IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO: 11967/07

NOT REPORTABLE DATE: 5/10/2007

In the matter between

PASCAL, MONKAM (JNR) APPLICANT

AND

In re:

PASCAL, MONKAM (SNR)	First	APPLICANT
SUSIE MONKAM	Second	APPLICANT
AND		
PASCAL, MONKAM (JNR)	First	RESPONDENT
TULAH TRADING (PTY) LTD	Second	RESPONDENT
HOOPSTRAAT BELEGGINGS (Pty) LTD	Third	RESPONDENT
MADELENE PROPERTIES (PTY) LTD	Fourth	RESPONDENT
ABSA BANK	Fifth	RESPONDENT
STANDARD BANK OF SOUTH AFRICA	Sixth	RESPONDENT

AND CASE NUMBER 11968/07

In re:

PASCAL, MONKAM (SNR) APPLICANT

AND

PASCAL, MONKAM (JNR) RESPONDENT

JUDGMENT

MAVUNDLA J.,

[1] This is a classical, case of a father and son relationship having gone sour. If it was possible, one or the other would have filed a divorce against the other claiming that their relationship has irretrievably broken down. However, even if that were possible, they shall remain bound to each other to eternity through their blood and flesh affinity. I assume that it was the desire and wish of the father, when his son was born, that the son must later in life, carry the family mantle. I say so because both the father and son share the same names, save that the father is also referred to, understandably, as senior while the son is referred to as junior. The cause of the dispute is nothing else but power, money and control thereof, as it will be apparent herein below.

[3] In both matter under case number 11967/07 and case number 11968/07 the son, who I shall henceforth refer to as Junior, is seeking in terms of Rule 47 an order against the father to furnish security for costs on the ground that the father, the respondent, is not of this part of this world but a perigrinus in the Republic of South Africa, and a resident and a citizen of Cameroon where he has aplenty and is one of the richest.

AD CASE NUMBER 11967

[4] In this matter, Junior, who is the first respondent in the main application, seeks an order in terms of rule 47 against senior, directing the latter to furnish security in the amount of R150, 000, 00. Senior is countering and seeking an order against junior in terms of Rule 35(13) to discover.

BACKGROUND FACTS

[5] In the main case Senior is the first applicant, while the second applicant is his daughter. The applicants in the main action brought an application to have junior, as the first respondent and ABSA Bank Limited as the 5th respondent ordered to restore to the applicants their signing powers on the following accounts of the 3rd respondent with 5th respondent: cheque account number 404886165 and Money Market account number 9077405642;They further seek an order directing the 5th respondent to remove signing powers of Junior from the aforesaid money market account; and interdicting Junior from revoking the 1st and 2nd applicants' signing powers on the 2nd respondent's cheque account number 011244283 held with the 6th respondent; and interdicting the 6th respondent from removing the signing powers of the 1st and 2nd applicants in respect of the cheque accounts referred to herein above; and interdicting the 1st respondent from revoking the signing powers of the 1st and 2nd applicants on the 2nd respondent's cheque account number 018339972 and from removing the signing powers of the 1st and 2nd applicants from the aforesaid account number 018339972.

[6] The main application was initiated on urgent basis on the 28 March 2007, shortly after an order was granted by my brother Mr. Justice Claassen on the 28 February 2007 under case number 3085/07 involving substantially the same parties, save ABSA Bank Limited and Standard Bank of South Africa, but including other parties. The battle is essentially over the directorship and ownership and control over the legal entities Tulah, Trading (Pty) Ltd, Hoopstraat Beleggings (Pty) Ltd, Madeleine Properties (Pty) Ltd, Monkam Holdings (Pty) Ltd. All these entities belong to the family. The order of the 28 March 2007 directed that the matter before that Court be postponed sine die pending the finalization of arbitration or litigation proceedings to be instituted by Senior against Junior regarding the directorship and ownership in the entities that I have listed herein above. There are also other ancillary orders granted by Mr. Justice

Claassen which I deem not necessary to state for purposes of this judgment.

