

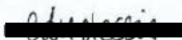


**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: Yes ☒ / No ☐
(2) OF INTEREST TO OTHER JUDGES: Yes ☒ / No ☐
(3) REVISED: Yes ☐ / No ☒

Case A2023-097547

Date: 12 November 2024


WJ du Plessis

In the matter between:

ROXANNE MAHER

Appellant

and

AVIANTO PTY LTD

Respondent

Coram: Du Plessis AJ (Windell J concurring)

Heard on: 19 September 2024

Delivered on: 12 November 2024

This judgment has been delivered by uploading it to the CaseLines digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by e-mail to the attorneys of record of the parties. The deemed date and time of the delivery is 10H00 on 12 November 2024.

Summary: Covid-19 – wedding venue – *force majeure* – impossibility of performance – unjustified enrichment

JUDGMENT

DU PLESSIS AJ (with whom WINDELL J agrees)

[1] This is an appeal from the Magistrate's Court, Mogale City, against the judgment of Magistrate Ismail, dismissing the plaintiff's (appellant in this case) claim for damages arising from a breach of contract, alternatively unjustified enrichment. In order to assess the finding of the Magistrate, it is important to set out the facts.

[2] The appellant instituted a claim in the magistrate's court against the respondent. The claim was founded on a contract in which the respondent was to rent the appellant a specific room for her wedding function. The cost of holding the function was approximately R63 000, which had to be paid in full to secure a booking of the date of 28 March 2020. The appellant paid the full contract price.

[3] On 26 March 2020, South Africa went into a nationwide lockdown¹ to curb the spread of the Coronavirus. This meant that the appellant's wedding could no longer take place on 28 of March as planned. The appellant stated that she chose the date of 28 March 2020 because it was on a Saturday. They eventually got married in June 2020 in the Minister's office in front of five people.

[4] The contract stated that a postponement of the function by the appellant would amount to a cancellation. Furthermore, in terms of the contract, a cancellation by the respondent for any reason not attributable to the default of the appellant would result in a full refund. Should the appellant's function be cancelled for any reason, then any refund would only be made once the date has been rebooked by another function. All changes and cancellations had to be made in writing.

¹ On 15 March 2020, in terms of the Disaster Management Act 57 of 2002, a national state of disaster was declared to curb the spread of the coronavirus. On 25 March 2020, regulations were promulgated in terms of s 37(1) of the Act that severely restricted the movement of people, as well as prohibited gathers. Various premises were closed to the public, and people were confined to their homes.

[5] The appellant states that the defendant cancelled her event due to no fault of the appellant but due to a *force majeure* event, namely the lockdown. She further states that the cancellation was not reduced to writing and that she is entitled to a full refund. She demanded that the contract price be paid. However, the respondent retained the R63 000. The appellant argues that this was as part of the penalty provision in the contract and is disproportionate to the prejudice suffered by the appellant. Alternatively, the respondents were unjustly enriched at the expense of the appellant. She approached the court for confirmation of the cancellation of the contract and payment of the money.

[6] The respondent disagrees, stating that the wedding could not take place due to the lockdown, and they offered a postponement to the appellant without penalty. They tried to arrange an alternative date but could not agree, after which the appellant requested a full refund. The respondent denies that she is entitled to a full refund. In this regard they rely, inter alia, on the *force majeure* clause in the contract. During oral evidence, they indicated that they offered her a voucher to be used at a later function of her choice. This is not in terms of the contract but an alternative solution to accommodate their clients.

A quo

[7] After hearing evidence and considering submissions, the Magistrate considered the lockdown and the *force majeure* clause (clause 16.13). He found that this clause covers the COVID regulations. He also found that the inability to perform was temporary. The respondent took it upon themselves to assist their clients in choosing alternative dates to hold the functions. This stems from the temporary impossibility of performance, which did not extinguish the respondent's obligation to perform.

[8] The Magistrate found that the event's postponement cannot be seen as a cancellation of the contract in its true sense. The respondents tried to assist with a postponement date, waved the penalty, and offered a voucher when no date could be agreed upon. However, with the appellant's unavailable dates, she requested a full

refund (clause 19.3). The court found that since the postponement was due to *force majeure*, the appellant is not entitled to a refund. The claim, therefore, failed.

