IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 1825/2013

In the matter between:-

MZONDASE INGRID MABASO Plaintiff

And

CHARL COETZER Defendant

JUDGMENT BY: MOENG, AJ

HEARD ON: 12 November 2014

DELIVERED ON: 28 November 2014

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[1] The plaintiff, an adult female, instituted action for damages against the defendant, an attorney practicing as such in Senekal. She alleges in her particulars of claim that on 16 March 2005, her husband was run down and resultantly killed by an unidentified vehicle whilst working on the road between Bethlehem and Kestel.

[2] Shortly after the accident, she consulted the defendant to act on her behalf and seek compensation from the Road Accident Fund (RAF) for loss of support and the defendant accepted the mandate. She

however discovered on 10 April 2013 that the defendant failed to lodge or prosecute such a claim and as a result, her claim became prescribed as against the RAF. She accordingly lost the amounts as reflected in her particulars of claim and submits that the defendant is liable in law to compensate her.

[3] In response, the defendant raised a special plea of prescription. He in the main denies that he accepted plaintiff's mandate to lodge or prosecute the claim on her behalf. He admits to having consulted with the plaintiff during March 2008 with a view of acting on her behalf in lodging the claim, but advised her in a letter dated 10 March 2008 that he will not act on her behalf since the claim was due to prescribe on 15 March 2008 (5 days later) and that she should immediately consult another attorney.

[4] He contends that plaintiff issued and served summons on him on or about 10 May 2013, more than three years after the cause of action arose. The plaintiff's action therefore prescribed on 9 March 2011 since she was aware of the fact that he will not act on her behalf on 10 March 2008.

[5] The plaintiff denied in replication that her claim prescribed, asserting that she only became aware of the defendant's failure to prosecute her claim timeously on or about the 10th of April 2013.

[6] The parties by agreement requested me to separate the special plea from the rest of the issues in terms of rule 33(4) and I granted the order. The issue to be decided in this judgment therefore only relates to whether the plaintiff's claim prescribed against the defendant.

[7] It is common cause that the defendant, having raised the special plea, bears the onus of proof. He testified and called two other witnesses, Annacletta Skosana (Skosana) and Betty van der Merwe (van der Merwe), both her staff members. Plaintiff was in turn the only witness in her case. The two versions are mutually irreconcilable

[8] The facts upon which the defendant based his case are in short as follows: He is an admitted attorney practicing as such in Senekal for the past 28 years. He was approached by the plaintiff on 8 March 2008 with a view of giving him instructions to lodge a claim for loss of support against the RAF.

[9] His practice did not deal with RAF matters but he nonetheless contacted Mr. Yazbek, an attorney from Bloemfontein, who usually assisted him with similar matters. He was however warned not to accept the instruction since the plaintiff's claim was about to prescribe in the next five days. He informed the plaintiff likewise and ensured that Skosana explain same to her in Sesotho.

[10] He furnished her with a letter and she acknowledged receipt thereof. I find it apposite to repeat the contents thereof verbatim:

> "*We refer to the above matter and attach hereto the documents that you supplied to us.*
>
> *Due to the circumstances and the fact that we are of the opinion that we will not be able to help you, and that there is a breech (sic) of trust, we no longer act on your behalf.*
>
> *Please note that you must* ***IMEDIATELY*** *(sic) consult with another attorney in this matter as this claim, if you have any,* ***<u>will prescribe on the 15th of March 2008.</u>***
>
> *We also attach hereto for your convenience a RAF 1 form.*
>
> *Yours faithfully*
>
> *Charl Coetzer Prokureurs*
>
> *Original receive(sic) on 10 March 2008* (signed by plaintiff)

"***I understand the meaning of this letter"***

[11] He did not open a file for the plaintiff but placed the letter referred to above in a general file that he uses for general correspondence. This was the first and last time he saw the plaintiff.

[12] Skosana confirmed that defendant told plaintiff that he will not be able to assist her and that she must go to another attorney. The plaintiff

and defendant conversed in English but it appeared as if she did not understand when he told her that he will not be able to assist her since she merely kept quiet. She in turn read the letter and explained the contents thereof to her. She did however not explain the issue relating to prescription and breach of trust to her.

