

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 33931/2021

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

In the matter between:

NJB INVESTCO PROPRIETARY LIMITED

Applicant

and

**GLOBAL CAPITAL INVESTMENT HOLDINGS
PROPRIETARY LIMITED**

First Respondent

BARNARD N.O., ANNEKE

Second Respondent

MACLAGH N.O., ZANELLA LUISA

Third Respondent

COTTERELL N.O., EDWARD VINCENT

Fourth Respondent

COTTERELL N.O, HEATHER BELINDA KIM

Fifth Respondent

GOLDBERG N.O. DAVID SAMUEL

Sixth Respondent

THE MASTER OF THE HIGH COURT

Seventh Respondent

**THE COMMISSIONER OF THE COMPANIES
AND INTELLECTUAL PROPERTIES COMMISSION**

Eighth Respondent

JUDGMENT

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and by upload onto CaseLines. The date and time for hand-down is deemed to be 11h00 on 3 April 2023.

OLIVIER, AJ:

Introduction

- [1] The applicant, NJB INVESTCO (PTY) LIMITED, is a private company with limited liability, duly incorporated in terms of the company laws of the Republic of South Africa.
- [2] The first respondent, GLOBAL CAPITAL INVESTMENT HOLDINGS (PTY) LIMITED ('Global') is a private company with limited liability, duly incorporated in terms of the company laws of the Republic of South Africa. It was placed under voluntary winding-up by special resolution on 22 January 2021, which was registered on 26 January 2021.
- [3] The second and third respondents are both insolvency practitioners. They are cited in their capacities as the provisional liquidators of the first respondent.
- [4] The fourth to sixth respondents are cited in their capacities as trustees for the time being of the Cotterell Family Trust ('the Trust'), which is the sole shareholder in Global.

[5] The seventh respondent is the Master of the High Court. The eighth respondent is the Commissioner of the Companies and Intellectual Properties Commission (CIPC). No specific relief is sought against them.

[6] The ninth respondent is Dean Levy, who the Trust contends is a trustee, and who was joined by separate application out of an abundance of caution by the applicant.

[7] Mr Costa represented the applicant. The Trust was represented by Mr Van Tonder.

Relief

[8] The notice of motion reads as follows:

In respect of CLAIM A:

1. The first respondent's creditors' voluntary winding-up be substituted with a compulsory winding-up in terms of section 346(1)(e) of the Companies Act 61 of 1973;
2. All proceedings in relation to the creditors' voluntary winding-up as well as the second and third respondent's appointments as provisional liquidators be set aside;
3. The costs of claim A of the application be costs in the winding-up.

In respect of CLAIM B:

3. (sic) The fourth, fifth, and sixth respondents in their capacities as trustees of the Cotterell Family Trust ("the Trust") be ordered to pay to the applicant:

3.1. R5 500 000.00; and

3.2. R429 778.72.

4. The fourth, fifth, and sixth respondents in their capacities as trustees of the Trust be ordered to pay interest on the amounts referred to in paragraph 3 above at the rate of 7% per annum a tempore morae to date of final payment, both dates inclusive;

5. Declaring that the fourth, fifth and sixth respondents in their capacities as trustees of the Trust are liable to pay the applicant 30% of the profits after tax of the first respondent from 18 October 2017 to date of the order, together with interest thereon at the rate of 7% per annum a tempore morae to date of final payment, both dates inclusive;

6. The 1000 ordinary no par value shares held by the Trust in the first respondent be transferred into the name of the applicant;

7. The fourth, fifth, and sixth respondents in their capacities as trustees of the Trust be and are hereby ordered within 7 days of the date of the order to take all steps necessary, including signature of all documents that may be required, in order to effect transfer of the 1000 ordinary no par value shares held by the Trust in the first respondent into the name of the applicant;

8. That failing compliance by the fourth, fifth, and sixth respondents with paragraph 7 above, the Sheriff be and is hereby authorised to take all steps and to sign all documents required in order to effect transfer of the 1000 ordinary no par value shares held by the Trust in the first respondent into the name of the applicant; and

9. The fourth, fifth, and sixth respondents in their capacities as trustees of the Trust be ordered to pay the costs of claim B of the application;

10. Further and/or alternative relief.

Background

[9] On 13 January 2021, the applicant obtained judgment against the first respondent for payment of R 3,084,242.39 together with interest and costs. The first respondent failed to comply with and make payment in terms of the court order. Subsequent to the granting of the order, one week later, the first respondent was placed in a voluntary creditor's winding-up.