[7] Senior and his daughter in their notice objecting to the Rule 47 (1) application stated that:

7.1 both applicants (in the main application, *sic)* both have resident status in the Republic of South Africa and are therefore not *peregrine;*

7.2 senior has substantial assets in South Africa being the sole shareholder of legal entities which own considerable immovable property.

7.3 Junior has admitted under oath in recent previous litigation under case number 3085/07 that senior is an extremely wealthy individual and therefore will definitely be in a position to pay any cost order against him;

7.4 The request for security of costs is vexatious in the circumstances which is highlighted by the fact that junior has been involved in litigation with senior recently under case number 3085/07 without requesting such security.

AD CASE NUMBER 11697/07

[8] The main application under this case number has been brought by Senior against Junior on the 28 March 2007. The order sought is, inter alia, that the chairman of the Pretoria Bar Council be authorised to appoint an arbitrator to determine through arbitration proceedings the dispute between the parties in respect of the directorship and ownership in the following entities, namely Hoopstraat Beleggings (Pty) Ltd; Madeleine Properties; Monkam Holdings (Pty) Ltd and Monkam Investment Properties (Pty) Ltd (in liquidation). The matter came before my brother, Mr. Justice Botha who granted an order in terms of which the matter is postponed

sine die and that the first respondent (ie Junior) to the fourth respondents are ordered to deliver their answering affidavit by not later than 8 May 2007. The first respondent (that is Junior) was ordered to "initially sign ten (10) blank cheques on the current account to third the third respondent, which cheques wii be left in custody of the applicant's attorney of record to be issued as and when and if need upon the written notification to the attorney of the first and fourth respondents..." together with further ancillary orders.

[9] Although a notice of intention to oppose was filed on the 5 April 2007, there has as yet been no answering affidavit filed by or on behalf of Junior. On 19 April 2007 Junior served a notice in terms of rule 47(1) calling for Senior to furnish security for costs. Senior in his notice objecting to this rule 47(1) has stated that:

9.1 he has permanent residence status in the Republic of South Africa;

9.2 he has substantial assets in South Africa being the sole shareholder of legal entities which own considerable immovable property.

9.3 Junior has admitted under oath in recent previous litigation under case number 3085/07 that applicant (Senior) is an extremely wealthy individual and therefore will definitely be in a position to pay any costs order found against him

9.4 The request for security for costs is vexatious in the circumstances which are highlighted by the fact that the respondent (Junior) has been involved in litigation with applicant (Senior) recently under case number 308507 without the of the and the and a requesting for security for costs.

9.5 The request has not been brought "within a reasonable time."

[10] In the objection to the notice in terms of Rule 47(1) Senior and his daughter, Ms Sisie Monkam who is the second applicant in the main

application, disclosed the grounds of their objection to the application for security for costs as being that they both have permanent resident status in the Republic of South Africa and are therefore not perigrini, and that the respondent has admitted under oath in case number 3085/07 that Senior is an extremely wealthy individual, and therefore will be in a position to pay any costs order made against him.

[10] Junior then served on 19 June 2007 a formal notice for the application for security for costs in the amount of R150,000,00. In his affidavit Junior states that the mere fact that Senior might have permanent resident status in the Republic of South Africa, if true, but cannot be admitted, is insufficient, since that status does not render him an *incola.* He says that in truth Senior is an occasional visitor in the Republic of South Africa. He denies that Senior is the owner of the shareholding he lays claim to. He further states that there is pending litigation in respect of ownership over the said entities claimed by Senior. He says that Senior does not have substantial assets in South Africa. He says further that the mere fact that Senior is a multi-millionaire in Cameroon does not mean that he will pay his legal costs in the Republic of South Africa.

[11] An opposing affidavit was filed on behalf of Senior by his attorney of record Mr. Tarn Finck. Mr. Finck states inter alia, that the main application was served on 28 March 2007. On 5 April 2007 Junior gave his notice of his intention to oppose. On 9 May 2007 the main application was set down for hearing on the opposed roll for 1 August 2007 Junior served his application for security for cost on the 19 June 2007, such application to be made on 8 August 2007.

