

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 93741/20

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHERS JUDGES: NO  
(3) REVISED: NO

09 December 2024

DATE

SIGNATURE

In matter between

**SB GUARANTEE COMPANY (RF) PTY LTD**

Applicant /Plaintiff

and

**JASON RICHARDSON**

First Respondent /Defendant

**CHER RICHARDSON**

Second Respondent /Defendant

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VARIATION ORDER IN TERMS OF RULE 42 (1) (b)

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LESUFI AJ:

## *Introduction*

- [1] This is a variation order in terms of Rule 42 (1)(b) of the Uniform Rules of the High Court relating to the judgment I handed down electrically by circulation to the parties' legal representatives by email and Caselines on 6 December 2024. Subsequently on the same day, it was brought to my attention by way of email from the parties that an error has slipped through in the order relating to the omission to reference the monetary amount of the immovable property being executed.
- [2] On paragraph 23.2 of the judgment, I made the following error "**The immovable property) is declared executable for the aforesaid amounts**" The error relates to the part of the paragraph which orders the executable amount in terms of the immovable property. I have therefore decided to reconsider the paragraph and what follows are the brief reasons why I am of the view that, under the circumstance, this court is empowered to vary paragraph 23.2 of the judgment in terms of rule 42(1)(b). I deal first with the purpose of rule 42(1)(b) procedure.

### *The purpose of rule 42(1)(b)*

- [3] Rule 42(1)(b) of the High Court Rules makes provision for a procedure in which the court may *mero motu* or upon the application by any party affected by an order or judgment vary such order or judgment is so far as the court is of the view that there is an ambiguity, or a patent error or omission.
- [4] It is trite that the rule empowers the court to make such a variation order but only to the extent of such ambiguity, error or omission. In other words, the rule does not allow the court to revisit the whole of its order or judgment. It limits the powers of the court to the removal of the ambiguity, error or omission concerned. This is what this court is intending to achieve with this variation of paragraph 23.2 of the main judgment.

### *Variation of paragraph 23.2 of the main judgment*

- [5] The error in paragraph 23.2 does not reflect the real intention of the court and/or not attributable to my intention in so far as the executable amount of the immovable property in the judgment is concerned. I am persuaded that I am empowered by rule 42(1)(b) to correct the error in paragraph 23.2 of the judgment to give effect to its true intention.<sup>1</sup> More so because the variation is not intended to extend to altering paragraph 23.2 intended sense or substance.<sup>2</sup>

### *Conclusion*

- [7] In my view, the error committed falls within the type of error mentioned above. In the application of the above principles, the variation of paragraph 23.2 is therefore justified under the circumstances. As a result, the costs order stands to be varied *mero motu*. Therefore, paragraph 23.2 in the judgment and order is varied and replaced with the following:

**“The immovable property ‘) is declared executable for the aforesaid amount of R 3 359 977.49”**

  
**B LESUFI**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

### **APPEARANCES**

For the Applicant

Adv PR Long instructed by

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<sup>1</sup> *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 306F–307A; *Mostert NO v Old Mutual Life Assurance Co (SA) Ltd* 2002 (1) SA 82 (SCA) at 86D.

<sup>2</sup> *Wessels & Co v De Beer* 1919 AD 172 at 174; *Randfontein Estates v Robinson* 1921 AD 515 at 520; *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 at 186–7. See also *International Tobacco Co (SA) Ltd v United Tobacco Co (South) Ltd* (2) 1955 (2) SA 29 (W); *Thompson v South African Broadcasting Corporation* 2001 (3) SA 746 (SCA) at 748–9.

For the Respondent

Date of hearing

Date of Judgment

Van Hulsteyns attorneys

Peter Zwane Attorneys

21 October 2024

9 December 2024