[10] The applicant and Global concluded a Subscription Agreement on 20 September 2017, in terms of which the applicant subscribed for 11 001 shares in Global for a price of R 11,000,010.00. Global had specific obligations in respect of redemption of shares, payment of dividends and payments of a percentage of profits after tax.

[11] The applicant alleges that Global breached the agreement by failing to pay the applicant R 5,500,000.00 for the redemption of 5,500 shares as it was contractually obliged to do; by paying only part of the dividends owing to the applicant, resulting in a shortfall of R 429,778.72; and by failing to pay to the applicant 30% of the profits after tax.

[12] In addition to the subscription agreement, the Trust issued a guarantee in favour of the applicant. The Trust also ceded as continuing covering security for the due payment and performance by Global of its obligations under the Subscription Agreement, all of its shares in Global.

Claim A

[13] The parties have since agreed that the first respondent's voluntary winding-up be substituted with a compulsory winding-up in terms of section 346(1)(e) of the Companies Act 61 of 1973, and that the costs of claim A of the application be costs in the winding-up.

Claim B

[14] In respect of Claim B, the parties have agreed on the following, which is recorded as part of a draft order subsequently prepared by the applicant's attorneys:

[14.1.] declaring that the fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust are liable to pay the applicant 30% of the profits after tax of the first respondent from 18 October 2017 to date of the order, together with interest thereon at the rate of 7% per annum a tempore morae to date of final payment, both dates inclusive, which the applicant may prove in due course, if any, and subject to the Trust's right to raise prescription as a defence to any of the debts claimed by the applicant.

[14.2.] the 1000 ordinary no par value shares held by the Trust in the first respondent be transferred into the name of the applicant.

[14.3.] the fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust be and are hereby ordered within 7 days of the date of the order to take all steps necessary, including signature of all documents that may be required, in order to effect transfer of the 1000 ordinary no par value shares held by the Trust in the first respondent into the name of the applicant.

[14.4.] that failing compliance by the fourth, fifth, sixth and ninth respondents with the aforementioned paragraph, the Sheriff be and is hereby authorised to take all steps and to sign all documents required in order to effect transfer of the 1000 ordinary no par value shares held by the Trust in the first respondent into the name of the applicant.

[14.5.] the Trust admits that it is liable to pay the applicant the first redemption amount in the sum of R 2,750,000.00 together with interest thereon at the rate of 7% per annum a tempore morae to date of final payment, both dates inclusive.

[15]What remains for determination, therefore, is the following:

[15.1.] whether the Trust is liable to pay the second redemption amount of R 2,750,000.00;

[15.2.] whether the Trust is liable to pay the sum of R 429,778.72 in respect of dividends;

[15.3.] whether the Trust is liable to pay interest on the aforementioned amounts at the rate of 7% per annum a tempore morae to date of final payment, both dates inclusive;

[15.4.] whether the Trust or the applicant should be liable for the costs of claim B of the application.

[16]In respect of the amounts claimed, they are recorded in a certificate signed by Neville John Bester, in his capacity as the sole director and shareholder of the applicant. Clause 2.4 of the Guarantee provides that a certificate signed by any manager, director or other officer of the applicant (whose authority and appointment it shall not be necessary to prove) setting forth the amount of any guaranteed obligation shall, in the absence of manifest error, be *prima facie* evidence of such amount as against the Trust. The certificate becomes conclusive proof if no rebutting evidence is produced by the Trust.

