



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

APPEAL CASE NO: A217/2024  
COURT A QUO CASE NO: 25318/2017

|                                                                                         |                                                 |
|-----------------------------------------------------------------------------------------|-------------------------------------------------|
| (1)                                                                                     | REPORTABLE: YES/ <del>NO</del>                  |
| (2)                                                                                     | OF INTEREST TO OTHER JUDGES: YES/ <del>NO</del> |
| (3)                                                                                     | REVISED.                                        |
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| 14/02/2025                                                                              |                                                 |
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In the Full Court Appeal of:

**BRINANT SECURITY SERVICES (PTY) LTD**

Appellant

and

**M L RACHOSHI**

First Respondent

**THE PRIVATE SECURITY SECTOR PROVIDENT FUND**

Second Respondent

**THE PENSION FUNDS ADJUDICATOR**

Third Respondent

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**FULL COURT JUDGMENT**

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CORAM: LABUSCHAGNE J; YENDE AJ; MAZIBUKO AJ.

- [1] The appellant appeals against the dismissal of its statutory challenge to set aside the determination of the Pension Funds Adjudicator (the “Adjudicator”) in favour of the first respondent by the Court *a quo* (Collis J) on 20 July 2023. The Adjudicator made a determination in terms of sec 30M of the Pension Funds Act, 24 of 56, which determination is the equivalent of a judgment in a civil court (see section 30O(1)). The determination was challenged by the appellant in the Court *a quo* in terms of section 30P of the Pension Funds Act. The court *a quo*, in assessing the determination so challenged could make any order it deems fit (section 30P(2)). This statutory right to challenge is not characterised in the Act as either an appeal or a review. It is similar to an appeal in the wide sense, i.e. a rehearing -with or without further evidence (sec 30P(3)). The only requirement is that it must relate to essentially the same complaint that was assessed by the Adjudicator (see **Meyer v Iscor Pension Fund** 2003 (2) SA 315 (SCA)).
- [2] The appeal serves before this court with leave obtained from the Supreme Court of Appeal, leave to appeal having been refused by the Court *a quo*.
- [3] The appellant is a registered security service provider with registration number 339326 registered with the Private Security Regulatory Authority in terms of the provisions of the Private Security Industry Regulation Act, 56 of 2001. By virtue of the services it provides, it employs security guards who also require registration with the authorities in terms of the aforesaid Act.

- [4] This case relates to a determination of pension benefits to which employees are entitled and how it affected the rights of particularly the first respondent, a former employee of the appellant.
- [5] The first respondent is Mr Rachoshi, who was the twenty-second respondent in the Court *a quo*. On appeal, the second respondent is the Private Security Sector Provident Fund, (the “Fund”) duly established in terms of the Sectoral Determination of the Private Security Industry Sector as set out in Government Notice No. R306 of 30 March 2001, as amended by Government Gazette No. R331 of 25 October 2002.
- [6] On appeal the third respondent is the Adjudicator, who was the twenty-ninth respondent in the Court *a quo*.
- [7] The appellant, as an employer, has a duty in terms of section 13A(1)(a) of the Pension Funds Act to pay contributions and to submit schedules to the Fund of employees on whose behalf payment is being made. Such contributions are to be paid into the account of the Fund.
- [8] Some 44 of the appellant’s employees laid complaints against the appellant in 2016 for not registering them as members of the Provident Fund and not making pension contributions on their behalf as required by the aforesaid Act. The appeal arises in respect of proceedings relating to 27 of the aforesaid complainants. The remainder were dealt with in other proceedings.
- [9] On 19 July 2021 Strydom AJ set aside the determination of the third respondent in these proceedings relating to 25 of the 27 complainants. On 4

February 2022 Ndlovane AJ set aside the determination of the third respondent insofar as it related to the twenty-fourth respondent. Only the first respondent in the appeal remained as 22<sup>nd</sup> respondent to oppose the proceedings in the Court *a quo*.

[10] Mr Rachoshi was employed by the Brinant on 26 August 2008. In a written request of 15 October 2009 Mr Rachoshi requested Brinant to stop deducting any contributions on his behalf from the Provident Fund as he had money problems. Brinant obliged. It bears noting that the admissibility of the document reflecting the aforesaid request by Mr Rachoshi is challenged in the appeal as **res nova** as it was only introduced in the replying affidavit. That does not detract from it being evidence. It was cited as a common cause fact by the court *a quo*. Whether it is **res nova** or a proper reply is discussed below.

