IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION: DURBAN

CASE NO: D9417/2019

In the matter between:

CMC Di Ravenna South Africa Branch — Applicant

and

Ethekwini Municipality — Respondent

Judgment

Lopes J

[1] This matter has its origins in a civil engineering contract concluded between the applicant and the respondent on the 8th July 2015. The contract was for the construction of what may be referred to as the C9-Cornubia Interchange 2, Meridian Drive in Umhlanga Rocks ('the contract'). The contract was terminated on the 14th December 2018. After the termination of the contract the parties began an adjudication process in terms of clause 10.5 of the Contract Conditions. The adjudicator handed down three decisions in favour of the applicant. In terms of the first two adjudicator's awards, he directed that interim payment certificates were to be issued within 28 days of the awards. Payment certificates in the sum of R2 049 130.48 and R8 129 492.42 were duly issued, but the respondent has failed to make payment.

[2] In this application the applicant seeks to enforce the two monetary awards in the total sum of R10 178 622.90 as well as the third award directing the Engineer to prepare the final payment certificate within 28 days.

[3] The relevant conditions of contract were contained in what is referred to as 'General Conditions of Contract for Construction Works (second edition) (2010)' issued by the South African Institution of Civil Engineering. The relevant clauses were:

> '10.5.1 If the Contract Data provides for dispute resolution by a standing Adjudication Board, the Employer, together with the Contractor, shall, within 56 days of the Commencement Date, appoint the member or members of the adjudication board.
>
> ...
>
> 10.6 **Disagreement with Adjudication Board's decision.**
>
> 10.6.1 Either party shall have the right to disagree with any decision of the Adjudication Board and refer the matter to arbitration or court proceedings, whichever is applicable in terms of the Contract;
>
> Provided that:
>
> 10.6.1.1 The decision shall be binding on both parties unless and until it is revised by an arbitration award or court agreement whichever is applicable in terms of the Contract.
>
> 10.6.1.2 A party shall not dispute the validity or correctness of the whole or a specified part of the decision before 28 days or after 56 days from receipt of the decision.
>
> Unless either party shall on or after the said 28 days, or on or before the said 56 days from receipt of the decision, give written notice to the other party, referring to this Clause, disputing the validity or correctness of the whole or a specified part of the decision, he shall have no further rights to refer such a dispute to arbitration or court proceedings, whichever is applicable in terms of the Contract.'

[4] It is common cause between the parties:

(a) That the dispute was referred to the decision of the Adjudication Board.

(b) The validity or the correctness of the whole or a specified part of any of the awards was not raised by either party within the time period concerned.

(c) The contract in question made no reference to arbitration proceedings, but only to Court Proceedings.

(d) The applicant, as contractor, was obliged to approach the Adjudication Board to resolve its dispute, even after the cancellation of the contract.

[5] The parties were agreed that there are three issues which I am to decide in this application:

(a) Is the applicant's order sought one for specific performance?

(b) If so, do I have the discretion to grant an order for payment in terms of the parties' agreement?

(c) Should I exercise that discretion and allow or refuse the relief.

[6] Mr *van Vuuren SC,* who appeared for the applicant together with Mr *Slon,* submitted the following:

(a) Although the mechanism of approaching an adjudication board during the subsistence of a contract is primarily designed to ensure the speedy resolution of a dispute during a contract, and that the employer would pay the contractor to enable the contractor to maintain its cash flow in order to finish the project, this matter was different. Here the contract had been terminated. Nevertheless, the applicant was still entitled to use the adjudication board procedure in order to resolve the dispute between the parties.

(b) With regard to the exercise of this Court's discretion:

(i) There is in reality no discretion for the court to exercise because a money payment is sought. So, the only options available are to grant the money judgment or to stay the payment thereof.

(ii) The fact that a court may have the power to exercise its discretion, is not an opportunity for the respondent to get a better deal than was provided for in the contract between the parties.

(iii) Any discretion which does exist operates only where there is an inability to comply with an order *ad factum praestandum*. Such an order is capable of enforcement by way of contempt of court proceedings. On the other hand, orders *ad pecuniam solvendam* are enforced via a writ of execution, and accordingly there is no discretion necessary to be exercised on the court's part in deciding specific performance, where money judgments are sought.

