

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 44658/2012

Date of hearing: 12 February 2025

Date delivered: 29 April 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
29/4/25	
DATE	SIGNATURE

In the application of:

ZODWA MAVIS KHANYILE
HLENGIWE MKHIZE
ANNA NTSHANGASE
MCUPHENI WISEMAN MDAKANE
Others:

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth to 9000th Applicants

and

THE PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA
CHAIRPERSON OF THE PORTFOLIO

First Respondent

COMMITTEE ON DEFENCE	Second Respondent
MINISTER OF DEFENCE AND MILITARY	
VETERANS	Third Respondent
CHIEF OF THE SOUTH AFRICAN	
NATIONAL DEFENCE FORCE	Fourth Respondent
SECRETARY FOR DEFENCE	Fifth Respondent
DIRECTOR-GENERAL DEPARTMENT	
MILITARY VETERANS	Sixth Respondent

JUDGMENT

Recordal: This judgment shall, for the benefit of the 9000 applicants, be translated into IsiZulu. The translation is appended hereunder. Where there are differences in interpretation between the English and the IsiZulu texts, the English text is applicable.

SWANEPOEL J:

[1] During the period between approximately 1960 and 1994 various anti-apartheid organizations fought an armed struggle against the apartheid regime. Millions of lives were affected by the war. Once the armed struggle neared its end, it became apparent that provision had to be made to accommodate those persons who had been part of the armed forces of the liberation movements. Therefore, during the Codesa negotiations the various political parties attempted to reach consensus about the manner in which soldiers from the armed forces would be integrated into the South African Defence Force (as it was then known).

[2] The first to fourth applicants are members of the erstwhile Kwa-Zulu Self Protection Force ("KSPF"). The fifth to nine thousandth respondents are alleged to also be members of the KSPF, albeit that none of the latter are identified by name. The applicants say in the founding affidavit that their names would be made available to Court, which never happened.

[3] The applicants say that as former soldiers in the KSPF they were entitled to have been integrated into the SANDF, and that their exclusion from the integration process was unconstitutional. They seek to be integrated into the SANDF, with full benefits and with effect from April 1994.

[4] The notice of motion set out the relief that the applicants seek:

[4.1] That a declaratory order be made that the exclusion of the KSPF from the definition of 'armed force' and their resulting exclusion from the integration process be declared unconstitutional;

[4.2] An order that the Termination of Integration Intake Act, 44 of 2001 is unconstitutional;

[4.3] An order declaring the respondents' decision not to integrate the KSPF into the SANDF to be unconstitutional;

[4.4] An order directing the applicants to be retrospectively integrated into the SANDF with effect from 27 April 1994;

[4.5] An order directing that the applicants are entitled to all benefits attached to their ranks, and to subsequent promotions, with effect from 27 April 1994;

[4.6] An order that the applicants be integrated into the SANDF

[4.7] Costs.

[5] The first respondent abides the decision of the Court, while the remaining respondents oppose the application.

[6] The applicant delivered a notice of amendment during August 2024. The notice sought to introduce relief relating to the inclusion of KSPF members onto the Military Veterans database, and an order that they are entitled to all benefits arising from the Military Veterans Act, 18 of 2011. The respondents opposed the amendment, and the applicants never brought an application for leave to effect the amendment. At the hearing of the matter the amendment was formally abandoned. It is therefore only the relief sought in the original notice of motion that I have to adjudicate upon.

[7] I must add, that the applicants took a number of *in limine* points in their reply, relating to the authority of the deponent to the

answering affidavit to depose to the affidavit, and attacking his personal knowledge of the facts. These were not persisted with in argument, wisely so, I believe. A deponent does not have to be authorized to depose to facts within his knowledge. Furthermore, the papers do not reveal any serious factual disputes. The issue between the parties relates to the interpretation of the various statutes.

