

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 5421/2023

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED.

DATE: 07/07/2025

SIGNATURE..



In the matter between:

WILLEM JANSEN VAN RENSBURG

Applicant

And

FREEDOM PROPERTY FUND LTD

Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **07 July 2025**.

JUDGMENT

Makoti AJ

Introduction

- [1] This is a dispute arising from a contractual relationship between the parties spanning a number of years, and which has now been terminated. The termination of the agreement is not in issue. It is rather the effect of the termination that has motivated the Applicant to seek relief before this Court. There were seemingly no problems whilst the contractual relationship persisted. The Applicant wants what he says is due to him from the Respondent. What the payments are for will be discussed in paragraphs below.
- [2] This application raises a number of issues. First, is the nature of the relationship - that is, whether an employment relationship existed between them. Second is whether the Applicant is entitled to payments compensating him for his work as a director of the respondent. The last issue is whether the Applicant was entitled to fees for services which he rendered in his capacity as attorney, using his law firm.
- [3] The Respondent opposes the application. It contends that the Applicant is not owed any money; that all that was due to him has been paid. Alternatively, that his claims were compromised.

Issues to be decided

- [4] The cumulative amount claimed by the Applicant is **R3,200,388-78** (Three Million, Two Hundred Thousand, Three Hundred and Eighty-Eight Rand and Seventy-Eight Cents), together with interest. It is made up of the following individual claims:

- [4.1] For payments which the Applicant alleges were outstanding, **R1,089,435-09** (One Million, Eighty-Nine Thousand, Four Hundred and Thirty-Five Rand and Nine Cents). This claim is a cumulative amount based on various monthly payments which the Applicant alleges were not paid to him. The Applicant seeks that interest on this amount be calculated from the date on which each of the payments were due to the date of final payment;
- [4.2] Attorneys' fees for professional services rendered, **R490,953-69** (Four Hundred and Ninety Thousand, Nine Hundred and Fifty-Three Rand and Sixty-Nine Cents). Interest at the current *mora* rate would be reckoned from 1 April 2023 to the date of final payment; and
- [4.3] Lastly, payment in lieu of directors remuneration totaling **R1,620,000-00** (One Million, Six Hundred and Twenty Thousand Rand). For this amount, if claim is successful, the calculation of *mora* interest would start from the date of judgment to date of final payment.
- [5] Ultimately, the question which I am faced with is whether the Applicant is owed and entitled to be paid the total amount claimed or any portion of it.

A summary of the facts

- [6] The parties concluded their first contractual agreement approximately twelve years ago, on or about 15 October 2013. That is the date that appears on the signature page of this agreement ("original contract"). It is not clear from the original contract whether it was signed on that date, and by whom. Nothing turns on the signature date and I do not dwell on that. I accept, as do the parties, that the original contract exists and was entered into

- [7] In terms of the original contract, the Applicant was to render services as an independent contractor to the Respondent for a period of five (5) years. Remuneration was fixed at **R30,000.00** (Thirty Thousand Rand) per month from 01 November 2013. Remuneration would increase annually by ten percent (10%). Further, in terms of the agreement the Applicant was required to tender his services to the Applicant for forty-two (42) hours in a week for the duration of the agreement.
- [8] The Applicant was entitled in terms of the original contract to claim the travel expenses incurred while rendering service to the Respondent. For such claims, the Applicant was to issue invoices on/or before the last day of each calendar month. The Respondent would then pay the amount claimed amounts on the 7th day of the month following the day the invoice(s) was issued.
- [9] On 24 May 2016, before the expiry of the five year period of the original agreement, the parties concluded a second agreement. This was an addendum to the original contracts ("addendum"). The addendum added more responsibilities for the Applicant, and made him the Group Legal Adviser ("GLA") of the Respondent. This change was effective from 1 December 2014.
- [10] The effect of the addendum is that the term of the original contract was extended. Significantly, the addendum recognised the fact that the Applicant was a practicing attorney and he was allowed to continue with his work. This was the first addendum.
- [11] Outside of this agreement, from October 2016, the Applicant was appointed and began serving as a director with the Respondent. This fact is not in dispute. That year , a Mr Stephen Maritz was appointed Chief Executive

