



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 1250/23

In the matter between:

JOHANNES FREDERICK GOUWS N O

FIRST APPELLANT

LYNETTE GOUWS N O

SECOND APPELLANT

WILLEM JACQUES GOUWS N O

THIRD APPELLANT

GEORGE RAYMOND SLOANE N O

FOURTH APPELLANT

and

JOHANNES PETRUS ERASMUS

SWARTS N O

FIRST RESPONDENT

JOHANNES PETRUS ERASMUS

SWARTS N O

SECOND RESPONDENT

ANNETTE VAN ZYL N O

THIRD RESPONDENT

JDJ HOLDING COMPANY (PTY) LTD

FOURTH RESPONDENT

EVENING SHADE PROPERTIES 46

(PTY) LTD

FIFTH RESPONDENT

Neutral citation: *Johannes Frederick Gouws N O and Others v Johannes Petrus Erasmus Swarts N O* (1250/23) [2025] ZASCA 48 (25 April 2025)

Coram: NICHOLLS, MBATHA, HUGHES, KATHREE-SETILOANE JJA and MODIBA AJA

Heard: 26 February 2025

Delivered: This judgement was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 25 April 2025.

Summary: Law of Contract – verbal agreement – transfer of shares – whether a valid and legally binding purchase and sale agreement was concluded between the parties.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Munzhelele J, sitting as the court of first instance):

1 The appeal is upheld with costs including those of two counsel where so employed.

2 The order of the high court is set aside and substituted with the following order:

‘2.1 The third, fourth and fifth respondents’ counterclaim is dismissed with costs, such costs to include the costs of two counsel where so employed.

2.2 The following order is granted by agreement between the parties:

(a) JDJ Holding Company (Pty) Ltd (JDJ) is ordered in terms of section 163 of the Companies Act, Act 71 of 2008 to:

(i) purchase the first to fourth applicants' (the WM Gouws Familie Trust) shares in JDJ for a purchase price determined by the auditors as at 13 May 2021, and as set out hereunder;

(ii) purchase the WM Gouws Familie Trust's loan accounts (if any) held in B.B. Cement (Pty) Ltd at face value as at the date of this order, and pay the equivalent of such loan account to the WM Gouws Familie Trust within ten days of the date of this order; and

(iii) pay the WM Gouws Familie Trust an amount equal to its loan account, if any, held in JDJ (at face value as at the date of this order) within ten days of the date of this order.

(b) Evening Shade Properties 46 (Pty) Ltd (Evening Shade) is ordered in terms of section 163 of the Companies Act, Act 71 of 2008 to purchase the WM Gouws Familie Trust's shares in Evening Shade for a purchase price determined by the auditors as at 13 May 2021, and as set out hereunder, and to pay the WM

Gouws Familie Trust an amount equal to its loan account, if any, held in Evening Shade (at face value as at the date of this order) within ten days of the date of this order.

- (c) The auditors shall be qualified chartered accountants with not less than ten years' experience in business/share valuations and shall be Mr Heinrich Regenass (Mr Regenass) of Logista Trust Inc., and Mr Johan Ferreira (Mr Ferreira) of Kahamelo Forensic Services (Pty) Ltd.
- (d) In the event that Mr Regenass and Mr Ferreira do not agree on the value of the WM Gouws Familie Trust's shares in JDJ and/or Evening Shade, then Mr Nick van Niekerk (Mr van Niekerk) is appointed to finally determine the disputes between Mr Regenass and Mr Ferreira as set out hereunder.
- (e) The auditors shall determine the value of the WM Gouws Familie Trust's shares in JDJ and Evening Shade (the purchase price), and shall:
 - (i) receive written representations (duly supported by the relevant financial documentation) from the parties and copied to all other parties within ten days of the date of this order;
 - (ii) make no allowance or deduction for the fact that the WM Gouws Familie Trust holds a minority shareholding in JDJ and Evening Shade and shall not apply a minority discount in respect of its shares;
 - (iii) include the values of all entities in which JDJ and Evening Shade hold any interests, whether directly or indirectly, and whether in the form of shares, members interests, loan accounts, retained dividends/earnings, work in progress, or any other interest, including, but not limited to the following entities:
 - Zamori Engineering Services (Pty) Ltd;
 - Countess Investments (Pty) Ltd;
 - Born Free Investments 107 (Pty) Ltd;
 - Tambati Game Property Investments (Pty) Ltd;

Elatismart Investments (Pty) Ltd;

Evening Shade;

B.B. Cement (Pty) Ltd;

Comtrontswana (Pty) Ltd;

Zamori SFT – J.V.;

Zamori Investments (Pty) Ltd.

