REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 48387/11

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

8/2/2013
DATE

SIGNATURE

In the matter between:

ALLIANCE MINING CORPORATION LIMITED (In Liquidation)	First Plaintiff
NORMAN KLEIN N.O.	Second Plaintiff
JUANITO MARTINS DAMONS N.O.	Third Plaintiff
KGASHANE CHRISTOPHER MONYELA	Fourth Plaintiff
OSMAN MOOSA N.O.	Fifth Plaintiff

[in their capacities as the duly appointed joint final Liquidators of Alliance Mining Corporation Limited (In Liquidation)]

and

EUGENE ANTHONY DE KOCK (Identity Number: [redacted])	First Defendant
ALWYN JOHANNES PETRUS STEENKAMP (Identity Number: [redacted])	Second Defendant
BRIAN ANDREW DE KOCK	

(Identity Number:) Third Defendant
CONNIE MARGRIET VAN NIEUWKERK
(Identity Number:) Fourth Defendant/Excipient

JUDGMENT

TSOKA, J:

INTRODUCTION

[1] The fourth defendant, Connie Margriet van Nieuwkerk (Van Nieuwkerk) the erstwhile director of the first plaintiff, a company in liquidation, has excepted to plaintiffs' particulars of claim, advancing six grounds upon which she contends that the particulars of claim are vague and embarrassing and/or lack averments necessary to sustain an action. The plaintiffs are the company (in liquidation) and its four joint final liquidators.

THE LEGAL PRINCIPLES APPLICABLE

[2] The test, at the exception stage, in determining whether a pleading discloses a cause of action is a benevolent one. The excipient, in this case, Van Nieuwkerk, has to show that the pleading is excipiable on every interpretation that can reasonably be attached to it. The plaintiffs are then confined to the facts alleged in the particulars of claim. See *First National Bank of Southern Africa Ltd v Perry NO and Others* 2001 (3) SA 960 (SCA).

[3] In *Steward and Another v Botha and Another* 2008 (6) SA 310 (SCA) the court said it is for the excipient (Van Nieuwkerk) to satisfy the court that the conclusion of the law, where a conclusion of the law is pleaded, that such conclusion cannot be supported by any reasonable interpretation of the particulars of claim.

[4] With regard to a pleading being vague and embarrassing, the excipient must show that the whole cause of action, not only a paragraph within the cause of action, is vague and embarrassing, in the sense that such a cause of action is either meaningless or has two meanings. Furthermore, the excipient must also show that the cause of action, he/she is called to meet, is prejudicial to him or her with the result that such an excipient is unable to plead thereto. Thus an exception would be allowed on the basis of vagueness and embarrassment only if such exception results in serious prejudice to another party. See *Nel & Others v MacArthur & Others* 2003 (4) SA 142 (TPD); *Levitan v Newhaven Holiday Enterprises CC* 1991 (2) SA 297 (C) at 298A; *Francis v Sharp & Others* 2004 (3) SA 230 (CPD) at 240E-F and the unreported judgment of Joffe J in **PriceWaterhouseCooper v Randgold and Exploration Company Limited Case no. 2008/3854 (11 September 2009)**

BACKGROUND FACTS

[5] Prior to dealing with the complaints raised by Van Nieuwkerk, it is necessary to briefly set out the facts in this matter and to then determine whether the grounds raised are sustainable or not.

[6] The first plaintiff, Alliance Mining Corporation Limited (In Liquidation) ("*Alliance*") was wound up by order of this Court on 15 April 2010. Prior to its liquidation it has at all material times conducted business in rendering services and supplying products to the mining industry. It was listed on the Alternate Exchange of the Johannesburg Securities Exchange in the mining sector during 2007.

[7] Van Nieuwkerk, the fourth defendant was appointed as a director of Alliance on 1 May 2004. She was also appointed as a financial director and the company secretary of Alliance. She was also the sole director and company secretary of Image Wealth (Pty) ("*Image Wealth*").

