

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2023-0066789

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
17 June 2025	
DATE	SIGNATURE

In the matter between:

ABSA BANK LTD

Plaintiff

and

GOLA TRADING AND PROJECTS

First Defendant

AUTHAR ARADANA

Second Defendant

TSWANE REFINERIES

Third Defendant

JUDGMENT

N S KRÜGER AJ:

Summary

Summary Judgment- loan facility and security by mortgage bond over immovable property-cancellation of contract- claim for immovable property to be declared executable- contract provides for several remedies upon default of repayment of the

loan in respect of the loan facility- cancellation is the most onerous of the remedies provided for- defence raised, amongst others, that cancellation was unlawful in circumstances where the plaintiff had unilaterally elected the most onerous consequence it is empowered to exercise from a list of consequences the contract provides for, without any warning- Botha v Rich NO 2014 (4) SA 124 (CC), Beadica 231 CC and others v Trustees, Oregon Trust and others 2020 (5) SA (CC) and AB v Pridwin Preparatory School 2019 (1) SA 327 (SCA) considered

Introduction and background

- [1] During 2021, the plaintiff and the first defendant concluded a Mortgage Backed Business Loan Agreement (“*the 2021 contract*”). There is a dispute whether the contract was concluded on 11 February 2021 as the plaintiff alleges, or 13 October 2021 as alleged by the defendants.
- [2] The 2021 contract consists of two parts being Commercial Terms and Standard Terms. In terms of the contract the plaintiff lends to the first defendant a maximum aggregate sum under the facility of R 5 600,000,00 which consists of drawdowns in the amount of R 5 535 600,00, charges and costs in the sum of R 56 000,00 and VAT on the charges and costs in the amount of R 8 400,00.
- [3] Apart from existing security which the plaintiff held for amounts owed by the first defendant to it, further security was provided by the registration of a mortgage bond by the first defendant over an immovable property ranking first for an amount of R 5 600 000,00 and an additional amount to secure interest and costs, charges and disbursements due the plaintiff should it exercise any right under the mortgage bond, limited to 20% of the aforesaid amount. A limited guarantee by respectively by the second defendant and third defendants for R 5 600,000,00 including a cession of claims and loan amounts were also provided.
- [4] In terms of the mortgage bond, the first defendant acknowledged its indebtedness to the plaintiff in the total sum of R 5 600 000,00 together with an additional amount of R 1 120 000,00. It was agreed the mortgage bond shall

remain in place as continuing security for the capital amount, the interest thereon as well as the additional amount, notwithstanding any intermediate settlement, for each sum the first defendant may be indebted to the plaintiff from any cause whatsoever. Should the first defendant fail to comply with its obligations or upon demand fails to pay any amount which is legally claimable, then all amounts secured under the bond shall at the option of the plaintiff and without notice become immediately payable in full and the plaintiff shall be entitled to institute proceedings to recover such amount as well as for an order declaring the property executable.

- [5] In terms of the guarantees, the second and third defendants undertook, amongst others, to irrevocably and unconditionally guarantee to the plaintiff the punctual payment by the first defendant of the guaranteed liabilities as and when the plaintiff asserts such guarantees liabilities have become due and payable. Should the first defendant fail to pay the guaranteed liabilities, the second and third defendants shall immediately on demand pay such amount as if they were the principal debtor and indemnify the plaintiff against any costs, loss or liability suffered.
- [6] Around July 2023, the plaintiff issued summons against the defendants alleging that as at 28 June 2023 the first defendant was arrears in the sum of R 434 324,36 representing 5 instalments. In consequence, so it is alleged, notice was given to the first defendant that as a result of its default it had elected to cancel the “...*available facility*...” the “...*2019 agreement*...” and to declare all outstanding amounts immediately due and payable. Immediate payment of any amounts payable under the “...*2019 agreement*...” was demanded. The notice recorded the plaintiff will be proceeding with legal action to recover the amounts outstanding. In its particulars of claim, the plaintiff alleges that as at 23 May 2023 the defendant was and remains indebted to it in the sum of R 5 276 441,91 together with interest thereon. The claim is premised upon a certificate of balance signed by the manager of the plaintiff’s banking recovery department. It records the “total amount due and payable” on 23 May 2023 as R 5 276 441,91 and the “current arrears” as R 419 970,53.