- (iv) not take into account any legal costs incurred by JDJ and Evening Shade (and any of the entities in which they hold an interest, if any) in respect of this application, and case number 14080/2018;
- (v) have the power to make such adjustments as may be considered fair to arrive at what, in their professional expert opinion, would constitute a fair purchase price for the WM Gouws Familie Trust's shares in JDJ and Evening Shade;
- (vi) have regard to the court orders granted by the high court under case number 14080/2018;
- (vii) be entitled to reasonable remuneration for their services in accordance with any rules and guidelines of their respective professions and to be reimbursed for all reasonable expenditure incurred for purposes of performing the valuations;
- (viii) circulate their draft valuations to the attorneys representing the parties within 20 court days of receipt of the written representations, alternatively the lapse of the period referred to above;
- (ix) receive final written representations from the parties within ten court days from the date of circulation of their draft valuations contemplated above; and
- (x) circulate their final valuations of the WM Gouws Familie Trust's shares in JDJ and Evening Shade to the attorneys representing the parties within five court days of receipt of the representations.

- (f) Mr Regenass and Mr Ferreira shall meet within five court days of circulation of their valuations to resolve, if possible, any differences that appear from such final valuations and draw a joint minute of their meeting reflecting all aspects on which they agree and on which they differ and circulate the joint minute to the parties' attorneys within five court days of their meeting.
- (g) In the event that Mr Ferreira and Mr Regenass are *ad idem* regarding the value of the WM Gouws Familie Trust's Shares in JDJ and Evening Shade, they will communicate same to the parties in their joint minute, and such valuation will be final and binding on the parties.
- (h) In the event that Mr Regenass and Mr Ferreira's valuations differ and they cannot resolve the difference between them at their meeting contemplated in 2.2 (f) above, then the remaining issues (as reflected in their joint minute) will be determined by Mr van Niekerk within five court days of circulation of the joint minute, and his valuation will be final and binding on the parties.
- (i) JDJ is ordered to pay the purchase price as determined by the auditors to the WM Gouws Familie Trust for its shares held in JDJ within five court days of publication of the joint minute (in the event that Mr Regenass and Mr Ferreira agree on the purchase price), alternatively within five court days of publication of Mr van Niekerk's report (as the case may be).
- (j) Evening Shade is ordered to pay the purchase price as determined by the auditors to the WM Gouws Familie Trust for its shares held in Evening Shade within five court days of publication of the auditors' joint minute (in the event that Mr Regenass and Mr Ferreira are *ad idem* regarding the purchase price, alternatively within five court days of publication of Mr van Niekerk's report (as the case may be).
- (k) The first and second respondents are liable for any fees and disbursements incurred by Mr Regenass, the third to fifth respondents are liable for the fees and disbursements incurred by Mr Ferreira, and the applicants and the first to

fifth respondents will jointly be liable for the fees and disbursements incurred by Mr van Niekerk.

- (l) The first to fifth respondents and the applicants, where applicable to them, are ordered to pay the relevant auditor's fees and disbursements within five court days of the presentation of a tax invoice by the auditors to the parties' attorneys reflecting the amount(s) due.
- (m) JDJ and Evening Shade are ordered to amend their share registers and share certificates within five court days of the purchase prices contemplated above being paid in order to give effect to the transactions contemplated herein, failing which the Sheriff of the High Court, Pretoria is authorised and directed to take such steps, do such things and/or sign such documents on behalf of the party or parties not cooperating.
- (n) The first to fifth respondents are ordered to pay the applicants' costs of this application (including all reserved costs), jointly and severally, the one paying the other to be absolved.'