[8] It is plaintiffs' allegations that during the period January 2007 to April 2010, Van Nieuwkerk, and each of the other three defendants, also the former directors of Alliance, were knowingly party to the carrying on of the business of Alliance and released Alliance's 2008 Annual Report which purportedly contained the approved annual financial statements and the directors'

responsibility statement; a report of the independent directors of Alliance and its subsidiary companies ("*the Group*") and that the purported Annual Report of 2008, fairly represented the financial position of the Group for the year ending 29 February 2008, when in fact this was not the case.

[9] According to this 2008 Annual Report, the Group, Alliance and its subsidiary companies, generated R80 788 135 after tax profit, up from R20 163 528 in the previous year: In respect of before tax profits, the Group, generated R109 683 918 for the year February 2008, up from R27 936 641 for the previous year ended 28 February 2007. The net assets were stated as having increased from R77,2 m to R238,2 m as at 29 February 2008. Revenue was stated as having increased 98% from R157 647 250 to R312 122 920.

[10] In truth, the financial statements of the Group were false and inaccurate in that they included non-genuine and fictitious profits before taxation and contained fictitious assets. During the period 28 July 2008 to 20 May 2009, Alliance, without justification or cause, recklessly incurred a liability towards Nedbank Limited relating to a "*Contracts for Difference*" exposure in an amount of R91 742 718,56. This amount was not disclosed in the Alliance's financial statements, and in fact it was deliberately concealed as a liability. The non-disclosure had materially and adversely impacted on Alliance's financial position.

[11] During the period October 2008 to June 2009 Dartingo Trading (Pty) Limited ("*Dartingo*"), Industrial Development Corporation ("*IDC*") and another nominated entity entered into negotiations for subscription of shares in Alliance. During the negotiations, Alliance furnished Dartingo and IDC with its Annual Report containing the incorrect information with regard to its after profit tax; the net assets and inflated revenue. The defendants, who were all the directors of Alliance, inclusive of Van Nieuwkerk, were aware of the true position of the after tax profit, net assets and revenue, and that the information furnished to Dartingo and IDC was false and material, and that Dartingo and IDC would act upon such information. On the strength of the false information furnished by the defendants, Dartingo subscribed for shares in Alliance and paid Alliance the sum of R114 375 600. Dartingo has since cancelled the subscription agreement and claimed damages from Alliance.

[12] Furthermore, it is plaintiffs' further allegations that the defendants, including Van Nieuwkerk, intentionally and knowingly permitted Alliance, without any justification, to make payments in the sum of R36 925 701 for the benefit of the first defendant, Eugene Anthony de Kock, alternatively to entities controlled by him and similarly made further payments in the sum of R13 259 062 to Alliance Corporation Holdings Company (Pty) Ltd ("*ACH*"). It is further alleged by the plaintiffs that, without justification, ACH was paid administration fees. The first defendant was at all material times a director and a controlling shareholder of ACH. At the time of payment, no

administration services were rendered by ACH to Alliance, and ACH had earned no administrations fees from Alliance. The purported administration costs, for the years ending 28 February 2007 and 29 February 2008, amounted to the sum of R663 964 and R1 066 636 respectively. Further financial services were allegedly rendered and fees paid to Imagine Wealth where none such services were rendered and fees earned. For the years ending 28 February 2007, 29 February 2008 and 28 February 2009, Imagine Wealth was paid the sums of R609 116; R670 027 and R2 838 195 respectively.

[13] Substantial payments were unjustifiably made to an entity known as Alliance Consolidated Estates (Pty) Limited (formerly known as Granitz Investments CC), of which entity the first defendant was also a director and a controlling shareholder for the year ending 28 February 2007, 29 February 2008 and 28 February 2009, respectively. Further unjustifiable and large dividends were also made to several entities, persons and trusts. At the time of such payments, same were neither due nor owing.

[14] On 25 June 2009, without any justification, Alliance made payment in the sum of R1 m to Van Nieuwkerk. The following day, in similar circumstances, it unjustifiably made a payment in the amount of R4,5 m to Imagine Wealth. Prior to these payments, on 19 June 2009, an amount of R2,7 m was, without any justification, and in the circumstances where such amount was neither due or owing, paid to Alwyn Johannes Petrus

Steenkamp, the second defendant. And again on 22 June 2009, Van der Merwe Trust was, without justification, paid an amount of R4 m in circumstances where such amount was neither due nor owing to the Trust.