[9] As for the claim of unjustified enrichment, the plaintiff had to prove that the payment of the monies was in terms of the contract concluded and that the defendant was unwilling or unable to perform its obligations in terms of the contract. The respondent did not deny the receipt of the monies, but was willing to perform their obligation in terms of the contract by tendering a voucher for the exact amount to be used by the appellant for a function of her choice. Since she was offered a voucher, her claim failed.

Appeal

[10] The appellant's appeal rests on the following questions:

- a. should public policy, fairness or morality have been considered when adjudicating the matter; whether the respondent's actions were *contra bonos mores*, as the performance of the contract was impossible due to the Covid-19 lockdown;
- b. whether it was appropriate for the Magistrate to have found that the claim must fail because the appellant was offered a voucher;
- c. whether the National Lockdown during the State of disaster constituted an "act of God" or "sabotage" in terms of the wedding contract;
- d. and whether the appellant was required to prove her alternative claims or whether they were deemed admitted, as per Rule 17(3)(a) of the Magistrate's court, as the respondent failed to deal with or deny the alternative claims in its plea.

[11] A court of appeal is only required to intervene in cases where the court below it is clearly shown to have been mistaken. Additionally, an appellate court may only intervene in a lower court's discretion under specific circumstances when it receives an appeal. These circumstances encompass whether the lower court has exercised its

discretion in a non-judicial manner, applied the incorrect principles of law, misdirected itself on the facts, or reached a decision that could not have reasonably been reached by a court that has properly appraised itself with the relevant facts and legal principles.² As will become evident, I am of the view that the court below was mistaken because it applied the incorrect principles of law. To understand the principles applicable, it is necessary to set out the specific terms of the contract relied upon by the parties.

Clauses of the contract

[12] It is common cause that the contract was validly concluded and that at the time of the conclusion of the contract, performance was possible. The dispute only focuses on the effect of the government's "lockdown" regulations to curb the spread of COVID, imposing restrictions on gatherings with the effect that it was not possible to celebrate a wedding during the "lockdown".

[13] It is also pertinent to note from the outset that under "Important information regarding the wedding", the appellant expressly indicates that the function date is "28 March 2020", indicating the function room they require.

[14] Then, various clauses deal with the cancellation of a booking, the impossibility of performance and the cancellation of the agreement. Clause 16.11, for instance, deals with risk and provides that

Avianto reserves the right to cancel any booking forthwith and without liability on its part in the event of any damage to, or destruction of the venue by fire, shortage of labour, strikes, industrial unrest, or any other cause beyond the control of Avianto, which shall prevent it from performing its obligations. In these circumstances every effort will be made to find an alternative venue.

[15] Clause 16.13, the *force majeure* clause, provides that

² *Mathale v Linda* [2015] ZACC 38 at para 40.

Avianto is not responsible for financially, legally or in any other way in the event that a function is cancelled through an act of God or sabotage.

[16] Clause 18 deals with rescheduling and provides:

18.1 The postponement of a function is considered a cancellation. Please refer to the cancellation policy.

18.2 The Client must confirm all changes and cancellations in writing.

[17] Clause 19 deals with cancellation. Clause 19.3 states that

“In the event the wedding is cancelled by Avianto, for any reason other than due to the default of the Client of the terms of this agreement, Avianto will immediately refund all amounts paid to date by the Client.”

[18] It is important to note that the date agreed upon for the wedding is a specific contract term for leasing a wedding venue. This date is often carefully chosen, keeping in mind the guests who will be travelling from far away to attend, organising a person who can officiate the marriage, the weather, and so forth. We thus accept that the appellant wanted her wedding to take place on the 28 of March 2020. The date was a material term of the contract. The impact of the other clauses needs to be evaluated in terms of this material term.

The law

[19] Non-performance of any contractual obligation is considered a breach of contract in nearly all legal systems today. The disadvantaged party may utilise the remedies available to them to rectify the breach of the other party when a party breaches the provisions of an agreement and fails to fulfil its obligations. In turn, certain consequences will arise. This is consistent with the principle of *pacta sunt servanda*.

[20] Nevertheless, the contractual playing field may become extremely unfair and detrimental when these contractual principles are strictly enforced, when the lack of performance and breach result from an extraordinary event or circumstance beyond the

parties' control. Consequently, the contractual clause of *force majeure* (literally meaning superior force) is vital, as it concentrates on these specific extraordinary events or circumstances that excuse parties from a breach of contract without assigning blame to either party.³ Originating in French and Roman law, the principle refers to unforeseeable events which render performance impossible.⁴

[21] When raised, it provides a form of relief for contracting parties, freeing them from fulfilling their obligations under the contract. This, then, is an exception to the contract law principle of *pacta sunt servanda*, not only by providing an escape but also by shielding parties from the consequences of a breach of contract because of circumstances beyond their control.