JUDGMENT

Modiba AJA (Nicholls, Mbatha, Hughes, Kathree-Setiloane JJA concurring):

[1] The issue in this appeal is whether a valid and binding agreement was concluded between the WM Gouws Family Trust (WM Gouws Trust) and the Johan Swarts Family Trust (JS Swarts Trust) at the shareholders' Annual General Meeting (AGM) of the fourth respondent, JDJ Holding Company (Pty) Ltd (JDJ) held on 20 March 2020. The first to third respondents, the trustees of the JS Swarts Trust, contend that it was. The appellants, the trustees of the WM Gouws Trust, contend that it was not.

[2] The Gauteng Division of the High Court, Pretoria (the high court) determined the above question in JS Swarts Trust's favour. WM Gouws Trust appeals against the judgment and order of the high court with leave of that court.

[3] The first appellant is Mr Johannes Frederick Gouws (Mr Gouws). He is cited *nomine officio* as a trustee of the WM Gouws Trust. Johannes Petrus Erasmus Swarts (Mr Swarts) is the first and second respondent. He is also cited *nomine officio* as a trustee of the JS Swarts Trust. Mr Douw Kruger (Mr Kruger) is a trustee of the Olympus Trust. He is not a party to these proceedings. Unless the context suggests otherwise, I collectively refer to the appellants as the WM Gouws Trust and to the first to third respondents as the JS Swarts Trust. Where I need to draw a distinction between the parties, I use their names.

[4] JDJ is a holding company in which the WM Gouws Trust, the JS Swarts Trust and the Olympus Trust hold 33%, 33% and 34% of the shares respectively. Each of these trusts also holds 7.69% of the shares in Evening Shade Properties 46 (Pty) Ltd (Evening Shade). The fifth respondent, Evening Shade is a subsidiary of JDJ. In terms of the agreement, WM Gouws Trust allegedly sold its shares in JDJ and Evening Shade to JS Swarts Trust for R25 million. JDJ and Evening Shade did not participate in the high court proceedings. They are also not participating in this appeal.

[5] Mr Gouws, Mr Swarts and Mr Kruger have known each other since 1990. Mr Gouws and Mr Swarts are engineers and Mr Kruger is a chartered accountant. They leveraged their knowledge and expertise in their respective fields and formed what culminated into a successful business enterprise. It started with energy efficient procurement projects for both public and private clients, and evolved into other businesses pursued through JDJ, Evening Shade and other subsidiary entities. Mr Gouws and Mr Swarts focused on the technical engineering aspects of the enterprise while Mr Kruger focused on finance. Initially, they were all directors in JDJ.

[6] It is common cause that the relationship between the three of them had irretrievably broken down to the extent that unless they unbundled their business interests, the business assets and, in turn their interests, would be imperilled. As a result, Mr Kruger, representing the Olympus Trust, successfully brought an application in the high court for an order in terms of s 163 of the Companies Act 71 of 2008 (the unbundling order). In terms of the unbundling order, JDJ would buy Olympus Trust's shares at a price to be determined through an evaluation undertaken by an auditor.

[7] While the evaluation of the Olympus Trust's shares was pending, the relationship between Mr Gouws and Mr Swarts also broke down. This prompted Mr Gouws to circulate a proposal to Mr Swarts and Mr Kruger regarding how their business interests may be unbundled. They discussed the proposal at the AGM, attended by the three of them. The proposal comprised three options. Only option 3 is relevant to the appeal. Mr Kruger advised that the Olympus Trust was not willing to consider the proposal because its interests were secured in the unbundling order. He, therefore, contended that accepting Mr Gouws' proposal was not beneficial to Olympus Trust because JDJ was already obliged to buy its shares at a price to be determined. Nevertheless, he participated in the discussion and offered his insights.

[8] The first two options were not palatable to either Mr Gouws or Mr Swarts because they would have led to the business entities closing – an eventuality they wanted to avoid in the interest of the trust beneficiaries. Consequently, the discussion focused on option 3, which entailed JDJ buying the shares of one of the two trusts, and the remaining trust continuing with the business with the hope of making a success thereof.