The guarantee

[17]The following express terms are relevant:

2.1 Guarantee and Indemnity

(a) The Guarantor hereby irrevocably and unconditionally guarantees, as a separate, principal and independent obligation (irrespective of whether or not any of the Guarantees Obligations are enforceable against the Obligor and not merely as an ancillary obligation) to and in favour of the Guaranteed

Party: (i) to pay to the Guaranteed Party, forthwith on first written demand therefor and on receipt of proof of failure, breach or other default by the Obligor, any and all amounts that are due and payable in respect of the Guaranteed Obligations and that have not been paid on due date, as if the Guarantor were the principal obligor.

(b) The Guarantor, as principal obligor and as a separate and independent obligation from its obligations under clause 2.1(a), hereby irrevocably and unconditionally indemnifies the Guaranteed Party and undertakes to keep the Guaranteed Party indemnified in full and on demand from and against any and all losses, costs (including legal costs on a full indemnity basis), claims, liabilities, damages (whether actual or consequential, direct or indirect) and expenses suffered or incurred or which may be suffered or incurred by the Guaranteed Party arising out of, or in connection with, any failure of the Obligor to punctually or fully perform or discharge the Guaranteed Obligations or as a result of any of the Guaranteed Obligations becoming unenforceable, illegal or invalid for any reason whatsoever. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have been obliged to pay under this Guarantee if the amount claimed had been recoverable on the basis of a guarantee.

(c) Without derogating from clauses 2.1(a) and 2.1(b), if any of the Guaranteed Obligations is not recoverable from the Obligor by reason of any illegality, incapacity, lack of authority, ineffectiveness of execution or any other reason, the Guarantor shall remain liable under this Guarantee for the Guaranteed Obligations as if it were the principal obligor.”

[18] ‘Guaranteed obligations’ is defined as ‘any and all obligations of the Obligor (whether current or future actual or contingent and including obligations to pay damages as a result of breach and any other obligations whatsoever and whether incurred solely or jointly) under or in connection with the Subscription Agreement and/or the Tigaza Preference Share Terms (as defined therein).’

[19] The nature of the guarantee agreement is critical to the applicant’s case.

[20] The Trust submits that the Guarantee is akin to a suretyship in terms of which the Trust takes up the position as surety and co-principal debtor in solidum, with the first respondent, towards the applicant. As a result, the Trust may rely upon and plead all the defences which the principal debtor has against the creditor, except those defences which are purely personal to the principal debtor.¹

[21] The essentials of suretyship are set out by Innes CJ in *Corrans and Another v Transvaal Government and Coull's Trustee*:²

the undertaking of the surety is accessory to the main contract, the liability under which he does not disturb, but it is an undertaking that the obligation of the principal debtor will be discharged, and, if not, that the creditor will be indemnified.

[22] The applicant contends that the Trust disregards the purpose and terms of the guarantee, and that it is not a suretyship agreement. The guarantee creates a separate, principal and independent obligation, not merely an accessory obligation.

[23] A guarantee may amount to either a contract of suretyship or a primary obligation to perform under certain conditions or circumstances.³ Its effect depends on its terms.⁴ It is a question of construction whether a particular contract is an accessory (secondary) guarantee (eg, suretyship) or a primary guarantee. Context is important.⁵

[24] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*, Wallis JA set out the current approach to interpretation, which has since been endorsed by the Constitutional Court on several occasions:⁶

¹ *Ideal Finance Corporation v Coetzer* 1970 3 SA 1 (A).

² 1909 TS 605 at 612.

³ *List v Jurgens* 1979 (3) SA 106 (A).

⁴ *Jonnes v Anglo-American Shipping Co (1936) Ltd* 1972 (2) SA 827 (A).

⁵ *Hutchinson v Hylton Holdings and Another* 1993 (2) SA 405 (T).

⁶ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 4 SA 593 (SCA) at para [18].

The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself' read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

[25] In *List v Jurgens*⁷ the Appellate Division had to interpret the following provision:

On behalf of this company and on my own personal behalf, I hereby warrant and guarantee that the purchase price due to you (in respect of the purchase of an interest in a fishing vessel bought by one G) will be paid to you by the end of December 1970.