Officer (CEO) of the Respondent. Maritz held the position of CEO until his resignation in December 2021. Regarding Maritz, the Applicant alleges:

[11.1] they came to an understanding that the Respondent was financially distressed;

[11.2] Maritz asked the Applicant to suspend the payment of the increments, previously agreed between the Applicant and the Respondent, until the company resolved its financial difficulties;

[11.3] The Applicant apparently acquiesced, and an agreement was agreed to that effect, orally; and

[11.4] Maritz confirmed this arrangement between the parties in a confirmatory affidavit.

[12] I note that the Respondent has not been able to dispute the Applicant's allegations in this respect, it has failed to provide any contradicting facts, and has simply noted the allegations in its plea. This should be read along with the fact that he was contractually entitled to receive annual increments. The suspension thereof is not an alteration of the material terms of the agreement, but a delay in the implementation of the relevant contractual stipulation.

[13] Further, according to the Applicant, Maritz undertook to extend his contract (as GLA) until he reached the retirement age of 65 when it expired during or about October 2023. The Respondent specifically denied this. It would be difficult to accept his allegation without more being provided. That would have amounted to an alteration of one material terms of the agreement in relation to its duration.

[14] I accept the proposition, and for now only as a proposition, that the Applicant's relationship with the Respondent was at two levels. First as an independent contractor cum GLA, and secondly as one of the members of the Respondent's board. It is in respect of the position as GLA that he says he was actually an employee as opposed to being an independent contractor. In section 213 of the Labour Relations Act¹ an employee is defined as excluding an independent contractor. It reads thus:

- “(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; or**
- b) any other person who in any manner assists in carrying on or conducting the business of an employer,...”.**

[15] If the definition above is followed the Applicant's case will not succeed. I am mindful that he relies on the deeming provisions of the LRA² to assert employee rights. But the deeming provisions talk to a situation of temporary employees, not independent contractors. On this score, also, it is difficult to see the Applicant succeeding on this claim. I develop the two points further below.

[16] Despite occupying the two positions in the company, the Applicant did not cease to practice as an attorney. In fact, he was obviously appointed to that position because he was a practicing attorney. Significantly, his law firm was also used by the Respondent in an action against the company's former auditors, RSM Betty Dickson. That action was instituted in 2020, and the Applicant issued invoices for services rendered as attorney to the Respondent.

¹ Act No. 66 of 1995 (the LRA).

² Section 200A of the LRA.

- [17] The parties concluded a third addendum on 9 October 2019. This further addendum recognised that the Applicant has been employed as GLA. In its terms, the second addendum, extended the Applicant's appointment for a further five years, effective 01 November 2018 to end October 2023. The Applicant alleges that he continued to work for the Respondent as an independent contractor and also serving as its Attorney, thus continuing to wear two hats.
- [18] It is not disputed that the 10% annual increases to the Applicant's remuneration have not been effected. The Applicant says that this was due to the oral agreement which he had struck with Maritz. The latter confirms this. This is the reason for the Applicant's claim to be paid all increments which had been outstanding since he concluded the oral agreement with Maritz.
- [19] In December 2021, Maritz resigned as CEO and director of the Respondent. This change came to herald the conclusion of yet another addendum to the original contract ("fourth addendum"). It was signed in December 2021, and its most important term is that the Applicant's contract with the company would end on 31 December 2022 Rather than in 2023 as agreed on conclusion of the third addendum.
- [20] Consequent to the parties concluding the fourth addendum the Applicant was paid an amount of **R341 850.06** (Three Hundred and Forty-one Thousand, Eight Hundred and Fifty Rand and Six Cents). The Respondent alleged that this payment was made in lieu of the annual increments due to the Applicant as well as for the value of his shares in the company.
- [21] Paragraph 6 of the fourth addendum reads:

"That company owes the contractor amounts in terms of commission and outstanding shares. These amounts will be settled as follows:

- Commission of 4% with regards to the sale of Tubatse Estate in the sum of R1 400 000-00 (One Million Four Hundred Rand) will be paid as follows- R260 000 -00 Two Hundred and Sixty Thousand Rand) on 1 December 2021, and 9 equal payments of R86,667.00 (Eighty-Six Thousand Six Hundred and Sixty-seven) per month from 1 January 2022, provided that the purchaser pays his monthly instalment timeously. Should the purchaser pay outstanding amount once off, the contractor will receive his full commission immediately thereafter.
- The outstanding amount due in terms of the outstanding shares, awarded to the contractor during 2015 after the successful conclusion of 2 settlement agreements, in the sum of R341 850-06 (Three Hundred and Forty-one Thousand, Eight Hundred and Fifty Rand and Six Cents), will be paid to the contractor by 1 February 2022.
- The parties agree that the term of the agreement will be amended to end on 31 December 2022. The agreement can be extended after this date if both parties agree to it in writing.”

[22] The parties also agreed that the remaining terms of the agreement, ostensibly as per the original contract and its addenda, would remain in full force and effect. On my reckoning, by the time the fourth addendum was concluded the Applicant was earning an amount of **R90 110-00** per month, excluding VAT.

[23] In respect of further payments, including bonuses and/or incentives, the parties agreed that they would be payable at the discretion of the Respondent's remuneration committee.

[24] Before I deal with the merits, I must address the question whether there are unresolvable material disputes of fact. This point was raised by the Respondent [at the hearing/in argument].

Whether there are material disputes of fact which cannot be resolved on the papers

- [25] The Respondent wants this case to be dismissed due to what it regards as material disputes of fact. It is its case that the Applicant chose the motion procedure in circumstances where it was foreseeable that there would be material disputes of fact of such a nature that they could not be resolved on the papers.
- [26] It seems to me that the Respondent foreshadowed this technical objection by alleging that it has paid the Applicant what was due to him. Also, I note that the Respondent relies on its use the word “*commission*” in an attempt to suggest a dispute of facts. Further, the Respondent states that because the addenda do not make reference to backpay, clause(s) in which the word “*commission*” appears must be read as inclusive of all amounts owed to the Applicant.
- [27] To say that the argument does not make sense is to understate my conclusion. In my view it is in the nature of an addendum that it will deal only with what it seeks to include in or delete from an existing agreement. It would not deal with every term of the agreement sought to be amended, but would simply take matters forward from what has already been agreed in a new context. This, in itself, does not give rise to an unresolvable dispute of facts.
- [28] I do not understand the authority of *Plascon-Evans Paint Ltd v Van Riebeck Paints (Pty) Ltd*³ to suggest that once there is a material dispute of fact the case for a plaintiff should be dismissed. Rather, the authority tells us that where such a dispute exists, a final order may be granted can be granted only

³ [1984] ZASCA 51; 1984 (3) SA 623(A) 634-635. Also, *National Director of Public Prosecutions v Zuma* 2009 (2) SA 279 SCA [26].

if the facts advanced by the Applicant, and which are been admitted by the Respondent, together with the facts alleged by the latter, justify such order. This requires of the Court to thoroughly interrogate the issues which are contained in the papers.

- [29] It is not enough that a dispute is raised in the papers. A dispute must be genuine and *bona fide*. It must not be one that is drawn only from the Respondent's version, and which consists of bald denials which are not creditworthy or raise fictitious disputes of fact, and which are palpably implausible, farfetched or untenable. In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*⁴ the Court explained this in the following manner:

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence), if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court would generally have difficulty in finding that the test is satisfied. I say generally because factual averments seldom stand apart from a broader matrix of circumstances all of which need to be borne in mind when arriving at a decision. A litigant may not necessarily recognize or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate

⁴ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at para [13].

as they may be, and will only in exceptional circumstances be permitted to disavow them...”