[9] After discussing option 3 at length, Mr Gouws and Mr Swarts agreed that WM Gouws Trust would exit the business by selling its shares in JDJ, and JS Swarts Trust would continue with the business. What is in dispute is whether the parties reached an agreement regarding the price, and more specifically, the tax implications of the sale. This dispute primarily stems from Mr Gouws' understanding of who the buyer would be. Although option 3 envisaged JDJ being the buyer, in which case Mr Gouws' understanding was that JDJ would pay R25 million to WM Gouws Trust after settling the tax liability that arose from the sale, the prospect of the JS Swarts Trust being the buyer was also mooted. However, Mr Swart's understanding was

that, as the buyer, JS Swarts Trust would not settle the tax liability that arose from the sale.

[10] The sale price on either version is markedly different. Although the tax liability of the sale was explored during evidence, the high court was not asked to determine the issue. Neither is this Court.

[11] The dispute regarding the price culminated in WM Gouws Trust instituting an application in the high court for an order in terms of s 163 of the Companies Act (the s 163 application). JS Swarts Trust counter-applied for an order giving effect to its version of the agreement (the counter application). It sought an order in which:

- (a) WM Gouws Trust is directed to transfer 33% of its shares in JDJ, and 7.69% of its shares in Evening Shade, to JS Swarts Trust against payment of an amount of R25 million by JS Swarts Trust to it; and
- (b) JS Swarts Trust is directed to pay R25 million to WM Gouws Trust against the transfer of these shares.

[12] The counter application was referred to trial in terms of an order of Kooverjie J. Pursuant to that order, JS Swarts Trust filed a declaration and WM Gouws Trust, its plea, defining the issues for determination by the high court. The parties settled the s 163 application by agreement, which would become effective if the counter application failed. They furnished the high court with the agreed order which they still seek in the event the appeal is upheld.

[13] To establish their cases during the trial, the parties primarily relied on the evidence of their respective witnesses, Mr Gouws and Mr Swarts, as well as the transcript of the AGM and the emails exchanged between the parties and their attorneys after the AGM. JS Swarts Trust contended that a valid and legally binding

agreement was concluded between the two trusts at the AGM; Mr Swarts represented the JS Swarts Trust at the AGM while Mr Gouws represented the WM Gouws Trust; Mr Swarts and Mr Gouws were duly authorised to conclude the contract on behalf of their respective trusts; and the material express, alternatively tacit, alternatively implied terms of the agreement were that WM Gouws Trust sold and JS Swarts Trust purchased the former's shares in JDJ and Evening Shade for R25 million.

[14] WM Gouws Trust denied that the agreement was concluded. It contended that the parties agreed to conclude a written contract subject to the terms and conditions to be agreed between the parties. Mr Swarts expressed an intention to 'have someone look at' the written agreement once drafted, signalling that the written agreement would set out the agreed terms and conditions. Thus, the alleged agreement lacked the necessary elements to constitute a legally binding agreement.

[15] In addition, Mr Gouws' lack of authority to conclude the alleged agreement on behalf of the trustees of the WM Gouws Trust was pleaded as a defence. A repudiation defence was also pleaded in the alternative. WM Gouws Trust persists with these defences in the appeal. Save to mention that the high court dismissed them, for reasons that will be apparent later, I do not need to address the defences further.

[16] The high court found that JS Swarts Trust accepted option 3 with the conditions set out therein. The intention was to establish a contractual relationship. They reached consensus on the *merx*, being the shares, and the R25 million purchase price. It held that option 3 is silent on the tax implications of the sale, but as tax is a non-essential element of the agreement, failure to agree on it does not deprive it of its contractual force. In addition, the high court held that tax was never discussed at the AGM and that Mr Gouws had incorrectly asserted through his attorney, Ms Van

Biljon, that the agreed price was R25 million, exclusive of tax. According to the high court, nothing transpired at the AGM to support a finding that the agreement reached at the AGM was provisional in nature, subject to suspensive conditions or further negotiation.