(c) Reference was made to *Enza Construction (Pty) Ltd v Paarl Tissue (Pty) Ltd* [2019] JOL 42810 (KZP) a judgment of Koen J. That matter concerned a contractual issue where an adjudicator was appointed where the dispute resolution clause provided that a determination by the adjudicator would be immediately binding upon, and implemented by the parties. At paras 27-29 Koen J stated the following:

'[27] It is so that specific performance is a discretionary remedy in contract, as the respondent contends, which will be refused if it would result in undue hardship to the party against whom it is sought to be enforced. But it should not be refused if there is no alternative remedy which will be available to an aggrieved party.

[28] Although the respondent has resisted the relief claimed by the applicant contending that it is a claim for specific performance which should be refused, what the respondent really seeks is a stay of the obligation determined by the adjudicator on its part to make payment to the applicant. This stay is sought on the basis that if the subsequent arbitration was to reverse or at least partially reverse any part of the final award, that the respondent is concerned that the applicant will not be able to make repayment of such amount. To avoid or reduce any prejudice it has offered to provide security for payment by it to the applicant in the form of a guarantee from its holding company. The applicant also sought to counter this by suggesting some form of security to guarantee repayment to the respondent if repayment is found to be due by the arbitrator if this court contemplated directing that security be furnished.

[29] I am not persuaded that the grounds advanced by the respondent should result in any stay or refusal of specific performance of the obligation to comply with the adjudicator's award. The adjudicator's award and its immediate implementation is what the parties contracted for. The applicant is entitled to enforce the award against the respondent.'

Mr *van Vuuren* submitted that where there is no alternative, there is, in reality, no discretion. In *Enza Construction* as there was no alternative remedy, and only a money judgment was sought, there was no discretion for the learned judge to exercise. Mr v*an Vuuren* referred to *Haynes v Kingwilliamstown Municipality* 1951 (2) SA 371 (A) which dealt with the circumstances in which a judge would have a discretion to order specific performance, or, in a fitting case, to refuse to decree specific performance and leave the plaintiff to claim, and prove his *id quad* interest.

[7] Mr *van Vuuren* also referred to *Murray & Roberts Ltd v Alstom S&E Africa (Pty) Ltd* 2020 (1) SA 204 (GJ), a judgment of Unterhalter J, where the applicant sought to enforce the decision of an adjudicator, and the respondent resisted the enforcement on the basis that the adjudicator's decisions were

impossible of performance. The specific performance concerned the issue of the traceability of material certificates with authentic test records in compliance with a certification agreed to between the parties. The general conditions of subcontract provided that the decision of the Board would be binding and promptly be given effect to, unless that decision is reversed by an amicable settlement or an arbitration award. Notice of dissatisfaction had to be given within 28 days of receiving the Board's decision. The respondent issued a notice of dissatisfaction which was a few hours' outside the said period. At paras 18 and 30, Unterhalter J stated:

'18. It is clear from this scheme that once the Board has rendered its decision, the decision is immediately binding upon the parties and gives rise to an obligation promptly to give effect to the decision. That obligation is not suspended while a party decides whether to give notice of dissatisfaction, nor even if such notice is given and arbitration proceedings commence … And if notice of dissatisfaction is not given or not given timeously, then the decision becomes final and binding and so too does the obligation promptly to give effect to the decision.

. . .

30. If, as I find, the adjudicator's decision is one for specific performance, then the question is whether this court should consider the question as to whether Alstom can comply with that decision in order to determine whether to make the decision an order of this court.'

Unterhalter J further recorded that he was not being asked to decide whether to order specific performance of the contractual obligations owed by parties, in which case he would be at large to determine the correct remedy. Instead he was being asked to decide whether to make an order enforcing the adjudicator's decision where the adjudicator had already decided on the remedy. Ultimately he decided that the respondent had agreed to be bound by the adjudicator's decision and to give effect to it. He found that the applicant was entitled to the remedy which had been decided upon by the adjudicator, and he could find no circumstances warranting him from withholding from the applicant the further benefits of having the decision of the adjudicator made an order of court. This would permit the applicant to enforce the decision.

[8] Mr *van Vuuren* submits that what the respondent is doing is effectively asking the court not to give effect to a contract. This is contrary to a number of authorities including *Brisley v Drotsky* 2002 (4) SA 1 (SCA), paras 12 and 21, *South African Forestry Co Ltd v York Timbers* 2005 (3) SA 323 (SCA), para 27 and *Potgieter & another v Potgieter NO & others* 2012 (1) SA 637 (SCA), paras 32-34. These cases outline the reasons why courts do not endorse notions of making decisions on reasonableness and fairness which lead to legal and commercial uncertainty.