[8] The applicants also abandoned their attack on the constitutionality of the Termination of Integration Intake Act, 44 of 2001 ("the Termination Act"). That leaves one vexed question: Should the applicants have been integrated into the defence force in 1994, and was their exclusion unconstitutional. With the applicants having foregone the attack on the Termination Act, a further question is, even if the applicants should have been integrated into the SANDF in 1994, whether the Termination Act prohibits their integration?

[9] Section 224 of the Constitution, 200 of 1993 ("the Interim Constitution") provided for the establishment of the South African National Defence Force ("the SANDF"). The relevant subsections are (1) and (2), and read as follows:

"224 Establishment of National Defence Force

- (1) The National Defence Force is hereby established as the only defence force for the Republic.

(2) The National Defence Force shall at its establishment consist of all members of-

- (a) the South African Defence Force;
- (b) any defence force of any area forming part of the national territory; and
- (c) any armed force as defined in section 1 of the Transitional Executive Council Act, 151 of 1993;

and whose names, at the commencement of this Constitution, are included in a certified personnel register referred to in section 16 (3) or (9) of the said Act: Provided that this subsection shall not apply to members of any such defence or armed force if the political party under whose authority and control it stands or with which it is associated and whose objectives it promotes did not take part in the first election of the National Assembly and the provincial legislatures under this Constitution."

[10] I have highlighted a part of the passage above, as it is, in my view, the crux to this case. The applicant's case is that they fall under subsection (2) (c) above. It is common cause that the KSPF was a force that fell under the control and authority of the Inkatha Freedom Party, a party that participated in the 1994 elections, and whose members held office in the Cabinet thereafter.

[11] Section 1 of the Transitional Executive Council Act, 151 of 1993 ("the TEC Act") defines an 'armed force' as any force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, a participant in the council. It must be noted that Inkatha did not participate in the Transitional Executive Council, but it did participate in the 27 April 1994 election. For purposes of this judgment, I shall assume that the KSPF is an armed force within the meaning of section 1 of the TEC Act.

[12] Section 241 of the Constitution, 108 of 1996 ("the Constitution") provided that Schedule 6 thereof applied to any transition to the new constitutional order established by the new Constitution. Annexure D (3) of Schedule 6 to the Constitution provided for an amendment to the proviso to section 224 of the Interim Constitution, but otherwise the wording of section 224 was retained. The new proviso reads:

"Provided that this subsection shall also apply to members of any armed force **which submitted its personnel lists after the commencement of the Constitution of the Republic of South Africa (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution**, if the political organization under whose authority and control it stands or with which it is associated and whose objectives it promotes did participate in the Transitional Executive Council or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution."

[13] Once again I have highlighted the part of the text that I believe to be crucial to this application.

[14] There is no submission made by the applicants that Inkatha complied with its obligation to submit certified personnel lists. The applicant's papers are silent on this issue. Even after I afforded the applicant's counsel an opportunity to scrutinize the papers again and to point out to me where the applicants make the averment that Inkatha had submitted certified personnel lists, counsel was unable to do so. The only reasonable conclusion is that the averment is not made because Inkatha did not submit the lists.

[15] During 1996 the crisis relating to the exclusion of the KSPF from the SANDF came to a head, and pursuant to a decision taken by the Cabinet, it was agreed that some 2000 KSPF members would be incorporated into the SANDF. The KSPF submitted a list of personnel from which the SANDF could interview and, if appropriate, appoint members of the KSPF. The normal recruitment procedures applied to this process.

[16] This list, the applicants say, was the list that is referred to in section 224 of the Interim Constitution. The difficulty that I have with this argument is that the list submitted in 1996 was not submitted as part of the constitutional process of integration as provided for in the Interim and in the final Constitution. It was a separate political process during which a personnel list was provided, after the parties had arrived at an agreement.

Consequently, the refusal to integrate the KSPF into the SANDF is directly the result of the failure of Inkatha to comply with the requirement of providing a certified personnel list of its members. The KSPF's exclusion is thus not unconstitutional.