[11] The following chronology will be useful in understanding the issues discussed below.

[12] On 3 March 2016 the Pension Funds Adjudicator received a complaint from a number of employees of Brinant, including Mr Rachoshi. On 9 March 2016 the Adjudicator acknowledged receipt of the complaint and sent it to Brinant to respond to, giving Brinant time to submit its response by 11 April 2016. This gave rise to a procedural challenge by the appellant in the court *a quo* and on appeal as the Act requires the complaint to be made to the Fund, whose Board will then advise the employer and request its response (section 30A(1)). Only once the response so received is not accepted by the complainant, or if no

response is received within 30 days, may the complaint be lodged with the Adjudicator (section 30A(3)).

- [13] In the course of 2016, the Pension Funds Adjudicator referred the issue to the Fund in order to try and settle the issue with Mr Rachoshi. The employees who had lodged complaints were represented by a firm of attorneys Soonder Inc. In an email of 24 August 2016 Soonder Inc (per Arlen Naidoo) notified the Adjudicator that *“The outcome is that the Fund has accepted the resolution proposed by the parties’ Attorneys, duly guided by the PFA”*. The PFA was notified that a settlement agreement is in the process of being prepared. On 29 August 2016 the Senior Assistant Adjudicator of the PFA, Charison Raphadana enquired of Soonder Inc about progress in respect of settlement. On the same day Soonder Inc (per Arlen Naidoo) reported to the Senior Assistant Adjudicator:

*“The matter has been resolved. We will attend to signature during the course of this week. Mr Channon has indicated that payment of arrears will be resolved within 7 days of signature and that the court application will be withdrawn.”*

- [14] In the course of September 2016 the first respondent, Mr Rachoshi’s employment was terminated.
- [15] On 18 October 2016 a settlement agreement was signed by Brinant on the one hand and the Fund on the other hand in respect of the complainants. The agreement included the settlement of claims of a list of employees in

**Annexure A** to the settlement agreement, which included Mr Rachoshi as number 24 on that list.

- [16] In terms of Rule 7 of the Fund Rules, a lumpsum payment of pension benefits would be payable to a member upon resignation, dismissal or retrenchment.
- [17] A written submission was made by Brinant on 27 October 2016 to the Pension Funds Adjudicator and a further response was submitted on 15 November 2016. The crux of the first response was that the dispute had been settled in terms of the written settlement agreement and in the supplementary response of 15 November 2016, proof was provided of payment made in terms of the settlement agreement. Mr Rachoshi received payments on 6 June 2016 and again on 11 November 2016. It will be noted that one payment was made before the settlement and the second after the settlement was concluded.
- [18] As part of the written submission of Brinant on 27 October 2016 a signed settlement agreement was attached pertaining to outstanding Provident Fund contributions in respect of the complainants.
- [19] On 14 February 2017 the Fund received payments from Brinant in respect of outstanding Provident Fund contributions. On 24 March 2017 the Pension Funds Adjudicator made a determination in respect of Mr Rachoshi and it is this determination which is the focus of both the proceedings in the Court *a quo* and the present appeal.
- [20] In the determination by the Pension Funds Adjudicator, the settlement as a defence was discussed and rejected. The Adjudicator found that the

agreement fell foul of the Rules of the Provident Fund. The result was that only 5 years of a period in excess of 5 years was covered by the settlement agreement. There were Provident Fund contributions that were not included because of the 5-year limitation from 1 July 2016 looking backwards. In respect of Mr Rachoshi, the Pension Funds Adjudicator found that there were unpaid contributions from 1 March 2009 to 31 May 2011.

[21] The determination orders Brinant to register Mr Rachoshi as a current member of the Provident Fund and to provide proof of payment of the arrear contributions for the period 1 March 2009 to 31 May 2011.

[22] In so ordering, the Pension Funds Adjudicator assumed that Mr Rachoshi is still an employee of Brinant. In paragraph 2.1 of the determination, it is expressly stated that Mr Rachoshi is still a member of the Provident Fund “*by virtue of their employment with the second respondent (Brinant)*”.

