IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 19322/2012

3/4/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

24/03/17 ....
DATE SIGNATURE

In the matter between:

ONSITE WASTE MANAGEMENT CC Plaintiff

and

WASTESERV WASTE MANAGEMENT CC First Defendant

NTUMELENI PAULUS MOYANA Second Defendant

JUDGMENT

Baqwa J

Claim for disgorgement of secret profits in terms of section 42 *– Close Corporations Act 59 of 1984 – Breach of fiduciary duties – Conflict of interests – Duty to disclose undue benefits to other members.*

Summary

In 2009 Johan Lombard (Lombard) and the second defendant had discussions regarding the possibility of starting a company to perform waste disposal in the Gauteng Province. The idea culminated in the incorporation and registration of the plaintiff, Onsitewaste Management CC. To get the business off the ground, the plaintiff purchased trucks and equipment with loans which the plaintiff obtained from RMB Bank. Lombard signed as personal surety in favour of the plaintiff. The value of the assets acquired was approximately R10 million. The second defendant did not make any financial contribution except for his contacts (potential clientele) and skills for which he was awarded 30% member's interest in the plaintiff. The balance of the member's interest was held between Lombard and his wife Katrien. The business established an office in Pomona, Kempton Park with Lombard as Chief Executive Officer, the second defendant as Manager, Sales and Marketing and Katrien as Chief Financial Officer.

Unbeknown to Lombard and Katrien, the second defendant had prior to the establishment of the plaintiff, established another close corporation, the first defendant, in which the second defendant had 100% member's interest. In subsequent business transactions involving a company known as Halberg Guss, the second defendant secured contracts ostensibly for the plaintiff but involving the first defendant as main contractor and the plaintiff as sub-contractor. Lombard was under the impression that the first defendant was a subsidiary of Halberg Guss. The second defendant secured contracts for waste removal in which both the plaintiff and the first defendant were competing without declaring the true facts to the plaintiff. In the process, the second defendant secured secret profits and benefits for himself without disclosing those to other members of the plaintiff. When Lombard discovered the non-disclosure of the 100% interest in the first defendant, he purchased the 30% held by the second defendant in the plaintiff and instituted action against the second defendant.

Held, that the second defendant had acted in contravention of section 42 (a) and (b) of the Close Corporations Act 59 of 1984 ("*the Act*") and that it had to account for any secret profits and benefits to the plaintiff in terms of section 42 (3) (a) of the Act.

Annotations:

Reported cases

Transvaal Cold Storage Co. Ltd v Palmer 1904 TS 45

West Coast and Rand Native Labour Agency Ltd v Abernathy 1908 EDC 17

Robinson v Randfontein Estates Gold Mining CO Ltd 1921 AD 188

Mallison v Tanner 1947 (4) SA 681 (T)

Dorbyl Ltd v Vorster 2011 (5) SA 575 (GSJ)

RP v DP and Others 2014 (6) SA 243 ECP at 247

Statutes

Close Corporations Act 59 of 1984

Companies Act 71 of 2008

Introduction

[1] This is a claim for payment of services rendered by the plaintiff to the defendant subsequent to an oral agreement entered into in February 2010 in Pomona, Kempton Park Johannesburg.

The Parties

[2] The plaintiff is Onsitewaste Management CC, a close corporation incorporated in terms of the Close Corporation Act 69 of 1984 whose registered address is Pinzgauer Street, Industrial Park Mabopane.

[3] The first defendant is Wasteserv Waste Management CC, a close corporation of Suite 401, 4th floor, Hatfield Plaza, North Tower, Hilda Street, Hatfield, Pretoria.

[4] The second defendant is Ntumeleni Paulus Moyana, an adult male businessman who is the sole member of the first defendant herein.

[5] The second defendant was a director of the plaintiff at all times relevant to this action and held a 30% member's interest in the plaintiff.

[6] The second defendant held out to the plaintiff that the first defendant was an independent juristic person in which he only held 25% membership interest and that there was no conflict of interest, potential or actual between his interests in the plaintiff and his interests in the first defendant.

[7] The plaintiff subsequently discovered that the second defendant was in fact the controlling mind behind the first defendant at the times relevant to the plaintiff's claim and that in reality the second defendant held 100% membership interest in the first defendant.

[8] In this action the plaintiff instituted two claims against the first defendant and the second defendant.