[12] Attached further to Mr. Finck's affidavit is annexure "TF2", which is a copy of the identity document of Senior. This document reflects that Senior is a South African citizen and that he was born in Cameroon. Further attached

as annexure "TFa" is a letter from Attorneys Grove, Deysel & Partners, dated 20 March 2007 and addressed to the High Commissioner of Cameroon in South Africa, wherein it is inquired whether the Minister of Economics is aware that Mr. Pascal Monkam (Snr) is now a South African resident and taxpayer. Mr. Finck further referred to case number 3085/2007 and pointed out that Junior in that matter had admitted that Senior is a wealthy man Cameroon.

[13] It is important to point out that in the matter under case number 3085/2007 Junior denies that Senior is the owner of the legal entities which I have referred to in paragraph 8 herein above. But what is more important is that at paginated page 233 he says that Senior "wanted to invest in the Republic of South Africa. He and I travelled to this country in 1998. He liked what he saw. He signed two purchase agreements, one in respect of the Third Applicant and the other in respect of Cresta Hotel." The Third Applicant he refers to is Hoopstraat Bellegings (Pty) Ltd in that matter and sixth respondent in the main application in casu. He further states that he has "never denied that Senior put up the money to purchase the companies. That was always the intention".

[14] The onus to convince the Court that Senior must be ordered to furnish security for costs rest on Junior, as the applicant[1] who must provide credible evidence on affidavit that such order must be granted. It is trite that a peregrinus[2] plaintiff may be ordered to furnish security for costs in respect of his claim, either in convention[3] or reconvention[4], vide Erasmus'.

1 Firstrand Bank Ltd v Pather 2005 (4) SA 429 NPD at 432 *C-G*
2 Protea Assurance Co Ltd v Januszkiewics 1989 (4) SA 292 (W); Toumbis v Antoniou 1999 (1) SA 6363 (W) at 641.

3 Lowndes v Rothschild 1908 TH 49; Brearley v Faure, Van Eyk and Moore (1905) 22 SC 2; Ka1chelnik v Afrimeric Distributors (Pty) Ltd 1948 (4) SA 279 (C).
4 Thomson, Watson & Co v Poverty Bay Framers Meat Supply Co 1924 CPD 23; Banks v Henshaw 1962 (3) SA 464 (D); Africair (Rhodesia) Ltd v Interocean Airways SA 1964 (3) SA 114 (SA); Sandock Austral Ltd v Exploitation lndutrielle et Commerciale-Bretic 1974 (2) SAS 280 (D) AT 284-5

Work Superior Court Practice, at B1-340A Service 26, 2006 *in fine.* It is also so that the perigrinus may be ordered to give security *for* costs in respect of the incola defendant's reconvention claim, or security *for* the amount of the judgment that may be given against him. It must also be borne in mind that the court has a discretion to or not to order that security be given[5]. In the exercise pf its discretion the Court must have all the relevant circumstances, inter alia, as well as consideration of fairness[6]. I must bear in mind that Junior, is not entitled as of right to the order of security.

[15] Junior in his application for security for costs, alleges that Senior does not own the entities which Senior lays claim to, he failed to take this Court to its Confidence and deal with the source and means that made it possible for the acquisition of the relevant entities. Since in case number 3085/2007 he admits that Senior provided money for the acquisition of the entities which Junior alleges that he is the sole director of, it was necessary, in my view, that he should have disclosed the golden-laying-egg goose that made it possible for him to have such entities forming the dispute between the parties. His failure to make such disclosure in this application, entitles me to make an adverse inference against him. It would seem that Senior is economically active[7] directly or indirectly through Junior who has been made director of various legal entities created by funds provided by Senior. This is so because at paginated page 234 paragraph 10.5 of case number 3085/2007, Junior says that: "At time, the First Respondent had no interest in actually running any of the businesses personally. He would solely provide the finance. In time he would realize his investment. I was in charge." I do accept, therefore, that Senior does have assets or means within the Republic of South Africa, which Junior is a privy to and can attach to recover his legal costs from.