[15] Alliance was allowed to continue trading, conduct business and incur debts, to the knowledge of the four defendants, alternatively, in circumstances in which the four defendants ought reasonably have had knowledge, that fairly valued, its liabilities exceeded its assets and/or there existed no realistic prospect that the debts of the company would be paid as and when such debts fell due and payable in the ordinary course of business.

[16] It is the plaintiffs' contention therefore that, in these circumstances, it is apt to invoke the provisions of section 424 of the old Companies Act 61 of 1973 ("*the old Act*") declaring the four defendants, including Van Nieuwkerk, to be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of Alliance or as the court may direct. And further it is alleged that the conduct of the four defendants, constitutes breaches of fiduciary duties the four defendants owed to Alliance, which breaches resulted in Alliance's loss of R285 132 839,82. Furthermore, it is alleged that such conduct constitutes wrongful conduct, and breaches of fiduciary duties on their part resulting in the loss and damages in the same amount. It is plaintiffs' further contention that, the conduct of the four defendants, including Van Nieuwkerk, constitutes the conduct prohibited by section 22 (1) of the Companies Act No 71 of 2008, as amended ("*the new Act*") for which the four

defendants are liable in accordance with the provisions of section 22 read with the provisions of section 77 (2) and/or (3).

[17] Section 424 of the old Act provides as follows –

> "***424. Liability of directors and others for fraudulent conduct of business***
>
> *(1) When it appears, whether it be in winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court may, on the application of the Master, the Liquidator, the judicial manager, any creditor or member or contributory of the company, declare that any person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct."*

[18] Sections 22 and 77 of the new Act, provide as follows respectively –

> "***22 Reckless trading prohibited***
>
> *(1) A company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.*
>
> *[Sub-s. (1) substituted by s. 14 of Act No. 3 of 2011.]*
> *Wording of Sections*
>
> *(2) If the Commission has reasonable grounds to believe that a company is engaging in conduct prohibited by subsection (1), or is unable to pay its debts as they become due and payable in the normal course of business, the Commission may issue a notice to the company to show cause why the company should be permitted to continue carrying on its business, or to trade, as the case may be.*

[Sub-sec. (2) substituted by s. 14 of Act No. 3 of 2011.]
Wording of Sections

(3) If a company to whom a notice has been issued in terms of subsection (2) fails within 20 business days to satisfy the Commission that it is not engaging in conduct prohibited by subsection (1), or that it is able to pay its debts as they become due and payable in the normal course of business, the Commission may issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be.

[Sub-s. (3) substituted by s. 14 of Act No. 3 of 2011.]

...

77. Liability of directors and prescribed officers

(1) In this section, "directo"' includes an alternate director, and –

(a) a prescribed officer; or

(b) a person who is a member of a committee of a board of a company, or of the audit committee of a company,

irrespective of whether or not the person is also a member of the company's board.

(2) A director of a company may be held liable –

(a) in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as a consequence of any breach by the director of a duty contemplated in section 75, 76 (2) or 76 (3) (a) or (b); or

(b) in accordance with the principles of the common law relating to delict for any loss, damages or costs sustained by the company as a consequence of any breach by the director of –

(i) a duty contemplated in section 76 (3)(c);

(ii) any provision of this Act not otherwise mentioned in this section; or

(iii) any provision of the company's Memorandum of Incorporation.

(3) A director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having -

(a) acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company, despite knowing that the director lacked the authority to do so;

(b) acquiesced in the carrying on of the company's business despite knowing that it was being conducted in a manner prohibited by section 22 (1);

(c) been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder of the company, or had another fraudulent purpose;

(d) signed, consented to, or authorised, the publication –

(i) any financial statements that were false or misleading in a material respect; or

(ii) a prospectus, or a written statement contemplated in section 101, that contained –

(aa) an "untrue statemen"' as defined and described in section 95; or

(bb) a statement to the effect that a person had consented to be a director of the company, when no such consent had been given,

despite knowing that the statement was false, misleading or untrue, as the case may be, but the provisions of section 104 (3), read with the changes required by the context, apply to limit the liability of a director in terms of this paragraph; or

[Sub-item (bb) substituted by s. 49 (a) of Act No. 3 of 2011.]