### **THE COURT A QUO**

[23] The applicant brought its application for review of the Pension Funds Adjudicator’s determination in terms of section 30P of the Pension Funds Act, 24 of 1956. Most of the complainants fell away, through the orders made by Strydom AJ and Ndlovane AJ as referred to above. In those orders the determination of the Adjudicator was set aside in respect of the complainants who were parties to those orders. The orders were obtained by default.

[24] The grounds of appeal are centred on two propositions. The first is that the complaint of Mr Rachoshi had been settled, and the determination was in

conflict with the settlement. The second was that the Adjudicator had exceeded his jurisdiction in investigating acts and conduct that occurred more than three years before the date on which the complaint was lodged- ie 16 March 2016. The time bar is in sec 30I.

[25] In terms of section 30I(1) *“The adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than 3 years before the date on which the complaint is received by him or her in writing.”*

[26] In advancing its argument that the dispute with Mr Rachoshi had been settled, the appellant (applicant in the Court *a quo*) stressed that the Adjudicator was part and parcel of the negotiations and was constantly updated regarding progress. The applicant contended that the Pension Funds Adjudicator cannot disregard the settlement agreement in circumstances where it was the result of a negotiated process over which the Pension Fund Adjudicator had supervision.

## **THE TIME BAR**

[27] The appellant contended then, as it does now, that the act or omission to which the determination relates took place more than 3 years before receipt of the complaint. The appellant contends that non-payment of contributions on behalf of Mr Rachoshi from 2009 was as a result of his express request made on 15 October 2009.

[28] The nature of the time bar has featured in case law in this division, one of the cases being that of the appellant.

[29] The first matter is that of **Brinant Security Services (Pty) Ltd v The Private Security Sector Provident Fund and Four Others Case No A113/2022 GDP** which was heard on 2 August 2023 by the Full Court, (Justices Potterill J, Retief J and Phooko AJ). A written judgment and order was made on 6 September 2023. It was specifically stated in par 18:

*“Accepting then that section 30 I (1) is simply a time bar and that subsection (2) is merely a means to determine ‘the date of the act/omission how arising’ to enable the calculation of the time bar in subsection (1), means that the function of subsection (2) to consider the Prescription Act 68 of 1969 (Prescription Act) is to ensure that an Adjudicator does not investigate a matter which, in law, has prescribed. Its function is not there to be utilized as a special defence of prescription. The Act and Prescription Act possess different functions.”*

[30] The second matter is that of **Brinant Security Services (Pty) Ltd v The Private Security Sector Provident Fund and Three Others Case No 9102/2022 GDP** which was heard on 3 August 2023 by Justice Holland-Muter J. A written judgment and order were made on 13 November 2023.

[31] In paragraph 21 of the judgement Holland-Muter J, finds as follows:

*“Section 30 I (2) of the Act makes the provisions of the Prescription Act 68 of the 1969 applicable in respect of the calculation of the time barred three-year period referred to in section 30 I. Of significance is that the fourth respondent does not possess the discretion to condone nor extend the time bar provided for. Section 30 I is simply a time bar and that the Prescription Act’s three-year*

*period when calculating a determination has to be accounted for. Section 30 I is clear that the Adjudicator (fourth respondent) shall not investigate a complaint of the act or omission to which it relates occurred more than 3 years before the date on which the complaint was received. This was confirmed by **Investec Employee Benefit Ltd v Marais and Others [2012] 3 All SA 622 (SCA)**. There is no room for any argument that the three-year period was interrupted as in normal prescription matters. It is a time bar and not a prescription period. The fourth respondent erred in this regard.”*

- [32] The appellant’s procedural challenge is based on non-compliance with section 30A(1)-(3) of the Act which reads as follows:

**“30A Submission and consideration of complaints**

- (1) *Notwithstanding the rules of any fund, a complainant may lodge a written complaint with a fund for consideration by the board of the fund.*
- (2) *A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.*
- (3) *If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator.*

(4) *Subject to section 30I, the Adjudicator may on good cause shown by any affected party –*

(a) *extend a period specified in subsection (2) or (3) before or after expiry of that period; or*

(b) *condone non-compliance with any time limit specified in subsection (2) or (3)."*

[33] It is common cause that the complainants did not follow the procedure and never approached the Fund and its Board with their complaints. Brinant was also not provided with the opportunity to respond to the Fund or the complainants in the above regard. The court *a quo* recognised this deviation but was satisfied that all the parties were given an opportunity to be heard by the Adjudicator. Implicit in this assessment was that the process was nevertheless fair and there was no prejudice to the appellant.