[9] At the commencement of the proceedings the plaintiff withdrew its claim against the first defendant and its first claim against the second defendant. The plaintiff however persists in its second claim against the second defendant.

[10] The parties agreed that the issues as pleaded by both parties with regard to the second claim against the second defendant be separated in terms of Rule 33 (4) of the Uniform Rules of Court and be tried in the present action and a court order was granted to that effect in terms of which this court is called upon to decide two issues only, namely whether the second defendant acted in breach of his fiduciary duties to the plaintiff and whether such breach occasioned an opportunity for a secret profit. The determination of quantum was postponed **sine die**.

The Law

[11] Section 42 of the Close Corporations Act 69 of 1984 governs the internal relations of a close corporation and provides as follows:

"***Fiduciary position of members***

42. (1) Each member of a corporation shall stand in a fiduciary relationship to the corporation.

(2) Without prejudice to the generality of the expression 'fiduciary relationship', the provisions of subsection (1) imply that a member-

(a) shall in relation to the corporation act honestly and in good faith, and in particular-

(i) shall exercise such powers as he may have to manage or represent the corporation in the interest and for the benefit of the corporation; and

(ii) shall not act without or exceed the powers aforesaid; and

(b) shall avoid any material conflict between his own interests and those of the corporation, and in particular –

(i) shall not derive any personal economic benefit to which he is not entitled by reason of his membership of or service to the corporation, from the corporation or from any other person in circumstances where that benefit is obtained in conflict with the interests of the corporation;

(ii) shall notify every other member, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the corporation; and

(iii) shall not compete in any way with the corporation in its business activities."

[12] With reference to the law of agency Salomon JA in **Robinson v Randfontein Estates Gold Mining CO Ltd** 1921 AD 188 at 229 stated as follows:

"*.... It is no doubt well settled that in equity an agent cannot without the consent of his principal given with full knowledge of the material facts and under circumstances, which rebut any presumption of undue influence, retain any profit acquired by him in transactions within the scope of the agency. The principal can always in such a case treat the profit as acquired on his own behalf and insist on it being accounted for to him.*"

[13] "*The duties of company directors arise from the common law and from the Companies Act 71 of 2008. In terms of the law, directors have essentially two categories of general duties: fiduciary duties and the duty to act with reasonable care and skill. The nature and extent of the fiduciary duty owed by a director to the company has been discussed in a number of cases. In this regard, the paramount duty of directors individually and collectively is to exercise their powers in good faith in the best interests of the company. Various categories of fiduciary duties have been established over time. They include the duty*

- *to act legally, honestly, and within their powers and that of the company;*
- *not to allow personal interests to interfere with their duties to the company and, therefore, to avoid any conflict of interest with the company and to disclose any such conflicts; and*
- *not to compete with the company or misuse confidential informantion.*

These categories of fiduciary duties are not exhaustive."

See **The Power of Governance: Enhancing the Performance of State-Owned Enterprises** by Reuel J. Khoza and Mohamed Adam (2005) p 106 – 7.

[14] A number of duties are also provided for in the Companies Act. Thus section 234 of that Act provides as follows:

"***234 <u>Duty of Director or Officer to Disclose Interest in Contracts</u>***

(1) A director of a company who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract referred to in subsection (2), which has been or is to be entered into by the company or who so becomes interested in any such contract after it has been entered into, shall declare full interest and full particulars thereof as provided in the Act."

[15] In discussing the subject of conflict of interests, Khoza et al **(supra)** p 276 state as follows:

"*In South Africa, the fiduciary duties with regard to conflict include the duty to:*

- *avoid conflicts of interests;*
- *avoid competing with the company;*
- *not make secret profits;*
- *declare conflicts of interest;*
- *recuse oneself from discussions where there is a conflict unless otherwise permitted by the board and allowed in terms of the articles of the company; and*
- *table contracts in which a director has a direct or indirect interest for the approval of the shareholder, unless otherwise permitted by the articles.*

Where a director has a fiduciary duty to a company, s/he can be held liable in the absence of bad faith or dishonesty 'their liability in this respect does not depend upon breach of duty but upon the proposition that a director must not make a profit out of property acquired by reason of his relationship to the company of which he is a director' [Regal (Hastings) Ltd v Gulliver and Others [1942] 1 All ER 378]."

