summary of evidence. I noted that the Minister, a crucial party in every land restitution case, had not filed a response to the referral report. I thereafter issued further directions stipulating that by 1 February 2019 the following documents had to be filed:

> "5.1 The Minister's response;
>
> 5.2 The joint minute of experts;
>
> 5.3 The response by all parties to the amendments that are sought;
>
> 5.4 Statements of agreed facts and fact in dispute to be filed by Parker;
>
> 5.5 A list of witnesses who will testify and a summary of their evidence."

[22] I also directed that during the week of 4 to 8 February 2019, the first week scheduled for the trial, court files were to be put in order and that a representative

of each legal team should be involved in this process to assist Parker and ensure that all parties have the same files. I further directed that on Monday 11 February 2019 there would be a face-to-face conference at the Western Cape High Court, Cape Town to asses *inter alia* the status of the matter. I directed further that on 13 February 2019 there would be a hearing on the question of costs *de bonis propriis* pertaining to the case not being trial ready. Parker was given notice to show cause why such costs should not be awarded against her firm for the failure to get the files in order and the failure to comply with the Court directions. The State Attorney was similarly given notice to show cause as to why *costs de bonis propriis* should not be awarded for failure to file a response by the Minister. I suggested that after the hearing on costs, if circumstances permitted, the hearing on the separated issue only, namely whether the Plaintiffs had been dispossessed of a right in land as a result of a racial law or practice, could be conducted during the remainder of the time set aside for the trial.

[23] On 29 January 2019 the State Attorney requested an extension until 5 March 2019 for filing the Minister's response. This was not be acceded to given that the hearing on the question of dispossession could commence in February. Instead, an extension until 11 February 2019 was granted for the Minister to file a short response dealing only with the issue of dispossession.

[24] Supposedly in compliance with my direction for filling of documents, and in yet another act contrary to the Rules and Practice Directions, on 1 February 2019, Parker took the liberty of e-mailing voluminous documents to the Registrar, without filing originals. The Landowner Defendants faxed documents to the Court, but the originals were subsequently filed. On 5 February 2019 the Registrar sent a letter and circular to Parker and other the parties drawing

attention to the Rules of the Court and specifying that e-mailing documents did not comply with the requirement for filing.

Conference of 11 February 2019

[25] At a face-to-face conference on 11 February 2019 at the Western Cape High Court, the legal representatives of all other parties complained that Parker's staff had not arrived on time each day during the preceding week to get the files in order together with other legal teams. In this regard the affidavit by Mostert on behalf of the Landowner Defendants records that, notwithstanding the fact that their legal representative had no obligation to ensure that the court files are properly indexed and paginated, they offered their assistance by instructing a correspondent attorney in Cape Town, at substantial cost to assist Parker's team to get their house in order and to ensure that the trial proceeds on the allocated dates. Despite prior arrangements to meet at Court every morning during the week of 4 to 8 February 2019, Parker's team was consistently late causing the other representatives to wait for long periods each day. Mr Roberts, counsel for the Landowner Defendants, added that on Friday 8 February 2019 arrangements had been made to meet early in the morning but Parker's team only arrived at 15h00. Parker did not deny this, but said that no arrangement had been made for a specific time on the Friday. She however did not explain the delays. She stated in her view the files were in order but that trial bundles had not been prepared and confirmed by all parties. Mr Roberts pointed out that at a conference of the parties on 12 December 2018 parties had agreed that trial bundles would be prepared by 18 January 2019 whereafter core bundles would be prepared. Parker had not complied. He stated that the Landowner Defendants' legal team had complied with the filing of pleadings and the trial bundles and all directions issued at the conference of 23 January.

[26] Mr Dodson for the Commission similarly reported that the Commission had complied with the directions. Mr Seneke for the First Defendant stated that the Minister was unable to file a response by 11 February 2019, the extended time given. Counsel, he said, had only been briefed early this year and there had been difficulties in getting the files.

