



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 1220/2023

In the matter between

RENE VAN HEERDEN NO

CHRISTIAN WAGENAAR NO

STEPHANUS PHILLIPUS

(In their capacity as trustees of the Rene
Boerdery Trust, IT 1551/01)

and

ALBERTUS WYNAND PRETORIOUS NO

PETRUS JOHANNES JOUBERT NO

(In their capacity as trustees of the Pretorius
Familie Trust, IT 1551/97)

FIRST PLAINTIFF

SECOND PLAINTIFF

THIRD PLAINTIFF

FIRST DEFENDANT

SECOND DEFENDANT

Neutral citation: *Van Heerden NO and Others v Pretorius NO and Another*
(1220/2023) [2025] ZAFSHC 169 (10 June 2025)

Coram: MAJOSI AJ

Heard: 22 APRIL 2025

Delivered: 10 JUNE 2025

Summary: Contractual damages – breach of rental agreement – causal link
between breach of contract and damages suffered.

ORDER

- 1 The first and second defendants are 100% liable for the plaintiffs' proven or agreed damages for the second claim with costs, which shall include:
 - 1.1 The costs of counsel on scale A;
 - 1.2 The reasonable and qualifying costs of the wool expert, Mr Jan Christiaan Joubert.
 - 2 The plaintiffs' third and fourth claims are dismissed.
 - 2.1 There is no order as to costs.
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JUDGMENT

Majosi AJ

[1] The plaintiffs herein instituted action proceedings against the defendants for breach of a rental agreement concerning 600 merino wool sheep. It is alleged that not all the sheep were returned and, as a result, the plaintiffs suffered certain damages due to this failure. The action was defended.

[2] The salient terms of the agreement were that the plaintiff trust would rent out the merino ewes for a period of three years commencing on 1 June 2019, and ending on 31 May 2022, at a rate of R1 000 per sheep per annum. After the expiry of the agreement, the defendant's trust would return the exact number of sheep, non-pregnant, with an age ranging from four teeth to full mouth ewes, sheared and with three-month worth of wool growth on their bodies.

[3] The defendant trust was entitled to use the sheep for normal farming practices such as production and sell any sheep and lambs for their own profit. They were also to keep the sheep in optimal condition as per industry standards which included health protocols and vaccinations at their own costs. The defendant's trust was also required to register a notarial bond over the animals as security for the rental agreement.

[4] In the event of breach, a 14-day period to remedy the breach would be afforded to the offending party and, if not complied with, the rental agreement would be immediately

terminated. Return of the sheep would be required, together with any outstanding amount for rental. Amendments to the agreement would have no force or effect unless reduced to writing and signed by both parties as per clause 7.3 of the agreement.

[5] The plaintiffs allege that the defendants breached the agreement by not returning all the sheep by the 1 of June 2022 when the agreement came to an end. Only 391 merino wool ewes were returned some five months after the agreement came to an end and that they suffered damages as a result.

[6] For claim 1, they alleged that a rental amount of R90 000 was outstanding and for claim 2, that a total 209 sheep were not returned. For claim 3 they alleged that due to the sheep being returned five months late, they could not sell wool at an eight-month wool length. For claim 4, they alleged that they lost out on making a profit for selling off the progeny of the sheep. Merits and quantum were separated at the judicial pre-trial conference.

[7] The issues in dispute then were:

- (a) the authority of the third plaintiff to enter into the rental agreement on behalf of the trust;
- (b) the correct interpretation of the rental agreement;
- (c) whether the full rental amount was paid and;
- (d) the exact number of merino ewes returned to the plaintiff.

[8] On the trial date, the defendants and their legal representatives were in default and it was directed that the matter proceed on the merits in terms of rule 39(1) of the Uniform Rules of Court. The notice of set down for trial was filed and served on 5 December 2024 before the defendant's attorneys later withdrew as attorneys of record on 1 April 2025. The defendants had knowledge of the trial date as further notices were served on them in anticipation of the trial date.