[16] Even though we are dealing with a close corporation **in casu**, the same principles with regard to fiduciary responsibilities of directors and conflict of interest issues apply.

[17] It is also of some relevance to consider the issue of "*corporate personality*" which has been dealt with extensively in our case law. Of particular relevance is the dictum of Alkema J in the case of **RP v DP and Others** 2014 (6) SA 243 ECP at 247 (Par 16 and 17) in which he comments as follows:

> "*[16] It is trite that '(a) registered company is a legal persona distinct from the members who compose it' (see Dadoo Ltd and Others v Krugersdorp Municipal Council 1920 AD 530 at 550 which is the leading South African case on the subject). It is equally trite that –*
>
> *'a court would be justified in certain circumstances in disregarding a company's separate personality in order to fix liability elsewhere for what are ostensibly acts of the company. This is generally referred to as lifting or piecing the corporate veil.... The focus then shifts from the company to the natural person behind it (or in control of its activities) as if there were no dichotomy between such person and the company.... In that way personal liability is attributed to someone who misuses or abuses the principle of corporate personality.'*
> *(See Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd 1995 (4) SA 790 (A) at 802 F – H; Amlin (SA) Pty Ltd v Van Kooij 2008 (2) SA 558 (C) in para 12.)*
>
> *[17] Under the common law our courts have in certain exceptional circumstances refused to recognise the separate legal existence of a company. This occurred, for instance, where it was held that the separate legal personality of a company was used as a device by a director to evade his or her fiduciary duty. One of the first leading cases is Robinson v Randfontein Estates Gold Mining Co Ltd 1921 AD 168 where the Appellate Division refused to recognise the separate legal personality of a subsidiary where Robinson had attempted to use the*

subsidiary as a device to evade the fiduciary duties he owed to the holding company as a director of that company. Following a long-established line of cases, the new Companies Act 71 of 2008 now for the first time permits a court under s 20 (9) to disregard the separate legal personality of a company if it finds that the use of the company or any act by it 'constitutes an unconscionable abuse of the juristic personality of the company as a separate entity' (s 20 (9))."

[18] Whilst the dictum is some relevance **in casu** I am of the view that the provisions of section 42 of the Act sufficiently cover the factual matrix presented by the evidence.

<u>Common Cause Issues</u>

[19] It is common cause that:

19.1 The second defendant was a director of the plaintiff and held 30% membership thereof.

19.2 That the second defendant represented to the plaintiff that the first defendant was an independent juristic person in whom he only held 25% membership interest.

19.3 The plaintiff conducts business in the waste management industry, which involves the collection, transport, recycling and disposal of waste at designated disposal and landfill sites.

19.4 That an oral agreement was entered into between the plaintiff represented by Johan Lombard and the first defendant represented by the second defendant.

19.5 The plaintiff would collect fly ash, core sand, furnace dust and other related waste ("*the waste*") at Brits from Halberg Guss and other sites as directed by the first defendant from time to time.

19.6 The plaintiff would transport and dispose of the waste at the designated disposal and landfill sites.

19.7 The plaintiff would accomplish the aforesaid collection, transport, recycling and disposal of waste by using its large skip truck and trailer with registration number YXX 223 GP ("*the large skipper truck*") and Scania Horse with its 30 ton hydraulic side tipper with registration number XHX 032 GP ("*tipper truck*").

19.8 The plaintiff would submit invoices to the first defendant for payment within 30 days from date thereof by the first defendant.

19.9 The second defendant as a member and director of the plaintiff had a duty to act with care, diligence and skill in managing the business of the plaintiff and had a duty to exercise good faith towards the plaintiff.

19.10 As director and member of the plaintiff, the second defendant was in a fiduciary relationship with the plaintiff and owed a fiduciary duty in this regard to the plaintiff.

19.11 The 30% member's interest held by the second defendant in the plaintiff from 9 August 2009 to 9 September 2011 was sold to Mr Johan Lombard on 9 September 2011.

19.12 The first defendant represented by the second defendant gave the plaintiff work to do collection, transportation and disposal as a subcontractor of the first defendant at certain designated sites.

The Evidence

[20] Mr Johan Lombard was the only witness to testify for the plaintiff whilst the second defendant gave testimony for the defendants.

[21] Lombard testified that he and his wife Katrien Lombard (Katrien), have a business which deals in waste disposal in the Limpopo province under the name and style of Oil Separations.

