IN THE NORTH GAUTENG HIGH COURT, PRETORIA /ES

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / ~~NO~~.
(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~.
(3) REVISED.
7/7/2011
DATE SIGNATURE

21/7/2011

CASE NO: 24067/2010

DATE:

IN THE MATTER BETWEEN

BAREND PETERSON N.O. (in his capacity as Curator of 0vation Global Investment Services (Pty) Ltd and of 0vation Global Investment Nominees (Pty) Ltd)	1ST APPLICANT
JOHN ANDRIAN LEVIN N.O. (in his capacity as Curator of 0vation Global Investment Services (Pty) Ltd and of 0vation Global Investment Nominees (Pty) Ltd)	2ND APPLICANT
AND	
ABSA BANK LIMITED	RESPONDENT

JUDGMENT

MAKGOBA, J

[1] This case brings to mind what was foretold by RUMPFF, CJ some thirty two years ago in the well-known case of **Administrateur, Natal v Trust Bank van Afrika Bpk 1979 3 SA 824 (AD)** when he said:

> "*The birth-pangs of such a right of action have endured so long that the time has arrived, perhaps even with a Caesarean section, that the child should be brought into the world. It should immediately be added that it can be foretold that this child will be a problem child. With the necessary love, and especially discipline, it can however play a useful role in legal life.*"

[2] The problem child referred to by the learned Chief Justice is none other than the legal principle,

> "*an action for a claim for pure economic loss based on an omission*"

or

> "*liability for an act of omission, causing pure economic loss*".

[3] "*Pure economic loss*" connotes loss that does not arise directly from damage to the plaintiff's person or property, but rather in consequence of the negligent act itself, such as a loss of profit, being put to extra expenses, or the diminution of the value of property – see: **Fourway Haulage SA (Pty) Ltd v SA National Road Agency Ltd 2009 2 SA 150 (SCA) at para 10**, and the authorities cited therein.

[4] Our problem child has grown up and advanced to a stage where an action for a claim for pure economic loss based on an omission is recognised in our law. The Supreme Court of Appeal in **Fourway Haulage**, *supra*, at para 12, per BRAND, JA stated that in dealing with the claim for pure economic loss, one had to remember that negligent causation of such loss was not regarded as *prima facie* wrongful. Its wrongfulness depended on the existence of a legal duty. The imposition of this legal duty was a matter of judicial determination involving criteria of public or legal policy consistent with constitutional norms. Conduct causing pure economic loss would only be regarded as wrongful, and therefore actionable, if public or legal policy considerations require that such conduct, if negligent, should attract legal liability for the resulting damages. See

also: **Minister of Safety and Security v Van Duivenboden 2002 6 SA 431 (SCA) paras 12 and 22; Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 1 SA 461 (SCA) in paras 13-14;** and **Trustees, Two 0ceans Aquarium Trust v Kantey & Templer (Pty) Ltd 2006 3 SA 138 (SCA) at paras 10-12.**

[5] In these proceedings I have to decide whether the plaintiffs' application for amendment of their particulars of claim should be allowed and/or whether the defendant's exception to plaintiffs' particulars of claim, on the basis that it lacks averments which are necessary to sustain an action, are well founded or not. In **Telematrix (Pty) Ltd**, *supra*, the Supreme Court of Appeal found no fault in deciding a case such as the present on exception. Three more important judgments that spring to mind where this issue was decided on exception are: **Lillicrap, Wassernaar and Partners v Pilkington Brothers (SA) (Pty) Ltd 1985 1 SA 475 (AD); Indac Electronics (Pty) Ltd v Volkskas Bank Ltd 1992 1 SA 783 (A);** and **Minister of Law and 0rder v Kadir 1995 1 SA 303 (A).**

[6] The applicants are the plaintiffs in an action instituted by them against the respondent as defendant. For ease of reference, the applicants will henceforth be referred to as "the plaintiffs" and the respondent as "the defendant".

[7] The plaintiffs sue in their capacities as curators, both, of two companies, namely 0vation Global Investment Services (Pty) Ltd ("0vation Services") and 0vation Global Investment Nominees (Pty) Ltd ("0vation Nominees"). The first and second plaintiffs are authorised to institute these proceedings in terms of the 0rder of Court granted by the Western Cape High Court, pursuant to the two companies having placed under curatorship.