[9] At the start of the proceedings, the plaintiff abandoned claim 1. Presumably, due to the non-variation clause of the agreement, the plaintiffs conceded the hand-written amendments were not true amendments to the agreement as they had not been agreed to in writing by the defendants' trust. They averred that court may rely on the signed and

typed version of the agreement. In light of the above mentioned, these aspects can no longer be considered as disputes.

[10] For the purpose of my adjudication, the authority of the third plaintiff to enter into the rental contract had to be proved as well as the correct number of sheep that were returned by the defendants' trust, albeit late. If plaintiffs suffered any damages in respect of loss of income for wool shearing wool and for lost out on any income for progeny due to the five-month late return of the sheep as per claim 3 and 4. For the sake of the clarity, I will refer to the claims as they appear in the pleadings to avoid confusion.

[11] Mr. Stephanus Van Heerden testified that the plaintiff trust entered into a rental agreement with the defendant trust. The material terms of the agreement were that they would rent out 600 merinos for the period of three years starting 1 June 2019 until 31 May 2022 at a rate of a R1 000 per ewe, per annum.¹ The said sheep were to be wool merino ewes, 600 in number, not older than four teeth to full mouth, non-pregnant, sheared with three months of wool growth on their bodies.²

[12] He further indicated that, at the time the rental agreement was concluded, he had authority to contract on behalf of the trust based on his appointment as a trustee and furthermore, he was instructed to contract on behalf of the trust as per the resolution passed by the trust which was signed by two of the three trustees³ as provided for in clause 9.1 of the plaintiffs' trust deed.⁴

[13] At the end of the rental period, the defendants delivered a total of 391 sheep in October 2022. The delivery, having taken place as follows, on 4 October 2022, 107 were delivered and further 284 sheep were delivered on 31 October 2022. A deficit of 209 sheep remained outstanding hence the action was instituted after the defendants' trust did not remedy their breach despite being informed in writing to do so or comply with the terms of the contract.

[14] As a result of the sheep being delivered five months later than agreed upon, this

¹ Rental Agreement, clauses 3 and 4.

² Annexure A Particulars of sheep in terms of clause 2 of the rental agreement.

³ Trial bundle, Resolution of the Trustees of Rene Boerdery Trust.

⁴ Ibid, Trust Deed of Rene Boerdery Trust.

caused him to suffer further damages. For claim 3, he could not shear the wool of the sheep as they only had three months' worth of wool growth. If he did so, he would obtain a lesser price due to the length of the wool. If he had received the merino ewes on 1 June 2022 as agreed, they would have had at least eight months' worth of wool growth on their bodies which would sell at an increased price.

[15] For claim 4, as he received the sheep five months late, he could not sell progeny for profit which would have brought him an income for at least one lamb per sheep, given the fact that their production rate is one lamb per year.

[16] In terms of rule 38(2), the affidavit of Jan Christiaan Joubert was admitted into evidence. He indicated that he has 30 years' experience as a sheep and wool expert and has been employed as such since October 1995. He opined that merino sheep can be sheared every 8 months and if they are sheared earlier, the length of the wool will be shorter and this will have an impact on the price that is fetched. He further stated that the gestation period for a merino wool sheep is, on average, five months. This effectively means that an ewe will lamb, on average, once a year as the said lamb will be dependent on the ewe for a few months.

[17] Though the crux of the plaintiff trust claim relates to the 209 sheep that were not returned as agreed, it alleges, for the latter part of its claims, that had the sheep been returned on time they would have (a) made a profit from wool shearing and (b) if the returned sheep would have produced lambs that could have been sold for profit. Thus, with the sheep returned five months late, the plaintiff trust lost out on that opportunity to make a profit and thus suffered a material and financial loss hence the third and fourth claim with interest.

[18] Counsel for the plaintiffs asserted that, in the defendant failing to deliver all the sheep on time, the rental contract was breached and the plaintiffs, not only suffered damages, but a real financial loss was suffered as 209 sheep is outstanding to date. For the plaintiff's trust to be placed back in a position as it would have been if the defendant had complied with the agreement and returned all the sheep by 1 June 2022, it would not have suffered the loss as per claim 2 for 209 sheep.