- [7] Essentially and in summary, the defendants in their plea denied the existence of any “*2019 agreement*”. They further denied that the arrears on the account as at 28 June 2023 in respect of the 2021 contract amounted to R 434 324,36 or that any amount was outstanding. They pleaded that a loan statement received by the first defendant dated 6 June 2023, duly annexed to the plea, reflected an arrears of R 184 909,34 and not R 434 324,36. Two payments were made in the amounts of R 90 000,00 each on 11 June 2023 and 2 August 2023 respectively. On 6 September 2023 it received an updated statement, duly annexed to the plea reflecting an arrears of R 165 591,97. On 7 September 2023 payment of R 194 015,05 was made and accepted by the plaintiff.
- [8] The defendants plead further that on 19 September 2023 an updated statement was received which reflected a credit balance of R 119 339,06, confirming that the arrears had been settled. On 6 October 2023, the plaintiff’s attorneys addressed correspondence requesting payment of the monthly instalment of R 85 000,00 for October 2023. Payment of R 85 000,00 was made on 9 October 2023. This was followed by a further statement from the plaintiff dated 10 October 2023, recording the arrears as nil. A copy of the statement is duly annexed to the plea.
- [9] It is further pleaded that on 2 November 2023 the plaintiff’s attorneys addressed correspondence to the defendants’ attorneys recording that the account was in arrears in the amount of R 312 714,63. In the light of what is pleaded before, the defendants denied any arrears and that the certificate of balance was correct. They furthermore denied the plaintiff was entitled to cancel the 2021 contract and pleaded in the alternative that it was reinstated in consequence of the plaintiff’s conduct in accepting payments after the alleged cancellation and the full paying up of the account as well as the correspondence dated 6 October 2023 by the plaintiff’s attorneys requesting payment of the monthly instalment of R 85 000,00 in respect of October 2023.
- [10] On 29 November, the plaintiff brought an application for summary judgment claiming payment from the defendants jointly and severally, the one paying the other to be absolved, of R 5 276 441,91 together with interest. It also claims

that the property belonging to the first defendant be declared specifically executable. Costs are claimed on the scale as between attorney and client. This is in accord with the relief sought in its summons and particulars of claim. In its supporting affidavit it records, in its conclusion, that it seeks an order in terms of the notice of motion.

[11] In some respects the contents of the supporting affidavit contradicts what is set out in the plaintiff's particulars of claim and the relief sought therein particularly pertaining of the amount claimed. It also is not in accord with the amount claimed in the notice of motion and as recorded in the conclusion to the supporting affidavit. Instead, it is conceded that an error exists in the bank statements. It seeks to explain this by alleging that when the plaintiff made its election to terminate the 2021 contract, "*...pursuant to non-payment during various months during 2023 and on or about June 2023...*", the first defendant was in arrears in the amount of R 419 970,53 as alleged in the letter of its attorneys in which the first defendant was informed that the plaintiff had elected, amongst others, to cancel the "*...available facility and the agreement;*" and to declare all outstanding amounts immediately due and payable as well as claim immediate payment of same. The payments by the first defendant on 11 July and 7 September 2023 were made after the election to cancel the contract. These were insufficient to purge the alleged total amount claimed in terms of the acceleration clause following upon the cancellation of the agreement.

[12] Allegations are then set out in the supporting affidavit which is not included in the particulars of claim. It states that discussions took place between the defendants' attorneys and Mr. Olivier who drafted the particulars of claim. After investigations at the plaintiff it was discovered that "*...the correct arrear sum was not pulling through onto the statements issued...*" It is further alleged that upon the discovery of the error, a correct statement was issued and sent to its client. A copy of the purported correct statement is annexed to the affidavit. This is dated 30 October 2023. It is not annexed to the particulars of claim. It reflects a closing balance of R 5 025 689,24 as at 9 October 2023. It is then alleged it was sent to the defendants attorneys annexed to the letter of 2

November 2023 which is referred to in the defendants plea as referred to before.