[26] The Court held that it was not a suretyship but an original undertaking whereby the promisor bound himself as principal debtor and not as surety.

⁷ *List v Jurgens supra*.

[27]Applying the *Endumeni* principles, I am of the view that the guarantee is not a suretyship agreement. The Trust gave an independent undertaking that it will perform in terms of the agreement. The wording of clause 2.1 supports this interpretation, which provides for a separate, principal and independent obligation (irrespective of whether or not any of the Guaranteed Obligations are enforceable against the Obligor and not merely as an ancillary obligation). Furthermore, the Guarantor, as a separate and independent obligation from its obligations under clause 2.1(a), irrevocably and unconditionally indemnifies the Guaranteed party (applicant) against any losses, and so on. While correct that the subscription agreement refers to the guarantee and vice versa, it does not automatically follow that the guarantee creates an accessory rather than an independent obligation. Other pointers include that the parties are described differently than they would ordinarily be in a suretyship agreement, for example 'principal obligor'.

Dividend

[28]Insofar as the claim of R 429,778.72 for the scheduled dividends is concerned, it is not disputed that Global was required to pay the applicant scheduled dividends totalling R 4,220,808.71. It is also not disputed that Global has paid the applicant R3, 791,029.99 and that there is a shortfall owing in the sum of R 429,778.72.

[29]The Trust relies on the definitions clause (clause 1.2 (i)) of the Subscription Agreement to argue that the provisions of the Companies Act, 2008 apply. It states that 'distribution' shall bear the meaning assigned to such term in the Companies Act and includes any payment ... by way of interest or principal ..., dividend, fee, royalty or other distribution of payment (including, by way of the repurchase of any shares). This, says the Trust, makes distribution and payment of the dividend subject to the provisions of the Companies Act, 2008. Therefore, the declaration and payment of preference dividends were dependent on the existence of sufficient funds, and had to pass the liquidity test in terms of s 4 of

the Act. Global does not have the funds to pay; therefore, the dividend payment claimed by the applicant (R 429, 778.72) is not due and payable.

[30] The respondents further assert that because no dividends were payable by the first respondent to the applicant from 30 September 2020 onwards, as surety and co-principal debtor, the Trust cannot be liable to pay any dividends towards the applicant. According to the Trust, the applicant's claim does not give rise to a 'Guaranteed Obligation'.

[31] The applicant argues that this is no defence. Firstly, there is no express term in the Subscription Agreement providing for what the Trust contends. Secondly, in terms of the guarantee the Trust guaranteed the performance by Global of its obligations under the Subscription Agreement as a separate, principal and independent obligation. Clause 2 of the Guarantee provides for situations where Global is unable to pay amounts due in terms of the Subscription Agreement, or where it may be unenforceable against Global, for whatever reason (my emphasis).

[32] The applicant submits that clause 2.1(b) provides a complete indemnification against any and all losses suffered by the applicant, which would include an inability to declare and pay dividends. The applicant submits that the payment of the scheduled dividends is a guaranteed obligation. As recorded above, the clause irrevocably and unconditionally indemnifies the applicant against, inter alia, any and all losses, claims and damages arising out of or in connection with any failure by Global to punctually or fully perform or discharge the guaranteed obligations, or as a result of the guaranteed obligations becoming unenforceable for any reason whatsoever. An inability to declare and pay dividends would be covered by unenforceability 'for any reason whatsoever'.

[33] The applicant relies further on clause 2.1(c) in the event that (a) and (b) may not apply. The essence of the provision is that if any of the guaranteed obligations is not recoverable from Global for any reason, the Trust shall remain liable under the guarantee for the guaranteed obligations as if it were the principal obligor.

Accordingly, the Trust remains liable for the balance of the dividends owed to the applicant.

[34] I find the argument of the Applicant persuasive and that payment of the outstanding dividend amount is payable by the Trust. I disagree that the dividend is not a guaranteed obligation; its definition is sufficiently broad to incorporate payment of the dividend.