[8] The plaintiffs delivered particulars of claim dated 29 April 2010 ("the original particulars of claim") to which the defendant delivered a Notice to Remove Cause of Complaint, contending that the original particulars of claim were excipiable. The Notice to Remove Cause of Complaint led to the delivery of a Notice of Intention to Amend by the plaintiffs. The defendant delivered a Notice of 0bjection to the intended amendment. It is as a result of this objection that the

plaintiffs launched the present application to amend. The objection is to the effect that the particulars of claim as sought to be amended would still be excipiable, that is, that the amendment sought to be introduced do not cure the excipiability of the original particulars of claim.

[9] In this judgment, reference to "the particulars of claim" will be to the particulars as sought to be amended, and not the original particulars of claim.

[10] The parties herein are agreed that the present application for amendment should be regarded as in essence being an exception and should be treated as such. Accordingly, if the particulars of claim are excipiable, then the application for leave to amend ought to be dismissed. It is trite that an amendment ought not to be allowed where its introduction into the pleading would render such pleading excipiable. See **Cross v Ferreira 1950 3 SA 443 (C) at 450E-F.**

[11] The nature of the exception and the resulting issues in this matter can best be understood against the background of the facts pleaded in the

plaintiffs' particulars of claim. I accordingly proceed to set out in detail the factual matrix of this case hereunder.

[12] 0vation Services administered funds entrusted to it by or on behalf of investors ("the principals") which funds were paid to and were obliged to be held by 0vation Nominees as trust property on behalf of and for the benefit of investors in terms of section 4 of the Financial Institutions (Protection of Funds) Act, 28 of 2001 ("the Protection of Funds Act"). Such property remained the property of the principals in terms of the provisions of section 4(5) of the Protection of Funds Act.

[13] By agreement between 0vation Nominees and a financial service provider named Common Cents Portfolio Strategists (Pty) Ltd ("Common Cents") 0vation Nominees would transfer cash amounts into a banking account designated by Common Cents and/or one Angus Cruickshank for investment of such funds in cash portfolios.

[14] Angus Cruickshank is a sole shareholder of Cornerstone Transaction Financing (Pty) Ltd which in turn held all issued shares in 0vation Services and Common Cents. Cruickshank is not employed by either

0vation Services, 0vation Nominees or Common Cents but purported to act on their behalf in the fraudulent manner relevant to this case.

[15] During February 2005 to January 2006 Cruickshank caused 0vation Nominees to make available an amount of R209 529 336,00 into Common Cents Portfolio to be invested on behalf of principals. During April 2005 to January 2006 from the abovementioned amount Cruickshank caused the following amounts to be paid into the following ABSA bank accounts from the account in the name of 0vation Nominees at First National Bank:

<u>Account 665</u>: in the sum of R47 708 657,18 opened in the name of 0vation Global Investment Holdings and transferred this amount into the account during the period 21 April 2005 to 5 July 2005.

<u>Account 459</u>: in the sum of R121 490 460,63 opened in the name of Common Cents and transferred this amount into this account during the period July 2005 to 5 January 2006.

[16] Furthermore Cruickshank caused further ABSA bank accounts to be opened in the name of 0vation Global Investment Holdings (Pty) Ltd. These were accounts 707 and 933 to which funds from account 665

were transferred. Cruickshank misappropriated the sum of R34 844 988,14 from accounts 665, 707 and 933. During July 2005 to January 2006 he misappropriated the sum of R103 382 402,74 from account 459.

[17] At all material times and when the bank accounts 459, 665, 707 and 933 were opened same were processed by one Mr Leon Dawie Prinsloo, the employee of ABSA, who was responsible for overseeing the said accounts. The plaintiffs allege that the defendant was represented by the said Prinsloo who was employed by the defendant as business banker at the Booysens branch of the defendant and who acted in the cause and scope of his employment as such with the defendant.

[18] The plaintiffs allege that both 0vation Services and 0vation Nominees had existing accounts with the defendant in various names belonging to various principals of 0vation Services and that Prinsloo was aware of the fact that the amounts dealt with by Cruickshank as pleaded herein constituted "trust property".