[9] Mr *van Vuuren* also referred to the decision of *JRT Developments Ltd v TW Dickson (Developments) Ltd* a decision of the 8th October 2020 heard in the Technology and Construction Court (which operates in the Business and Property Courts in Birmingham), before Watson HHJ. That case concerned an application for summary judgment to enforce an adjudication award, together with a cross-application for a stay of execution pursuant to the rules applicable. The stay of execution sought by the respondent, was to endure until the finalisation of the trial of its claim against the applicant on the grounds of the applicant's probable inability to repay the judgment sum, and on the ground that if it is unable to pay the judgment sum, and if a stay is not granted, it would suffer manifest injustice. The matter related to an extended family structure, some of the members of whom were members of the claimant and defendant. The two companies operated together to develop certain properties. A dispute arose and the adjudicator's decision was that the defendant was liable to pay the claimant the amount demanded by it, having failed to serve a Payless Notice in response to a Disputed Payment notice.

[10] The general rule under the statutory scheme under which the parties in *JRT* operated, was that in the case of adjudication enforcement, there should be no stay of execution. The purpose of the statutory scheme was to facilitate cash flow in favour of the contractor, and a stay would defeat that purpose. One of the circumstances in which a stay may be allowed is where it is probable that the claimant would be unable to repay the judgment sum at the end of the trial. The court recorded that the adjudication is designed to be a quick and inexpensive method at arriving at a temporary result in a construction dispute, and that:

(a) Adjudicators' decisions were intended to be enforced summarily in order that claimants are not kept out of their money.

(b) In applications to stay the execution of a summary judgment order arising out of an adjudicator's decision, the court was required to exercise its discretion under order 47.

(c) The probable inability of a claimant to repay the judgment sum awarded by an adjudicator and enforced by a court order at the end of a substantive trial or arbitration hearing could constitute special circumstances within the meaning of order 47.

(d) If the claimant is in insolvent liquidation, or if there is no dispute on the evidence that the claimant is insolvent, a stay of execution would usually be granted.

(e) Even if the claimant's present financial position suggested that it is probable that it would be unable to repay the judgment sum when it fell due, that would not usually justify the grant of a stay.

[11] In *JRT* the court found that the claimant's financial position was not caused either wholly or significantly by the defendant's failure to pay the sums awarded by the adjudicator, and held that for the reasons set out 'in the

exceptional circumstances of this case' and 'in the very unusual circumstances of this case', the defendant would suffer manifest injustice if enforcement of the judgment were not stayed. The court considered it expedient to exercise its discretion to stay execution of the judgment until the completion of the trial on the defendant's claim.

[12] Significant among the factors motivating the court to make that finding was that the directors and shareholders of both companies were family members, dealing with each other informally and in a way consistent with a joint venture agreement, rather than parties who dealt with each other at arm's length. The defendant had relied on the complainant to manage the project, source the necessary funding and obtain payment from the funders during the course of the project. Very unusually, the commercial agreement provided that the claimant had to pay for the respondent's overheads during the projects, and not the other way around.

[13] Mr *van Vuuren* pointed out the differences between *JRT* and this case, and submitted that the extraordinary circumstances of that case took it out of any consideration as authority for the decision in this matter. He stressed that it is not the function of this Court to make a better contract for the respondent other than the one which it concluded. In addition, this is not a case of dealing with the process of success and a reconsideration of a decision, but rather simply payment of the payment certificates issued pursuant to the adjudicator's award.

[14] Mr *Wallis,* who appeared for the respondent together with Ms *Lushaba*, recorded that with regard to the third of the awards by the adjudicator (the decision that a final certificate has to be delivered), the applicant's stance is that it has complied with that obligation, although this appears to be denied by the respondent. Mr *van Vuuren* regarded the certificate referred to by Mr *Wallis* as an interim certificate because it did not contain anything indicating that it was a final certificate. In this regard I note that the pro forma document is described on the face of it as a 'Progress Certificate'.

[15] Mr *Wallis* submitted that the respondent accepts that ordinarily, amounts awarded by an adjudicator are enforceable and immediately payable. He submitted, however, that there are peculiar factual reasons in this case not to follow the normal course set out in the contract. Reasons not to do so are:

(a) The applicant is financially distressed, or probably insolvent on its own version;

(b) The respondent is a government entity and involved in the expenditure of scarce funds and public funding constraints;

(c) No attempt has been made to ring-fence the funds in order to protect the respondent, or even to hold them in trust as offered by the respondent;

(d) There is a genuine dispute regarding the adjudicator's decision and that is something to be decided by this Court in due course;

(e) The adjudicator's award did not involve an interim decision because the contract had been terminated. The principles underlying the provision of cash-flow, and the rule that adjudicator's awards are payable forthwith, do not apply in this case.