[22] During 2007 the second defendant engaged Lombard as an employee of a company known as Phambili Wasteman. He offered the services of Phambili Wasteman to Oil Separations. The meeting led to a contract in terms of which Phambili Wasteman did work for Oil Separations.

[23] The work relationship led to regular interactions between Lombard and the second defendant and during August 2008 the second defendant enquired whether Lombard would be interested in selling his company, Oil Separations.

[24] The company was not in the market but Lombard was willing to consider an offer and advised the second defendant accordingly.

[25] The second defendant set up a meeting between Lombard and certain persons representing the first defendant, namely, Mr Ramaphosa and Mr Nonde.

[26] Due to the then prevailing economic conditions the negotiations came to nothing. Notably, the second defendant did not disclose to Lombard that he held any interest in the first defendant at that time.

[27] It later transpired during the evidence that the second defendant did not have any member's interest at the time because he had transferred his member's interest in the first defendant to his sister and wife because Phambili Wasteman did not permit him to hold same as long as he was in their employ.

[28] Towards the end of 2009 Lombard and the second defendant had further discussions regarding the possibility of starting a company to do waste disposal in the Gauteng province. These discussions resulted in the incorporation and registration of Onsite Waste Management CC, the plaintiff herein.

[29] In order to get the business started the plaintiff purchased trucks and equipment utilising loans which the plaintiff obtained from RMB Bank and for which Lombard signed personal suretyship in favour of the plaintiff. The assets acquired to get the business going were estimated at R10 million.

[30] It is common cause that the second defendant made no financial contribution except for his contacts (potential clientele) and skills for which he was given a 30% member's interest in the plaintiff.

[31] Lombard was the Chief Executive Officer responsible for the operational requirements and it was agreed that he would execute his responsibilities mainly from the offices of Oil Separations in Limpopo and that he would visit the plaintiff's Pomona office in Kempton Park from time to time.

[32] Katrien would be responsible for the finance department of the plaintiff and would issue invoices to clients also from Limpopo.

[33] The second defendant would be the sales and marketing manager responsible for, **inter alia**, sourcing clients and negotiating contracts and prices, managing the Kempton Park office and generating waste manifest documents which were known as the "*waste stream*". He would endorse the pricing on those documents once the work was performed.

[34] The price endorsement preceded the invoicing process and the documents were thereafter handed over to Katrien and those assisting her in order for them to issue the invoices.

[35] During the end of February 2010 the second defendant advised Lombard that some of the work done at Halberg Guss had to be channelled through the first defendant.

[36] According to the second defendant, the plaintiff would continue to charge Halberg Guss the same rates it always charged and the new arrangement would not prejudice the plaintiff in any way.

[37] Based on those assurances by the second defendant Lombard agreed that the plaintiff would continue to collect fly ash, core sand, furnace dust and other related waste at Britz from Halberg Guss.

[38] It was agreed further that the plaintiff would transport and dispose of the waste at designated disposal and landfill sites using its large skip truck and it would charge the first defendant R6 600.00 for each trip of waste collected and disposed of. The R6 600.00 was calculated by multiplying the three bins carry load by R2 200.00 which was the rate agreed upon.

[39] The plaintiff had positioned thirteen bins at the premises of Halberg Guss which would be collected once they were full.

[40] As work progressed it was agreed that the plaintiff would purchase a further tipper truck which would also collect waste from Halberg Guss at the agreed rate of R220.00 per ton.

[41] When the second defendant and Lombard had the discussions referred to above, Lombard had no idea that the second defendant held any interest in the first defendant. He surmised that the first defendant could be a subsidiary of Halberg Guss.

[42] All seemed to be in order and Lombard observed that work was proceeding as planned and money was coming into the plaintiff's bank account.

[43] However, during or about July 2010 the second defendant approached Lombard and informed him that all the invoices for work done for Halberg Guss by the plaintiff had to be channelled through the first defendant. Lombard did not sense anything untoward in the said suggestion as he thought the first respondent was a subsidiary as aforesaid.

[44] It also transpired that the relationship between members of the plaintiff had not been formalised at that stage in terms of formal agreements. The plaintiff then took steps to ensure the relevant paper work was prepared including an Association Agreement during or about August 2010 for which he engaged the services of an attorney, Mr Markgraaff of Gildenhuys Malatji Incorporated Attorneys.

