

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 80811/2014

In the matter between:

SHARON ANN VLOK	First Applicant
DANIEL EARNEST LAMPBRECHT	Second Applicant
CHARLENE ESMAY JORDAAN	Third Applicant
JEAN PAPANDONIS	Fourth Applicant
BRIAN JOHN WAXHAM	Fifth Applicant
CHRIS NEL	Sixth Applicant
HYMIE PINSHAW	Seventh Applicant
FRANCOIS STRAUSS	Eighth Applicant
LEA MAGDALENA MEYER	Ninth Applicant

and

NICOLAS GEORGIU	First Respondent
ZEPHAN PROPERTIES (PTY) LTD	Second Respondent
NICOLAS GEORGIU N.O.	Third Respondent
MAUREEN LYNETTE GEORGIU N.O.	Fourth Respondent
JOSEPH CHEMALY N.O.	Fifth Respondent
GEORGE NICOLAS GEORGIU	Sixth Respondent
MICHAEL NICOLAS GEORGIU	Seventh Respondent
HENDRIK JACOBUS MYBURGH	Eighth Respondent
BOSMAN & VISSER (PTY) LTD	Ninth Respondent
PICKVEST (PTY) LTD	Tenth Respondent
HEINRICH PIETER MOLLER	Eleventh Respondent
WILLEM MORKEL STEYN	Twelfth Respondent
BAREND STEFANUS VAN DER LINDE	Thirteenth Respondent
FREDERICK JULIUS REICHEL	Fourteenth Respondent
EUGENE KRUGER INC.	Fifteenth Respondent
HANS KLOPPER	Seventeenth Respondent
ORTHOTOUCH LTD	Eighteenth Respondent
HIGHVELD SYNDICATION NO 19 LTD	Nineteenth Respondent

HIGHVELD SYNDICATION NO 20 LTD
HIGHVELD SYNDICATION NO 21 LTD
HIGHVELD SYNDICATION NO 22 LTD

Twentieth Respondent
Twenty-first Respondent
Twenty-second Respondent

NOTICE OF INTENTION TO AMEND NOTICE OF MOTION

KINDLY NOTE that Fifth to Ninth Applicants herein ("Applicants") intend to amend their Notice of Motion in terms of Rule 28(1) as follows:

With reference to the attached draft titled "*Proposed [amended] Notice of Motion*" and marked as "Annexure A":

- By *inserting* the *underlined* words and numbers wherever they appear (i.e. underlined).
- By *deleting* the words and numbers that have been *struck through* (i.e. ~~strikethrough~~).

KINDLY TAKE NOTE THAT unless written objection to the above proposed amendment, with the grounds therefor, is delivered within 10 days after receipt of this notice, the amendment will be affected.

DATED AT PRETORIA ON THIS 4th DAY OF SEPTEMBER 2019.



Geyser & Coetzee Attorneys

Attorneys for the class and/or various investors

9 Boabab Nook,

Zwartkop

Centurion

Pretoria

For Theron & Partners

Stellenbosch
TEL: (012) 663 5247
FAX: (012) 663 5719
REF: W Coetzee

**TO: THE REGISTRAR OF THE NORTH GAUTENG HIGH COURT
PRETORIA**

AND TO: KYRIACOU INC
First to Fifth Respondents' Attorneys
First Floor, Fussell House
48 Athol Oaklands Road
Melrose North
Tel 011 444 2665
Fax 086 653 5677
Email legal@kincorporated.co.za

C/o ROSS & JACOBS INC
457 Roderick Road
Lynwood
Pretoria

[Draft]

"Annexure A"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 80811/2014

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LEA MAGDALENA MEYER	Ninth Applicant
and	
NICOLAS GEORGIU	First Respondent
ZEPHAN PROPERTIES (PTY) LTD	Second Respondent
NICOLAS GEORGIU N.O.	Third Respondent
MAUREEN LYNETTE GEORGIU N.O.	Fourth Respondent
JOSEPH CHEMALY N.O.	Fifth Respondent
GEORGE NICOLAS GEORGIU	Sixth Respondent

MICHAEL NICOLAS GEORGIU	Seventh Respondent
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BOSMAN & VISSER (PTY) LTD	Ninth Respondent
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EUGENE KRUGER INC.	Fifteenth Respondent
HANS KLOPPER	Seventeenth Respondent
ORTHOTOUCH LTD	Eighteenth Respondent
HIGHVELD SYNDICATION NO 19 LTD	Nineteenth Respondent
HIGHVELD SYNDICATION NO 20 LTD	Twentieth Respondent
HIGHVELD SYNDICATION NO 21 LTD	Twenty-first Respondent
HIGHVELD SYNDICATION NO 22 LTD	Twenty-second Respondent

PROPOSED (AMENDED) NOTICE OF MOTION – Fast Tracking of buyback claims

TAKE NOTICE that application will be made to the above Honourable Court for the following relief:

PART A:

1. That this application be heard as one of urgency and that the Honourable Court in accordance with Rule 6 (12) dispense with the normal rules with regard to forms and service.