[19] Upon receipt of the sheep on the said date, the wool on their bodies would have,

after a mere five months, grown to eight months' worth of wool and they would have made a profit from eight months' worth of shearing.

[20] Furthermore, had the sheep been returned, they could have been pregnant and produced progeny which could have been sold for profit by the plaintiff. Put differently, had it not been for the breach of the agreement, the plaintiff trust would have been in possession of all the sheep; shear all 600 sheep for profit and would have been in a position to use all the ewes for breeding purposes.

[21] It was thus submitted that the damages in claim 3 and 4 flow naturally from the damages suffered in claim 2 and can be considered as damages. It was proffered that the plaintiff trust was entitled in law to claim such damages. In support thereof, counsel for the plaintiffs referred me to various cases wherein the court had to establish if indeed this was a real loss or too remote that it could not be contemplated.⁵

[22] In *Sandlundlu (Pty) Ltd v Shepstone & Wylie Inc*,⁶ Snyders JA stated the following at paras 13 -14:

'A plaintiff who enforces a contractual claim arising from the breach of a contract needs to prove, on a balance of probability, that the breach was a cause of the loss.

International Shipping Co (Pty) Ltd v Bentley 1990 (1) SA 680 (A) at 700F-G Corbett CJ explained the practical enquiry in the following terms:

"The enquiry as to factual causation is generally conducted by applying the so-called "but-for" test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; aliter, if it would not so have ensued."'

[23] The above-mentioned cases reiterate that, should a plaintiff elect to enforce a contractual claim arising from a breach of contract, he should, on a balance of

⁵ Plaintiff's written submissions, *Victoria Falls & Transvaal Power Co Ltd* 1915 AD 1; *Sandlundlu (Pty) Ltd v Shepstone & Wylie Inc* [2010] ZASCA 173; [2011] 3 All SA 183 (SCA) (*Sandlundlu*); *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) SA 670 (A).

⁶ *Sandlundlu* para 13-14.

probabilities, prove that the breach of the rental contract was the cause of the loss suffered. For claims 3 and 4, the plaintiff would also have to prove that the loss was not too remote.

[24] It is common cause per the pleadings that an agreement was concluded between the two trusts for the rental of 600 sheep and that the contract came to an end on 30 of May 2022. Only 391 sheep were returned with 111 lambs which were still dependent and not self-sufficient from the respective ewes. It is not in dispute that the defendant trust did not return and deliver 209 merino wool ewes when the agreement reached end of life. This is a clear breach of clause 6 of the rental agreement which was properly signed in May 2019. I thus hereby find that there was a breach of the rental agreement by the defendant trust.

[25] For the plaintiff to be successful in its subsequent claims, it would have to show that, as a direct result of the sheep not being returned on time, he suffered a financial loss that is an actual loss and not a remote loss. The evidence presented by Mr Van Heerden pertaining to his authority to enter into the rental agreement as the third plaintiff is fortified by a trust resolution and by clause 9.1 of the plaintiffs' trust deed. This specific clause dictates that he indeed had the requisite authority to contract on behalf the plaintiff trust where the rental contract is concerned.

[26] There is no doubt that the 209 sheep that were not returned in terms of the rental agreement is a real loss suffered by the plaintiff. This is the plaintiff's exact claim where claim 2 is concerned. The rental agreements stipulated that a total of 600 sheep will have to be delivered at the end of the rental period with at least three months of wool on their bodies, ewes, not older than four teeth to a full mouth. I have no qualms in accepting that as that is a real loss and the plaintiff is entitled to 100% of its proven damages in respect of claim 2.

[27] The third claim pertaining to the shearing of wool for profit is different. Annexure A to the rental agreement as stipulated herein above did not require for the sheep to have more wool growth on their bodies besides the three-month length growth. It is so that the sheep were returned five months late and the rationale for the third claim is that, if they were returned in on 1 June 2022, by the month of October 2022, they would have had at least eight months' worth of growth on their bodies which could have been sheared for profit for the benefit of the plaintiff.