[27] It became clear from the lamentable state of affairs that the trial could not take place during the remainder of the time allocated during February 2019, and I proposed that the hearing of the issue of costs *de bonis propriis* proceed on 13 February 2019 as previously suggested. At this juncture, Parker, citing an apparent conflict of interest, stated that she would require separate legal representation to that of the Plaintiffs for the costs hearing, and moreover that she was withdrawing as Plaintiffs' attorney. She asked for a postponement of the hearing on costs to enable her to get legal representation. It was agreed that the hearing on costs *de bonis propriis* would be postponed until 29 April 2019. The State attorney representing the Commission was tasked with getting a file in order for that hearing by 15 February 2019. Parker was given an indulgence to file her affidavit by 22 February 2019. Any party wishing to file response thereto was directed to do so by 4 March 2019.

[28] The hearing on the question of dispossession only and points *in limine* related thereto was postponed to 10 to 21 June 2019. I directed that all outstanding pleadings be filed by 11 March 2019, that the Plaintiffs' new attorneys prepare a trial bundle by 15 March 2019, whereafter the parties would jointly prepare a core bundle by 18 March 2019. The Minister was granted until 11 March 2019 to file her response, which she did.

[29] Submissions were received timeously from the First Defendant, the Plaintiffs, the Landowner Defendants and from Parker. Heads of argument were filed timeously on behalf of all parties except the Plaintiffs. Without applying for condonation, Mr Van der Merwe took the liberty of emailing heads of argument on behalf of the Plaintiffs on 17 April 2019 and filing same on 26 April 2019. This caused the Landowner Defendants' attorney to seek condonation for and file a supplementary affidavit. At the hearing, condonation was granted for the late filing of heads and the filing of the supplementary affidavit.

Costs *de bonis propriis* : State Attorney

[30] Ms Gangen, the attorney at the office of the State Attorney, Cape Town responsible for this matter filed an affidavit on behalf of the First Defendant. In it, she explained that initially the same legal team acted for the Second Defendant, the Chief Land Claims Commissioner, and the Minister. The settlement agreement between the Ebenhaeser Community, the Communal Property Association, the Minister and the Commission entered into on 13 June 2015, she stated, confirmed the stance of the Minister to restore the claimed land to the Plaintiffs based on the Minister's acceptance of the validity of their claim. Thereafter no party had called for the Minister to file a plea because the parties were well aware from the pleadings of the Minister's stance.

[31] She went on to state that at a conference some 4 years later on 12 December 2018, the legal representatives of the Landowner Defendants notified the other parties that the regulations under the Property Valuation Act, 17 of 2014 which had been promulgated by the Minister, and the validity thereof may become an issue in the proceedings. It was decided that this could give rise to a conflict of interest, and that it would be impossible for the same legal team to continue to represent the Minister. Consequently, a separate legal team for the First

Defendant was briefed. Ms Gangen made all the papers available to the new legal team. It has, she explained, been difficult for the new legal team to get on top of the full set of papers in a short space of time during the end of year recess period in order to draft a plea.

[32] In heads of argument Mr Dodson for the Commission submitted that in terms of Rule 38(9)(b) the Minister was not obliged to file a plea or response to the referral report, unless the Court ordered otherwise. Until 23 January 2019 when the court so ordered, the Minister was therefore not in default of filing a response or plea. This is correct. It is also so, that in terms of Rule 38(7)(b) a party participating in referral proceedings may deliver a response to any report or document filed by the Commission. There is no obligation to do so. Mr Dodson further submitted that no obligation arose under the Rules for the Minister to file a plea to the action which was subsequently brought by the Plaintiffs. This was firstly because the action was a nullity, given that the claim had been referred by the Commission, the Court was already seized with the claim, and the procedure at Rule 38 for referrals was applicable. Secondly, even if the action was not a nullity, the Minister was not obliged to file a plea *inter alia* because he did not oppose the relief claimed in the action. This is indeed so.