[34] The appellant contended to the Court *a quo* that the Pension Funds Adjudicator did not have jurisdiction to entertain the complaint as the prescribed procedure had not been followed.

[35] In the Court *a quo* counsel for Mr Rachoshi contended that Brinant was misinterpreting section 30. He referred specifically to section 30H (2) which reads:

*“The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation.”*

[36] Mr Rachoshi’s counsel stressed that the restriction on the jurisdiction of the Pension Funds Adjudicator to investigate matters is in relation to only where civil court proceedings have been instituted, not where the complaint was lodged directly with the Pension Funds Adjudicator.

[37] Mr Rachoshi relied on section 30(2) which reads as follows:

*“If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of 3 years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.”*

[38] Mr Rachoshi contended that he only became aware of his claim against Brinant in relation to their non-compliance with the Provident Fund Rules in 2015.

[39] However, the request made by Mr Rachoshi in October 2009 stands in the way of this argument. As he made the request, he knew at that time already that non-payment of his contributions would flow as a result of his request. However, Mr Rachoshi has distanced himself from this note and contends that he did not write the request in question.

- [40] Mr Rachoshi further contends that he doesn't know who Soonder Inc is, denies having given them a mandate to represent him in negotiations with Brinant and therefore contends that he is not bound by the settlement agreement. He contends that the reference to Soonder Inc is hearsay evidence.
- [41] Regarding receipt of the two payments by Mr Rachoshi, these receipts are conceded.
- [42] Mr Rachoshi contends that he believed that Brinant was attempting to comply with the determination made by the twenty-ninth respondent (i.e. the Pension Funds Adjudicator). Mr Rachoshi's position in the Court *a quo* was that the two payments received were not in full and final settlement of money due to him related to pension benefits. He contends that the method of calculation of the outstanding contributions did not take account of late payment of interest and was therefore in breach of section 13A (7) of the Act.
- [43] On the jurisdictional challenge in terms of section 30I of the Act, the court noted that the determination as far as Mr Rachoshi (and others) dealt with complaints laid more than 3 years after the date of the complaints. The court states: *"It is common cause that Mr Rachoshi requested Brinant as far back as on 15 October 2009 already, that it should stop deducting any contribution from his salary which request Brinant acceded to."*
- [44] However, according to the Pension Funds Adjudicator's determination, Mr Rachoshi ought to have been registered on 1 March 2009. It is on this basis that the appellant had contended that the Adjudicator dealt with the complaint more than 3 years before the act or omission complained of.

- [45] Counsel for the appellant in the Court *a quo* had also argued that prescription applies. However, Mr Rachoshi contended that he only became aware of the conduct of Brinant, acting in breach of their rules in 2015. He therefore contends that his claim against Brinant could not have prescribed as prescription only starts to run as from the date he became aware of the debt in terms of section 12(3) of the Prescription Act, read with section 31(2) of the Pension Funds Act. In reply this contention was merely denied.
- [46] In the absence of rebuttal evidence, the court *a quo* accepted Mr Rachoshi's version that he only became aware of the debt in 2015 and as a result of the provisions of section 12(3) of the Prescription Act, prescription was delayed.
- [47] One must however bear in mind that the Court *a quo* found that it was common cause that the appellant had already ceased making deductions from October 2009 at the specific request of Mr Rachoshi. Knowledge of the salient facts was established to exist in 2009 already. Knowledge of having a valid claim is not relevant- it is knowledge of the salient facts giving rise to a debt. The court *a quo* erred in requiring knowledge of wrongfulness before the time bar is triggered.
- [48] In respect of the procedural challenge relating to the periods concerned, the court recorded that a complainant must first approach the Provident Fund in writing for consideration of the complaint. It is for the Fund to then refer the matter to the employer for a response and only after the complainant has obtained a written finding by the Fund, will a complainant be entitled to

approach the Pension Funds Adjudicator, if dissatisfied with the response by the Fund.