[17] In this Court, WM Gouws Trust contended that the high court erred in its findings. It persisted with the contentions it made in the high court. JS Swarts Trust maintained that the appeal falls to be dismissed because the high court's findings were correctly made. It also contended that the elements for the formation of a final and binding contract were satisfied when JS Swarts Trust accepted option 3 at the AGM, and Mr Gouws did not consider tax as a significant aspect of the agreement.

[18] The onus to establish that a valid and legally binding agreement was concluded at the AGM rests with JS Swarts Trust. Upholding the version of the WM Gouws Trust will call for interference with the factual findings of the high (trial) court. It is trite that an appeal court will only reverse the factual findings of a trial court if there is a clear misdirection, or the trial court's findings are demonstrably not borne out by the trial record.¹

[19] An analysis of the AGM transcript and emails subsequently exchanged between the parties and their attorneys show that after agreeing that the relationship between the parties had broken down, there was no meeting of minds between them regarding who the buyer would be, and the purchase price of the shares. Several factors demonstrate this outcome.

¹ *Rex v Dhlumayo and Another* 1948 (2) SA 677 (A) at 705-706, see also: *S v Francis* 1991 (1) SACR 198 (A) at 204C-E, *ST v CT* 2018 (5) SA 479 (SCA); ZASCA 73; [2018] 3 All SA 408 (SCA) para 26; and *Makate v Vodacom Ltd* 2016 (4) 121 (CC); [2016] ZACC 13; 2016 (6) BCLR 709 (CC) para 38.

[20] First, Mr Swarts initially accepted option 3 subject to certain conditions and expressed concerns about the tax implications of the sale. Whereas option 3 set out JDJ as the buyer, Mr Swarts also ‘offered’ that SJ Swarts Trust could be the buyer. However, since he had not carefully considered option 3, he reserved his right to resile from the agreement once he had fully considered it. To address his concerns, and as suggested by Mr Kruger, the parties agreed that Mr Gouws would request Ms Van Biljon, the attorney of JDJ, to draft the agreement and Mr Swarts would have ‘someone’ look at it. It is clear from Mr Swart’s evidence that the terms of ‘his offer’ were not final as he was still going to consider option 3. This meant that he could propose further conditions because option 3 contained no tax calculations.

[21] Second, Mr Gouws presented his proposal on a without prejudice basis. This appears from the agenda for the AGM where the proposal is described as ‘Without Prejudice proposals made by the WM Gouws Family trust on 4 March 2020’.

[22] Third, Mr Swarts made it clear that he did not want to argue about the terms of the agreement in front of Ms Van Biljon. The parties had agreed that Mr Gouws would request her to draft the agreement. If Ms Van Biljon was tasked with merely reducing the agreement to writing, there would have been nothing to argue about.

[23] Last, the parties’ conduct after the AGM is inconsistent with Mr Swarts’ version that they reached a legally binding agreement at the AGM. Mr Gouws subsequently instructed Ms Van Biljon to draft the agreement. On 25 March 2021, she addressed an email to the parties to clarify the terms of the agreement. She pertinently raised the issue of the tax implications of the sale. In response, Mr Swarts expressed his unwillingness to discuss the tax as it never featured at the AGM. He then declared ‘*force majeure*’ due to the onset of the Covid-19 lockdown and having to take care of his sick wife. Thereafter, the parties did not discuss the issue further

until a year later. Subsequent emails exchanged between the parties' attorneys – at that point, Mr Swarts had instructed an attorney to represent JS Swarts Trust in these discussions – demonstrate that a discussion on the terms of the agreement continued, and the parties still did not reach an agreement. In none of the emails exchanged did Mr Swarts assert JS Swarts Trust's version. He did so, for the first time, in JS Swarts Trust's answering affidavit filed in the s 163 application which incorporated its founding affidavit in its counter claim.