[33] I accept in the light of the above that an order for costs *de bonis propriis* against the State Attorney for not filing a response by 23 January is not warranted. It is further not warranted given that the Minister has filed her response within the extended time for filing. I note that had Parker or the Plaintiffs' previous attorney filed a Rule 38 notice listing the participating parties, and had she filed a practice note in compliance with Practice Direction 8, as directed by the Court on 19 April 2017 and again on 28 November 2018, indicating *inter alia* that the Minister was represented by the same legal team that represented the Commission, the question of costs *de boniis propriis* against the Minister may

well not have been raised. The shambolic files the Court was confronted with, unaided by a practice note, conveyed the impression that the Minister was not a party, was not represented and that his/her stance was conveyed by the Commission without any independent confirmation. Notwithstanding the settlement agreement referred to in the Commissions' report, given that a period of some four years had lapsed since the settlement had been entered into between the Minister and some of the parties and, because there was no confirmation by the current Minister that her stance in respect of the claim was the same as her predecessor, the silence on the part of the Minister was disconcerting. Whilst it is indeed so that Rule 38 does not make it compulsory for a response to be filed, given that the *lis* in any land claim is between the Minister and the claimants[2] , it is extremely helpful at the outset to have confirmation of the Minister's stance. This is so even if the Minister supports the claim and abides the decision of the Court, the stance of the Minister in this case, as conveyed by Mr Dodson.

Costs *de bonis propriis*: Parker

Submissions by Rehana Khan Parker

[34] In her affidavit, Ms Parker states that she appreciates she is required to show cause why an order of cost *de bonis propriis* should not be made against her for failure to get the files in order and failure to comply with other directives issued by the Court. She states that the specific events in the litigation process need to be seen in the context of the broader difficulties which this matter has presented. Her affidavit then goes on to set-out a chronology of events from the date of her appointment, consultations, exchanges with other parties in particular

[2] *In Re Kusile Land Claims Committee: Land Restitution Claim, Midlands North Research Group and Others* 2010 (5) SA 57 (LCC) at para 23.

the land owner Defendants and the difficulties her firm experienced from the time it was formally appointed on 22 February 2017.

[35] She states that her firm had "rendered services as a panellist to the service provider, Maenetja Attorneys which receives mandates and instructions from the Department of Rural Development and Land Reform". Attorneys who are on that panel are funded by the State for their services. I note that this is a reference to the Land Rights Management Facility which at the time was managed by Maenetja Attorneys for the Chief Land Claims Commission. Attorneys on the panel are funded to represent land claimants, farm workers and labour tenants. She states it was apparent from the nature of the brief that this was a complex brief.

[36] Her affidavit chronicles what she refers to as "multiple and persistent difficulties in obtaining instructions from the community". She refers to a splinter group within the community, dissatisfaction with a committee among members of the community which continued well into January 2018, various meetings with the community and difficulties which the Communal Property Association ("CPA") experienced. She expresses frustration at what she refers to as a pattern of the service provider being unable to provide her with requisite mandates. The work was hampered by the absence of a clear policy on whose budget paid for what. She states her firm was placed at risk as a result of these processes. Eventually, through her persistence, payment of disbursements was received on an *ad hoc* basis

[37] On the issue of the preparation of the Court files she states that after being notified on 19 October 2018 by the Registrar of the trial dates, she sought a mandate from the service provider to consult with the CPA in letters dated 6 November, 13 and 29 November. She does not however explain why she did not

proceed to index and paginate the court files and file a practice note after receiving the letter from the Registrar on 19 October 2018.

[38] On receipt of the further letter from the Registrar of 28 November 2018, and a direction from the Court on 7 December 2018, pertaining to the filing of a practice note and indexing and paginating the court files by 14 December, she states she wrote to the service provider on 7 December 2018 requesting a mandate to comply with the Court's directions. She does not explain why a mandate was required to file a practice note, which is generally a document of not more than a page setting out the parties, their representatives and the nature of the claim. Nor is it clear why a mandate from the service provider was a prerequisite for complying with a court direction which has the force of a court order, and for complying with an obvious routine step in any litigation, the indexing and paginating of a Court file.

[39] On 8 December 2018 she states she received a mandate to consult with the CPA. No mandate she says was received to update the court files. She does not explain why, given that she had been directed to prepare the files by 14 December 2018, and she was unable to comply, she did not explain her difficulties to the parties and the Court. Nor does she explain why she failed to file a comprehensive practice note in accordance with a time line agreed by the parties at a conference on 12 December 2018. On 14 December 2018, she records that copies of letters from the Court to her were sent to the service provider. Given that this was the deadline for the preparing of the Court files, she fails to explain why once again she did not communicate her difficulties to the Court and the parties. She goes on to state that by 19 December 2018 she had received no mandate to update the Court files. She advised Mr Isaac Peter of the Department of Rural Development and Land Reform and the service provider that members of the Plaintiffs' legal team were flying to the Court in Randburg without a

mandate and at her own cost. She states she received a response from Mr Isaac Peter on 20 December 2018. She does not state what that response was. I note however that she does not state that his response was to refuse the mandate she sought, presumably to fund the preparation of the court files.