[49] In paragraph 32 of the judgment the court notes the following:

*“Before, this court it is common cause, counsel for the applicant had argued that the complainants did not follow the above procedure and never approached the fund for consideration. The employer was further not provided with the opportunity to respond to the fund or the complainants in respect of the complaint.”*

[50] The applicant contended that non-compliance with this procedural prescript meant that the Pension Funds Adjudicator lacked jurisdiction. In response thereto, counsel for Mr Rachoshi referred to section 30H (2) which reads:

*“The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation.”*

[51] It was contended that the legislature only provides for one instance where the Pension Funds Adjudicator’s jurisdiction to investigate a matter is curtailed, and that is in section 30H(2). There was therefore no express curtailing of the jurisdiction of the Pension Funds Adjudicator to investigate and make a determination.

[52] The court referred to the procedures followed by the Pension Funds Adjudicator and stated that it was clear that the latter attempted to comply with

section 30A in that it gave all parties an opportunity to be heard. Although the procedure in section 30A (1) was not followed, there was sufficient opportunity to make representations and to be heard. The court therefore found that there was no basis for strict compliance with section 30A. This holistic approach to the process that was followed, to test it for fairness and the determination of prejudice not to be faulted

## THE SETTLEMENT

[53] On the issue of the settlement, the court accepted the Adjudicator's assessment that no consequences flowed from the settlement. The court *a quo* accepted Mr Rachoshi's version that he believed that the payments that he had received were made by Brinant while attempting to comply with the determination made by the Pension Funds Adjudicator. At paragraph [47] the court states:

*"[47] He thus laboured under the impression that the applicant was in the process of complying with the determination. It is further his assertion that the two payments he received were not in full and final settlement of the monies due to him as a result of his pension fund contributions.*

*[48] The applicant in its replying affidavit merely denies that Mr Rachoshi has merit in his opposition to the application. It is noteworthy to mention that no explicit attempt was made to answer to the assertions made by Mr Rachoshi in relation to the two payments which he received."*

[54] The Court *a quo* accepted Mr Rachoshi's contention that he was unaware of who Soonder Inc was, had not given them a mandate and that he is not bound by any agreement concluded by them ostensibly on his behalf. The court further accepted that the settlement agreement, having been rejected by the Pension Funds Adjudicator in his determination, "*it must follow that no legal consequences can flow therefrom.*"

[55] In the premises the Court *a quo* dismissed the application with costs.

[56] On the issue of a negotiated settlement, it is trite that parties make compromises in the course of discussions and that a settlement is not a matter of simple calculation. Particularly in respect of Mr Rachoshi, the court should have taken into account his request not to be debited for contributions to the Provident Fund in terms of his written request of October 2009. Particularly then, if Brinant adhered to his express request, the calculation of an amount less than the full period would be the result of a negotiated settlement. It is therefore not open to the Pension Funds Adjudicator, having presided over the process, to second-guess the reasoning and impose his view of what was fair on parties who had reached a negotiated settlement. The Court *a quo*'s acceptance that no legal consequences flowed from the settlement is therefore flawed and constitutes a misdirection.

[57] Further, the court's acceptance of Mr Rachoshi's contention that he believed that the two payments made by Brinant to him were in compliance with the determination made by the Pension Funds Adjudicator, can be identified as a misdirection merely with reference to the chronology. The determination in

question was only made known on 24 March 2017, while Mr Rachoshi received his first payment on 6 June 2016 (before the settlement) and the second payment was received on 15 November 2016 (after the settlement). It is therefore incorrect to accept Mr Rachoshi's version in circumstances where the chronology proves him to be wrong.

[58] On his version he never appointed Soonder Inc to negotiate a settlement on his behalf. If that were so, on what conceivable basis did he accept payments from Brinant in June 2016 and November 2016? There is no cogent evidence as to why he accepted the first payment. It was before the settlement and before the determination.