(e) *been present at a meeting, or participated in the making of a decision in terms of section 74, and failed to vote against –*

(i) *the issuing of any unauthorised shares, despite knowing that those shares had not been authorised in accordance with section 36;*

(ii) *the issuing of any authorised securities, despite knowing that the issue of those securities was inconsistent with section 41;*

(iii) *the granting of options to any person contemplated in section 42 (4), despite knowing that any shares –*

(aa) *for which the options could be exercised; or*

(bb) *into which any securities could be converted, had not been authorised in terms of section 36;*

(iv) *the provision of financial assistance to any person contemplated in section 44 for the acquisition of securities of the company; despite knowing that the provision of financial assistance was inconsistent with section 44 or the company's Memorandum of Incorporation;*

[Sub-para. (iv) substituted by s. 49 (b) (i) of Act No. 3 of 2011.]
Wording of Sections

(v) *the provision of financial assistance to a director for a purpose contemplated in section 45, despite knowing that the provision of financial assistance was inconsistent with that section or the company's Memorandum of Incorporation;*

[Sub-para. (v) substituted by s. 49 (b) (i) of Act No. 3 of 2011.]
Wording of Sections

(vi) a resolution approving a distribution, despite knowing that the distribution was contrary to section 46, subject to subsection (4);

(vii) the acquisition by the company of any of its shares, or the shares of its holding company, despite knowing that the acquisition was contrary to section 46 or 48; or

(viii) an allotment by the company, despite knowing that the allotment was contrary to any provision of Chapter 4.

[Sub-para. (viii) substituted by s. 49 (b) (ii) of Act No. 3 of 2011.]

…"

[19] Schedule 5 deals with transitional arrangements. It reads as follows:

"***Schedule 5*** *TRASITIONAL ARRANGEMENTS*
[Sch. 5 amended by s. 126 of Act No. 3 of 2011.]

1. Interpretation.–

(1) In this Schedule –

*(a) '**general effective date**' means the date on which section 1 of this Act came into operation; and*

*(b) '**previous Act**' means the Companies Act, 1973 (Act No. 61 of 1973).*

(2) A reference in this Schedule –

(a) to a section by number, is a reference to the corresponding section of –

(i) the previous Act, if the number is followed by the words 'of the previous Act'; or

(ii) this Act, in any other case; or

(b) *to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.*

(3) *Despite any other provision of this Act –*

(a) *the Minister, by notice in the Gazette, may determine a date on which the Commission may assume the exercise of any particular function or power assigned to it in terms of this Act; and*

(b) *until a date determined by the Minister in terms of paragraph (a) –*

i) *the Commission may not perform that particular function or exercise that particular power; and*

ii) *the Minister has the authority to, and bears the responsibility of, exercising any such function or performing any such power assigned by this Act to the Commission.*

...

7. Company finance and governance.–

(7) A right of any person to seek a remedy in terms of this Act applies with respect to conduct pertaining to a pre-existing company and occurring before the effective date, unless the person had commenced proceedings in a court in respect of the same conduct before the effective date.

9. Continued application of previous Act to winding-up and liquidation.–

(1) Despite the repeal of the previous Act, until the date determined in terms of subitem (4), Chapter 14 of that Act continues to apply with respect to the winding-up and liquidation of companies under this Act, as if that Act had not been repealed subject to subitems (2) and (3).

11. General preservation of regulations, rights, duties, notices and other instruments.–

(1) Any right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, that had not been spent or fulfilled immediately before the effective

> *date is a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.*"

[20] Having dealt with the background facts and the legal principles applicable, I turn to deal with the six grounds of complaint raised by Van Nieuwkerk against the plaintiffs' particulars of claim.