Redemption

[35] In terms of the subscription agreement, Global was required to redeem 5,500 shares. The claim of R 5,500,000.00 consists of the first redemption amount in the sum of R 2,750,000.00 which fell due on 18 October 2020, and the second redemption amount in the sum of R 2,750,000.00 which fell due on 18 April 2021. The Trust does not dispute that it is liable to pay R 2,750,000.00 (the first redemption amount that Global has failed to pay), but disputes liability in respect of the second redemption amount.

[36] In respect of the second redemption amount, the Trust argues the redemption was subject to s 4 of the 2008 Companies Act. The Trust refers to the Annexure A to the Subscription Agreement to explain the circumstances under which the second redemption payment was to occur:

3.2 Subject to compliance with section 4 of the Companies Act, the Tigiza A Preference Shares shall be redeemed by the Company on a bi-annual basis as follows:

(a) ...

(b) after the expiry of a period of 6 months from the First Redemption Date [18 April 2021], the Company shall redeem 2,750 of the Tigiza A Preference Shares at the Redemption Value (Second Redemption Date)."

[37] In short, the Trust submits that the Subscription Agreement provides that the second redemption payment was subject, first and foremost, to the solvency and liquidity test of section 4 of the Companies Act, 2008; in other words, the Trust is only liable for payment of the second redemption payment – as a ‘Guaranteed Obligation’ for purposes of the Guarantee – in circumstances where the second redemption payment was approved and in compliance with section 4 of the Companies Act, 2008.

[38] Furthermore, because the second redemption payment is not owing to the applicant - due to the first respondent’s winding-up and automatic disqualification of the solvency and liquidity test - the Trust cannot be liable for payment of the second redemption payment towards the applicant. The Trust’s obligation to pay the second redemption payment remains tied to the solvency and liquidity test of the Companies Act when applied to the first respondent. The applicant’s claim is therefore not a ‘Guaranteed Obligation’.

[39] The import of the Trust’s argument, according to the applicant, is that it is not liable to pay that amount as the due date for payment was after Global had been placed into voluntary winding up, thereby no longer obligating Global to make payment. The applicant contends that there is no basis for this argument -- liquidation neither discharges a debt, nor does it discharge a guarantor such as the Trust from liability.

[40] Again, I find myself in agreement with the applicant. The provisions of clause 2 are sufficiently broad to cover the issue of share redemption, even should the second payment have been subject to the solvency and liquidity test. The Trust is not in the position of a surety. As it stands, it would appear that the financial status of Global is a matter for investigation during the winding up process.

[41] I have found that the Trust is liable to pay both the dividend owing to the applicant, as well as the second redemption amount. I see no reason why the Trust should not be liable for interest on these amounts as claimed by the applicant. This is also reflected in the certificate of indebtedness. The Trust has agreed to pay interest on the amount (yet to be determined) that will be due to

the applicant in respect of profits, as well as the first redemption amount, on the same terms.

Joinder and misjoinder: the identity of the trustees

[42]An *in limine* point was taken by the Trust regarding the identity of the trustees.

The complaint was that there had been a non-joinder of Dean Levy, who the respondents allege is a trustee of the Trust, and a misjoinder of the sixth respondent (“Goldberg”), who the Trust contends is no longer a trustee.

[43]The Trust claims that the resignation and appointment documentation were duly signed by the trustees of the Trust and, thereafter, submitted and stamped by the Master of the High Court (as acknowledgement of receipt). The applicant’s argument was that the formalities in terms of s 21 of the Trust Property Control Act were not complied with.

[44]Levy was later joined as the ninth respondent in his official capacity by order of Strydom J on 21 July 2022, out of an abundance of caution according to the applicant. The application was not opposed. Any issue regarding non-joinder has therefore been cured.

[45]In respect of misjoinder, the approach adopted by the applicant and its insistence that Goldberg is still a trustee, is understandable considering the need to comply with the formalities of the Trust Property Control Act. To my mind, this does not disqualify the application.