[16] Mr *Wallis* distinguished the matter of *Enza Construction* on the basis that in that matter there was no confirmation of the financial distress of the applicant, or any question of insolvency. He submitted that in this matter the applicant's own contention was that it is financially distressed, and in fact it went as far as the Supreme Court of Appeal in order to attempt to demonstrate that. They have been maintaining this position since 2019, when the matter first came before Potterill J in the court *a quo*. The applicant had been placed under business rescue proceedings on the 14th December 2018, and stayed that way until the Supreme Court of Appeal reversed the decision. It did so because of a failure to comply with the statutory provisions, and did not consider the basis of the liquidity position of the applicant.

[17] Mr *Wallis* submitted that an order for a stay of execution was not a self-fulfilling prophecy, as suggested by the applicant. The problem is that there is no evidence available to indicate whether the amounts involved in the payments in this case will have any material effect on the applicant's financial wellbeing. It is therefore a theoretical concern which does not arise in this matter. However, there is evidence available which demonstrates that concurrent creditors may not receive any payments whatsoever. If the company is distressed, and is not required (in terms of the Italian insolvency laws, the applicant being an Italian company) to guarantee a minimum payment to concurrent creditors, the respondent may pay, but never be able to recover if it succeeds in the upcoming trial.

[18] Mr *Wallis* conceded that there are no South African cases which support his contention for a stay in the circumstance present in this case. He submitted that the upcoming court proceedings provided a safety net in this matter,

because there are no arbitration proceedings available. However, the safety net would be withdrawn if the debtor is not able to repay the amounts paid to it by the respondent, if the respondent subsequently succeeds in the court proceedings. The indication of an intention to pursue arbitration proceedings was based on a mistaken understanding suggested by the respondent. A special plea had, or would certainly be raised, in respect of a time-bar in defence to the respondent's intention to pursue the matter. There is no reason why the applicant could not accede to the respondent's request that the money be ring-fenced and placed in an attorney's trust account.

[19] With regard to *Murray & Roberts*, Mr *Wallis* emphasized the view of Unterhalter J that he was being asked to decide whether to make an order enforcing the adjudicator's decision, where the adjudicator had already decided upon the remedy. The learned judge was of the view that the adjudicator had determined the merits of the case, and decided upon a remedy, and his decision was a binary one: enforce the decision or leave the applicant without the benefit of the decision. He referred to the equities of such an outcome requiring careful consideration. Mr *Wallis* also made reference to the equitable discretion referred to by Unterhalter J in *Murray & Roberts*, paragraphs 73 and 75. In addition, in *Enza Construction*, paragraphs 25 to 29, Koen J referred to the discretion he had, and which he exercised in deciding that the applicant was entitled to enforce its adjudicator's award against the respondent.

[20] Mr *Wallis* emphasised the fact that adjudication is designed to ensure that a contractor's cash flow continues. Normally a contractor will use the money for cash-flow purposes related to the project in hand. In the present circumstances, however, the cash flow available to the applicant, if the

respondent is compelled to pay, will be used by the applicant for the discharging of its indebtedness to its general body of creditors.

[21] Mr *Wallis* submitted that our construction law is very similar to that of the United Kingdom, where, if insolvency exists, a stay would usually be granted. Both here and in the United Kingdom, adjudicator's rewards are immediately enforceable. It is relevant however, that in this matter the contract had been terminated, and there is no suggestion that the employer would try to exploit its position *vis-a-vis* the contractor. In fact, the contrary applies. Accordingly, the normal rules simply do not apply in this case, as the applicant has no risk of not being paid. In this regard an ordinary judicial discretion comes into play and constitutes a balancing of the Court's discretion, which has led to non-enforcement in other jurisdictions. Mr *Wallis* also submitted that the decision is at a practical level, and enforcement will put at risk balancing the alternatives, when the respondent is to have the disputed matter decided at trial.