First Ground of Complaint

[21] The graveman of the complaint is that the plaintiffs do not allege any basis upon which section 424 of the old Act would continue to be of application in the circumstances where the oid Act has been repealed, and where there is presumption of non-retrospectivity of the new Act, and in the circumstances where the plaintiffs' action against the defendants was instituted after 1 May 2011, the coming into operation of the new Act. It is Van Nieuwkerk's assertion that, the plaintiffs cannot rely upon item 9 (1) of Schedule 5 to the new Act as section 424 of the old Act only deals "*with respect to the winding-up and liquidation of companies*".

[22] Van Nieuwkerk's contention is narrow and short-sighted. Chapter 14 of the old Act deals generally with winding-up of companies and amongst other things, personal liability of delinquent directors and other offences. The Chapter, with the necessary modifications, applies to the new Act.

[23] In Contemporary Company Law (Second Edition) at 1015, Cassim and Others opined that, since s 424 of the 1973 Act, which deals with the liability of directors for fraudulent or reckless conduct of business forms part of Chapter XIV of the old Act, it may be preserved and may continue to apply in the winding-up and liquidation of companies.

[24] Henochsberg, in Henochsberg on the Companies Act 71 of 2008, at 100, commenting on the provisions of section 22 of the new Act, maintains that Item 9 (1) of Schedule 5 provides that Chapter 14 of the old Act will continue to apply with respect to the winding-up and liquidation of companies under the new Act until a date determined by the Minister in the Gazette. The implication is that section 424, dealing with the liability of directors and others for fraudulent conduct of business, will continue to apply. The author states:

> "*...The use of the words 'company must not carry on its business' compared to the words in s 424 of the 1973 Act that 'the business of the company' may be significant as it would seem that the company, as party to the business described in s 22, may also be liable. It may also be significant for business that falls within the description in s 22 carried on before the Act came into operation as item 7 (7) of Schedule 5 provides that the remedies in terms of the Act apply to conduct pertaining to a pre-existing company. However, liability of directors in terms of the Act only applies from the effective date of the Act, but possible liability of the company is not excluded.*"

[25] Item 11 (1) of Schedule 5 provides that any right or entitlement enjoyed by the plaintiffs in respect of the relevant conduct or any obligation imposed

on each defendant arising from the relevant conduct in terms of any provision of the old Act, including section 424, is a right or entitlement enjoyed by the plaintiffs or is an obligation imposed on each defendant in terms of a comparable provision of the new Act. There being no comparable provision akin to the provisions of section 424 of the old Act in the new Act, the plaintiffs were obliged, so contends Van Nieuwkerk, to plead an obligation under the provisions of section 424 of the old Act in order to establish a claim under section 22 (1) of the new Act read with the provisions of section 77 of the new Act.

[26] It being common cause that there are no comparable provisions in the new Act, it was open to the plaintiffs to base their cause of action on the provisions of section 424 of the old Act as provided for in item 9 (1) of Schedule 5 or item 11 (1) of the same schedule of the new Act. This view is bolstered by what was said in **Steward and Another v Botha and Another 2008 (6) SA 310 (SCA) at para [4]** where the court stated that it is for the excipient, the fourth defendant, to satisfy the court that the conclusion of law pleaded by the plaintiffs cannot be supported by any reasonable interpretation of the claim. In the present matter, the plaintiffs conclusion of law as pleaded, is supported by reasonable interpretation of the particulars of claim.

[27] The result is the first complaint deserves to be rejected.

Second Ground of Complaint

[28] The complaint is directed at paragraphs 14.2 and 14.3 of the particulars of claim wherein the plaintiffs allege breaches of fiduciary duties on the part of the defendants, including Van Nieuwkerk. It is Van Nieuwkerk's complaint that there is no allegation in the particulars of claim as to whether and to what extent the claim is based on common law, the new Act or both the common law and the new Act, in particular the provisions of section 77 (2) (a) of the new Act. It is further Van Nieuwkerk's complaint that the nature of the fiduciary duty breached is not alleged and that the plaintiffs rely on undefined and unidentified fiduciary duties.