[17] Crucially, I have no idea whether any of the applicants before court were even included in the 1996 list. The applicants chose not to disclose that information to me. I cannot, therefore, even if I regard the list submitted in terms of the 1996 incorporation process as the applicable list, find that these particular applicants are members of an armed force whose names were included on a personnel list as envisaged by section 224 of the Interim Constitution.

[18] A final nail in the proverbial coffin of this application is the Termination Act. Section 5 of the Termination Act imposed a deadline of 31 March 2002 by which members of armed forces had to have entered into employment agreements with the SANDF. If a member had not entered into an employment agreement by that date, the window had closed on integration into the SANDF.

[19] It is on the basis of the Termination Act that Mr. Bruinders SC argued on behalf of the respondents that, notwithstanding anything else, the applicant's entitlement to be integrated had expired. I agree. Even if the applicants had proven that they were constitutionally entitled to be integrated into the SANDF, which I do not believe that they had, their claim to be integrated would have expired.

[20] The respondents argued in their papers that the claim had prescribed by virtue of the provisions of the Prescription Act, 68 of 1969 ("the Prescription Act"), as it arose more than three years before the application was brought. In my view, this application does not concern a 'debt' in terms of the Prescription Act. Although Mr Bruinders did not pursue this argument, I must, briefly, deal with the issue.

[21] In *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd*¹ ("Escom") the court held that a 'debt' is "*that which is owed or due; anything (as money, goods or services) which one person is under obligation to pay or render to another*". In *Desai NO v Desai and Others*² the Court seemed to espouse a wider definition. However, the Constitutional Court has now explained in *Makate v Vodacom Ltd*³ that the approach in Escom is correct, and that, to the extent that *Desai* suggests a wider definition, it is wrong. The Constitutional Court held in *Off-beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others*⁴ that a claim in terms of section 252 of the Companies Act, 1973 was not susceptible to prescription as it was not a debt under the Prescription Act. The Court said⁵:

"The claim is a far cry from something owed or due, or an obligation to pay money, deliver goods or render services to another. If anything, it is the right to seek a judicial determination as to whether the applicants are entitled to a statutory remedy, the entitlement to which is determined on equitable grounds...."

[22] In my view, the applicant's claim is a statutory claim that is not a 'debt' for purposes of the Prescription Act, as it is not something that is owed or due, or an obligation to pay money or deliver goods or render services.

[23] As is evident from the above, the application must fail. I shall apply the *Biowatch* principle⁶ with regard to the costs. The applicants were pursuing what they believed to be their Constitutional rights, and it would be appropriate not to follow the normal rule, which is that costs follow the result. Furthermore, Mr. Bruinders indicated that the respondents did not seek a costs order.

[24] I make the following order:

The application is dismissed.

Okuqoshiwe: Lesi sahlulelo sizobhalwa ngesiZulu ukuze bonke abamangali abangu-9000 bezwe. Isinqumo sesiZulu zifakwe ngemuva. Uma kukhona impikiswano phakathi kwesiZulu neSingisi, kuzosetshenziswa umbhalo weSingisi.

SWANEPOEL J:

[1] Eminyakeni kusuka ku 1960 kuya ku 1994 izinhlangano ezaziphikisa ubandlululo zalwisana nobandlululo. Izimpi zathinta izigidi zabantu. Kuthe lezizimpi seziya ngasekupheleni, kwacaca ukuthi kumele

kwenziwe uhlelo oluzobhekelela laba ababesemibuthweni eyayilwela inkululeko. Ngakho-ke kwizingxoxo zeCodesa amaqembu ezezopolitiki ahlukahlukene Azama ukufinyelela kwisivumelwano ngendlela ayezothathwa ngayo amasosha ayelwa izimpi zobandlululo azofakwa kuMbutho wezokuvikela wase Ningizimu Afrika.

[2] Abammangali bokuqala abane babengamalunga e KwaZulu Natal Self Protection Force (KSPF). Owesihlanu kuya koka -9000 nabo kuthiwa babengamalunga e KSPF kodwa amagama abo awadalulwanga Abamamangali bathe encwadini yabo yecala bazowasho amagama abo eNkantolo kodwa kwangenzeka.