[19] In alleging unlawfulness on the part of the defendant the plaintiffs state that in respect of the opening of account 665 the defendant was required to comply with and adhere to its own internal rules, procedures and protocols and owed 0vation Services and 0vation Nominees a duty of care in the following respects:

19.1 it was obliged to establish and verify the identity of 0vation Services and of 0vation Nominees as well as their respective head offices or principal places of business;

19.2 it was obliged to establish that 0vation Nominees had entered into an irrevocable agreement with 0vation Services in accordance with subsection (d) of the definition of "nominee" in section 1 of the Protection of Funds Act;

19.3 it was obliged to establish and verify whether Cruickshank had the necessary authority to establish the intended business relationship between the defendant, 0vation Services and 0vation Nominees;

19.4 it was obliged to ensure that the application forms for the required accounts were properly filled in and accompanied by the necessary supporting documentation;

19.5 it was obliged to peruse the aforesaid application forms and supporting documents and compare them to the information contained in the application documentation relating to the accounts.

[20] The plaintiffs aver that had the defendant complied with its obligations it would have established that Cruickshank was not authorised to open an account in the name of 0vation Global Investment Holdings. Furthermore that the defendant would have established that Cruickshank was not authorised to act on behalf of 0vation Nominees.

[21] In respect of the opening of account number 459 the plaintiffs aver that the defendant owed a duty of care to the plaintiffs in that

21.1 it was obliged to establish and verify the identity of Common Cents as well as its head office or principal place of business;

21.2 it was obliged to establish that 0vation Nominees had entered into an asset management agreement with Common Cents;

21.3 it was obliged to establish and verify whether Cruickshank had the necessary authority to establish the intended business relationship between the defendant and Common Cents;

21.4 it was obliged to ensure that the application forms for the required account were properly filled in and accompanied by the necessary supporting documentation and was obliged to peruse the aforesaid application forms and supporting documents.

[22] The plaintiffs further allege that subsequent to opening accounts 459, 665, 707 and 933 the defendant had a duty of care under the common law to manage and monitor the accounts. That the defendant negligently, wrongfully and unlawfully breached its obligations by failing to manage and monitor the above accounts, alternatively, by failing to properly manage and monitor the accounts.

[23] The plaintiffs aver in their particulars of claim that in the event that the defendant had complied with the obligations in respect of the proper management and monitoring of all of the above accounts, it would have established that:

23.1 the activity on account numbers 665 and 459 should have flagged internal risk procedures in respect of:

(a) the high value and volume of the transactions;

(b) that the accounts should have been handled by ABSA Corporate instead of a private/business account at local branch level;

23.2 the transfer of funds into and out of accounts 665, 459, 707 and 933 in the high volumes aforesaid, amounted to improper activity on the accounts which necessitated reporting in terms of FICA and an enquiry to 0vation Services.

[24] In the circumstances, the plaintiffs aver that the defendant:

24.1 should reasonably have known that trust property was being misappropriated by Cruickshank;

24.2 had a duty to the principals as owners of such property to act on such knowledge by notifying 0vation Services, Common Cents or 0vation Nominees in respect of the transactions to and from the accounts, which duty defendant wrongfully and unlawfully breached.

[25] In further breach of its duty of care, neither Prinsloo nor any other representative of the defendant notified 0vation Services nor 0vation Nominees of the above misappropriation of funds which notification the defendant ought reasonably to have given to 0vation Services and Nominees.

[26] But for the defendant's aforesaid unlawful omission, 0vation Services and/or 0vation Nominees would have:

26.1 been alerted to and investigated the activities on the accounts;

26.2 taken steps to prevent any unauthorised employment of the funds;

26.3 recovered or attempted to recover any funds that had already been misappropriated.

[27] An amount of R18 108 057,89 was repaid from account 459 to 0vation Nominees' FNB account. Furthermore an amount of R12 863 669,04 was repaid to 0vation Nominees' FNB account from account 665. Consequently and as a result of defendant's alleged negligent breaches of its duty of care as pleaded by the plaintiffs, Cruickshank was able to misappropriate a total sum of

R169 199 117,81 of which the plaintiffs have recovered the sum of R8 757 742,17 to date. The plaintiffs have been and remain unable to recover the remaining balance of R129 469 648,71.

[28] In concluding the particulars of claim the plaintiffs allege that as a result of the defendant's negligent breach of its duties as aforesaid, the principals suffered damages in the sum of R129 469 648,71. This is the amount claimed against the defendant.

