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Theron & Vennote

Partners

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Our ref.: J FURSTENBERG/ka/W230316
Your ref.: MK/ik/Z723

04 September 2018

Messrs Kyriacou Incorporated
PRETORIA

PER EMAIL: mario@kincorporated.co.za &
legal@kincorporated.co.za

Dear Sirs

Re: FAST TRACK: VLOK e.a / GEORGIU e.a CASE NUMBER: 53020/18
(PRETORIA HIGH COURT)

1. We refer to the following notices recently filed by your clients:
 - Notice of Intention to Oppose;
 - Notice in terms of rule 7(1), and;
 - Notice in terms of rule 6(5)(d)(iii).
2. Regarding the Notice of Opposition:

As a matter of courtesy and given that you only refer to Part B in the "framelines" of your said Notice, we accept that you are not opposing the relief under

Part A of the Motion. In this instance, kindly inform us in writing within three days hereof, if you have any other views, failing which we shall proceed to set the matter down for an order under Part A on an unopposed basis. We shall also present to the court this letter as clarification insofar as the said Notice may not be clear as to the intention.

3. Regarding the Notice under rule 7(1):

3.1 For the reasons stated in paragraph 52.1 of the affidavit of the Fifth Applicant (Mr Waxham), the First to Fourth Applicants cannot be regarded as parties any longer to the litigation. Your Notice seeks Powers of Attorney from such parties. Given that neither our firm nor the 5th to 9th Applicant purport to act on behalf of such Applicants, we will therefore ignore your rule 7(1) Notice.

3.2 By the way, the pre-existing citation of the parties are still being used (insofar as First to Fourth Applicants are concerned), simply for the sake of convenience and to avoid confusion that a "renumbering" of the cited Applicants will cause. In any event, the order of Murphy J by which the "new" Applicants have been joined as parties, specifically reads that they are joined as Fifth to Ninth Applicants respectively, and we deem it improper to "renumber them".

3.3 If you disagree with this approach of not responding to your said Notice, kindly inform us of such issues so that we can deal therewith.

3.4 Insofar as may be necessary, we hereby confirm that attorneys Geysler & Coetzee Attorneys have been appointed as correspondent attorneys in Pretoria by our firm. We assume, however, that this is not the disputed authority intended by your said Notice.

4. Insofar as your Notice in terms of rule 6(5)(d)(iii) is concerned:

- 4.1 Given the wording of the subrule, this is obviously something that is only to be dealt with and argued at the hearing of the matter.
- 4.2 However, it appears that you have misread the Notice of Motion. The relief sought under Part B is only to proceed once the relief under Part A is granted. Therefore, only once the order of Makhafela J is varied, answering affidavits need to be filed in relation to Part B.
5. Kindly also take notice that the application was supposed to be issued under the same case number as the so-called certification application (i.e. 80811/14), given that it is interlocutory to that application. You will note that various paragraphs of the supporting affidavit (of Fifth Applicant) make it clear that the application is merely interlocutory to the existing application, and in fact express references are made to the application "*under the above case number*" which in context clearly can only refer to case number 80811/14. Inadvertently and without proper consideration, our correspondent attorneys in Pretoria caused the application to be issued under a new case number. Kindly therefore take notice of this mistake. We will in due course cause this to be rectified, probably by means of a formal amendment of the Notice of Motion. This letter will, in due course and if necessary, be presented to court, in so far as this mistake is to be opportunistically used by your client to delay or frustrate the relief sought.
6. We further also noted that your clients' Notice of Opposition were filed three days late. Insofar as your client intends to indeed file opposing affidavits to Part A of the relief, kindly note that such three days are to be regarded as being "part of" the period of fifteen days within which to file such opposing affidavit. Kindly also note that, given the past delaying tactics on the part of your clients in the litigation between the respective parties, we will again fully put before court any further attempt on your client's part to frustrate or delay the further litigation.

We look forward to hearing from you in respect of the above issues, especially as a matter of urgency in relation to the issue referred to in paragraph 2 above.

Yours faithfully

THERON & PARTNERS

PER:



J FURSTENBERG



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Docex 16
Sandton City

11B"

4 September, 2018

Our Ref: MK/sn/Z723

Theron & Partners

Your Ref: Mr. Furstenburg/

Per e-mail: lawteam@iafrica.com

cc: Natalie Lubbe & Associates

Per e-mail: natalie@natalielubbe.co.za

Dear Sir / Madam,

RE: GEORGIU & OTHERS / VLOK & OTHERS: CASE NUMBER 53020/2018

1. We refer to the above matter and your letter dated 28 August 2018, sent to Natalie Lubbe & Associates. We assume that the letter in question should have been addressed to our offices and that it was sent to Ms. Lubbe's offices in error.
2. The letter was however forwarded to us, and our reply thereto is contained below.