[29] In paragraph 13 of the particulars of claim, the plaintiffs state the conduct of the defendants which they allege constitute fiduciary duties. They further state the conduct which in their view constitutes the breaches of the fiduciary duties. It is as a result of those breaches of fiduciary duties that the plaintiffs allege a loss in the amount of R285 132 839,32. It is further plaintiffs' contention that the conduct complained of, constitutes wrongful conduct and breaches of fiduciary duties on the part of the defendants resulting in the loss and the damages of R285 132 839,32.

[30] The conduct of the defendants as alleged by the plaintiffs is not mutually exclusive. Such conduct arises under both the common law as well as in terms of the provisions of section 77 (1) (a) of the new Act.

[31] in *Picbel Group Voorsorgfonds (In Liquidation) & Others v Somerville & Others* [2012] ZAGPJHC 48 (30 March 2012), Sutherland J, dealing with a similar complaint as in the present matter, said the following –

> *"[47] The further complaint is that there is no exposition of what acts were committed that constitute the breaches of the common law fiduciary duty. This complaint is unsound. The particulars mention in paragraph 31 several acts or omissions attributed to Nedbank in addition to the details of the dishonest scheme hatched by Glavalas and Somerville in paragraph 26. Among the averments are references to a failure to preserve the assets to dealt with under the control of their owners, the Funds; the removal without authorisation or proper cause, the failure to prevent improper disadvantage or prejudice to the Funds, the failure to be impartial, and the failure to act prudently and put the best interests of the Funds first in the dealings undertaken. In my view, the factual foundation for the averments of a breach of a common-law fiduciary duty is amply asserted."*

[32] In my view, this complaint is unsound.

Third Ground of Complaint

[33] The complaint is allied to the second ground of complaint. In paragraph 13 of the particulars of claim, the plaintiffs allege that the defendants, as directors of Alliance, were knowingly party to the carrying on of the business of Alliance as detailed in paragraph 13. That the conduct, as alleged, is unauthorised and wrongful, admits no doubt. Similarly, this complaint is unsound.

Fourth Ground of Complaint

[34] The complaint is that the particulars of claim do not allege to what extent each instance of the relevant conduct complained of, constitutes the carrying on of Alliance's business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.

[35] The allegations in paragraph 14 of the particulars of claim, as pleaded, are sufficient enough to enable the fourth defendant to plead thereto. In any event, the fourth defendant fails to state that the conclusion of law pleaded by the plaintiffs cannot be supported by any reasonable interpretation of the particulars of claim. Furthermore, no prejudice is alleged that would prevent the fourth defendant to plead to the particulars of claim or a request for further particulars would not suffice to cure any vagueness in the event that the allegations are vague.

Fifth Ground of Complaint

[36] According to Van Nieuwkerk, sections 77 (2) and (3) of the new Act contain distinct bases for claims and that in the present case, the particulars of claim do not allege which of the distinct bases contained in those provisions the plaintiffs rely upon in founding a claim arising from section 22 of the new Act. The conduct of the defendants complained of is stated in paragraph 13 of the particulars of claim. In paragraph 14 of the particulars of claim, the plaintiffs state the conduct of the defendants that would render them liable in accordance with the provisions of section 22 read with the provisions of section 77 (2) and/or (3) of the new Act. Resultantly, this complaint has no merit. It must be rejected.

Sixth Ground of Complaint

[37] The complaint relates to the declaratory order sought pursuant to the provisions of section 424 of the old Act. It is Van Nieuwkerk's contention that the relief sought is unavailable to the plaintiffs on the same grounds as stated in the first and second complaints. Similarly, this ground, on the same reasoning as in both the first and second ground, has no merit. It must be rejected.

[38] Having regard to the aforegoing the exception must be dismissed.

[39] In the result, the exception is dismissed with costs, such costs to include the costs of two counsel.

M TSOKA
JUDGE OF THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

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DATES OF HEARING:	*5 December 2012*
DATE OF JUDGMENT:	***8 February 2013***