[22] A *force majeure* clause typically contains five key elements, namely:⁵

- a. The clause must show that the impediment is beyond the parties' reasonable control, that the event or circumstance could not have reasonably been foreseen at the time of the conclusion of the contract and that the effects of the event or circumstances could not have been avoided by the parties;
- b. It must list the triggering event that activates the clause's operation. These events must be specified, such as wars, riots, acts of God, epidemics, etc.
- c. The triggering event must render performance impossible.
- d. The affected contracting party must inform the other party of the impact of the triggering event and the inability to perform.

³ Comyn, R. I. (2023). *Supervening impossibility and the interpretation and use of force majeure clauses in contracts during a pandemic* (LLM dissertation, University of Pretoria) at 11.

⁴ Comyn, R. I. (2023). *Supervening impossibility and the interpretation and use of force majeure clauses in contracts during a pandemic* (LLM dissertation, University of Pretoria) at 5.

⁵ Comyn, R. I. (2023). *Supervening impossibility and the interpretation and use of force majeure clauses in contracts during a pandemic* (LLM dissertation, University of Pretoria) 12.

- e. And invoking the clause will either terminate the contractual obligations (permanently or temporarily) or allow for the renegotiation of the contractual obligations.

[23] A *force majeure* clause is different from the general rule in Roman law of *impossibilium nulla obligatio est* (there is no obligation for the impossible), which includes *vis maior* (or acts of God) and *casus fortuitus*. It is generally accepted that *vis maior* refers to forces or events caused by nature (such as earthquakes, storms and fires).⁶ *Casus fortuitus* refers to fortuitous occurrences caused by persons, such as theft, strikes, and arson.⁷ This refers both to factual impossibility and legal impossibility. In the latter case, performance may still be physically possible, but it would be unlawful to render performance.⁸ In both cases, however, the event or occurrence is unforeseeable and beyond the control of the contracting parties.

[24] Essentially, this means that where a contract has become impossible to perform after it had been entered into, the general rule is that the position is then the same as if it had been impossible from the beginning – the contract and resultant obligations are extinguished.⁹

[25] In modern South African contract law, *casus fortuitus* is described as a species of *vis maior*.¹⁰ Importantly, Christie explains that these events include any happening, whether due to natural causes or human agency, that is unforeseeable with reasonable foresight and unavoidable with reasonable care, and includes legislative changes

⁶ Comyn, R. I. (2023). *Supervening impossibility and the interpretation and use of force majeure clauses in contracts during a pandemic* (LLM dissertation, University of Pretoria) at 9.

⁷ Van Schalkwyk, A. J. (2018). *The Nature and Effect of Force Majeure Clauses in the South African Law of Contract* (Master's thesis, University of Pretoria (South Africa)) 6.

⁸ *Peters Flamman and Co Appellants v Kokstad Municipality Respondents* 1919 AD 427.

⁹ *Peters Flamman and Co v Kokstad Municipality* 1919 AD 427 at 434-437.

¹⁰ Du Bois F Wille's *Principles of South African Law* (2007) 9th ed 850.

introduced after the conclusion of a contract which renders the performance impossible.¹¹

[26] While their origin is Roman law, *force majeure* has been adopted by civil law countries. It is not formally recognised as part of the South African legal system but is often contained in a contractual clause. A *force majeure* clause protects both parties from extraordinary events beyond their control. It relaxes the obligation and limits strict liability imposed on a party to perform in terms of the contract when the events listed or defined in the *force majeure* clause arise.

[27] Without a *force majeure* clause, the contracting parties must rely on the common law doctrines of supervening impossibility since that is the default position in South Africa. In this case, performance becomes objectively impossible after the contract has been concluded due to no fault of either party and as a result of unforeseen and unavoidable events. In such a case, the rule is that the obligation to perform and the corresponding right to performance is extinguished.¹² In other words, both parties are excused from performing since the impossibility of the performance is due to an event beyond the control and foreseeable expectation of the parties, which impacts their intention of performing in terms of the agreement. Nobody can be obliged to do the impossible.