[45] The second defendant responded regarding certain clauses in the Association Agreement by way of an e-mail dated 16 August 2010 in which he advised that in respect of clause 4.2.4 he held a 25% member's interest in the first defendant.

[46] This revelation by the second defendant came as a total shock to the Lombards as they had had no idea whatsoever about the true relationship between the first and second defendants.

[47] A meeting was subsequently held at the attorneys' offices where the second defendant disclosed being the holder of 25% member's interest in the first defendant. He further stated that the first defendant was merely a consulting firm whose affairs were being managed by his wife and sister. He contended that in those circumstances there was no conflict of interests.

[48] Lombard accepted the second defendant's explanation at that stage after weighing his options. He was cognisant of the fact that the plaintiff was mainly able to operate because of the second defendant's skills and ability to source clients.

[49] As matters turned out there was an even greater surprise coming for Lombard, in August 2011 he discovered that the true position was that the second defendant had a 100% members' interest in the first defendant.

[50] As a result of the discovery, an agreement was entered into in terms of which Lombard purchased the second defendant's 30% members' interest in the plaintiff.

[51] The Lombard's were not aware at the time of purchase of his members' interest that the second defendant had manipulated prices to an extent where he had benefited the first defendant and earned secret profits They only became aware of this fact after the second defendant returned his laptop computer which he had formatted and deleted the information thereon. The Lombards were only able to retrieve the information with expert assistance.

[52] The discovery of the price manipulation and the making of secret profit resulted in the present action.

[53] The second defendant also testified about his personal background and the fact that he obtained a business degree at the CIDA campus after which he joined the Phambili Wasteman group during June 2005 where he garnered experience about the waste industry.

[54] He had registered the first defendant after joining Phambili Wasteman. He registered it under the name and style of Petshomi Empowerment Technologies and later changed its name to Wasteserv Waste Management.

[55] Though he was hesitant to admit it under cross-examination he ended up admitting that it was one of his conditions of employment that he would not hold any interest in a competing business such as that of the first defendant. It was for that reason that he had transferred his members' interest to his wife and sister.

[56] In August of 2008 the second defendant arranged a meeting regarding the proposed purchase of Oil Separations between the Lombards, Ramaphosa and Nonde.

[57] The second defendant left Phambili Wasteman and joined the plaintiff in December 2009 where he was paid a salary of R20 000.00 and given a vehicle. The plaintiff also took over his cell phone and paid for his cell phone account. The second defendant understood that the plaintiff did that to protect his intellectual property.

[58] The second defendant testified that they did some work for Halberg Guss and that he was responsible for the pricing for the first defendant and for the plaintiff. He admitted that he kept the pricing knowledge to himself and did not share it with Lombard.

[59] The rates which the second defendant negotiated for the plaintiff were less than what he negotiated for the second defendant for the Halberg Guss work.

[60] The second defendant further conceded that he only disclosed that he held 25% members' interest when he entered into a Close Corporation agreement with the Lombards whereas in truth and in fact he held 100% members' interest in the first defendant.

[61] The second defendant testified that he was indeed in control of pricing for the plaintiff which he performed by endorsing same on the back of the blue manifest document after a job had been done and without which no invoices could be issued by Katrien.

Application of the Law to the Facts

[62] The common cause facts show that the second defendant was employed by the plaintiff to **inter alia** solicit business for the plaintiff at prices most beneficial to the plaintiff. The plaintiff was entitled to that benefit. Where an agent acquires any benefit for himself in the execution of that mandate, such benefit is claimable by the principal even where the agent was **bona fide**.

See **Robinson v Randfontein Estates Gold Mining CO Ltd** (**supra**).

The same principle applies in the case of a manager which the second defendant was **in casu**.

See **Transvaal Cold Storage Co. Ltd v Palmer** 1904 TS 45; **West Coast and Rand Native Labour Agency Ltd v Abernathy** 1908 EDC 17; **Dorbyl Ltd v Vorster** 2011 (5) SA 575 (GSJ).

[63] Further, as a member of the plaintiff close corporation, the second defendant stood in a fiduciary relationship with the corporation. In the circumstances he had a duty to exercise such powers as he had to manage or represent the plaintiff in its interests and for its benefit.

See section 42 (1) and 42 (2)(a)(i) of the Close Corporations Act 69 of 1984 ("*the Act*").