5 Sitecki v Sitecki 1917 TPD 165 at 169; Vanda v Mbuqe & Mbuqe 1993 (4) SA 93 (TK GD) at *95F-G*

6 Resamus' Superior Court Practice [Service 27, 2007] at BI-341.

7 Magida v Minister of Police 1987(l) SA 1 (A) at 14E, 15D.

[16] The Court has a discretion to or not to order that security be furnished.[8] In the exercise of my discretion, I shall have to bear in mind that section 34 of the Constitution of the RSA, Act 108 of 1996 provides that: "Everyone has the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum." A liberal approach with regard to rights enshrined in the Constitution is required. Besides, the dictates of fairness, having regard to the fact that in casu we are dealing with a dispute over ownership between a father and a son, with the son who admits that the father has provided the money through which the entities the son claims to be the sole director of, and that the father has no assets in the Republic of South Africa, demand, in my view that the door must not be shut in the face of the father, who wants to lay claim of what his money, on admission by the son, has made it possible for the son to procure the entities the son alleges to be his own. This must be so even if Senior is a perigrinus of the Republic of South Africa, assuming that he is indeed such. However, there is evidence that Senior has been granted citizen status of this Country. He has provided documentary proof to that effect, in the form of a South African identity document and such cannot be ignored.

[17] Rule 47(1) demands that as soon as practicable after the commencement of the proceedings, the party who wants the other to furnish security, must demand that security should be filed. The main application was initiated on urgent bases on the 28 March 2007, calling for a Rule Nisi to be issued upon Junior and others to show cause on 24 April 2007, why the relief sought in that application should not be made an

2.

[8] Sitecki v Sitecki 1917 TPD 165 at 169; Vanda v Mbuqe & Mbuqe 1993 (4) SA 93 (TK GD) at 95F-G; Magida v Minister of Police 1987 (1) SA 1 (AO at 14E and 15D.

order of the Court. On the very date of 28 March 2007 the parties agreed to the order that was made by the honourable Mr. Justice Botha, which order I have referred to herein above[9]. Junior waited until June 2007 before bringing his application for security for costs. He says that he did not delay in bringing the Rule 47 application. I am of the view that two months' is a delay sufficient enough for this Court to take into consideration in consideration of the exercise of its discretion against the applicant[10]. If indeed Junior was apprehensive that his father, because of the enmity and hostility between themselves, which I assume that it must have been there already on 28 March 2007, would simply refuse to pay the legal costs, I would have accepted Junior to approach this Court with his application for security for costs much earlier than he did.

[18] Taking all the above factors, I am of the view that the application for security for costs, should not be granted at all under the circumstances.

[19] Senior has also made a counter application. He says that the purpose of such counter application "is to obtain this honourable court's sanction to supplement the applicant's founding affidavit in the main application and also to obtain the direction of this honourable court in compelling Junior to make discovery of the documentation listed In annexure A and B in the notice of counter-application that is in his possession or under his control, which documentation is required to protect Senior's and Susie Monkam's rights relating to the main application." The relevant documents are fully set out in annexure A and B that are attached to the relevant counter application.

He further seeks this Court's leave to supplement their supplementary affidavit in the main application with the facts deposed to in the affidavits

[20]

9 Para.8 supra.

10 H.R. Holfeld (Africa) Limited v Karl Walter & Co. GmbH and Another (2) 1987(4) SA 861 at 865E

filed in opposing the application *for* security *for* costs and the affidavits filed in support of the counter-application and to further supplement the founding papers in the main application.

[21] Junior has also served a rule 47(1) notice, calling upon the Senior to furnish security *for* costs, which notice he served on 3 August 2007. The grounds *for* calling *for* security reflected are that the plaintiff is a limited company and that it has no assets.