2.

2.1 That the court order granted on 27 May 2015 by the honourable Mr Justice Makhafola (which allows for the non-filing of opposing affidavits by First to Fifth Respondent) be declared to be only applicable to the relief sought by Applicant *other* than the relief referred in part B below, and therefore that such existing order does not preclude or excuse such Respondent from filing opposing affidavits to the relief sought in part B below.

2.2 Alternatively, that the said existing order be varied or amended to allow for the necessary filing of opposing papers to the relief sought in part B below, for instance by inserting the following wording at the end of the current paragraph 2 of the order:

"The aforementioned order however does not apply in relation to the relief sought by Applicants against First to Fifth Respondents in relation to Highveld Syndication 21 Ltd and Highveld Syndication 22 Ltd on the strength of the buyback agreement forming part of the relevant prospectus issued in relation to such two companies, copies of which agreements are attached as annexure "SV1" and "SV2" respectively to the founding affidavit of First Applicant dated 30 October 2014 filed under the above case number;

3. That costs of the application under part A herein be cost in the cause (proceedings) referred to in part B below, except in the event of the relief sought in this part A being opposed, in which case those Respondents who oppose it be ordered to bear the costs jointly and severally on a scale of attorney and client.

4. Further and/or alternative relief.

TAKE NOTE THAT the accompanying affidavit of Fifth Applicant and others will be used in support of this application.

TAKE FURTHER NOTICE THAT if you intend opposing the relief sought in Part A above, you are required:

- a) to file notice of opposition within 5 (five) days of receiving notice of this application;
- b) and to file your answering affidavits, if any, within 15 (fifteen) days of filing the aforementioned notice of opposition.

If you do not oppose this above relief, application therefor same will be brought on a date to be arranged with the registrar without any further notice to any party.

PART B:

1.

1.1 That, subject to the paragraphs prayer 1.2 below, leave be granted to the Fifth to Ninth Applicants to institute a class application (alternatively, a class action) under section 38(c) of the Constitution of the Republic of South Africa, or alternatively under the common law – assisted and represented by their current attorneys of record (Theron & Partners) – as representatives of the investors (i.e. the holders of shares and/or units) in Highveld Syndication 21 Ltd (Twenty-first Respondent – “HS21”) against First to Fifth Respondents on the strength of the buyback agreement forming part of the relevant prospectus issued in relation to Highveld Syndication 21 Ltd, a copy of which agreement is attached as annexure **“SV1”** to the founding affidavit of First Applicant dated 30 October 2014 filed under the above case number;

~~1.2 That, save for those investors in Highveld Syndication 21 Ltd who elect to opt out, and save for those investors who have already obtained~~

~~judgment in respect of the above claim, the Fifth to Ninth Applicant are hereby permitted to act as representatives of all investors in such company and to institute the class action certified in prayer 1.1.~~

1.3 Such class application (alternatively class action) is to be issued within 40 days of the granting of this order or such later date as the court may allow upon application.

1.4 That Fifth to Ninth Applicant are hereby permitted to act as representatives of those investors in HS21 who "opt in" for purposes of such class application in the manner described in paragraph 1.4 below.

1.5 Each investor in HS21 who wishes to be part of the class application is required to "opt in" by means of the following:

(a) By registering at/on a web-based registration site/form – the URL (website address) of which will be communicated and published as referred to below. For purposes of such registration, an investor shall provide the following:

- (i) Full name and surname of the (investor) - or the name of Trust or company/close corporation) or of the investor's representative (for instance executor or curator of the investor);
- (ii) identity number of investor (or registration number in the case of a company or close corporation being the investor);
- (iii) the total amount invested in HS21;
- (iv) an email address for purposes of correspondence with the investor.
- (v) A cell phone contact number (in the event of communication by means of email is or may become impractical or if an email address does not exist);

(b) Subject to subparagraph (c) below, by paying the following

registration fee into a dedicated (separate) trust account of Theron & Partners attorneys (Stellenbosch):

(i) In the case of an investor who has an investment in HS21 of R100,000 or less: a registration fee of R4,500;

(ii) In the case of an investor who has an investment in HS21 of more than R100,000: a registration fee of R6,500;

(c) Investors in HS21 who are also fully paid up members of the Highveld Syndication Action Group (“HSAG”) as at 31 January 2020 are exempted from the above registration and payment of the fee. Such HSAG members will be automatically regarded as having “opted in” for purposes of the class application;

1.6 Such registration (to “opt in”) is to occur on a date not later than 65 days from the granting of this order. Such period may be extended by the court upon good cause shown;

1.7 Through such registration, an investor will also become a member of the HSAG;

1.8 Should it appear during the course of the litigation that the aforementioned registration fees received are insufficient to fund the litigation, the Applicants may approach the court or the presiding judge for directives and/or orders concerning additional payments to be made by class members.