[24] Mr Swarts' evidence is inconsistent with what transpired at the AGM and the parties' subsequent conduct as borne out by the AGM transcript and email correspondence referred to above. Mr Gouws' evidence, on the other hand, is consistent in material respects with this documentary evidence and the parties' conduct after the AGM. A finding that the high court wrongly rejected Mr Gouws' version and accepted Mr Swarts' is inescapable. Its finding that option 3 is silent on tax and was not discussed at the AGM is inconsistent with its conclusion that the agreed R25 million purchase price is inclusive of tax.

[25] In finding that the price was agreed upon, because these elements constituted the *essentialia* of the agreement, and that there were no further essential terms to agree to, the high court erred. This finding was based on Mr Gouws' concession under cross-examination that tax is not an *essentialia* of the agreement. The concession does not, nullify his evidence that he wanted R25 million after tax. Rather, what it demonstrates is the absence of the meeting of minds on the price. If R25 million is the amount Mr Gouws wanted after tax, then the sale price would have been substantially more than the amount reflected in option 3. This is precisely the concern Mr Swarts raised during the meeting, resulting in him reserving his right to withdraw his conditional offer and/or acceptance of Mr Gouws' without prejudice offer.

[26] In the circumstances, no valid and legally binding agreement was concluded between the two trusts at the AGM. For all the above reasons, interference with the factual findings of the high court is warranted. The appeal, accordingly, succeeds.

[27] Therefore, I make the following order:

1 The appeal is upheld with costs including those of two counsel where so employed.

2 The order of the high court is set aside and substituted with the following order:

‘2.1 The third, fourth and fifth respondents’ counterclaim is dismissed with costs, such costs to include the costs of two counsel where so employed.

2.2 The following order is granted by agreement between the parties:

(a) JDJ Holding Company (Pty) Ltd (JDJ) is ordered in terms of section 163 of the Companies Act, Act 71 of 2008 to:

- (i) purchase the first to fourth applicants' (the WM Gouws Familie Trust) shares in JDJ for a purchase price determined by the auditors as at 13 May 2021, and as set out hereunder;
- (ii) purchase the WM Gouws Familie Trust's loan accounts (if any) held in B.B. Cement (Pty) Ltd at face value as at the date of this order, and pay the equivalent of such loan account to the WM Gouws Familie Trust within ten days of the date of this order; and
- (iii) pay the WM Gouws Familie Trust an amount equal to its loan account, if any, held in JDJ (at face value as at the date of this order) within ten days of the date of this order.

(b) Evening Shade Properties 46 (Pty) Ltd (Evening Shade) is ordered in terms of section 163 of the Companies Act, Act 71 of 2008 to purchase the WM Gouws Familie Trust's shares in Evening Shade for a purchase price determined by the auditors as at 13 May 2021, and as set out hereunder, and to pay the WM

Gouws Familie Trust an amount equal to its loan account, if any, held in Evening Shade (at face value as at the date of this order) within ten days of the date of this order.

- (c) The auditors shall be qualified chartered accountants with not less than ten years' experience in business/share valuations and shall be Mr Heinrich Regenass (Mr Regenass) of Logista Trust Inc., and Mr Johan Ferreira (Mr Ferreira) of Kahamelo Forensic Services (Pty) Ltd.
- (d) In the event that Mr Regenass and Mr Ferreira do not agree on the value of the WM Gouws Familie Trust's shares in JDJ and/or Evening Shade, then Mr Nick van Niekerk (Mr van Niekerk) is appointed to finally determine the disputes between Mr Regenass and Mr Ferreira as set out hereunder.
- (e) The auditors shall determine the value of the WM Gouws Familie Trust's shares in JDJ and Evening Shade (the purchase price), and shall:
 - (i) receive written representations (duly supported by the relevant financial documentation) from the parties and copied to all other parties within ten days of the date of this order;
 - (ii) make no allowance or deduction for the fact that the WM Gouws Familie Trust holds a minority shareholding in JDJ and Evening Shade and shall not apply a minority discount in respect of its shares;
 - (iii) include the values of all entities in which JDJ and Evening Shade hold any interests, whether directly or indirectly, and whether in the form of shares, members interests, loan accounts, retained dividends/earnings, work in progress, or any other interest, including, but not limited to the following entities:
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 B.B. Cement (Pty) Ltd;
 Comtrontswana (Pty) Ltd;
 Zamori SFT – J.V.;
 Zamori Investments (Pty) Ltd.
- (iv) not take into account any legal costs incurred by JDJ and Evening Shade (and any of the entities in which they hold an interest, if any) in respect of this application, and case number 14080/2018;
 - (v) have the power to make such adjustments as may be considered fair to arrive at what, in their professional expert opinion, would constitute a fair purchase price for the WM Gouws Familie Trust's shares in JDJ and Evening Shade;
 - (vi) have regard to the court orders granted by the high court under case number 14080/2018;
 - (vii) be entitled to reasonable remuneration for their services in accordance with any rules and guidelines of their respective professions and to be reimbursed for all reasonable expenditure incurred for purposes of performing the valuations;
 - (viii) circulate their draft valuations to the attorneys representing the parties within 20 court days of receipt of the written representations, alternatively the lapse of the period referred to above;
 - (ix) receive final written representations from the parties within ten court days from the date of circulation of their draft valuations contemplated above; and
 - (x) circulate their final valuations of the WM Gouws Familie Trust's shares in JDJ and Evening Shade to the attorneys representing the parties within five court days of receipt of the representations.