[22] Junior has stated in his affidavit [11] that "first applicant is a very wealthy man in Cameroon. However, same does not apply here. In fact the First Applicant found he was unable even to pay *for* his own medical treatment in this country. ...I have admitted that the First Applicant by reason of the millions of Rands invested in the Republic of South Africa is more than
able to pay legal costs in the Republic of South Africa. On the contrary, I have every reason to believe that he will not be in a position to do so. It goes without saying that he will undoubtedly be unwilling to pay my legal costs given the present relationship between us."

[23] I am conscious of the further points raised by Junior, *for* instance that the counter-application involves other respondents in reconvention and that none of them are involved in the counter-application. It however needs to be borne in mind that, save for the firth respondent which is ABSA Limited, and the sixth respondent which is Standard Bank of South Africa, all the other respondents are the very entities whose soul the parties are fighting *for.* Junior claims that he is the sole director of such companies. This particular dispute over ownership of these entities has since been referred to arbitration. It is proposed by Junior that the main application should not be considered until such time that the application *for* costs has been disposed of. Such cause, in the light of my earlier decision that security for

[11] Paginated page 226 paragraph 7 (Ad paragraph 10)

costs should not be furnished by Senior, would frustrate the dictates of fairness and justice, and result in slamming the door in the face of Senior, who seeks redress to what seems to be a "daylight highway robbery" of an old man, by a son too impatient to await his inheritance at the unknown date of the eventual demise of his father. For the very reasons I have advanced earlier, I am of the view that there is no reason to order Senior to furnish security for costs even in respect of the counter-application.

[24] In respect of the application for security for costs under case number 11968/2007, it needs mention that on 16 August 2007, the main application served before the honourable Mr. Justice Rabie who granted an order authorising the chairman of the Pretoria Bar Council to appoint an arbitrator to determine through arbitration proceedings the dispute between Senior and Junior in respect of the directorship and ownership in the following entities:
Hoopstraat Beleggings (Pty) Ltd; Tulah Trading (Pty) Ltd; Madeleine Properties (Pty) Ltd and Monkam Holdings (Pty) Ltd and Monkam Investment Properties (Pty) Ltd (in liquidation).

[25] It must be borne in mind that the main application was initiated on 28 March 2007. The relief sought therein is precisely what was ordered by the honourable Mr. Justice Rabie on the 16 August 2007. Therefore there is no pending action before this Court in respect of the *lis* pertaining to what was sought initially. That order of the 16 August 2007 is final, since there is no pending appeal against it. In this regard vide H.R. Holfeld (Africa) Limited v Karl Walter & Co. GmbH and Another (2) [12]
Kirk-Cohen J said:

> "The word 'proceedings' refers to the pending action or motion proceedings and, possibly, to an appeal. It does not refer to a judgement which is not subject to a pending appeal. In order to see

[12] 1987 (4) SA 861 (W) at 865C-D

how the courts have in the past interpreted the word 'proceedings', I refer no further than to the definition thereof contained in Claassen's Dictionery of Words Judicially Defined, Vol 3 at 201 sv 'proceedings'. Therefore for this reason, this application for security must fail.

[26] Whereas the main application was initiated on 28 March 2007, Junior only served his notice of application for security for costs on 19 June 2007, almost 2½ months later. The honourable Mr. Justice Kirk-Cohen[13] said:

"The Afrikaans text of Rule 47 is equally clear; it does not use only one word for the word 'proceedings'. Rule 47(1) refers to the claim being made 'so gou moontlik na die aanvang van 'n geding'. Rule 47(3) states that, if security be not given an application can be made to Court for such security 'en dat die verrigtinge opgeskort word totdat aan die bevel voldoen is'."

[27] In casu, it cannot be said that 2½ months is as soon as possible as envisaged by Rule 47(1). I am of the view that Junior was dilatory in bringing this application for security. I am of the view that he is not *bona fide* in bringing this application. He brings it with a singular purpose of impeding Senior in his quest for justice and getting to the truth of this fiasco over the soul of the assets in issue between the parties. I am of the view that for all the above mentioned reasons all the application for security for costs must fail.