[13] Van der Merwe stated that she has no independent recollection of the plaintiff since there were no entries that she made of any appointment that she made after the 8th of March. She however conceded that there would be no entries if she was a walk-in client and that she also has no recollection of whether she phoned the defendant after 8 March. The procedure that she follows should someone phone the defendant in his absence would be to jot the information of such a person down and then hand it over to him upon his arrival. No record is however kept of such telephone messages.

[14] Plaintiff in turn stated that she met the defendant shortly after her husband's death at the small claims court in Senekal where he presided as commissioner. She related the untimely death of her husband to him and he told her to visit his office the next day. She obliged and the defendant told her what documents he will need to lodge a claim on her behalf. She handed the documents over to him before the end of 2005.

[15] She visited his office around five to six times but the defendant assured her that he is working on her file and that she must stop disturbing him since he knew his job. She confirmed signing the document that purportedly informed her that defendant will not represent her, but disputed that the contents thereof were explained to her. She was merely asked to sign the document without reading it and was told that the reason for her signature was for submission of her claim to the RAF. She disputed that Ms. Skosana interpreted anything to her and that she was given a copy of the letter.

[16] She on the date of this signature informed the defendant that she was relocating to Frankfort. She phoned his office on numerous occasions after March 2008 but never managed to speak to him. She was time and again informed by the receptionist that the defendant is not available and that she would pass the message to him. She was once told that they have not received any response from the RAF and also visited his office but was informed that he was not available.

[17] She later met him whilst alighting from his motorcycle. She enquired about the status of her claim but he informed her that he was not acting for her anymore. She only learned on 10 April 2013 that her claim was not submitted after having visited the current attorney's office.

[18] It appears from the above summary that it is common cause that:

1. The collision, in which the plaintiff's husband was tragically killed, took place on **16 March 2005**;

2. That in case the identity of the driver was known, a claim had to be lodged with the RAF within a period of 3 years therefore on or before **15 March 2008** and in the case of an unidentified vehicle, within 2 years;

3. That plaintiff issued and served summons on the defendant for damages on **10 May 2013**.

[19] The issues are:

1. Whether plaintiff instructed defendant two or three months after her husband's death (therefore in or around **May or June 2005**) to lodge and prosecute a claim on her behalf, or as defendant sought this Court to conclude, whether he declined to accept such mandate on the **8th March 2008;**

2. Whether the contents of the letter purporting to inform the plaintiff that the defendant will not be able to accept her mandate or terminating the mandate to lodge the claim, were explained to her

on **8 March 2008** or whether she was informed that the purpose of her signature was to lodge the claim.

3. Whether she continuously during the period between **May or June 2005** and **8 March 2008** as well as **10 April 2013** and/or **10 May 2013**, contacted defendant to determine the status of her claim

[20] Mr. Grobler placed strong reliance on **Gunase v Anirudh** 2012 (2) SA 398 (SCA) and contended in the main that the plaintiff was aware that the defendant did not accept her mandate on **8 March 2008** and that her claim thereby prescribed on **14 March 2011.** He in the alternative argued that even if the Court may conclude that the mandate was accepted, the plaintiff should, by the exercise of reasonable care have acquired knowledge that her claim had not been lodged before 14 March 2011.

[21] Mr. Rontgen in the main relied on **Macleod v Kweyiya** 2013 (6) SA 1 (SCA). He contended that the issue to be determined was whether there was a mandate to lodge the claim and once concluded in the affirmative, the defendant's liability would be established. He argued with great persuasion that the defendant accepted the mandate to lodge and prosecute the claim but failed to do so. The plaintiff in his view only became aware of the defendant's failure to lodge her claim on 10 April 2013.

[22] Section 12 of the Prescription Act 68 of 1969 reads as follows:

"12. When prescription begins to run.

(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.

(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care".

[23] Extinctive prescription in terms of section 12(3) only begins to run from the date when the creditor, has knowledge or is deemed to have knowledge, of the identity of the debtor, and of the facts out of which the claim arises. It has been repeatedly said that the statutory prescription periods are meant to protect defendants from undue delay by litigants who are reluctant in enforcing their rights.

