

WILKEN FREDERICK JACOBUS

Applicant

and

FREYSEN WILLIE NO

Respondent

CASE NUMBER: 8813/2019

JOHANNESBURG HIGH COURT

Judgement received in the above matter. After a year of fighting for our clients rights against Freysen Attorneys we now won the matter. Herewith the Judgement.

Congratulations Adv. Jaco Carstens and my office.

Well done for showing them how to do it.

Costs

[38] The normal principle is that costs follow the result. No reasons have been advanced to deviate from this principle. The applicant has sought a punitive costs order on the scale as between attorney and client.

[39] Considering the misconception on the part of the respondent as to his fiduciary duties¹⁷ and the stance adopted by him in these proceedings, I am persuaded that such an order is justified¹⁸.

[40] The respondent has been cited in this application in his official capacity as receiver and liquidator. In my view, it would be a grave injustice if the costs order I intend to grant, be paid from the funds under the control of the respondent, where they are currently held in terms of the order.

[41] I grant the following order:

[1] The respondent is directed to submit his statement of account for assessment by the Master of the High Court, Johannesburg in terms of section 84(1)(b) the Administration of Estates Act 66 of 1965 and subject to the provisions of that Act within 30 days of date of this order.

[2] In the event that the respondent fails to comply with his obligations, the applicant is granted leave to supplement his papers and apply for the removal of the respondent as sought in prayer 3 of his notice of motion or any other appropriate relief.

¹⁷ Mngomezulu supra

¹⁸ De Sousa v Technology Corporate Management (Pty) Ltd 2017 (5) SA 577(GJ) 655C-J; Ward v Sulzer 1973 93) SA 701 (A)

[3] The respondent is directed to pay the costs of the application on the scale as between attorney and client.

[4] The respondent's counter application is dismissed with costs on the scale as between attorney and client.

[5] The respondent is directed to pay the costs in [3] and [4] above from funds other than the funds presently under his control in terms of the order granted under case number 19779/2014 on 4 February 2016.



**F DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

DATE OF HEARING	:	02 September 2019
DATE OF JUDGMENT	:	19 September 2019
APPLICANT'S COUNSEL	:	Adv JC Carstens
APPLICANT'S ATTORNEYS	:	GD Ficq attorneys Mr Ficq
RESPONDENTS' COUNSEL	:	Adv J Brenkman
RESPONDENTS' ATTORNEYS	:	Freysen attorneys Mr Freysen