[28] This then brings me to the application for discovery brought by Senior. Rule 35 provides that:

"(1) Any party to any action may require any other party thereto, by notice in writing to make discovery on oath within twenty days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring

[13] H.R. Holfeld (Africa) Limited v Karl Walter & Co. GmbH and Another (2) (supra) at 865E

discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such other party. Such notice shall not, save with the leave of a judge, be given before the close of pleadings."

[29] Section 1 of the Supreme Court Act defines:

'civil summons' as meaning "any summons whereby civil proceedings are commenced, includes any rule *nisi,* notice of motion or petition the object of which is to require the appearance before the court out of which it is issued of any person who is interested in resisting the grant of such relief",,[14]

"defendant" as including "any respondent or other party against relief is sought in civil proceedings;

[30] In the Supreme Court Practice[15] Under Uniform Rules of the High Court, "'action' is defined as: 'shall mean a proceeding commenced by summons...' and 'is used in its narrow sense, denoting 'a proceeding commenced by summons... ",[16], vide also one of the cases cited by the learned authors under footnote 9 therein namely Joh-Air (Pty) Ltd v Rudman. [17]

[31] From the above it is clear that any party, which Senior is, to any action, which includes a notice of motion, may require any other party thereto, like Junior is such party, by notice in writing to make discovery on oath within twenty days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such

[14] Act 59 of 1959; Superior Court PracticeA1-2, [Service27,2007];BI-8A [Service 19, 2003]

15 B1-6 [Service 28.2007] B1-8 [Service 24,2005] and the footnotes 8 and 9 thereof.
16 B1-8 [Service 24, 2005]
17 1980 (2) SA 420 at 427E-G.

other party. However, the inclusion of the word "may" in subrule 1 indicates that there is no automatic right.

[32] The honourable Botha J said that:

> "D. The Court has a discretion in relation to orders to be granted, pertaining to discovery, as appears from the case referred to by counsel for the respondents, Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd 1971 (4) SA 589 (W). In application proceedings we know that discovery is a very, very rare and unusual procedure to be used and I have no doubt that that is a sound practice and it is only in exceptional circumstances,
>
> E in my view, that discovery should be ordered in application proceedings." [18]

The point made herein above is re-emphasised in subrule 13.[19].

[33] The discovery under applications must be at the direction of the Court. Further, there must be special circumstances present which warrant that such discovery be directed, by the Court in the exercise of the its discretion.

[34] In the Supreme Court Practice[20] the learned authors, in discussing Rule 35 under general state as follows:

> "The object of discovery was stated in Durbach v Fairway Hotel Ltd[21] to be 'to ensure that before trial both parties are made aware of all the documentary evidence that is available. By this means the issues are narrowed and the debate of points which are incontrovertible is eliminated... .But it must not be abused or called in lightly in situations for which it was not designed or it will lose its

[18] Moulder Components v Courakis and Another 1979 (2) SA 457 at 470C-D.
[19] Rule 35(13) provides that:

" The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications."

[20] Bl-250
[21] 1949 (3) SA 1081 (SR) at 1083

edge and become debased.'[22]The employment of discovery should be confined to case where parties are before the court and are litigating 'at full stretch'.[23] Discovery is not intended to be used as snipping weapon preliminary skirmishes."

[35] The main application under case number 11967/07 is still alive since it was postponed sine die;[24] The purpose of the main application is essentially to interdict Junior from revoking the signing powers of Senior and Ms Susie Monham in certain current accounts relating to the entities whose directorship and ownership is the cause of the battle between these parties. The documents which it is sought that Junior must discover relate to the various accounts pertaining to these entities. Senior has also made serious allegations against Junior. It is stated that divested the assets of one of the entities, namely Monkam Investment Properties (Pty) Ltd and transferred some of these assets into another entity Madeline Properties (Pty) Ltd and thereafter caused Monkam Investment Properties (Pty) Ltd to be wound up.[25] The liquidator in the company successfully brought an application to set aside such disposition, under case number 5180/2006. It is further stated that it has since come to the knowledge of the applicants that on the 27 March 2007, unbeknown to the applicants and the presiding judge on the 28 March 2007, Junior a cheque in the amount of R674, 845,25 on money market account number 9077405642 held in the name of Hoopstraat to issued. Junior failed to disclose this fact on the 28 March 2007. Senior avers that he would want to supplement his papers once discovery has been made.