[13] The plaintiff further alleges that it provided what is referred to as a 'recalculation document', which is an annexure to the supporting affidavit. Its heading frames it as a "*RECONSTRUCTION*". It is dated 1 November 2023 and spans the period from 30 April 2021 until 9 October 2023. At the top of the recalculation, below the heading, it records the "system balance" to be R 5 025 689,24 and the "recalculated balance" as R 5 025 787,85. Apparently the difference between these two numbers is an "interest difference" of R98,61. In terms of the recalculation, the total interest calculated and capitalised equals R 1 290 788,31, total debits is R 5 535 896,73 and total credits R 1 865 297,19. The total outstanding capital and balance are recorded as being R 5 025 787,85. It further records that the "Instalment due" is R 2 177 715,09 and that the arrear amount is R 312 417,90.

[14] Regarding the 2019 agreement, the plaintiff explains it was the result of an error committed by the author of the particulars of claim. Reference to it in the particulars of claim is alleged to have been an oversight.

[15] In their affidavit resisting summary judgment, the defendants assert that the application for summary judgment and the supporting affidavit does not properly disclose the events that transpired between the parties and fails to demonstrate it is certain whether anything is due and how much is due in relation to the amount claimed and the calculation thereof. The defendant refers to the payments that had been made as set out in their plea and attaches the various statements received from the plaintiff as it did in their plea as well as an additional statement dated for August 2023.

[16] In an e-mail annexed to the resisting affidavit dated 6 October 2023 addressed to the plaintiff's attorneys, the defendants attorneys record that arrears has been settled in full and the first defendant has been furnished with a statement from the plaintiff confirming same. The plaintiff's attorneys are requested to confirm their client's instructions. It expresses the view that the matter may be resolved amicably without litigation. In response, on the same day, the plaintiff's

attorneys addressed an e-mail to the defendant's attorneys which records the following:

"Please note that our client has received payment however the account is still in arrears.

Our instructions are that your client should settle the remaining arrears of R 120 000,00 (rounded off) as well as the instalment of R 85 000,00 (rounded off) which is due on 9 October 2023 in order for us to pend legal action."

[17] On 9 October 2023 the defendants' attorneys transmitted correspondence to the plaintiff's attorney wherein it is recorded that the plaintiff's instructions to its attorneys do not accord from the statements of account transmitted to the first defendant. It explains the first defendant received a statement on 6 September 2023 reflecting an alleged arrears of R 165 591,97 and that it had made payment in the amount of R 194 025,05 on 7 September 2023. It further records it received an updated statement on 19 September 2023 which reflected a credit balance of R 119 339,06. It is recorded that despite the discrepancy, as a show of *bona fides*, payment of R 85 000,00 requested in the correspondence of 6 October 2023 was made.

[18] Then, on 10 October 2023, the first defendant received a further loan statement from the plaintiff recording that the arrears amount was R 0,00 and that the payment of the R 85 000,00 was a "*pre-payment*".

[19] On 12 October 2023 the plaintiff's attorney responded to the defendants' e-mail of 9 October 2023 stating the plaintiff was not amenable to pending or suspending litigation until the arrears have been paid. It states the arrear amount is attached to the e-mail "*...indicating the arrear amount owing by your client.*" The heading of the document referred to bears the plaintiff's logo and records it to be from Relationship Banking Recoveries. It is dated 11 October 2023. At the bottom it bears a signature identifying it as that of the "*Legal Specialist: Special Projects Recoveries Relationship Banking Legal Recoveries.*" It spans the period of 6 June 2023 until 11 October 2023. On the latter day it records the current balance as R 5 025 985,97, the arrears as R 118 986,31 and the arrear days as 126.

[20] In their resisting affidavit the defendants point out that the document attached to the e-mail of 12 October 2023 omitted the payment of R 90 000,00 made on or about 11 July 2023. The first defendant's representative telephonically informed the plaintiff's attorneys accordingly, who directed a further e-mail to the defendant's attorneys on 12 October 2023 in which it states that the e-mail was manually drafted by their client as the system does not generate a statement specifically showing the arrear amount. It is stated there was a "*typographical error*" and that the July payment of R 90 000-00 had been taken into account, though it is not so indicated. It further states that an account statement from January 2023 is attached which indicates all payments made and that the arrear amount is still R 118 986,31. The defendants point out that the latter amount does not accord with the statement it received on 10 October 2023 which recorded a balance of R nil.