[29] The plaintiffs' case is founded on the facts that the defendant negligently opened and maintained banking accounts which caused pure economic loss to them and/or the principals.

[30] The defendant objects to the amendment of plaintiffs' particulars of claim in that if allowed, same would be excipiable on the following grounds:

30.1 that the particulars of claim lack allegations necessary to sustain a cause of action; and

30.2 that the particulars of claim are vague and embarrassing.

The theme in the defendant's objection, directed at the absence of a cause of action, is directed at the absence from the particulars of claim of one of the essential elements of such a claim, namely wrongfulness or "the breach of a legal duty". The theme in the defendant's objection directed at the vague and embarrassing character of the particulars of claim is aimed in the main at confusion and contradiction surrounding the identity of the party to whom the alleged legal duty is owed.

[31] In synoptic form, the defendant alleges that the factual allegations in the particulars of claim do not found or support the legal conclusions or averments that the defendant owed a legal duty to 0vation Services or to 0vation Nominees or to the principals and that the omissions of the defendant were wrongful or unlawful.

[32] It is appropriate to revisit the particulars of claim as set out above in order to crystallise the role of the defendant in this action. It was the defendant (ABSA Bank) which opened account 665 (in the name of 0vation Global Investment Holdings) and account 459 (in the name of Common Cents) and accounts 707 and 933 [in the name of 0vation

Global Investment Holdings (Pty) Ltd] all on the instructions of Cruickshank.

[33] The role attributed to the defendant (apart from the mere opening of the accounts) is that of an omission in the following context. It is alleged that all the aforesaid accounts were processed by the defendant's servant, Mr Prinsloo, (acting in the course and scope of his employment) who was also responsible for overseeing the accounts and that the defendant has certain duties in the opening of the accounts and that the defendant had a duty to manage and monitor the accounts. It is further alleged that the defendant's wrong was its omission to carry out these duties and thereby detect Cruickshank's misappropriation and warn 0vation Services or 0vation Nominees thereof. In essence the plaintiffs' claim is based on the defendant's alleged omission to warn 0vation Services or 0vation Nominees of Cruickshank's misconduct, and thereby enable one of them to prevent the misappropriation of monies by Cruickshank.

[34] The central question is whether the facts pleaded are sufficient to sustain the element of wrongfulness which is a discrete requirement of

a delictual claim. This approach was affirmed in **Fourway Haulage SA (Pty) Ltd v SA National Road Agency Ltd 2009 2 SA 150 (SCA):**

> "*The proposition that a plaintiff claiming pure economic loss must allege wrongfulness, and plead the facts relied upon to support that essential allegation, is in principle well founded. In fact, the absence of such allegations may render the particulars of claim excipiable on the basis that no cause of action had been disclosed.*"

Per BRAND, JA at para 14.

[35] As pointed out earlier in this judgment the legal principle regarding liability for an act of omission causing pure economic loss is recognised and settled in our law.

[36] The South African case law which recognises a duty of care on the part of a bank all recognise the duty in the context of cheques and recognise a duty owed to a true owner of the cheques in issue. In **Indac Electronics (Pty) Ltd v Volkskas Bank Ltd 1992 1 SA 783 (A)** the issue on exception, was whether on the facts alleged a

collecting banker owed a legal duty not to act negligently. VIVIER, JA said:

> "*In the case before us only the element of unlawfulness is presently in issue: the exception has been taken solely on the ground that the facts alleged by the plaintiff do not give rise to a legal duty on the part of the defendant not to act negligently so that the defendant's conduct as the collecting banker was consequently not unlawful.*
>
> *In determining whether the defendant was under such duty not to act negligently (for without this legal duty there can be no unlawfulness) the Court is required to exercise a value judgment embracing all relevant facts and involving consideration of policy.*"

[27] After evaluating various factors, VIVIER, JA said at 801A-D:

> "*On the balance, the factors which I have mentioned above, in my view, operate in favour of recognising the existence of a legal duty on the part of a collecting banker to the true owner of a lost or stolen cheque to avoid causing him pure economic loss by negligently dealing with such cheque. However at the*

stage of deciding an exception a final evaluation and balancing of the relevant policy considerations which have been mentioned above should not be undertaken. It is sufficient for present purposes to say, firstly, that ***lex Aquilia*** *does provide a basis upon which a collecting banker may be held liable in negligence to the true owner of a lost or stolen cheque, and, secondly, that there are considerations of policy and convenience in the present case which* ***prima facie*** *indicate the existence of a legal duty on the part of a collecting banker to prevent loss by negligently dealing with the cheque in question. This* ***prima facie*** *indication may be rebutted by the evidence which the defendant might lead at the trial, duly tested and evaluated in the light of any countervailing evidence which might be led by the plaintiff. It cannot, therefore, at this stage be found that the defendant's conduct was not unlawful.*"

[38] It should be remembered that the **Indac Electronic** case found there to be a *prima facie* legal duty on the part of the collecting banker to prevent loss. The case was only concerned with the issue of wrongfulness and no view was expressed on the standard of care (the

negligence issue). See the following cases that followed thereafter: **Columbus Joint Venture v ABSA Bank Ltd 2002 2 SA 1049 (SCA); Powell and Another v ABSA Bank t/a Volkskas Bank 1998 3 SA 807 (SEC)** and **KwaMashu Bakery Ltd v Standard Bank of South Africa Ltd 1995 1 SA 377 (D).**

[39] Inasmuch as the authorities referred to above with regard to the legal duty of a banker towards the true owner of a lost or stolen cheque are clear and settled law in that regard, they do not provide a complete answer to the present case which relate to the opening of a bank account and subsequent failure to monitor same. In the present case policy decision and value judgment will have to be embarked upon to decide whether a legal duty in relation to opening and conduct of a banking account exists.

[40] The cases referred to above (even if they do not form a precedent *in casu*) do not serve as a bar to the extension of liability in novel duty situations. The challenge remains to exercise a value judgment embracing all relevant facts and involving considerations of policy.

[41] In the **Commissioner, SARS and Another v ABSA Bank Ltd and Another 2003 2 SA 98 (W)** (the "**SARS** case") the Court stated that expert evidence of banking practice would be desirable, especially where the legal duty contended for is not supported by precedent and the Court hearing the exception has no evidence before it of that nature and extent of monitoring procedures (if any) ordinarily carried out in relation to customers' accounts and what a prudent banker would or should have done in the circumstances.

[42] In regard to the existence of a legal duty on the part of a bank relating to opening an account for a customer the Court in the **SARS** case stated the following:

> "*[37] I will deal firstly with the existence of a legal duty on the part of a bank relating to opening an account for a customer. This is an area that is, to an extent, 'covered by authority'. Liability based on a failure to take precautions when an account is opened has been recognised. In the* ***KwaMashu Bakery Ltd v Standard Bank of South Africa Ltd*** *COMBRINCK J said*

'I now turn to deal with the standard of care in particular what steps the defendant ought to have taken to discharge the duty of care. The question is what reasonable, practical and affordable measures would the reasonable, prudent collecting banker have taken in order to have prevented the harm which resulted to the plaintiff ...'

In order to succeed in obtaining the proceeds of his theft of a cheque the thief has to open a bank account with the collecting banker. This he normally does after the theft of the cheque, the account then being opened in the name as close as possible to the named payee.

As a first step towards the protection of the true owner, I think it could be expected of a reasonable banker not to only satisfy himself of the identity of a new client but also gather sufficient information regarding such client to enable him to establish whether the person is the person or entity which he, she or it purports to be. Checks could be made on places of employment, address given, whereabouts of the next of kin, etc before accepting the *person as a customer. This could in no way impact on the banking system or involve an unreasonable amount of time or cost."*

[43] It may be mentioned that the Court in the **KwaMashu Bakery** case had the benefit of hearing evidence as the case went on trial and was not decided at the exception stage like the present case. The relevance of this statement will appear later in my judgment.

[44] After considering the relevant factors in the case, the Court in the **SARS** case found that a legal duty exists on the part of the second defendant to avoid causing plaintiff pure economic loss by negligently opening and maintaining the bank account. The Court formulated its view as follows:

> "*[47] I propose to adopt the approach in the* ***Indac*** *case to the issue of a legal duty. A consideration of all the factors I have referred to, in my view supports the existence of a legal duty on the part of the second defendant to avoid causing the plaintiffs pure economic loss by negligently opening and maintaining the Zamzar account. However*

the exception stage is not the time for a final balancing and evaluation of all the relevant policy considerations."