[24] It has also been held that one of the focal purposes of the Prescription Act is to protect a debtor from old claims against which it cannot effectively defend itself because of loss of records or witnesses caused by the lapse of time. If creditors are allowed by their deliberate or negligent acts to delay the pursuit of their claims without incurring the consequences of prescription, that purpose

would be subverted. (See **Uitenhage Municipality v Molloy** 1998 (2) SA 735 (SCA)

[25] It is a well-established principle that a creditor is not able, by his own conduct, to postpone the commencement of prescription by his inaction to ascertain the identity of the debtor and of the facts from which the debt arises. As was held in **The Master v I L Back & Co Ltd and Others**1983 (1) SA 986 (A) *'If all that is required to be done to render the debt payable is a unilateral act by the creditor, the creditor cannot avoid the incidence of prescription by studiously refraining from performing that act'.*

[26] In **Drennan Maud & Partners v Pennington Town Board** 1998 (3) SA 200 (SCA), Olivier JA held that:

> "*Section 12(3) of the Act provides that a creditor shall be deemed to have the required knowledge `if he could have acquired it by exercising reasonable care'. In my view, the requirement `exercising reasonable care' requires diligence not only in the ascertainment of the facts underlying the debt, but also in relation to the evaluation and significance of those facts. This means that the creditor is deemed to have the requisite knowledge if a reasonable person in his position would have deduced the identity of the debtor and the facts from which the debt arise"*

[27] **In Leketi v Tladi NO and others** [2010] 3 All SA 519 (SCA) Mthiyane JA held at para 18 that:

> *"It seems to me that the adverse operation of section 12(3) is not dependent upon a creditor's subjective evaluation of the presence or absence of "knowledge" or minimum facts sufficient for the institution of a claim. In terms of section 12(3) of the Prescription Act, the "deemed knowledge" imputed to the "creditor" requires the application of an objective standard rather than a subjective one. In order to determine whether the appellant exercised "reasonable care," his conduct must be tested by reference to the steps which a reasonable person in his or her position would have taken to acquire knowledge of…"*

[28] The onus rests on the defendant claiming prescription to allege and prove such knowledge, or deemed knowledge. (See **Gericke v Sack** 1978 (1) SA 821 (A)) Diemont JA however held at 827 E-G that the Courts take cognizance of the handicap under which a litigant may labour where facts are within the exclusive knowledge of his opponent and they have in consequence held, as was pointed out by Innes J., in ***Union Government (Minister of Railways*) v *Sykes***, 1913 AD 156 at p. 173, that "less evidence will suffice to establish a *prima facie* case where the matter is peculiarly within the knowledge of the opposite party than would under other circumstances be required." But the fact that less evidence may suffice does not alter the *onus* which rests on the defendant. This burden shifts to the plaintiff only if the defendant has established a prima facie case.

[29] I am faced with mutually irreconcilable accounts relating to the issues referred to above. In order to reach a conclusion on disputed issues

in a civil trial a court must determine (i) the credibility of witnesses, (ii) their reliability and, (iii) the probabilities. (See **Stellenbosch Farmers' Winery Group Ltd and Another v Martell ET CIE and others** 2003 (1) SA 11 (SCA) at par 5.

[30] I will proceed to deal with these disputed issues:

- ***Was there a mandate?***

[31] The defendant's version is that plaintiff visited his office for the first time on 8 March 2008 and he refused to assist her but advised her to see another attorney. The plaintiff in turn stated that she instructed the defendant in 2005 to lodge and prosecute the claim on her behalf.

[32] I should approach this dispute mindful of the fact that the onus rests on the defendant to allege and prove prescription. The primary source from which one may deduce whether there was a mandate is the letter that professed, according to the defendant, to inform plaintiff that he will not act on her behalf. This letter is the epitome upon which defendant sought to show the date from which prescription started to run. It also sought to indicate that defendant had no mandate and that he informed plaintiff to see another attorney due to the impending prescription of her claim.

[33] This letter however strongly militates against the conclusion that defendant seeks this court to reach. Two critical averments in this letter are in direct conflict with the testimony of the defendant and his key witness Skosana and these averments casts doubt over their reliability, honesty and credibility.