[64] The second defendant had a duty to avoid any material conflict between his own interests and those of the corporation and in particular not to derive any personal economic benefit by reason of his service to the corporation from any other person where such is obtained in conflict with the interests of the corporation and to notify every member, at the earliest opportunity practicable, of the nature and extent of any direct or indirect material interest he may have in any contract of the corporation and not to compete, in any way with the corporation in its business activities.

See section 42 (2)(b) and section 42 (b)(i) of the Act.

[65] Section 42 (3)(a)(i) of the Act provides:

"(3)(a) A member of a corporation whose act or omission has breached any duty arising from his or her fiduciary relationship shall be liable to the corporation for:

(i) any loss suffered as a result thereof by the corporation; or

(ii) any economic benefit derived by the member by reason thereof."

[66] In the case of **Mallison v Tanner** 1947 (4) SA 681 (T) ("*Mallison*") an agent received a mandate to sell his principal's house for two thousand pounds, and where he had knowledge of an offer to purchase at that sum by a prospective purchaser, and where the agent himself had offered eighteen hundred pounds and the offer was accepted and where within one-and-a-half hours the agent resold the house to the prospective purchaser for two thousand pounds (plus fifty pounds commission). The court held per Barry J. P.:

"*That the agent was liable to account to his principal for the difference in the amount.*"

[67] The second defendant had an absolute duty not only to disclose his status vis-à-vis the first defendant but also to make a clean breast of his pricing activities and profits to the plaintiff. In Mallison (**supra**) Barry J. P. stated as follows (p 681):

"*An agent is one who acts on behalf of the principal and, unless otherwise understood, the principal manifests consent that the agent shall act only for his benefit. Unless otherwise agreed, an agent is subject to a duty not to deal with his principal as an adverse party in a transaction connected with his agency. Unless it is otherwise provided in the agreement, however, an agent acting as an adverse party, even though with the knowledge of the principal that he is doing so, is subject to the duty to reveal to the principal all the material facts which he knows or which he should know, and to deal fairly with the principal.*"

[68] **In casu**, the second defendant simply did not deal fairly with his principal. He kept his principal totally in the dark especially in regard to the secret profits which he was amassing behind his principal's back.

[69] In light of not only the common cause facts, the overall evidence and the admissions made by the second defendant in his testimony, I find that while contracting with the first defendant on the plaintiff's behalf the second defendant did not disclose to the other members of the plaintiff:

69.1 The actual prices he had negotiated for the first defendant with Halberg Guss for skip services and/or bulk removal and disposal work at Halberg Guss in respect of the work set out in annexures "*A*" and "*B*" to the Particulars of Claim;

69.2 The second defendant's interest in the first defendant until 16 August 2010;

69.3 The full extent of the second defendant's interests in the first defendant, namely 100%, after 16 August 2010;

69.4 That such non-disclosure amounted to a breach of the second defendant's fiduciary duties and fiduciary relationship towards the plaintiff in terms of section 42 of the Act.

Costs

[70] Regarding the question of costs, as indicated (**supra**) the plaintiff elected to withdraw its claim against the first defendant and its first claim against the second defendant. It therefore follows that the plaintiff should be held liable for the costs incurred by the first and second defendant in regard to those claims.

[71] In the result:

71.1 The second defendant is found liable towards the plaintiff to account for the proven profits and economic benefits received by the second defendant directly or indirectly through the first defendant, from the transactions listed in annexures "*A*" and "*B*" of the Particulars of Claim. The determination of the value of such benefits with any other remaining disputes in the action, are postponed **sine die**.

71.2 The second defendant is ordered to pay the plaintiff's costs, including the costs of two counsel for the trial from 27 February 2017 until 3 March 2017.

71.3 The plaintiff is ordered to pay the first defendant's costs including the costs of two counsel.

71.4 The plaintiff is ordered to pay the second defendant's costs regarding the first claim against the second defendant including the costs of two counsel.

S. A. M. BAQWA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appearances

For the Plaintiff:	Advocate J. D. Maritz SC Advocate P. L. Uys
Instructed by:	Gildenhuys Malatji Inc.
For the Defendant:	Advocate F. W. Botes SC Advocate R. Deminey
Instructed by:	Fuchs Roux Attorneys
Heard on:	27 & 28February 2017 and 1 & 3 March 2017
Delivered on:	3 April 2017