[59] This is one of those instances where the inherent improbability of Mr Rachoshi's version called for its rejection. The application of the Plascon-Evans rule simpliciter would result in an injustice. The Court *a quo* erred in accepting Mr Rachoshi's contention that he accepted the payments in compliance with the determination, when no such determination had been made. The court should have accepted the contention of the applicant that payment flowed, particularly as far as the second payment was concerned, from the settlement agreement.

[60] His contentions regarding the mandate of Soonder Inc is not material on the facts. The settlement concluded on 18 October 2016 was to the benefit of the listed employees, which included Mr Rachoshi. They are not listed as parties but are the beneficiaries of the settlement. His acceptance of the benefit in the form of a payment on 11 November 2016 made Mr Rachoshi a party to the

settlement on trite principles related to a **stipulatio alteri**. It is irrelevant whether he had given a prior mandate to Soonder Inc. The court a quo erred in not assessing the consequence of accepting the 11 November 2016 payment.

[61] Insofar as the exercise of the statutory power of the Pension Funds Adjudicator is concerned, the Pension Funds Adjudicator made three fundamental misdirections.

[62] Firstly, he has discounted a negotiated settlement (*transactio*) over which he presided. There was no remaining complaint to investigate as Mr Rachoshi was bound by the settlement as discussed above.

[63] It is binding on the Adjudicator too. The Adjudicator took an active role in the settlement process. He required to be updated on progress made in regard to such settlement negotiations. He was further provided with a copy of the settlement agreement and was notified prior to his determination of full compliance by Brinant with the terms of the settlement agreement. In those circumstances, it is not open to the Pension Funds Adjudicator to put a line through a negotiated settlement. It is binding on the parties, and it precludes the Adjudicator from dismissing the settlement as non-existent.

[64] A second misdirection made by the Pension Funds Adjudicator flows from the error of fact that he made in treating Mr Rachoshi as an employee of Brinant at the time of the determination and in issuing directions to register Mr Rachoshi as a member of the Provident Fund. Mr Rachoshi's employment had terminated in the month before the settlement agreement was concluded.

Whilst this put an end to his employment, it did not have the immediate effect of cancelling his membership of the Provident Fund, as he was still entitled, under Rule 7 of the Provident Fund Rules to a lumpsum payment of his pension benefits.

[65] The issuing of directions for the registration of Mr Rachoshi as a member of the Provident Fund is not a part of the determination that can be severed from the rest. It constitutes a unitary exercise of a public power based on an incorrect fact, namely that Mr Rachoshi was still an employee of Brinant at the time of the determination.

[66] Lastly, the Pension Funds Adjudicator failed to determine whether he had jurisdiction insofar as his objection as far as Mr Rachoshi was concerned related to non-payment of employer contributions in the period 2009 to 2011. As his determination arose from a complaint received in March 2016, he was clearly investigating matters and acts that took place more than 3 years from the date of receipt of the complaint. He simply lacked jurisdiction to enquire into and to make directions on such events.

[67] In the premises we are satisfied that the Court *a quo* erred in dismissing the sec 30P challenge of Brinant.

[68] In the premises the following order is made:

1. The appeal is upheld with costs, including the costs of two counsel, on Scale C..

2. The order and judgment of the Court *a quo* is set aside, and the order is replaced with the following:

“1. The Pension Funds Adjudicator’s determination dated 24 March 2017 relating to the twenty-second respondent’s complaint is hereby set aside in terms of section 30P of the Pension Funds Act, 24 of 1956.

2. The respondents are ordered to pay the costs of the application, such costs to include the costs of two counsel on Scale C.”

[REDACTED]

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**LABUSCHAGNE J**

[REDACTED]

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**YENDE A J:** I concur

[REDACTED]

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**MAZIBUKO AJ:** I concur

*This judgment was prepared by **LABUSCHAGNE J.** It is handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on Caselines electronic platform and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed **14 February 2025.***

Appearances:

Advocate for Applicant: J G Cilliers SC

Appearing with : T Ellerbeck

Instructed by: Arthur Channon Attorneys

Advocate for First Respondent(s): DF Makhubela

Appearing with : F Tugwana

Instructed by: Raulinga, Netsianda and Khameli Inc Attorneys

Heard: 31 January 2025

Delivered: 14 February 2025