[21] In response, also on 12 October 2023 , the defendant's attorneys addressed an e-mail to the plaintiff's attorneys pointing out the discrepancies in the plaintiff statements and documents as well as their various correspondences. A request is made for an explanation on the calculation of the arrears. It is recorded that the plaintiff's system does indeed generate statements specifically showing arrears on the accounts as evidenced by the loan statements. It is proposed that the matter be resolved by mediation. In response, on 13 October 2023, an e-mail was received from the plaintiff's attorneys wherein it is stated the plaintiff is amenable to pending legal action to reach a settlement. It is recorded the plaintiff has been provided with the relevant documentation and their attention drawn to the discrepancies.

[22] It is in this context the recalculation referred to by the plaintiff in its supporting affidavit was received in the letter of 2 November 2023. The defendants point out that this letter contradicts the prior correspondence received from the plaintiff's attorneys and the statements of account received from the plaintiff.

[23] The defendants contend that the constant changes to the amounts reflected in the statements demonstrate that the certificate of balance does not reflect the correct balance. In the result, extrinsic evidence is required to prove indebtedness and summary judgment is not available to the plaintiff.

[24] The defendants contend the plaintiff was not entitled to cancel the agreement with the first defendant. As appears from the letter above, the plaintiff's attorneys on 6 October 2023 requested payment of R 85 000,00 rounded off towards an agreed monthly instalment. The first defendant as at the date of the filing of the resisting affidavit, has been keeping up payments to meet its monthly obligations timeously which the plaintiff has accepted. No notice of breach at had been received prior to the alleged cancellation. The plaintiff claimed interest and alleged late charges which it is contended demonstrates the continued existence of the contract.

[25] The defendants contend they have a *bona fide* defence to the plaintiff's claim. It is also contended that a clear dispute of fact exists which ought to be adjudicated upon at trial after evidence has been adduced *viva voce*. Furthermore, it is submitted a triable defence exists.

[26] The third defendant has been placed under voluntary liquidation. At the hearing, the plaintiff sought an order for its claim against the third defendant to be postponed *sine die*. According to a draft court order uploaded to Caselines on the eve of the hearing, the plaintiff sought judgment against the first and second defendants for payment in the reduced sum of R 4 274 658,30 together with interest thereon and for the property belonging to the first defendant to be declared specifically executable. It prays for its claim against the third defendant to be postponed *sine die*.

Consideration

[27] The defendants' opposition centres around three issues as framed by the defendants' counsel. The first concerns the question whether the cancellation was lawful in circumstances where the plaintiff had unilaterally elected the most onerous consequence it is empowered to exercise from a list of consequences the contract provides for, without any warning to the first defendant. The second concerns the sum allegedly owed by the first defendant and the third concerns procedural issues pertaining to the appropriateness of and manner in which the application for summary judgment was brought.

[28] The 2021 contract's standard terms do not contain a breach clause. There is no provision for notice to be given to the first defendant of it having breached the contract due to failing to honour its obligations in terms of its provisions.

[29] In terms of the commercial terms of 2021 contract, the first defendant is the borrower. The second and third defendants are the guarantors and, together with the borrower, are referred to as the "*Relevant Parties*." Clause 23 of the Standard Terms of the 2021 contract deals with "*Events of Default*" save for clause 23.15 which deals with consequences of default. A multitude Events of Default are defined in respect of the borrower and the Relevant Parties. Clause 23.2 refers to when a borrower does not pay on due date any amount payable and clause 23.3 when a Relevant Party does not comply with any of its obligations under or in connection with the facility held by the plaintiff in respect of the facility. Clause 23.15 stipulates that when any event occurs similar to those set out in the previous 14 sub-clauses, then the plaintiff may, on written notice to the borrower:

"(a) review the Facility;

(b) cancel the available Facility;

(c) increase the interest rate Margin by a further 2%...per annum so long as the default continues;

(d) declare that all or any part of the Loan become immediately due and payable;

(e) claim immediate payment of all or any part of any amounts outstanding under any Finance Document;

(f) exercise its rights under any Security;

(g) cancel this Agreement; and/or

(h) institute action for damages."

[30] The defendants' counsel submitted that a proper construction of the contract read with these clauses indicates that the exclusion of a contested liability as creating an event of default is not an automatic consequence of any of the Events of Default stipulated in sub-clauses 23.1 to 23.14. Counsel submitted that the clause requires there to be a commensurate proportionality between

the nature and extent of the default and the selected remedy that may be sought to be applied.