- (f) Mr Regenass and Mr Ferreira shall meet within five court days of circulation of their valuations to resolve, if possible, any differences that appear from such final valuations and draw a joint minute of their meeting reflecting all aspects on which they agree and on which they differ and circulate the joint minute to the parties' attorneys within five court days of their meeting.
- (g) In the event that Mr Ferreira and Mr Regenass are *ad idem* regarding the value of the WM Gouws Familie Trust's Shares in JDJ and Evening Shade, they will communicate same to the parties in their joint minute, and such valuation will be final and binding on the parties.
- (h) In the event that Mr Regenass and Mr Ferreira's valuations differ and they cannot resolve the difference between them at their meeting contemplated in 2.2 (f) above, then the remaining issues (as reflected in their joint minute) will be determined by Mr van Niekerk within five court days of circulation of the joint minute, and his valuation will be final and binding on the parties.
- (i) JDJ is ordered to pay the purchase price as determined by the auditors to the WM Gouws Familie Trust for its shares held in JDJ within five court days of publication of the joint minute (in the event that Mr Regenass and Mr Ferreira agree on the purchase price), alternatively within five court days of publication of Mr van Niekerk's report (as the case may be).
- (j) Evening Shade is ordered to pay the purchase price as determined by the auditors to the WM Gouws Familie Trust for its shares held in Evening Shade within five court days of publication of the auditors' joint minute (in the event that Mr Regenass and Mr Ferreira are *ad idem* regarding the purchase price, alternatively within five court days of publication of Mr van Niekerk's report (as the case may be).
- (k) The first and second respondents are liable for any fees and disbursements incurred by Mr Regenass, the third to fifth respondents are liable for the fees and disbursements incurred by Mr Ferreira, and the applicants and the first to

fifth respondents will jointly be liable for the fees and disbursements incurred by Mr van Niekerk.

- (l) The first to fifth respondents and the applicants, where applicable to them, are ordered to pay the relevant auditor's fees and disbursements within five court days of the presentation of a tax invoice by the auditors to the parties' attorneys reflecting the amount(s) due.
- (m) JDJ and Evening Shade are ordered to amend their share registers and share certificates within five court days of the purchase prices contemplated above being paid in order to give effect to the transactions contemplated herein, failing which the Sheriff of the High Court, Pretoria is authorised and directed to take such steps, do such things and/or sign such documents on behalf of the party or parties not cooperating.
- (n) The first to fifth respondents are ordered to pay the applicants' costs of this application (including all reserved costs), jointly and severally, the one paying the other to be absolved.'

L T MODIBA
ACTING JUDGE OF APPEAL

Appearances

For appellants: S D Wagener SC

Instructed by: Savage Jooste and Adams, Pretoria
AP Pretorius & Partners, Bloemfontein

For respondent: P L Uys

Instructed by: Weavind & Weavind Inc, Pretoria
Hattingh Attorneys, Bloemfontein