[28] Two requirements need to be met for performance to be regarded as objectively impossible.¹³ Firstly, performance must be objectively impossible and not merely difficult, more burdensome, or economically onerous. Secondly, the impossibility must have been unavoidable by a reasonable person.

¹¹ Christie (2016) *Law of Contract in South Africa* 549.

¹² *Bob's Shoe Centre v Heneways Freight Services (Pty) Ltd* 1995 (2) SA 421 (A) 425, 432, as well as *Unibank Savings & Loans Ltd (formerly Community Bank) v Absa Bank Ltd* 2000 (4) SA 191 (W) 198 B-E and *Peters Flamman & Co v Kokstad Municipality* 1919 AD 427 434-435.

¹³ Hutchison D, et al *The Law of Contract in South Africa* (2022) 3rd edition Oxford University Press: South Africa 383 – 384.

[29] To know what legal principle is applicable, it is necessary to understand whether the contract contained a force majeure clause that included the Covid-19 pandemic and the subsequent lockdown. I think not.

[30] Clause 16.11 speaks about Avianto's right to cancel a booking in the event of damage and destruction of the venue, and then it lists "fire, shortage of labour, strikes, industrial unrest, or any other cause...". Based on a contextual interpretation of the contract and principles of interpretation of contractual clauses, the clause refers to events caused by the specific events listed that are outside the venue's control. It does not include "government restrictions" and cannot be extended to include "government restrictions" under "any other cause". Government action does not form part of the genus of events outside the venue's control that seem to be deliberate disruptive actions by human beings with close connections with the venue – namely fire, shortage of labour, strikes, and industrial unrest.

[31] This is further reinforced by the maxim *inclusion unius est exclusio alterius*¹⁴ where the inclusion of one is the exclusion of another. In other words, where parties expressly mentioned one matter in the contract, they intended to treat other similar matters that were not mentioned differently.

[32] Clause 16.13, which the parties regard as the *force majeure* clause, refers to an "act of God or sabotage". The two events are thus "act of God" and "sabotage". The lockdown must thus fall under either "act of God" or "sabotage" for clause 16.3 to be applicable. The question then turns to whether the lockdown regulations promulgated to curb the spread of COVID-19 are an "act of God."

[33] I accept that the spread of the virus falls under an "act of God". This is because an "act of God" refers to natural events beyond human control – such as the virus and its exponential spread and severe consequences on the health and lives of the

¹⁴ Cornelius *Principles of the Interpretation of Contracts in South Africa* 186

population. The regulations promulgated, however, are a human response to the natural event and are better classified as an “act of State”. This then refers to the actions taken by the government in its sovereign capacity to protect public health and safety. It is a policy decision. For instance, the government also had the option not to impose strict lockdowns on the country, even in the face of a pandemic.¹⁵ Still, based on policy considerations, the South African government elected to impose strict measures regarding the movement of people. It was these measures, and not the spread of the virus, that prohibited the wedding from taking place.

[34] This approach is similar to cases dealing with insurance contracts, where the question is whether it was the disease insured against or the lockdown that caused the losses. These cases turn on the interpretation of the specific insured events as defined in the insurance policies concerned. For instance, in *Guardrisk Insurance Company Limited v Café Chameleon CC*,¹⁶ dealing with an insurance contract, the court had to determine whether a contract providing for the loss resulting in interruption of business for notifiable disease includes the government’s response to it. In other words, whether the disease or the lockdown were insured risks in terms of the policies. The court found that they were. In other words, the insured peril covered the disease and the government’s response.

[35] In the absence of the possibility of reliance on *force majeure*, the question is whether the appellant has made a case under the common law. In *Peters Flamman and Co Appellants v Kokstad Municipality Respondents*¹⁷ legislation forced the appellants’ business to be wound up because they were regarded as “enemy subjects”. Thus, due to the legislation promulgated, it became impossible for the appellant to perform their contractual obligations. The court accepted that such government action is a supervening impossibility.

¹⁵ Sweden, for instance, elected not to have a lockdown.

¹⁶ [2020] ZASCA 173.

¹⁷ 1919 AD 427.

[36] Numerous other cases¹⁸ likewise dealt with an impossibility arising from government action (in the form of promulgation of legislation). In those cases, the maxim of *impossibilium nulle obligatio est* was applied.