AD PARAGRAPHS 1 AND 2

3. We note that you have received the following notices, served on your correspondent attorneys Geysers & Coetzee:
 - 3.1. our clients' notice of intention to oppose in respect of Part B of the application;
 - 3.2. our clients' notice in terms of Rule 7(1), also in respect of Part B of the application; and
 - 3.3. our clients' notice in terms of Rule 6(5)(d)(iii) in respect of Part B of the application.
4. The above notices:
 - 4.1. were served on Geysers & Coetzee on 8 August 2018 at 09:43;

Director
Mario Kyriacou B.Comm. LL.B. Dip. Insolvency Law

Registration number: 2007/022092/21

- 4.2. were served on Geysers & Coetzee's email address, lawteam@iafrica.com.
5. The email address at which service took place has been used by agreement between the parties for the service of documents (including various interlocutory notices) since late 2014.
6. In addition to the above notices, the following notices were also served on Geysers & Coetzee:
 - 6.1. our clients' notice of intention to oppose Part A of the application; and
 - 6.2. our clients' notice in terms of Rule 7(1) in respect of Part A of the application.
7. The notices in respect of Part A of the application:
 - 7.1. were served on Geysers & Coetzee on Wednesday 8 August 2018 at 09:42; and
 - 7.2. were also served by email at lawteam@iafrica.com.
8. For your ease of reference, we attach hereto scanned copies of the following:
 - 8.1. the covering email evidencing service of the notices in respect of Part A on Geysers & Coetzee at lawteam@iafrica.com;
 - 8.2. our clients' notice of intention to oppose in respect of Part A of the application, which was filed at Court on 16 August 2018 pursuant to service thereof;
 - 8.3. our clients' notice in terms of Rule 7(1) in respect of Part A of the application, also filed at Court on 16 August 2018 pursuant to service thereof.
9. In the premises we trust that the above dispels any notion that our clients do not intend opposing the relief sought under Part A of the notice of motion.

AD PARAGRAPH 5

10. A perusal of your clients' notice of motion reflects that Part B thereof is not interlocutory or incidental to the relief applied for under case number 80811/2014.
11. In the premises it is clear that case number 53020/2018 is a new case, and we hold instructions to treat it accordingly. Although the relief applied for in terms of Part A of the notice of motion could have been deemed to be interlocutory, it is so closely tied with Part B that one cannot deal with Part A and Part B as separate applications.

AD PARAGRAPHS 3 TO 3.4

- 12. Case number 53020/2018 was brought as a new application, under a new case number.
- 13. Your letter under reply concedes that neither your firm nor your Pretoria correspondents hold instructions to act on behalf of the first to fourth applicants in this new application.
- 14. Since the totality of the relief applied for in the new application is not interlocutory or incidental to the pending application under case 80811/2014, our clients' stance as evident from our clients' notices in terms of Rule 7(1) remains unchanged.

AD PARAGRAPHS 4 TO 4.2

- 15. We note the explanation proffered in paragraph 4.2 of your letter under reply, and will take instructions from our client with regard to our clients' Rule 6(5)(d)(iii) notice in respect of Part B of your clients' notice of motion.
- 16. In the light of the explanation adverted to in the preceding paragraph, our clients' Rule 6(5)(d)(iii) notice in respect of Part A of the notice of motion will also be served evenly herewith.

AD PARAGRAPH 6

- 17. Our clients have delivered a Rule 7(1) notice in respect of the relief applied for in Part A of your clients' notice of motion. The Rule 7(1) notice prevents you from acting until you have satisfied our offices that you are mandated to act for all the applicants under case number 53020/2018.
- 18. Our clients' notice of opposition was served, *ex abundante cautela*, simultaneously with their Rule 7(1) notice because, until you have satisfied the requirements of Rule 7, you are not entitled to accept service of any process under case 53020/2018 on behalf of any party. The notice referred to in paragraph 16 above is served on the same basis.
- 19. Our clients cannot be forced to deal with matters piecemeal where nine purported applicants have delivered a single application.
- 20. In the light of the above, we propose that:
 - 20.1. you advise us whether you intend persisting with the application as it stands, i.e. under case number 53020/2018; or
 - 20.2. whether you intend to take any steps in relation to the content of paragraph 5 of your letter under reply.

Director
Mario Kyriacou B.Comm. LL.B. Dip Insolvency Law

Registration number: 2007/022092/21

21. Needless to say, our client's rights are and remain reserved *in toto*.

Yours faithfully

KYRIACOU INCORPORATED
Per: **Maro Kyriacou**