[45] I turn now to the policy decision and value judgment necessary to decide whether a legal duty, both in relation to the opening and the conduct of the accounts, is established. I consider the following considerations relevant to this case:

45.1 At the time of the incident the defendant had statutory duties under the Financial Intelligence Centre Act no 38 of 2001 ("FICA") to report a suspicion. Cruickshank opened bank accounts and transferred large sums of money from one account to the other. The transfer of funds into and out of accounts 459, 665, 707 and 933 in the high volume aforesaid amounted to improper activity on the accounts which necessitated reporting in terms of FICA and enquiry to 0vation Services and 0vation Nominees.

45.2 In the event that the defendant had complied with its obligations in respect of the proper management and monitoring of all the above accounts it should have established that the activity of account 459 and 665 should have flagged internal risk procedures in respect of the high value and volume of the transactions that the accounts should have been handled by ABSA Corporate instead of a private/business account at local branch level.

45.3 It is apparent from the application forms for the opening of the bank accounts (which are annexed to the particulars of claim) that same were not properly filled in and accompanied by the necessary documentation in accordance with the defendant's policies and protocols. This should have raised a suspicion for the defendant to act.

45.4 Given the high prevalence of crime in South Africa, in particular money laundering, society's notion of justice demands that a bank should not turn a blind eye to the possibility that a customer may be using an account concluded with it for criminal purposes. *In casu* large sums of money (in millions) were juggled from one account to the other and ultimately withdrawn in large sums either in cash or cheques. A bank should be vigilant where the transaction is out of the ordinary.

[46] When considering the existence of a legal duty on the part of a bank (particularly a novel duty) evidence will ordinarily be necessary to appreciate fully considerations of policy and convenience. Evidence, be it factual or expert in nature, will assist the Court in evaluating the effect on banking procedures that would be caused were the legal duty to be recognised. I am unable to make a finding at this stage of an exception as to whether or not, for example, the defendant follows procedures to monitor accounts, the purpose of such monitoring and what such monitoring (if any) indicates.

[47] It is not possible without evidence to determine how great a burden recognition of the legal duties contended for will place upon banks. At the exception stage the Court does not have the evidential or factual material with which to reach any decision on this aspect and the factual material will be evaluated in the light of such evidence as may be led at the trial.

It is inappropriate to decide the issue of wrongfulness in this case on exception because the issue is fact bound. See: **Axiam Holdings Ltd v Deloitte & Touche 2006 1 SA 237 (SCA)**.

[48] Upon consideration of the plaintiffs' particulars of claim as they stand and further having taken note of the grounds of objection raised by the defendant, I make a finding that the particulars of claim do disclose a cause of action in that the element of wrongfulness has been *prima facie* established.

[49] The defendant has furthermore raised an objection against the plaintiffs' particulars of claim on the ground that they are vague and embarrassing.

[50] A pleading may be attacked on the ground that it is vague and embarrassing even though it discloses a cause of action or defence but it is worded in such a way that the opposite party is prevented from clearly understanding the case he or she is called upon to meet. It is, however, trite that an exception on the ground that the pleading is vague and embarrassing will not normally be upheld unless it is clear that the opposite party would be prejudiced in his defence or action as the case might be.

[51] The particulars of claim in this matter have been set out in detail. When such particulars of claim are read by a mind willing to understand, one comes to a conclusion that they clearly disclose that the defendant owed a duty of care to 0vation Services and 0vation Nominees. The fact that it is further alleged that the defendant owed a duty of care to the principals is neither here nor there. There is no reason in law nor logic why a legal duty cannot be owed both to the principals and 0vation Services and 0vation Nominees. The objection on this ground can therefore not stand.

[52] I grant the order in the following terms:

(a) The objection is dismissed with costs including the costs of two counsel.

(b) The amendment to the particulars of claim is allowed.

E M MAKGOBA
JUDGE OF THE NORTH GAUTENG HIGH COURT

24067-2010

HEARD ON: 13 & 14 JUNE 2011
FOR THE PLAINTIFF: C E PUCKRIN SC & M DEWRANCE
INSTRUCTED BY: STRYDOM & BREDENKAMP INC
FOR THE DEFENDANT: S A CILLIERS SC & F SNYCKERS
INSTRUCTED BY: EDWARD NATHAN SONNENBERGS