[40] Parker then goes on to state that her legal team attended at Court in Randburg on 20 and 21 December 2018 preparing the files. There is no explanation in her affidavit as to why, after this exercise the files were still not in order, and in fact in a worse state as pleadings were now missing, a fact which later in her affidavit she attributes to her staff erroneously removing them from the files. Her affidavit goes on to record several emails and telephone calls from the Registrar on 3, 7 and 9, January drawing attention to the problematic state of the files. Yet no explanation is given as to why the problems persisted, or if her firm was simply incapable of accomplishing the task and needed help, why this was not conveyed. Her affidavit similarly records that the files were couriered to Cape Town and that her staff attended at Chambers and attempted to get them in order.

[41] Her affidavit does not however record, as aforementioned that I personally met with her staff and explained in the clearest of terms how the files were to be indexed and paginated, and that a further four days was spent at this task by her staff. Her affidavit does however record that after this further intervention by her staff, the Registrar communicated to her that the files were in an even more dismal state, more particularly that there were irrelevant pleadings and at least 6 lever arch files with no indication as to what they pertained to, and that there were discrepancies between the judge's and assessor's files. On 17 January after receiving a further email from the Registrar, Ms Parker states she subsequently realized that heads of argument from previous applications had to be excluded. Ms Parker records that after the telephonic conference on 23 January 2019 she

was finally in a position to paginate the files and sort out the errors when the Landowner Defendants delivered their files to her. This, I note occurred after the Court directed the other parties to become involved with Ms Parker in sorting out the court files in an attempt to salvage the trial dates.

[42] Ms Parker concludes her affidavit by stating that she did everything within her power and ability and within the severe time constraints and budget limitations to comply with the Court directives to ensure that the Plaintiffs are ready for trial. She states that the protracted process of obtaining mandates for each and every step of the process required in order to progress the litigation has brought about delays.

Submissions on behalf of the Plaintiffs

[43] An explanatory affidavit on behalf of the Plaintiffs was filed by Madelaine Van Niekerk, the acting chairperson of the First Plaintiff. The affidavit details differences within the claimant community in 2017 and 2018. The difficulties in preparing for trial are attributed to problems experienced in obtaining mandates from the attorneys appointed by the Commission to fund the legal representation of land claimants. It is also stated that the claim is not ripe for trial and it is proposed that the matter be postponed.

[44] On the question of costs the affidavit states that the Plaintiffs have attempted diligently to prepare for the trial in February 2019, working through the festive season in order to achieve this. Submissions are also made as to why the Plaintiffs should not be mulcted with costs. As costs are not sought against the Plaintiff, these are not traversed. Mr J D Van der Merwe represented the Plaintiffs at the hearing. His submissions concerning *inter alia* Practice Direction 8, have been considered above.

Submissions on behalf of the Land Owner Defendants

[45] An affidavit by Johannes Mostert on behalf of the Landowner Defendants sets out in considerable detail the chronology of directions given to the Plaintiffs' attorneys to get the files in order and the extent of their non-compliance from October 2018 right until the last pre-trial conference on 11 February 2019. Much of this chronology has been alluded to above. Mr Mostert points out that Parker has not even ventured to explain the failure in her obligation to cause the Court papers and all other documents filed to be properly paginated and indexed since at least from 7 December 2018 when she was admonished to do so or from October 2018 when the matter was enrolled for hearing. He points out that Parker has been constantly reprimanded by this Court in strong terms and with threats of punitive costs orders without any positive result, from long before the date of the commencement of the trial on 4 February 2019.

[46] He points out also that Parker at no stage informed the Court and the parties that she was unable to comply with the Court Directions and he suggests that this is a case where unwarranted excuses have been made in an attempt to blame other parties for their failure to be trial ready and ensure that the court papers are in order. He asserts that the failure to comply is contemptuous. Parker's staffs' failure to arrive on time at Court during 4 to 8 February 2019 is indicative of the fact that this issue has not received the urgency that it requires.