[31] In substantiation of his submission, defendants' counsel referred the court to authorities which includes the judgment of the constitutional court in *Baedica*,¹ I was also referred to the judgment of the constitutional court in *Everfresh*² as well as the judgments of the Supreme Court of Appeal in *Liberty*,³ *Mohamed's Leisure*,⁴ *Roazar*⁵ and *South African Forestry*⁶

[32] The issue of developing the common law with reference to the law of contract to reflect constitutional values including equity, justice, fairness as well as Ubuntu has been somewhat controversial.⁷ In times gone by the remedy for the unfair enforcement of a contract⁸ was the *exceptio doli generalis*. In *Bank of Lisbon and South Africa v De Ornelas*⁹ in 1988 the *exceptio* was judged not to be part of our law by the Appellate Division. The void left by the demise of the *exceptio* is the source of many scholarly articles and presented our courts no end of difficulties in its search to fill the vacuum. In my view this court sitting in judgment of an application for summary judgment does not require an extensive review of the authorities in this regard. I do, however, refer to some authorities in considering if a *bona fide* defence and triable issue exist in this regard, or whether it warrants the exercise of my discretion not to grant summary judgment in the context of the facts and circumstances of this case.

[33] In *Brisley*¹⁰ the Supreme Court of Appeal held that a lack of good faith in enforcing a contract could not be accepted as an independent ground for not enforcing contractual terms, but confirmed that good faith is the foundation and justification of legal rules. Nevertheless a court should not act on the basis of abstract ideas but on the basis of established legal rules. The court also stated

¹ *Baedica 231 CC & others v Trustees, Oregon Trust & others* 2020 (5) SA (CC)

² *Everfresh Market Virginia (Pty) Ltd* 2012 (1) SA 256 (CC)

³ *Liberty Group Ltd & others v Mall Space Management CC* 2020 (1) SA 30 (SCA) at [23]-[31]

⁴ *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotels Interests (Pty) Ltd* 2018 (2) SA 314 (SCA)

⁵ *Roazar CC v The Falls Supermarket CC* 2018 (3) SA 76 (SCA)

⁶ *South African Forestry Co Ltd v York Timbers Ltd* 2005 (3) SA 323 (SCA)

⁷ See Christie *Christie's Law of Contract in South Africa* 2022 8th Edition, paras 1.5 and 10.3

⁸ Also regarding the enforcement of an unfair contract

⁹ 1988 (3) SA 580 (A) at 607B

¹⁰ *Brisley v Drotzky* 2002 (4) SA 1 (SCA) at [11]ff

that public policy is rooted in the Constitution and the fundamental values therein enshrined, which includes, amongst others equality and the advancement of human rights.¹¹

[34] In *South African Forestry* the court found, in reference to *Brisley*, as follows:

*“In these cases it was held by this Court that, although abstract values such as good faith, reasonableness and fairness are fundamental to our law of contract, they do not constitute independent substantive rules that courts can employ to intervene in contractual relationships. These abstract values perform creative, informative and controlling functions through established rules of the law of contract. They cannot be acted upon by the courts directly. Acceptance of the notion that judges can refuse to enforce a contractual provision merely because it offends their personal sense of fairness and equity will give rise to legal and commercial uncertainty. After all, it has been said that fairness and justice, like beauty, often lie in the eye of the beholder. In addition, it was held in *Brisley*... that - within the protective limits of public policy that the courts have carefully developed, and consequent judicial control of contractual performance and enforcement - constitutional values such as dignity, equality and freedom require that courts approach their task of striking down or declining to enforce contracts that parties have freely concluded, with perceptive restraint.”*¹²

[35] It appears the preferred concept for dealing with contractual unfairness that cannot be satisfactorily resolved by existing legal rules is that of public policy.

[36] In *Barkhuizen v Napier* the Constitutional Court held that public policy imports the concepts of fairness, justice and reasonableness which preclude the enforcement of a contractual term if it would be unfair or unjust. The Supreme Court of Appeal in *Bredenkamp v Standard Bank of South Africa*¹³ interpreted the effect of the judgment in *Barkhuizen* as follows:

“...as I understand the judgment, if a contract is prima facie contrary to constitutional values, questions of enforcement would not arise. However, enforcement of a prima facie innocent contract may implicate an identified constitutional value. If the value is unjustifiably affected, the term would not be enforced.”