[46]The draft order submitted by the applicant refers to the fourth to six, and ninth, respondents as the parties against whom the relief is sought in their official capacities. The draft order proposed by the respondent also makes similar reference to these four respondents.

Costs

[47] It is trite that in awarding costs, a court has a discretion, which must be exercised judicially upon a consideration of all the facts, the circumstances of each case, weighing the issues in the case, the conduct of the parties and any other relevant circumstance. The discretion is wide, but not unlimited. As a rule of thumb, a successful party is entitled to their costs. A court should make an order that would be fair and just between the parties.⁸

[48] Applicant's counsel submitted that there can be no basis for costs against the applicant in respect of the joinder application. No personal relief was being sought against either Messrs Goldberg or Levy in their personal capacity, and it is questionable what costs they could have incurred personally, considering that it is the Trust that is opposing the application. Also, the fact that the joinder issue was not raised in the answering affidavit militates against an adverse costs order.

[49] It was submitted by Mr Van Tonder that the Trust should not be saddled with the costs of the joinder application, as it was not opposed. Similarly, in respect of the transfer of the shares, no demand was made by the applicant – but had demand been made, the Trust would have transferred the shares. It did not oppose this relief in the answering affidavit. The Trust should therefore not be saddled with those costs.

[50] Having regard to all the relevant considerations, I am satisfied that the fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust be ordered to pay the costs of claim B of the application, except for the costs of the joinder application. The joinder application was made by the applicant and was not opposed. Even though only out of an abundance of caution, it was under the circumstances prudent of the applicant to make the application. It would be unfair to mulct the Trust with those costs.

[51] I intend to make the draft order, as amended, an order of court.

⁸ *Fripp v Gibbon & Co* 1913 AD 354 at 363.

I MAKE THE FOLLOWING ORDER;

CLAIM A

1. The first respondent's creditors' voluntary winding-up be substituted with a compulsory winding-up in terms of section 346(1)(e) of the Companies Act 61 of 1973;
2. The costs of claim A of the application be costs in the winding-up.

CLAIM B

3. The fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Cotterell Family Trust ("**the Trust**") be ordered to pay to the applicant:
 - 3.1. R5 500 000.00; and
 - 3.2. R429 778.72;
4. The fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust be ordered to pay interest on the amounts referred to in paragraph 3 above at the rate of 7% per annum *a tempore morae* to date of final payment, both dates inclusive;
5. Declaring that the fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust are liable to pay the applicant 30% of the profits after tax of the first respondent from 18 October 2017 to date of the order, together with interest thereon at the rate of 7% per annum *a tempore morae* to date of final payment, both dates inclusive, which the applicant may prove in due course, if any, and subject to the Trust's right to raise prescription as a defence to any of the debts claimed by the applicant;
6. The 1000 ordinary no par value shares held by the Trust in the first respondent be transferred into the name of the applicant;

7. The fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust be and are hereby ordered within 7 days of the date of the order to take all steps necessary, including signature of all documents that may be required, in order to effect transfer of the 1000 ordinary no par value shares held by the Trust in the first respondent into the name of the applicant;
8. That failing compliance by the fourth, fifth, sixth and ninth respondents with paragraph 7 above, the Sheriff be and is hereby authorised to take all steps and to sign all documents required in order to effect transfer of the 1000 ordinary no par value shares held by the Trust in the first respondent into the name of the applicant; and
9. The fourth, fifth, sixth and ninth respondents in their capacities as trustees of the Trust be ordered to pay the costs of claim B of the application, excluding the costs of the separate joinder application.

M Olivier
Acting Judge of the High Court
Gauteng Division, Johannesburg

Date of hearing: 28 November 2022

Date of judgment: 3 April 2023

On behalf of Applicant:

M. T. A. Costa

Instructed by:

Salant Attorneys

On behalf of Fourth to Sixth Respondents:

L. Van Tonder

Instructed by:

Norton Rose Fulbright