[47] No fault, he states, can be laid at the door of the Landowner Defendants and it is apparent that Parker or the Plaintiffs themselves are liable to pay the costs of the Landowner Defendants on a punitive scale for the period of 4 to 13 February 2019, and in the event of the trial not proceeding, also the costs of the remainder of the allocated trial dates. In the event of it being held that the

Minister and/or Second Defendant had failed to provide the Plaintiffs with the necessary funding to timeously instruct experts, the wasted costs must be borne by them, alternatively jointly and severally by Parker or the Plaintiffs themselves on a punitive scale. Furthermore, he calls for Parker, alternatively the Plaintiffs, further alternatively, jointly and severally to be ordered to pay the Landowner Defendants' costs occasioned by the opposition in respect of the argument pertaining to costs. Finally, he contends that no fault can be laid at the door of the Landowner Defendants.

Finding

[48] It is well recognised that costs *de bonis propriis* are awarded against erring attorneys only in reasonably serious cases such as cases of dishonesty, wilfulness or negligence in a serious degree.[3]

As was stated in *Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd; Telkom SA Soc Limited and Another v Blue Label Telecoms Limited and Others* [2013] 4 All SA 346 (GNP), at paragraph 35:

> "Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are, dishonestly, obstruction of the interests of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, and gross incompetence and a lack of care."

Ms Parker's conduct must be judged against this standard.

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[3] *Ntuli v Smit and Others v Smit and Another* 1999 (2) SA 540 (LCC) at 553B-C; *Mahlangu v De Jager* 2000 (3) SA 145 (LCC) at 163E-F. See also *Immelman v Loubser en 'n Ander* [1974] All SA 89 (A), *Webb and Others v Botha* 1980 (3) SA 666 (N) at 673; and *Khunou and others v M Fihrer & Son (Pty) Ltd* 1982 (3) SA 353 (W) at 363.

[49] The facts show that Parker persistently failed to comply with Practice Directions 8 and 10 which required her to index and paginate the court files as prescribed, and file the requisite practice note from the time of her appointment on 22 February 2017, and that she continued not to comply thereafter. This was notwithstanding a direction from the Court via a letter from the registrar to comply on 19 April 2017, (when initial trial dates were allocated), notwithstanding being asked to comply in a letter on 19 October 2018 (when the February 2019 trial dates were allocated) and thereafter, notwithstanding receiving about ten further letters from the Registrar and several telephone calls directing her to comply. Her explanation for not attempting to comply until 20 December 2018 (the date when her team unsuccessfully attempted to index and paginate), is that she did not have a mandate from the service provider to do so. The absence of a mandate from a service provider cannot however take precedence over Practice Directions, which are binding on parties before this Court, and Rules, which are couched in peremptory terms and are similarly binding. Once Parker accepted the appointment to represent claimants in this Court she had to comply with its Rules and Practice Directions. In essence it is the protracted process of getting mandates from the service provider and difficulties in getting instructions from a splintered community which she blames for all delays. This can however only apply to delays until 20 December 2018, the date until which she complains of a lack of mandate.

[50] However, if indeed difficulties within the community and the challenges presented by the service provider were preventing her from complying and jeopardising the commencement of the trial, it was incumbent upon Parker, and in keeping with the standards expected of a legal practitioner, to alert the Court and the parties to the problem, apply for a postponement and perhaps if her problems were insurmountable, to have withdrawn. She did none of this. At no stage did she alert the Court and the parties to the fact that she could not comply

and would not be ready for trial. Instead she continued to participate in a manner which deviated substantially and materially from the standard expected of legal practitioners, and displayed what appeared to be a flagrant disregard for the Rules and Practice Directions of the Court and its many orders and directions.