[3] Abammangali bathi njengoba babengamasosha eKSPF kwakuyilungelo labo ukuthi bafakwe kuMbutho wezokuvikela wase Ningizimu Afrika (SANDF), nokuthi ukuvalelwa kwabo ngaphandle kule nqubo yokufakwa kwi SANDF kwakuphambene noMthethosisekelo.

Bafuna ukufakwa kuMbutho wezokuvikela eNingizimu Africa-SANDF, bathole zonke izimfanelo kusukela ngo April 1994.

[4] Incwadi yecala icacisile ukuthi abammangali bafunani.

[4.1] Ukuthi inkantolo ikhiphe umyalelo othi ukungabalulwa kwe KSPF njengeqembu elaluwumbutho ohlomile okwaholela ekutheni ingafakwa kwi SANDF, lesisenzo asithathwe ngesiphambene nomthethosisekelo.

[4.2] Kukhishwe umyalelo wokuthi umthetho wokunqamula ukuthathwa kwamasosha wango 2001 (Termination of Interfration Intake Act 44 of 2001) yayiphambene noMthethosisekelo.

[4.3] Inkantolo ichithe isinqumo sabamangalelwa sokungawafaki amasosha eKSPF ku SANDF njengesiphambene nomthethosisekelo.

[4.4] Umyalelo othi abamangali mabafakwe kuSANDF kusukela ngomhlaka 27 April 1994;

[4.5] Umyalelo othi abamangali kuyilungelo labo ukuthola zonke izinzuzo ezihambisana nezikhundla zabo, baphinde banyuswelwe ezikhundleni kusukela ngomhlaka 27 April 1994.

[4.6] Umyalelo othi abamangali bafakwe kwiSANDF.

[4.7] Izindleko.

[5] Ummangalelwa wokuqala uyahambisana nesinqumo seNkantolo, abanye abamangalelwa bayasiphikisa nesicelo.

[6] Abamangali baletha isaziso sokulungisa amaphepha abo ngo August 2024. Isaziso sasimayelana nokufakwa kwamalunga eKSPF ohlelweni lwamasosha asathatha umhlalaphansi, baphinde bathole zonke izinzuzo ezihambisana nezimpesheni zamasosha (Military Veterans Act 18 of 2011). Abamangalelwa baphikisana nezinguquko, abamangali abasifakanga isicelo sokuthi lezizinguquko mazenzeke.

Kuthe uma sekulalelwe icala abamangali bafaka isicelo sokuthi abasaqhubeki nesicelo sezinguquko. Isinqumo engizosithatha sizogxila kwisicelo esafakwa ngencwadi yokuqala eyafakwa abamangali.

[7] Kuzofanele ngikuveze nokuthi abamangali baqala ngokuphikisana namaphuzu amaninganana ligakaqalwa udaba njengokuthi ngabe wayenalo yini igunya lakubhala incwadi yokuphendla lo owaphendula amaphepha enkantolo. Abazange besaqhubeka nalempikiswano lokho engikubone kuwubuhlakani. Obhala incwadi efungelweyo akumele ukuthi aze anikwe igunya lokubhala ngamaqiniso awaziyo. Ngaphezu kwalokho, amaphepha awakhulumi ngamaphuzu okuphikiswana ngawo. Impikiswano phakathi kwabathintekayo imayelana nencazelo yemithetho.

[8] Abamangali baphinde bayeka ukuphikisana nokuba semthethweni kokumiswa kokuthathwa kwamasosha. Lokhu kushiya umbuzo oyindida, ekutheni ngabe kwakufanele yini abamangali bafakwe kuSANDF ngo 1994, nokuthi ukungafakwa kwabo kwakuphambene yini nomthethosisekelo. Njengoba abamangali beyekile ukuphikisa umthetho owawumisa ukuthathwa kwamasosha, umbuzo olandelayo uthi nokuba babefakiwe kwiSANDF ngo 1994, ngabe umthetho onqamula ukuthathwa kwabo uyabavimba yini manje.