[37] In *Botha v Rich NO*¹⁴ the Constitutional Court held that the enforcement of a contractual right of cancellation would be unfair in the circumstances prevailing in that case. A purchaser of immovable property in terms of an instalment sale

¹¹ At [91]

¹² At [27]

¹³ [2010] 4 All SA 113 (SCA) at [47]-[50]

¹⁴ 2014 (4) SA 124 CC at [49]-[51]

had paid more than half of the due instalments and then defaulted. The contract contained a forfeiture clause in terms of which the instalments already paid were forfeited to the seller. The latter gave notice to the purchaser of its intention to cancel the contract. In its judgment the court found that granting cancellation of the contract which would result in forfeiture of the instalments already paid would be a disproportionate penalty for the breach committed.

[38] Some seven years later *Beadica* revisited *Botha*. It stated that in *Botha* the court was mindful of the unique statutory context of the matter, the consequences of which would have been that enforcing the cancellation would have resulted in the purchaser losing her right to claim transfer of the property as provided for in the *Alienation of Land Act*¹⁵ and in forfeiture of the sum of instalments already paid.¹⁶ The court affirmed that *Barkhuizen* remains the leading authority in our law on the role of equity in contract. It found that *Botha* is not authority for the general proposition that a party who breaches its contractual obligations can avoid the termination of a contract by claiming that the termination would be disproportionate or unfair.¹⁷

[39] In dispelling any notion of a divergence of views between the Supreme Court of Appeal and the Constitutional Court, *Beadica* held that the principles articulated by the Supreme Court of Appeal in *AB v Pridwin Preparatory School*¹⁸ regarding judicial control of contractual terms and its enforcement were confirmed. These are that *pacta sunt servanda* applies but that a court will declare a contract invalid which is prima facie inimical to constitutional values or principles, or otherwise contrary to public policy. Whether a contract is not prima facie contrary to public policy but its enforcement in particular circumstances is, a court will not enforce it. A party seeking to avoid a contract or the enforcement of its terms bears the onus to establish the facts and circumstances in support thereof. The court will use its powers in these respects sparingly and only in the clearest of cases in which harm to the public is substantially incontestable and does not depend on the idiosyncratic inferences of diverse judicial minds. The courts will decline to use its power to

¹⁵ 68 of 1981, section 27

¹⁶ *Beadica* at [44]-[56]

¹⁷ At [58]

¹⁸ 2019 (1) SA 327 (SCA) at [27]

invalidate a contract or to not enforce any of its terms where any of the parties directly rely on abstract values of fairness and reasonableness to escape a contract's consequences because these values are not substantive rules to be used for such a purpose.

[40] With the above in mind, I am of the view that the defendants have in this respect raised facts and circumstances that should it be proved at trial in accordance with the principles set out in *AB v Pridwin*, will in this respect constitute a defence valid in law. For this reason alone, I am not inclined to grant summary judgment.

[41] In any event, it seems clear to me that, regard being had to the correspondence between the parties which I referred to at some length as well as the various conflicting loan statements it is evident the bookkeeping of the plaintiff was in disarray. The plaintiff's counsel conceded it contained errors and sought to explain it by submitting the errors occurred after the plaintiff had cancelled the 2021 contract. Even if that was correct, the fact remains, as is evident from the correspondence as well as the various loan statements and the 'reconstruction' that discrepancies exist. The loan statements for the most part deal with the account as if the contract had not been cancelled, or if it had, that may have been reinstated. It seems that as far as the plaintiff is concerned, the one hand is unaware of what the other is doing. In my view the defendants have succeeded in raising triable issues in these respects.

Conclusion

[42] Having regard to all of the above, I grant an order as set out below.

[43] It is noted the plaintiff has abnegated the defendants' request for the matter to be mediated in terms of Rule 41A. I am of the view this matter might have been well served by mediation.

Order

1. The application for summary judgment is dismissed;
2. The defendants are granted leave to defend;

3. Costs are costs in the cause.



N. S. KRÜGER
NAME OF JUDGE

ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Electronically submitted

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **17 June 2025**.

For the plaintiff:	Adv N Alli instructed by Jay Mothibi Inc
For the first defendant & second defendant:	Adv D Vetten instructed by Mahdi Attorneys Inc
Date of hearing:	10 March 2025
Date of judgment:	17 June 2025