[51] Post 20 December 2018, there is simply no explanation for the astounding fact that despite spending all of six days (20 and 21 December 2018 and 15 to 18 January 2019), ostensibly indexing and paginating in compliance with the Practice Directions, Parker's staff left the files in a state worse and more chaotic than they were before. This after both the Court Researcher and I personally guided them in the task at hand. Parker has not even ventured to explain the incompetence, lack of care and the extent to which her conduct deviated from the standard expected of legal practitioners in the very simple task of preparing files. Difficult clients and a challenging service provider cannot be blamed for failing in the very elementary process of indexing and paginating court files, a task which often a diligent candidate attorney, let alone an experienced attorney, should be able to accomplish with ease. She had over two years after she was appointed to comply with the Practice Directions and get the files in order. She failed to do so, and as a result, the trial could not proceed. Her counsel, Mr Trudeaux's contention in the circumstances that she acted impeccably and his attempts, like her to blame the service provider for her failings, cannot be countenanced.

[52] In *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) at para 32 the Constitutional Court per Bosielo AJ stated as follows:

> "I need to remind practitioners and litigants that the Rules and Court directions serve a necessary purpose. Their primary aim is to ensure that the business of our Courts is run effectively and efficiently. Invariably this will lead to the orderly management of our Courts' rolls which in turn will bring about the expeditious disposal of cases in the most cost –effective

> manner. This is particularly important given the ever increasing cost of litigation, which if left unchecked will make access to justice too expensive."

Practitioners are also reminded that a court direction is tantamount to a court order and failure to comply is not only disrespectful to the Court and other parties but can be contemptuous. I am inclined to agree that the cumulative effect of the failure to comply on the part of Parker on multiple occasions, notwithstanding various admonishments by the Court, can be construed as a flagrant disregard for the Rules, Practice Directions and further directions of this Court. This ultimately constituted the sole cause for the trial to be adjourned. As was contended by Counsel for the Third Defendant, this is not a case of one transgression but a multitude of failures.

[53] Legal practitioners who are appointed to represent land claimants and indeed other litigants at the State's, and ultimately the tax payer's expense, have a responsibility to ensure that the trust placed in them is not misplaced. They must familiarise themselves with and abide by the requisite Rules, Practice Directions and statutes, adhere to high standards of legal professionalism and care, and prepare diligently and adequately.

[54] In my view, the conduct of Parker substantially and materially deviated from the standard expected of legal practitioners, was irresponsible, grossly negligent and displayed lack of care. Her conduct demonstrated either a wanton disregard for the Rules and Practice Directions of this Court or ignorance thereof, and was discourteous to the other parties. This was a serious dereliction of duty which prejudiced all the parties. Parker, as aforementioned, not only failed in complying with Practice and other directions, but was remiss in regard to almost every step of preparation for trial. As a consequence, as aforementioned, the trial could not proceed as planned. I am satisfied that the circumstances of this case

warrant punitive costs to be paid *de bonis propriis* by Parker on an attorney client scale so that the Landowner Defendants would not be out of pocket. In view of all the circumstances, I am not inclined to award party and party costs nor to order that Parker pays only a portion of the costs as requested by her counsel. That costs are only being sought against Parker by the Landowner Defendants and none of the other parties, who were similarly prejudiced by the trial not proceeding is, I suggest the silver lining, if there be one in this vexed matter.

[55] I now turn to consider precisely what costs should be awarded to the Landowner Defendants. In a draft order they sought the costs of two counsel and an attorney including travelling and accommodation costs for the three weeks that the trial was set down for. In addition they sought the costs of six witnesses, including travelling and accommodation costs for this period, as well as those costs incurred by their correspondent during the period 4 to 11 February 2019 in assisting with the indexing and pagination of the Court files. At the hearing however, Mr Roberts for the Landowner Defendants conceded that they were not entitled to costs for the entire period, and settled for costs during 11 to 15 February for the legal team and three witnesses who would have testified on the issue of dispossession, as well as their correspondent's costs for 4 to 11 February 2019.

[56] The Landowner Defendants are in my view entitled to the costs incurred by their correspondent during the period 4 to 11 February 2019, in assisting with the indexing and pagination of the Court files, as directed at the conference of 23 January 2019.

[57] In respect of the costs during 11 to 15 February 2019 of two counsel and an attorney as well as the costs of the three witnesses, including the travelling

and accommodation expenses in respect of all of the aforegoing, the following bears considering:

57.1 It will be recalled that on 17 January 2019 as stated above, the Registrar wrote to the parties, informing them that the trial cannot commence until problems with the files are rectified.