[34] It is inconceivable that defendant would dictate in this letter that there was a <u>breach of trust</u> and that he is <u>no longer acting on behalf of the plaintiff</u> if there was no prior mandate to lodge and prosecute the claim. His explanation that he did not know what to write in the letter is deplorable and has no basis. A breach of trust is a precursor to a termination of mandate and it validates the plaintiff's assertion that she mandated the defendant to lodge the claim on her behalf. Any inconsistencies in plaintiff's evidence relating to the response given in the request for further particulars concerning the date she instructed him becomes immaterial in view of the contents of this letter. The unassailable conclusion is that there was such a mandate.

[35] I am satisfied, despite the conflict between the plaintiff's evidence and the response given in the request for further particulars, that plaintiff gave defendant a mandate to lodge or prosecute her claim in or around May/June 2005. The plaintiff's version as opposed to that of the defendant is in my view more probable and consistent with the averment in the letter.

- ***Were the contents of the letter explained to plaintiff on 8 March 2008?***

[36] The defendant asserts that the contents of the letter were explained to the plaintiff in English and interpreted by Skosana in Sesotho. The plaintiff conversely stated that she did not read the document, the contents thereof were not explained to her, and she was told that the purpose of her signature was for the claim to be lodged. I already concluded that defendant was unreliable on the issue relating to the mandate. It is highly improbable that he would draft a letter absolving himself from possible liability against someone who merely intended to give him instructions and therefore not his client.

[37] The question as to whether the contents of the letter were explained to the plaintiff should therefore be seen in this context. There are a number of improbabilities in defendant's version on this issue. His evidence is that the plaintiff conversed with him in English. The entry at the bottom of the letter, which was supposedly made by plaintiff stating that "***I understand the meaning of this letter",*** is also in English.

[38] The plaintiff should therefore also have spoken to him in English when she initially handed the documents over with a view of

instructing him to lodge the claim. It is however strange that he insisted that what he informed her and the contents of the letter be interpreted in Sesotho if it was clear throughout that the plaintiff was conversant in English. Skosana conversely stated that it appeared as if plaintiff did not understand when defendant told her that he will not be able to assist her since she merely kept quiet. She therefore not only had to explain what defendant related but also the contents of the letter.

[39] Both defendant and Skosana could in detail and without hesitation, give a similar version of the events that took place almost six years ago. It is mind boggling that the document that they could refresh their memories from and which should have been their reference point after such long passage of time was contrary to their recollection.

[40] It is thought-provoking that both defendant and Skosana did not explain the entire contents of the letter to plaintiff but only explained the part that defendant could not assist her and that she should consult another attorney. It is strange that Skosana read the letter and interpreted its contents, but did not interpret the breach of trust and the part that defendant will no longer be acting on her behalf.

[41] Skosana clearly attempted to support her employer's version, not appreciating the inconsistency of her evidence with the letter that he drafted. What was explained by both was not in line with the contents of the letter that the plaintiff supposedly understood and signed.

[42] Plaintiff in turn maintained that she was placed under the impression that her signature was required to lodge the claim. Having concluded that she gave defendant instructions to lodge her claim, the question is simply whether by signing the document, she was signifying her intention to accept that due to breach of trust, defendant was terminating his mandate. The answer is in my view in the negative based on the inconsistencies in the defendant's version.

[43] The defendant does not rely on the root of the document which is the termination of his mandate due to breach of trust. He however, in the same breath, wishes to rely on the averment that he informed plaintiff that she should consult another attorney. He wants to rely on the document but wants a certain portion thereof to be ignored. This is the idiomatic wanting to have one's bread buttered on both sides.

[44] The evidence around the defendant's letter of 8 March 2008 is crucial. The plaintiff acknowledges that she signed the letter but the question is whether she understood the contents thereof. The letter indicates that plaintiff was a client of the defendant at that stage. I

reject defendant’s assertion that he saw the plaintiff only on that day. I likewise reject the evidence of defendant and Skosana that they explained the contents of the letter to her or gave her a copy. A prudent attorney would not merely have written a letter to exonerate him. An attorney in such situation, seeing that a client’s claim is about to prescribe, should try to arrange an appointment an attorney who can help the client., particularly a client who is not sophisticated and does not appear to understand English.

[45] He can in my view therefore not succeed on the first leg of section 12(3) of the Prescription Act that the plaintiff had knowledge of the identity of the facts from which the debt arose.