[28] In my view, this loss is too remote for several reasons. Firstly, Mr. Van Heerden, during his testimony, emphasized health protocols and timely vaccinations are key to preventing diseases in sheep such as brandsiek (English term being sheep scab/mange). This particular affliction is a mite induced skin disease which causes crusty lesions on the skin of the sheep and resulting in wool and weight loss. It is for that reason the defendant trust was tasked to attend to this at their own costs.

[29] Nowhere in his testimony or in the pleadings for that matter was mention made of the fact that the sheep were checked by a veterinarian for diseases and given a clean bill of health that would have guaranteed that they carried wool on their bodies that would have for a fact grown to eight months length. Not even their own expert opined on the state of the sheep upon their return to the plaintiff's trust or that he inspected their merino wool for quality and sale purposes.

[30] Secondly, there was also no evidence led in the form of a veterinarian or fertility expert on sheep that the said sheep would have lived on after even if they had been returned at the end of the contract or for that matter, that they would have all lived to have their wool sheared at the eighth-month growth length mark. For all we know, they could have died upon their return to the plaintiff trust.

[31] Thirdly, the rental contract dictated that the sheep, upon their return to the plaintiff trust, must be sheared with only three months' worth of wool growth. This would then entail that, if the sheep indeed survived, a further period of five months would ensue to allow eight months' worth of growth on each individual sheep. This effectively means that a waiting period of 5 months was always going to be applicable no matter which month the sheep were returned. I am thus not satisfied with the evidence presented for claim 3.

[32] The fourth claim of the plaintiffs revolves around damages suffered as a result of loss of expected progeny for profit. If one has regard to the gestation period of a merino sheep, the sheep would have lambed once a year. It thus cannot be considered to be a loss at all as four to five months difference will not take away from the fact that an ewe would have lambed once a year anyway as already confirmed by their very own expert Mr Joubert. This is also provided that the returned ewes were fertile enough to produce

progeny. The defendants wrongful conduct, in my view, cannot be said to be the probable cause of the plaintiffs' loss under these circumstances.

[33] The plaintiffs trust averred that the 209 sheep that were not returned also made them lose out on the progeny of the sheep and, as a result, they suffered damages. I am not in agreement with this statement for several reasons. Their agreement does not stipulate that the plaintiff is entitled to any progeny from the sheep but yet, when the total of 391 sheep were returned, they were also returned with 111 lambs which were still dependent on the ewes. This cannot to be said to be a loss.

[34] Secondly, clause 5.2 of the agreement stipulates that the defendants were entitled to use the sheep for farming practices inclusive of production purposes or to keep their progeny and sell them for profit if they had been self-sufficient and not still dependent on their ewes with the plaintiff returning them once they became self-sufficient. This, in itself, means that the lambs that were returned was not due to the plaintiff. The defendants, in terms of the rental agreement, were entitled to the lambs. It can thus not be said that the plaintiff was entitled to a claim for progeny as this was not due and payable to the plaintiff.

[35] Thirdly, in my view, the plaintiffs were enriched by these 111 lambs which were returned to them but, are still expecting to be compensated for something that is not due or payable in terms of their rental contract. I am thus of the view that the plaintiff failed to advance evidence in that regard and claim 4 stands to be dismissed.

[36] On the issue of costs, the general rule is that costs follow the cause. The plaintiff trust was partially successful as only claim two succeeded. It follows then that the costs to be awarded should be confined to that claim and same must be granted. I cannot, however, find that the plaintiff trust should be entitled to costs of counsel in terms of rule 67A on any other scale other than scale A. The issues raised in these proceedings were not complicated.

[37] Accordingly, it is ordered:

- 1 The first and second defendants are 100% liable for the plaintiffs' proven or agreed damages for the second claim with costs which shall include:
 - 1.1 The costs of Counsel on scale A;

- 1.2 The reasonable and qualifying costs of the wool expert, Mr. Jan Christiaan Joubert.
- 2 The plaintiffs' third and fourth claims are dismissed.
- 2.1 There is no order as to costs.



MAJOSI AJ

Appearances

For the plaintiffs: R Van Der Merwe

Instructed by: Phatshoane Henney Inc, Bloemfontein.