57.2 At the conference on 23 January 2019, it was directed that during the first week allocated for the trial between 4 to 8 February 2019, the parties would assist Parker in getting the files trial ready. It was also directed that a face-to-face conference would be held on Monday 11 February 2019 to assess the status of the matter, that on 13 February 2019 there would be a hearing on costs *de bonis propriis*, and that thereafter, if circumstances permitted, a hearing on the separate issue of dispossession only, could be held during the remainder of the time set down for the trial.

57.3 It must have become apparent to the Landowner Defendants during the week of 4 to 8 February 2019 when Parker's legal team did not arrive punctually during that week to paginate, that the problems with the files would not be rectified, and hence the trial would not commence, as had been stated in the Registrar's letter of 17 January 2019.

57.4 As was also pointed out at the conference on 11 February 2019, the parties had agreed on 12 December 2018 that trial bundles would be prepared by 18 January 2019 whereafter core bundles would be prepared. Parker had not complied. Consequently, trial and core bundles had not been prepared during the week of 4 to 8 February. The problems with the files had simply not been fixed, and in keeping with the warning from the Registrar on 17 January, the Landowner Defendants ought to have been

aware that the trial would not commence, and their witnesses would not be required to travel to Cape Town to testify. Instead, I ordered at the conference on 11 February 2019, that trial and core bundles be prepared by 15 March 2019.

[58] In the circumstances, and especially given the warning that the trial would not commence until the files were fixed, I am not inclined to grant the costs sought by the Landowner Defendants in respect of the three witnesses for the period 11 to 15 February 2019, who were to testify at the trial on the issue of dispossession. It is in any case difficult to envisage how it was contemplated that these witnesses would testify in the two days remaining, after the hearing on costs, which had been scheduled for 13 February 2019. Similarly, I am not inclined to grant costs and expenses in respect of two counsel and an attorney beyond 13 February 2013, when the trial on dispossession was due to commence, and did not.

[59] The Landowner Defendants are however entitled to their costs in respect of this hearing on costs *de bonis propriis*, given that they have succeeded in claiming such costs.

[60] I order as follows:

1. The Plaintiffs' erstwhile attorneys, Messrs Rehana Khan Parker & Associates are ordered to pay *de bonis propriis* the following costs of the Third to Twenty Sixth Defendants on the attorney and client scale, occasioned by the adjournment of the trial set down for 4 February 2019 to 15 February 2019 and 25 February 2019 to 1 March 2019:

1.1 The cost of employment of two counsel and an attorney in respect of the trial dates 11 to 13 February 2019, as may be allowed by the Taxing Master;

1.2 The necessary and reasonable costs of two counsel and an attorney in respect of travelling and accommodation expenses, including the air travel costs and the costs in respect of travelling time to attend the trial in Cape Town from 11 to 13 February 2019, as may be allowed by the Taxing Master; and

1.3 The costs incurred by the correspondent attorney, Messers Spamer & Triebel Attorneys, Cape Town during the period of 4 to 11 February 2019 in assisting to compile indices and pagination of the Court papers.

2. The Plaintiffs' erstwhile attorneys, Messrs Rehana Khan Parker & Associates are ordered to pay *de bonis propriis* the costs of the Third to Twenty Sixth Defendants in respect of the costs *de bonis propriis* hearing on 29 April 2019.

Y S MEER
Acting Judge President
Land Claims Court

APPEARANCES

For Attorneys Rehana Khan Parker & Associates:	Adv. P Trudeaux
Instructed by:	Rehana Khan Parker & Associates
For Plaintiffs:	Mr JD van der Merwe
Instructed by:	JD van der Merwe Attorneys, Stellenbosch
For 1st Defendant:	Adv. G Shakoane SC Adv. T Seneke
Instructed by:	State Attorney Kwa-Zulu Natal
For 2nd Defendant:	Adv. A Dodson SC Adv. C de Villiers
Instructed by:	State Attorney Kwa-Zulu Natal
For 3rd to 26th Defendants:	Adv. M G Roberts SC Mr. A B T van der Merwe
Instructed by:	Cox & Partners