[37] In *South African Forestry Company Limited v York Timbers Limited*¹⁹ the doctrine of supervening impossibility allowed for the discharge of a contract if specific requirements were met, even if the parties were willing to perform. In this case, the contractual terms could not be complied with due to a third party's (the government) refusal to perform a contractual obligation. Notably, although the court stated that good faith is not a free-standing principle that the courts can apply to intervene in valid contracts, the court may establish new implied contract terms based on the doctrine of good faith, especially when there is ambiguity.

[38] *Freestone Property Investment (Pty) Ltd vs Remake Consultants CC*²⁰ dealt with a lease contract and the impact of the Covid-19 lockdown on the lessee's ability to pay rent. The lessor cancelled the lease agreements when the lessee defaulted on payment, and sought ejectment and arrear rent. The lessee raised the defence that their obligations were suspended during the time when lockdown regulations made it impossible for them to trade. The argument is that during that time, the lessor was freed from the obligation to tender occupation, and the lessee was excused from paying rent, due to the supervening impossibility caused by the national state of disaster. The court stated that it was only possible to rely on supervening impossibility during the "hard lockdown" when it was objectively impossible to perform.

[39] As in the *Firestone* case, the respondent could not provide the venue of choice to the couple on the date agreed upon. The appellant could thus not celebrate their wedding in the venue on the date agreed upon. Despite this, the appellant *did* perform by paying the full price for renting the venue.

¹⁸ *Gassner NO v Minister of Law and Order* [1995] 1 All SA 223 (C) deals with many of the cases in detail.

¹⁹ 2005 3 SA 323 (SCA).

²⁰ 2021 (6) SA 470 (GJ).

[40] *Santam Limited v Ma-Afrika Hotels (Pty) Ltd*²¹ also dealt with the application of supervening impossibility. The case involved a lessee, Ma-Africa Hotels, who, due to the COVID-19 pandemic and the lockdowns, could no longer pay the full rent for the properties. Santam, as insurer, was ordered to compensate Ma-Africa Hotels for the 18-month business interruption.

Development of the common law

[41] The interplay between the common law principles and *force majeure* can be problematic. If the *force majeure* clause does not have an all-encompassing definition of what will constitute a *force majeure* or provide for the specific circumstances, then a party must rely on the more stringent requirements of the common law of objective impossibility (and not, for instance, hardship caused by changed circumstances).²²

[42] There is a call for the common law to be developed in this regard to make provision for the common law doctrine of supervening impossibility to be developed by expanding its application to hardship caused by changed circumstances.²³ The call is that, in such a case, parties should be able to renegotiate the contract terms (as the doctrine of hardship provides).²⁴ While this was not argued, it does seem to be the crux of the respondent's defence in the court a quo: in the absence of being able to perform *on the specific date*, we offered to move the date, and in the absence of that, we offered

²¹ [2021] ZASCA 141.

²² Van Schalkwyk, A. J. (2018). *The Nature and Effect of Force Majeure Clauses in the South African Law of Contract* (Master's thesis, University of Pretoria (South Africa)) p 24.

²³ Hutchison A "Gap filling to address changed circumstances in contract law – when it comes to losses and gains, sharing is the fair solution" 2010 (3) Stell LR 426. Van Schalkwyk, A. J. (2018). *The Nature and Effect of Force Majeure Clauses in the South African Law of Contract* (Master's thesis, University of Pretoria (South Africa)) p 24. (Comyn, R. I. (2023). *Supervening impossibility and the interpretation and use of force majeure clauses in contracts during a pandemic* (LLM dissertation, University of Pretoria) 32 onwards.

²⁴ Hutchison A "Gap filling to address changed circumstances in contract law – when it comes to losses and gains, sharing is the fair solution" 2010 (3) Stell LR 415.

a voucher to the same price for any other event. The appellant, however, did not agree to what is effectively a renegotiation of the contract and can thus not be held to it.

[43] Lastly, the appellant also relied on public policy considerations and *contra bonos mores* arguments to state why she must be refunded the money. For this argument, she relies on *AHMR Hospitality (Pty) Ltd t/a Bakenhof Winelands Venue v Da Silva*.²⁵ In this case, the bride reserved a date in May 2020 and paid a deposit of R50 000. They initially postponed the wedding to 3 October 2020, but it became clear that the wedding could not take place due to the inability of the venue to perform, so the bride wrote an email to cancel. The bride requested the venue to provide her with a schedule of costs already incurred and asked for a refund of the balance of the deposit. The venue did not provide this and relied on a clause that stated that the deposit would become non-refundable 14 days after the deposit had been paid. The case proceeded to summary judgment, and the bride got her judgment. It then went on appeal. The appellant court thus had to decide whether the bride should have succeeded with her summary judgment.