- ***<u>Could plaintiff be deemed to have acquired such knowledge by the exercise of reasonable care?</u>***

[46] The next and most critical question relates to the second leg of section 12(3), whether the plaintiff is deemed to have had knowledge of defendant’s failure to lodge her claim if she could have acquired such knowledge by the exercise of reasonable care.

[47] The key enquiry is whether plaintiff took reasonable steps to determine whether her claim had been lodged with the RAF. Alternatively whether a reasonable person in plaintiff’s position would have deduced such facts from which the debt arose. 'Debt' in relation

to the Prescription Act, for current purposes, refers to the obligation of defendant to perform services on behalf of plaintiff.

[48] The evidence led by defendant is that he never had any contact with plaintiff after the letter dated 8 March 2008. Skosana and van der Merwe also confirmed that they never saw plaintiff at defendant's office after this date. I regard this averment by Skosana as extremely strange. Her post description is that of a messenger. Such an occupation is not office bound but entails running errands for your employer. Despite the long passage of time, with the utmost conviction, she unambiguously stated how many times plaintiff visited their office. She could in detail explain the dates that plaintiff visited their office and when she did not turn up for her appointment. This was in my view a clear indication of her bias and attempt to validate her employer's version.

[49] Van der Merwe was in turn frank to state that she had no independent recollection of the plaintiff visiting their office and whether she received phone calls from her. She explained the procedure that she follows should a client make an appointment or leave a message for the defendant. The significance of this procedure is that all appointments are entered in two diaries but no such entries are made for walk-in clients. Telephone messages are given to the defendant upon his arrival at the office but no record is kept of such messages. The process that they followed could therefore not cast doubt on plaintiff's version.

[50] Plaintiff in turn stated that she continuously tracked the progress of her case until she was told by defendant to leave the case to him as he knows what he is doing. She signed a document on 8 March 2008 which was purportedly aimed at the submission of her claim. She relocated to Frankfort and often called defendant's office to track the progress of her claim. She however never managed to speak to him as he never returned her calls. She was once told that her papers were not back yet. She visited his office but could not find him but at one stage met him on his motorcycle and enquired about the claim. He told her that he terminated her mandate. She consulted her current attorney and discovered on 10 April 2013 that the defendant failed to lodge her claim. She could however not give any dates when the above happened.

[51] The plaintiff was in my view a credible and a reliable witness save for certain aspects that she testified about, but were not put during cross examination. Subject to the difficulties of recollection which any witness would have after the lapse of a number of years, there is nothing to criticise in the plaintiff's evidence about the mandate and her conduct thereafter. I accept what she says.

[52] Mr. Grobler placed a great deal of emphasis on the fact that certain points were not put by the legal representative to the defendant when he testified and argued that her version should be rejected as a result. He contended that Mr. Rontgen failed to put it to defendant that plaintiff visited his office and he told her that she should not make

herself a nuisance as he is familiar with his work. He also emphasized that no statement was made regarding the steps that plaintiff took after 8 March 2008 to enquire about her claim.

[53] In **President of the Republic of South Africa and others v South African Rugby Football Union and Others** 2000 (1) SA 1 (CC) it was held that it is essential, when a party intends to suggest that a witness is not speaking the truth on a particular point, to direct the witness's attention to that fact by questions put in cross-examination showing that an imputation is intended to be made and to afford the witness an opportunity of giving any explanation and defending his or her character.

[54] It was further held that if the point in dispute is left unchallenged, a party calling the witness is entitled to assume that the uncontested testimony is accepted as correct. The precise nature of the imputation should be made clear to the witness so that it can be met and destroyed, particularly where the imputation relies upon inferences drawn from other evidence in the proceedings. The Court however warned that these rules relating to the duty to cross-examine must not be applied in a mechanical way, but always with due regard to all the facts and circumstances of each case.

[55] The facts of the matter at hand are that the defendant disputed outright, that there was any mandate from plaintiff to lodge the claim on her behalf. This was challenged by the plaintiff. Even if it was put to defendant that he assured plaintiff that he will deal with her claim,

such a statement would have been met with a denial based on the nature of the defendant's defence. Mr. Rontgen's failure to put this averment was in my view therefore not fatal.