<u>Rationale:</u>

[22] The starting point is the contract concluded between the parties, which provides for the appointment of an adjudicator to resolve disputes. Disputes arose after the cancellation of the contract, and an adjudicator was appointed to resolve the disputes. The adjudicator made three awards. The parties agreed that the adjudicator's decision would be 'binding on both parties unless and until it is revised by an arbitration award or court judgment, whichever is applicable in terms of the Contract.' The adjudicator's awards are themselves disputed, and the subject of a decision of this Court, to be made in due course.

[23] The applicant, however, is in dire financial straits. That is clearly so by its own conduct in trying to be placed under business rescue. The respondent, quite reasonably, fears that if it pays the adjudicator's monetary awards, and is

successful in the proceedings before this Court to overturn the decision of the adjudicator, it will enjoy but a pyrrhic victory. This is because the applicant, by its own admission, intends to use the monies paid in terms of the awards to satisfy its pressing creditors. The respondent will then be unable to recover any payments made by it. It will, in all probability rank as a concurrent creditor in the liquidated estate of the applicant.

[24] That, according to the respondent, would be manifestly prejudicial to its interests. It seeks a stay of the payment, pending the outcome of this Court's decision on the objections to the adjudicator's awards. The applicant's stance is that the respondent is bound by the contract it concluded, and it is not for this Court to make another contract for the parties. In the alternative, the respondent tenders to pay the amount of the awards into escrow pending this Court's decision.

[25] If the disputes between the parties had been resolved before this Court instead of before the adjudicator, the solution would have simple. The respondent, having lost, would have lodged an application for leave to appeal, and payment of the awards would have been stayed pending the outcome of the application for leave to appeal, and ultimately, if successful, the appeal itself. If the applicant wanted to enforce payment, it would have had to have made application therefor.
See: s 18 of the Superior Courts Act, 2013.

[26] The reason that the contract in this matter does not follow the same process is because it is a construction contract. The parties to these types of contracts provide in their contracts for the immediate payment of adjudicators' awards to ensure that contractors are not held to ransom by employers who, having lost the adjudication process, appeal and thereby suspend payments due

to the contractors. This may have the adverse effect of constricting the contractor's cash-flow to the point where it is unable to afford to continue the project, and find themselves at the mercy of the employer. The applicant was in a different position here – the contract had already been cancelled when the dispute arose, and there was no question of the applicant's cash-flow being constricted and preventing it from complying with its contractual duties.

[27] The two forces at play here are the applicant's contractual rights and the fear of the respondent that it will not recover the sums it pays out, if and when it turns out that the adjudicator's awards fall to be overturned. What influence should the fact that the usual reason for the applicant's right to immediate payment in construction contracts operates in a different sphere – where the contract has been cancelled? If it seems unfair and prejudicial to the respondent's financial considerations, does that entitle me to overlook the applicant's contractual rights?

[28] In *Enza Construction*, Koen J was faced with a very similar situation, save that, as pointed out by Mr *Wallis*, there was no suggestion of financial stress on the part of the applicant. Koen J was of the view that the parties should comply with the contractual terms – immediate enforcement of the awards. The reasoning of that judgment should be followed by me unless I am convinced that it is wrong. I am not.

[29] I do not believe that the fact that the contract in this matter has been cancelled should affect my decision. In *Enza Construction* the employer cancelled the contract because the work was not proceeding at an acceptable pace. The learned judge relied upon the basic principles set out in *Carillion Construction v Devonport Royal Dockyard Limited* [2005] EWHC 778 (TCC), para 80, where the court emphasised that adjudicators' awards must be

enforced, even if they evolve from errors of procedure, fact or law. What may be viewed as different is that in *Enza Construction*, the clause stated that the adjudicator's determinations 'shall be immediately binding upon, and implemented by the parties', whereas in the present matter the clause provides that '[t]he decision shall be binding on both parties unless and until it is revised by an arbitration award or court judgment . . .'. The decision of this Court in that regard is still some way off. The cases, however, have consistently adopted the view that adjudicators' awards are meant to provide a speedy mechanism for the resolution of disputes, and are enforceable pending the final determination of the disputes.

See: *Stefanutti Stocks (Pty) Ltd v S8 Property (Pty) Ltd* (20088/2013) [2013] ZAGPJHC 249 (23 October 2013), para 6.

Freeman NO & another v Eskom Holdings Ltd (43346/09) [2010] ZAGPJHC 29 (23 April 2013), para 17.

Tubular Holdings (Pty) Ltd v DBT Technologies (Pty) Ltd 2014 (1) SA 244 (GSJ), paras 10ff.