- [30] On the facts before me I am not persuaded that there are material disputes of fact, much less any dispute that would warrant an application of the principles espoused in *Plascon-Evans*. What I observed is that the Respondent has raised a fictitious dispute of fact - unsuccessfully so. The purported dispute is not germane to the issues arising in this case. I reject the Respondent's raising of this technical point as a non-starter.

The true nature of the relationship between the parties

- [34] The Applicant contends that he was an employee of the Respondent, or at least must be presumed to have been. To make this point, he refers to section 200A of the LRA.⁵ The provision provides for circumstances under which a person may be presumed as an employee of another. Amongst the considerations provided for in the LRA is the question of control by the would-be employer. The would-be employee's hours worked per month is also an important consideration.
- [35] In written argument, the Applicant's legal representatives conceded that the provisions or circumstances provided for in section 200A(1) do not apply to a person who earns an amount above what is regulated by the Minister in terms of the Basic Conditions of Employment Act – that is forty hours per week.⁶ The Applicant does not provide an indication whether he falls within the time worked category of or within the earnings threshold determined by the Minister. Instead, he has asked the Court to look into the conditions of his

⁵ No 66 of 1995.

⁶ No 75 of 1997.

employment and to make a determination that he was an employee as opposed to an independent contractor.

- [36] What the Court considers when faced with an application to determine the nature of a relationship as in this case, that is whether one is an employee of another, was posited in *Denel (Pty) Ltd v Gerber*⁷ in this way:

“... it is enjoined to determine the true and real position. Accordingly, it ought not to decide such matter exclusively on the basis of what the parties have chosen to say in their agreement for it might be convenient to both parties to leave out of the agreement some important and material matter or not to reflect the true position.”

- [37] At clause 5.2.10 of the original contract, the Applicant was required to render services to the Respondent for thirty-two hours every week for a period of forty-five weeks a year during the appointment period. It could be argued that the time worked threshold was exceeded and therefore that the Applicant could, on the face of it, be presumed to have been employee of the Respondent. But it is not that simple. The issue is complicated by the Applicant continuing to operate his law firm whilst at the same time working for the Respondents.
- [38] The Applicant was clearly not required to render his services to only one person. If he did so, it was at his own election and not because he was barred from doing so by any agreement with the Respondent. Another telling factor in the nature of the relationship was that the Applicant was required to invoice the Respondent monthly. The monthly invoices would include the amount set out in the relevant addenda exclusive of VAT.
- [39] I imagine that a person does not pay VAT from remuneration that he or she would earn as an employee. That you only pay when you are rendering

⁷ Denel (Pty) Ltd v Gerber (2005) 26 ILH 1256 (LAC) para [19].

services for which you invoice periodically. I am not convinced therefore that the Applicant was an employee of the Respondent and therefore reject this argument.

Whether the respondent is owed amounts claimed in the Notice of Motion

[40] I have mentioned the amounts which the applicant is claiming, and the reasons therefor. They are worth restating, as I do below.

(i) *In respect of unpaid increments to Applicant's remuneration*

[41] The first amount that the Applicant is claiming is **R1 089 455-09**, for outstanding monthly payments. Having taken careful consideration of the pleadings, I conclude that the Respondent stopped paying the increases during 2018. It was interesting to note the contention by the Respondent that it has paid the Applicant fully, including for previously unpaid increments of 10%. The Respondent suggested that the unpaid increments were factored into the amount of **R341 850-00** which was paid to the Applicant in December 2021.