22 The MV Urgup: Owners of the MV Urgup v Western Bulk Carriers (Australia) Pty 1999 (3) SA 500 (C) at 513G-1
23 At 513I (supra)
24 vide para [8] supra
25 Paginated page 34 para9.15 in fin.

[36] As I have indicated herein above the main application has been postponed sine die. "In Saunders Valve Co Ltd v Insamcor (Pty) Ltd. [26] it was held that the fact that a permanent interdict was being sought on motion constituted exceptional circumstances justifying an order obliging the applicant to make discovery prior to filing affidavits by the respondent.,,[27] In casu, when regard to all the circumstances of this case, the allegations of disposal of the assets of the entities concerned in this matter, the huge amounts of investment by Senior, a fact that is not disputed by Junior, I am of the view that, in the exercise of my discretion, I should grant the order sought under counterclaim. I also take into consideration the fact that in the main application, the other respondents mentioned therein, 2nd respondent to 4th respondents are essentially the entities whose soul the parties are fighting for. There would be no prejudice in the circumstances to grant the order sought, with some alterations, particularly having regard to the fact that the documents sought to be discovered by Junior, have a bearing to the said respondents[28]. The alteration is in regard to the seventh respondent, Snyman Venter Incorporated. There is not much said about this respondent on the papers, to justify my having to grant an order against it.

[37] In so far as condonation brought by Junior for the late filing of his documents, I am of the view that such condonation, should be granted. In fact it was not argued that I must reject such application. In respect of the costs in all these Rule 47 applications under both cases under case number 11967/07 including the counter-application under this case number, and case number 11968/07 it stands to follow that Senior and Sussie Monkam as the 1st applicant and or 1st respondent and 2nd applicant and or 2nd respondent respectively wherever same applies, are entitled to the costs of these actions. The question of attorney and client

[26] 1985 (1) SA 146 *(T)*
[27] Supre Court Practice B1-262A [Service 21, 2004]
28 Annexure A and B at paginated pages 152-157.

costs, just like a costs order is a matter of the discretion of the Court. Although I am tempted to grant a punitive costs order against Junior, I shall

4. Directing that the First to Sixth respondent are to file their answering affidavits in the main application, if any, within 10 (ten) court days after the expiry of the date upon which the applicants are allowed to supplement the founding affidavits as per prayer 3 above;

matter, and the concomitant intricacies herein, justifies the employment of 2

5. That the First Respondent (Pascal Monkam Junior) to pay the costs of this counter-application, which costs shall include the costs of two counsel, one of whom is senior counsel.

UNDER CASE NUMBER 11968/07

38. In the pre It is hereby ordered:

UND

1. That the Rule 47 application is dismissed with costs which costs shall include the costs of 2 (two) counsel, one of whom is senior counsel.

1. That both applications in terms of Rule 47 in the counter application, are dismi costs, which costs shall include costs of two counsel, one of whom is senior counsel.

2. That Pascal Monkam Junior as the first respondent in the counterclaim, is directed to make discovery of the documents listed in annexure "A" within the period of 15 days (fifteen) days of this order, and to make

HEARD ON THE : 18 / 09/2007
DATE OF JUDGMENT : 05/10/2007
APPLICANT'S [JNR'S] ATT : Mr. GROOVE B.
APPLICANT'S [JNR'S] ADV : Mr. GEACH, SC
WITH ADV : GEYLING PJ
RESPONDENTS' [SNR'S] ATT : Mr FINK T
RESPONDETS' ADV : Mr. MARITZ SJ, SC.
WITH ADV : LOUW N J

cuments discovered within ry;

licants to supplement their the facts deposed to in the r security for costs and the affidavits filed in support of the counter-application, and further supplement the founding papers in the main application within a period of 15 (fifteen) court days from the date on which inspection has been obtained as referred to in prayer 2 above;