2.

2.1 That subject to the paragraphs prayer 1-2 below, leave be granted to the Fifth to Ninth Applicants to institute a class application (alternatively, a class action) under section 38(c) of the Constitution of the Republic of South Africa, or alternatively under the common law – assisted and represented by their current attorneys of record (Theron & Partners) –

as representatives of the investors (i.e. the holders of shares and/or units) in Highveld Syndication 22 Ltd (Twenty-second Respondent – “HS22”) against First to Fifth Respondents on the strength of the buyback agreement forming part of the relevant prospectus issued in relation to Highveld Syndication 22 Ltd and a copy of which agreement is attached as annexure “**SV2**” to the founding affidavit of First Applicant dated 30 October 2014 filed under the above case number;

2.2 ~~That, save for those investors in Highveld Syndication 22 Ltd who elect to opt out, and save for those investors who have already obtained judgment in respect of such claim, the Fifth to Ninth Applicant are hereby permitted to act as representatives of all such investors in such company and to institute the class action certified in prayer 2.1.~~

2.3 That paragraphs 1.3 to 1.8 above apply *mutatis mutandis* to the class application in relation to Highveld Syndication 22 Ltd.

3. That paragraphs 3 and 4 of the Notice of Motion dated 31 October 2014 under the above case number (80811/14) be regarded as amended, in so far as necessary, to allow for the aforesaid class application based only on the buyback agreements, whilst, however, reserving the rights of the Applicants to in due course proceed with seeking leave to institute a class action based on the grounds *other* than the buyback agreements as set out in the founding affidavit in relation to the aforementioned two Highveld Syndication companies.

4. That the related relief sought under paragraphs ~~5 to 12~~ 5, 6, 8 and 12 in the existing Notice of Motion under the above case number (80811/14) (dated 31 October 2014) (also) be granted in relation to the above two class applications – provided that the following be added to the current paragraph 8 of such Notice of Motion:

“In addition, that such communication to investors are to include the following:

- A reference or link to the website of the HSAG where a copy of this order is to be displayed or made available;
- A reference or link to the so-called web based registration process/form referred to above to "opt in";
- a brief description of:
 - (i) who the class members are who can join the class action (i.e. who can "opt in") and;
 - (ii) the cause of action involved and the grounds thereof;
- The details of the attorneys (Theron & Partners), including the banking details of the bank account into which the registration fee is to be paid".

4A. That Applicants are ordered to file an affidavit within 20 days of final judgement in the said class applications, setting out the names of the investors (claimants) who have so opted in and the value of their investment.

5. Costs of this application under Part B be awarded against all those Respondents who oppose the application, jointly and severally, including the cost of two counsel.

6. Further and/or alternative relief.

BE PLEASED TO TAKE FURTHER NOTE THAT the accompanying affidavit of Fifth Applicant and others will be used in support of this application.

TAKE FURTHER NOTICE THAT if you intend opposing the application under Part B above, you are required:

- c) to file notice of opposition within 5 (five) days of date of the granting of the relief sought in prayer 2 under Part A above (or any related relief granted which results in confirmation that opposing affidavits are to be filed in relation to Part B);
- d) and to file your answering affidavits, if any, within 15 (fifteen) days of filing the

aforementioned notice of opposition.

If you do not oppose the application under Part B, same will be brought on a date to be arranged with the registrar without any further notice to any party.

DATED at PRETORIA on this _____ day of August 2018.

Geyser & Coetzee Attorneys
Attorneys for the class and/or various investors
9 Boabab Nook,
Zwartkop
CENTURION
For Theron & Partners
Stellenbosch
PRETORIA
TEL: (012) 663 5247
FAX: (012) 663 5719
REF: W Coetzee

**TO: THE REGISTRAR OF THE NORTH GAUTENG HIGH COURT,
PRETORIA**

AND TO: KYRIACOU INC
First to Fifth Respondents' Attorneys
First Floor, Fussell House
48 Athol Oaklands Road
Melrose North
Tel 011 444 2665
Fax 086 653 5677
Email legal@kincorporated.co.za

C/O: ROSS & JACOBS INC
457 Roderick Road
Lynwood
Pretoria