[44] The appellants argue that the respondent did not act in good faith by retaining the full payment. The Magistrate should have considered public policy and/or fairness and/or morality as factors to be considered in adjudicating this matter. The court commented

[23] Without making a pronouncement, it seems as if the Appellant opportunistically held on to the Respondent's money when given the prevailing conditions at the time, it was not entitled to. Their actions were not only *contra bonos mores*, but performance of the contract was impossible due to the conditions prevalent at the time – and it would have been immoral for the Appellant to have held the Respondent ransom and to dictate when they could get married, as a means or entitlement for them to have retained the deposit. The plaintiff was willing to pay for administrative expenses that the Appellant incurred. This was reasonable conduct. The Respondent sought a list of the expenses that justified the Appellant's alleged entitlement of the deposit. They failed to provide

²⁵ [2023] ZAWCHC 206.

this. Instead, they relied upon clause 2.1 which provided for a deposit being non-refundable in circumstances, which public policy dictates would not have been bona fide. As I have stated above, the operation of pacta sunt servanda would have been applicable had the restrictions of the Covid-pandemic and the attendant lockdown restrictions not been in place. Fairness and morality dictates that the retention of the deposit was not bona fide. I cannot find any misdirection in the Magistrate's finding in this regard.

[45] In that case, it dealt with a summary judgment and the question of whether the defendant raised a bona fide defence in its pleadings. It turns out that the defendant's pleadings were nothing more than a bare denial, and thus, in the absence of a proper defence, the summary judgment was correctly granted. I do not think that public policy considerations come into play as a self-standing principle in this case. In as far as it might have an impact on the decision, it is infused in the common law principles as discussed above, and the enrichment claim that is discussed below.

Consequences of the impossibility

[46] If no obligation arises because performance is objectively impossible, there cannot be a claim for performance or contractual damages based on the breach. Simply, anything given in fulfilment of the non-existent obligation has to be returned. If it is not returned, the claim can be enforced with a claim based on the unjustified enrichment of the recipient.

[47] In this case, the contractual obligations were reciprocal. The monies were paid in exchange for the venue. The impossibility of making the venue available on a specific date automatically means that the contract and the reciprocal obligations created by the contract, were extinguished from the moment that it became clear that the respondent would be unable to provide the venue.

[48] The respondent did not return the appellant's performance. A voucher instead of the money paid is not a return of the performance. The appellant was thus correct to claim back the money based on unjustified enrichment.

The enrichment claim

[49] Unjustified enrichment occurs when wealth is shifted from one person's estate to another without a good legal ground or cause.

[50] To succeed, the plaintiff must allege and prove:²⁶

- (a) receipt by the defendant of money or goods to which the plaintiff is entitled;
- (b) the absence of a valid causa for such receipt;
- (c) the defendant's enrichment at the expense of the plaintiff.;
- (d) that the plaintiff was impoverished.

[51] Based on the averments set out in the plea, the appellant paid the money to the respondent. This is not in dispute. This means that there was an enrichment on the part of the respondent and that the appellant was impoverished. Since the intervening impossibility of performance extinguished the obligation to make the payment, there was no valid cause for the respondent to receive and retain the money. The appellant, therefore, succeeded in proving the enrichment claim.

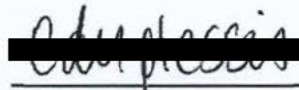
Order

[52] The following order is made:

1. The appeal is upheld, with costs on scale B.
2. The order of the Magistrate is replaced with the following:
 - a. The agreement is confirmed to have been extinguished as a result of supervening impossibility.
 - b. The defendant is to pay the plaintiff the amount of R63 008,00.

²⁶ Townsend Amler's *Precedents of Pleading*.

- c. Interest on the amount in (b) *a tempore morae* at the prescribed rate of interest (7,25%) from the date of service of summons to the date of final payment in full.


WJ du Plessis
Acting Judge of the High Court
Gauteng Local Division

I agree


L Windell
Judge of the High Court
Gauteng Local Division

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