[9] Umthetho wesikhashana (Section 224 of the Constitution, 200 of 1993) ("the Interim Constitution") wachaza ngokusungulwa koMbutho

wezokuvikela eNingizimu Afrika iSANDF. Izigatshana zomthetho ezibalulekile u (1) no (2) zifundeka kanje:

‘224 Ukusungulwa koMbutho wezokuvikela kazwelonke.

- (1) Umbutho wezokuvikela kazwelonke wasungulwa njengawo wodwa umbutho wezwe.
- (2) Ekusungulweni koMbutho wezokuvikela kazwelonke kwaba ukuthi uyokwakhiwa iwowonke amalunga alandelayo:
 - (a) Ombutho wezokuvikela Eningizimu Afrika.
 - (b) Noma ngabe imuphi umbutho wokuvikela wanoma iyiphi indawo eyingxenye kwZwelonke.
 - (c) Nanoma imuphi umbutho ohlomile njengokuchazwa kwawo kumthetho (Section 1 of the Transitional Executive Council Act, 151 of 1993.)

labo amagama abo abhalwa emabhukwini aqinisekisiwe kuqala lomthethosisekelo, ebhukwini olunohlu lwamagama oluchaziwe kwisigaba 16 (3) noma kwisigaba (9) salowo mthetho: Lomthetho angeke usebenze kunoma imuphi umbutho wokuvikela noma ohlomile, uma kungukuthi iqembu lezopolitiki elilawula lowombutho noma umbutho ohlobene neqembu lezopolitiki elingazange laba ingxenye yokhetho lokuqala lukazwelonke noma olwezifunda ngaphansi komthethosisekelo.

[10] Lombhala ongenhla ngiwubhale ngamaqophelo amakhulu ngenxa yokuthi iyona ndikimba yaloludaba, ngokubona kwami. Abamangali bathi bona udaba lwabo lungena kwisigaba (2) (c) ongenhla. Kuyavunyelwana ngokuthi Ikspf kwakuwumbutho ongaphansi kweIFP futhi ulawulwa iyona, okuyiqembu elalisokhethweni luka 1994, amalunga ayo aqokwa angena kwi Cabinet.

[11] Ngokwesigaba sokuqala somthetho womkhandlu omkhulu obekwe isikhashana wango 1993 -Section 1 of the Transitional Executive Council Act 151 of 1993. ("the TEC Act") uchaza umbutho wezimpi njengombutho ongasungulwanga ngokusemthethweni futhi olawulwa noma ogunyazwe, noma ozihlanganisa noma ofeza izinhloso, zelunga lomkhandlu. Kufanele kuphawuleke ukuthi Inkatha ayizange ibe ingxenye yomkhandlu wokufuduka, kodwa yayiyingxenye yokhetho lwangomhlaka 27 April 1994. Kulesisahlulelo ngizothatha ngokuthi Ikspf iwumbutho ohlomile ngokwenzazelo yesigaba sokuqala somthehto wokufuduka.

[12] Isigaba 241 somthethosisekelo 108 wango 1996 ("the Constitution") isahluko 6 ungena kulona lonke ushintsho lomthethosisekelo olusungulwe kumthethosisekelo omusha. U Annexure D (3) wesahluko 6 kwezomthethosisekelo wenze izinguquko kumthetho okwisigaba 224 kumthethosisekelo wesikhashana, kodwa noma kunjalo ngendlela lesi sigaba 224 esibhalwe ngayo usenjalo. Umthetho omusha ufundeka kanje:

“Lesi sigatshana somthetho siyosebenza nanoma ngabe ikumaphi amalunga ombutho ohlomile **abaletha uhlu lwamagama emva kokuba sekuqale ukusebenza umthethosisekelo wase Ningizimu Afrika (Act 2000 of 1993), ngaphambi kokuba kwamukelwe umthethosisekelo omusha ngendlela obhalwe ngayo kwisigaba 73 (Section 73) walowomthethosisekelo,** uma iqembu lenhlangano ligunyaziwe ukuthi lingaphatha, linemithetho elilawulayo futhi lizibandakanya ekutheni ligqogquzela izinhloso zalo lingenelile kuMkhandlu wofuduko wesikhashana iTEC futhi langenelile kukhetho lokuqala kwi sishayamthetho sikaZwelonke kanye nolwesifundazwe ngaphansi kwalo Mthethosisekelo”.