[56] To Mr. Rontgen's credit, he put it to the defendant that plaintiff contacted defendant's office telephonically and that she later met defendant on his motorcycle. It is not in dispute that he rides a motorbike. This was met with a denial and Van der Merwe was called to dispel this averment and evidence by plaintiff. There can therefore be no imputation that defendant did not have an opportunity to respond to this evidence. The circumstances herein are therefore not such as to reject plaintiff's evidence because it was not put to the defendant in cross examination.

[57] Mr. Grobler further reasoned that even if it may be accepted that defendant did not explain the contents of the letter to plaintiff, then in that case she did not exercise reasonable care to have acquired the necessary information. He contended that reasonable care did not merely entail making enquiries but plaintiff should have gone further than that to get information on the status of her claim. The warning bells should, according to him, have sounded when the defendant failed to revert to her after her calls.

[58] The question is therefore whether a reasonable person in her position would have acted differently and deduced the facts from which the debt arose at an earlier stage. The following factors in my view refute the argument by Mr. Grobler:

[59] The plaintiff is an unsophisticated person who failed her matric exams. When confronted in cross examination as to why she did not insist to see the defendant when she visited his office, she indicated that it would have been disrespectful. She clearly had a very high regard for the defendant. This is therefore the standard of reasonable care upon which she should be measured.

[60] She was told by defendant that he knows what he is doing and should leave her claim to him. She logically left her claim in his capable hands. A lay client is customarily entitled to regard an attorney duly admitted to the practice of the law as a skilled professional practitioner. Such a client places considerable reliance upon the competence, skill and knowledge of an attorney and trusts that the attorney will fulfil his or her professional responsibility.

[61] She did not just sit back and do nothing after having signed the documents that purportedly were to authorise the submission of her claim. She made enquiries, went to his office and enquired from him when he was on his motorbike. She in my view acted reasonably under these circumstances.

[62] The defendant had accepted her mandate. He relied on a letter that supported plaintiff's assertion that there was such a mandate. This letter was the basis upon which defendant could refresh his memory and effectively defend himself. The need for the protection afforded by the Prescription Act to protect a debtor from old claims against

which he cannot effectively defend himself because of loss of records or witnesses caused by the lapse of time, therefore falls away.

[63] Mr. Grobler quoted a number of cases in support of his argument. These cases are in my view distinguishable from the facts *in casu*.

[64] In **Gunase v Anirudh** *supra* the creditor failed to make reasonable enquiries regarding the status of his RAF claim from 2000 to 2004. He did not go to the appellant's offices or contact any other person for assistance during this period and also failed to contact the new attorney that had taken the debtor's files over.

[65] In **Jakobo v Grimbeek case 380/2013** an unreported judgment delivered on 7 August 2014 by Kruger J in the Free State High Court Bloemfontein, the plaintiff failed to make any enquiries regarding the status of his RAF claim from 2002 to 2012 after having attained the age of majority in 2004. The defendant had long destroyed his file and had no recollection of the claim.

[66] In **Drennan Maud & Partners v Pennington Town Board** *supra* the enquiry was when the Town Board, acting through its employees and members, became aware, or were deemed to have become aware, that the appellant had committed a design fault on a reinforced concrete retaining wall which resulted in a failure to protect the Town Board's properties as described. Officers of the Town Board inspected the wall in September 1989 and observed certain defects

on the wall. The cause of action arose in November 1989 but summons was served more than three years later.

[67] The Court upheld the special plea and held that the nature of the design fault was clearly visible at the toe end of the wall in November 1989. Anyone observing what was taking place there could see the scouring action of the river and sea, and how sand behind the wall was being sucked out into the river. The court held that the creditor was deemed to have had the requisite knowledge, if a reasonable person in his position would have deduced the identity of the debtor and the facts from which the debt arose.

[68] I conclude that the plaintiff discovered on 10 April 2013 that the defendant failed to lodge or prosecute her claim. Her claim against the defendant had therefore not prescribed when summons was served on the defendant on 10 May 2013.

[69] I therefore make the following order:

1. The special plea is dismissed.
2. The costs are to be reserved for determination by the trial court

LBJ MOENG, AJ

On behalf of the plaintiff:	Mr. K.M Rontgen Instructed by: McIntyre & Van Der Post BLOEMFONTEIN
On behalf of the defendants:	Adv. J.F Grobler Instructed by: Lovius Block BLOEMFONTEIN