[30] I agree with the submissions of Mr *van Vuuren* that it is not for me to make a new contract for the parties. Considerations of reasonableness, fairness and equity, which may apply in terms of construction law in the United Kingdom do not apply in the same way in South Africa, where parties are bound by the terms of their agreements, even where those terms may operate harshly in some cases.

See: the cases cited by Mr *van Vuuren*, set out in paragraph 8 above.

[31] Whilst the idea of placing the award payments in escrow pending this Court's decision may offer a sensible, reasonable and equitable solution, it was not what the parties agreed to do in their contract. This is really a case where the

situation that occurred was not predicted – the contract being cancelled and the applicant taking advantage of the contractual terms.

[32] Mr *Wallis* argued but faintly that the funds are valuable resources in the hands of a municipality, and the risk of those monies being lost, should not be allowed by our courts. The short answer to this is that the respondent should have taken more care of the terms upon which it contracted. In addition, one can envisage damage to the commercial reputation of the country, if the courts were seen to be actively bailing-out government institutions at the expense of foreign investors on grounds the courts would not apply to ordinary commercial contracts.

[33] After the hearing of this application, but before I had completed the judgment, I was referred, by consent of the parties, to the decision of Tsautse AJ of this division in *Andimahle Trading Enterprises CC v Greater Kokstad Municipality*, handed down on the 3rd February, 2021. On similar facts to this matter the learned acting judge ordered that the funds be held in escrow pending the outcome of arbitration proceedings. Her conclusion, at paragraph 44, was as follows:

> 'The respondents have requested the Court that the award must be paid to their attorneys (sic) trust account pending the outcome of the adjudication. Taking into account that these are public funds, I am inclined to follow the suggestion of having the award held in trust.'

That seems to be the only rationale for the learned acting judge adopting a course which is entirely different from the tenor of her judgment, which was that the parties were bound by their contractual obligations. If I am correct in this, I am in respectful disagreement with the conclusion reached by the learned acting judge, for the reasons I have set out above. The parties elected to agree to a process whereby they provided for remedies outside of what contracting parties may normally have done. They cannot now be heard to complain because those provisions no longer suit them.

[34] In the result, the answers to the issues I was called upon to decide are:

(a) Inasmuch as specific performance is one of the remedies for breach of a contract, which includes orders both *ad factum praestandum* (an order to perform a specific act) and *ad pecuniam solvendum* (an order to pay money in performance of a party's contractual obligations), the order prayed in the Notice of Motion is one for specific performance.

(b) I do not believe that I am entitled to exercise my discretion where no other remedy is sought, save payment of a contractual obligation, and where no other remedy is available to the applicant.

(c) Accordingly, I must grant the order sought.

[35] I see no reason why the costs should not follow the result. The parties were agreed that the costs of two counsel is appropriate.

[36] I accordingly make the following order:

(a) The adjudicator's decisions dated the 8th August 2019 (No 1), the 10th August 2019 (No 2) and the 8th August 2019 (No 3) and which are annexed to the applicant's founding affidavit marked 'PDC 4', 'PDC 5' and 'PDC 6' at pages 44, 61-62 and 73-74 respectively are made orders of this Court.

(b) The respondent is directed, forthwith, to give effect to the adjudicator's awards by making payment to the applicant of the sums of:

(i) R 2 049 130. 48.

(ii) R 8 129 492.42.

(iii) Interest on those amounts calculated at the rate of 10% (ten percent) from the 10th August, 2019 to date of payment.

(c) The respondent is directed to pay the applicant's costs of the application, such costs to include those consequent upon the employment of two counsel.

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Lopes J

Date of hearing:	19th January 2021.
Date of judgment:	26th February 2021.
For the applicant:	(Mr PHJ van Vuuren, with Mr BM Slon instructed by Nicqui Galaktiou Inc).
For the respondent:	(Mr PJ Wallis, with Ms SBR Lushaba, instructed by Strauss Daly Inc).

(iii) Interest on those amounts calculated at the rate of 10% (ten percent) from the 10th August, 2019 to date of payment.

(c) The respondent is directed to pay the applicant's costs of the application, such costs to include those consequent upon the employment of two counsel.

Graham Lopes

Lopes J

Date of hearing: 19th January 2021.

Date of judgment: 26th February 2021.

For the applicant: (Mr PHJ van Vuuren, with Mr BM Slon instructed by Nicqui Galaktiou Inc).

For the respondent: (Mr PJ Wallis, with Ms SBR Lushaba, instructed by Strauss Daly Inc).