[13] Ngiphindile futhi ngayigqamisa ingxenye yemibhalo engikholelwa ukuthi ibalulekile kulesi sicelo.

[14] Akukho engikutshelwe abamangali ukuthi Inkatha isenzile isithembiso sokuletha uhlu lwamagama abantu. Amaphepha abamangali awasho lutho ngaloludaba. Ngisho sengimnikile uMmeli wabamangali ithuba lokuthi aphinde abhekisise amaphepha angikhombise lapho abamangali bezisholo bona ngokwabo ukuthi Inkatha yaluhambisa uhlu lwamagama abantu, uMmeli akakwazanga ukukwenza lokho. Isizathu engiphetha ngaso ukuthi akushiwongo lokhu ngoba Inkatha ingalulethanga uhlu lwamagama abantu.

[15] Ngesikhathi sango 1996 lenhlekelele yokuvalelwa ngaphandle kwamasosha eKSFP kwi SANDF yafakelwa izibuko, kulandela isinqumo esasithathwe umkhandlu kaHulumeni, kwavunyelwana ukuthi amanye amalunga ayizinkulungwane ezimbili (2000) azothathwa azofakwa kwi SANDF. I KSPF yahambisa uhlu lwamagama abantu okwakuzokwenziwa inhlolekhono kubo bese kuthi ngesikhathi esifanele baqoke amalunga eKSPF. Inqubo ejwayelekile yokuqasha yasetshenziswa.

[16] Loluhlu lwamagama abantu, abamangalelwa bathi yilo okukhulunywa ngalo kwisigaba 224 somthethosisekelo wesikhashana (section 224 of the Interim Constitution). Inkinga enginayo kulenkulumo ukuthi loluhlu lwamagama abantu olwalethwa ngo 1996 alulethelwa njengxenye yomthethosisekelo wokuqashwa kwamasosha njengoba kuchaziwe lapha kumthethosisekelo wesikhashana kanye nalo owaphasiswa. Kwakungenye inqubo yepolitiki ehlukile lapho kwalethwa khona amagama abantu, ngemuva kokuthi lamaqembu efinyelele kwisivumelwano.

[17] Kubalulekile ukuthi, anginalo ulwazi noma ukhona yini kulabamangali abaphambi kwenkantolo igama lakhe elabhalwa ohlini lwamagama ngo 1996. Amangali bakhethe ukungakudaluli lokho kimi. Noma kungathiwa loluhlu lwamagama abantu aphambu kwami amagama abhalwa ngo 1996, kodwa angeke ngikwazi ukuthi labamangali abaphambu kwami amalunga ombutho ohlomile, amagama abo ayebhalwe ohlwini olubalulwa isigaba 224 somthethosisekelo wesikhashana

[18] Lomthetho wokuqedwa kokuthathwa kwamasosha afakwe embuthweni iwona oshaye lela isipikili sokugcina kulesisicelo. Umthetho okwisigaba 5 sokuqedwa kokuthathwa kwamasosha wabeka usuku lomhlaka 31 March 2002 njengosuku oluwumnqamulajuqu, ukuthi amalungu ombutho ohlomile abe esengenile kwisivumelwano sokuqashwa iSANDF ngaleso sikhathi. Uma ilunga lingangenile kwisivumelwano sokuqashwa ngalolosuku, isikhathi yskuqashwa kwamasosha siyobe sesivaliwe.

[19] Yilezo zizathu ke zalomthetho wokuqeda kokuthathwa kwamasosha uMnu. Bruinders SC ame ngazo emele abamangalelwa, ngele kwalokho, ilungelo lokufakwa kwamasosha embuthweni laseliphelelwe isikhathi. Ngiyavuma. Ngisho kungathiwa abamangali bavezile ukuthi kwakuyilungelo labo ngokomthethosisekelo ukuthi bafakwe kwiSANDF, okuwukuthi angikholwa ukuthi babenalo lelo lungelo, isikhathi sabo sokuthi bafakwe kumbutho wokuvikela sasiyobe sesiphelelwe.

[20] Abamangalelwa bami ngelithi lelilungelo laseliphelelwe isikhathi ngenxa yomthetho obalula izikhathi wango 1969 isigaba 68, ngenxa yokuthi lesisicelo safakwa sekuphele iminyaka emithathu kwenzeka isigameko. Ngokombono wami lesisicelo sabamangali asingeni ngaphansi kwalomthetho ngoba asikhulumi ngokukweletwa kwemali. Yize noma uMnu Bruinders engaqhubekanga kakhulu ngaloludaba enkulumeni yakhe angiluveze loludaba kafushane.

[21] Ecaleni (*Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd*¹ ("Escom") inkantolo yalawula ukuthi isikweletu ilokho okukweletwa umuntu noma okufanele kunikezwe noma kwenzelwe omunye umuntu, okweletayo usuke ephoqelekile ukukhokhela omunye umuntu. Kwelika *Desai NO v Desai*² nabanye iNkantolo kwabukeka sengathi ifuna ukuchaza kabanzi. Kodwa-ke iNkantolo yomthethosisekelo isikuchazile ecaleni lika *Makate v Vodacom Ltd*³, ukuthi ilungile indlela okwenziwe ngayo kwelika *Escom*, incazelo ebanzi kwelika *Desai* ayilungile. Inkantolo yomthethosisekelo yalawula kwele *Off-beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others*⁴ kanye nabanye ukuthi icala lombango ngokomthetho okwisigaba 252 wezenkampani wango 1973 wawungasebenzi kulomthetho wesikweletu. Kusho iNkantolo:⁵

"Icala lombango lihluke kakhulu kunesikweleti osikweletayo noma okumele usikhokhe noma isibophezelo sokukhokha imali, okanye uhambise impahla noma wenze umsebenzi. Uma kungabakhona kungaba ukucela ilungelo kwezomthetho ukuthi ingabe abamangali bangasizakala yini ngenye indlela ewumthetho, noma angeke bahlukaniselwe yini ngokulinganayo.

[22] Ngokombono wami, icala labamangalelwa alisilona icala lemali/isikweletu ngoba akuyona imali ekweletwayo okumele ikhokhwe futhi asikho isibopho sokukhokha imali okanye ukuhambisa impahla noma ukwenza umsebenzi.

[23] Njengoba kunobufakazi ngenhla lesisicelo kumele singaphumeleli. Ngizowusebensisa lowamthetho ka Biowatch⁶ malunga nezindleko. Abamangali bebhukuluma ngezinto abebekholelwa ukuthi bekungamalungelo abo omthethosisekelo, futhi kuzoba kahle ukuthi kungalandelwa umgomo ojwayelekile, lo othi izindleko zilandela umiphumela. Ngaphezu kwalokho, uMnu Bruinders ukuvezile ukuthi abamangalelwa abazange bacele umyalelo wezindleko.

[24] Ngikhipha umyalolo othi:

Isicelo siyachithwa.



SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

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Instructed by:	Sekati Monyane Attorneys Inc.
Counsel for respondents:	Adv. T Bruinders SC Adv. K Millard
Instructed by:	The State Attorney
Date heard:	7 February 2025
Date of judgment:	29 April 2025

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- ¹ Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd 1981 (3) SA 340 (A)
- ² Desai NO v Desai and Others 1996 (1) SA 141 (A)
- ³ Makate v Vodacom Ltd 2016 (4) SA 121 (CC)
- ⁴ Off-beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others 2017 (5) SA 9 (CC)
- ⁵ At para [49]
- ⁶ Biowatch Trust v Registrar Genetic Resources and Others 2009 (6) SA 232 (CC)