[42] It can at least be accepted, if the version of the Respondent is to be believed, that the Applicant was entitled at some point to be paid the increments that he is claiming. On its version, the Respondent included the outstanding increments into the sum mentioned above. I am not persuaded. This is because the fourth addendum is clear what this payment was for. It specifically mentioned that payment was for '*outstanding amount[s] due in terms of the outstanding shares, awarded to the contractor during 2015 after the successful conclusion of 2 settlement agreements*' (my emphasis).

[43] The Applicant's version was that he had reached an agreement with Maritz to not claim the increments until the Respondent was financially stable. The

version was confirmed by Maritz. As I indicated above, what the Applicant and Maritz agreed on was merely to suspend the implementation of one of the material terms of the agreement. This the Respondent did not rebut. Its denial was simply baseless, including its version that the increments were incorporated into a commission. There is no reason why the agreement between the Applicant and Maritz on behalf of the Respondent should not be respected and given effect to. Neither the original contract nor its addenda prevented them from concluding this oral agreement. And they both acted with the sole intent of helping the company to overcome its financial burdens at the time.

- [44] To his credit, the Applicant has provided a confirmatory affidavit deposed to by Maritz to back his claims. I have no doubt that when concluding the deal, Maritz acted for and on behalf of the Respondent. It cannot be gainsaid that Maritz had authority to reach the agreement with the Applicant, at the very least ostensible authority.⁸ The Applicant had by then been working with the Respondent for a long period of time. He knew its financial challenges and was willing to assist it to overcome them.
- [45] At no point did the Respondent pay the outstanding increments. If it has, it would have attached proof of such payment. The Respondent instead oddly claimed that the abovementioned amount of **R341 850-00** included payment for the outstanding increments. The facts are so clear and not open to doubt. I find that the Applicant has made out a compelling case for payment of outstanding annual increments. He is entitled to the payments, and would have been paid the outstanding amounts earlier had he not agreed to assist the Respondent to get out of a difficult situation.

⁸ Makate v Vodacom (Pty) Ltd 2016 (4) SA 121 (CC).

[46] I must deal with another of the the Respondent's unsustainable points: that the Applicant compromised his claim for backpay through the conclusion of the fourth addendum. Of course, a compromise agreement intended to resolve disputes is legally binding. It is correct that a compromise is an agreement, which, like any other, must reveal the true meeting of minds⁹ of the contracting parties. Thus, these parties ought to have been *ad idem* on that issue.¹⁰ I do not see how it could be said, on the established facts, that there was any meeting of the minds in this regard. Reliance on compromise in this case is far fetched. First, there is no suggestion that there was a dispute between the parties when the Applicant and Maritz concluded the agreement. Second, as I pointed above, there was no meeting of minds between them.

(ii) *Payment in respect of services as Attorney*

[47] The second amount the Applicant claims is for the services which it alleges to have rendered on behalf of the Respondent as an attorney. The amount concerned is **R490 953.69** (Four Hundred and Ninety Thousand, Nine Hundred and Fifty-Three Rand and Sixty-Nine Cents). This claim is based on several invoices (23/1337, 23/1338, 23/1339 and 23/1344) that were issued by the Applicant's law firm for services rendered. The Applicant also included a bill of costs for the case titled *Freedom Property Fund (Ltd) v RSM Betty and Dickson*, in which he represented the Respondent.

[48] To fulfil his mandate to the Respondent the Applicant engaged the services of several advocates, including senior counsel. The Respondent does not dispute that the invoices issued by the Applicant were not settled. Also, it is not in dispute that the Applicant rendered day-to-day services to the Respondent as a legal advisor - a role that he played outside of representing

⁹ Cloete v Van Zyl (3384/2017) [2024] ZAECMKHC 48 (2 May 2024) para [21].

¹⁰ D.K and Others v C.F (26567/2021) [2023] ZAGPJHC 1331 (20 November 2023) para [8].

the Respondent in litigation. Paragraph 2.5 of the third addendum is clear in this regard.

- [49] Regarding *quantum* the Applicant also relied on a confirmatory affidavit of an expert, Ms Nastasija Ryan. She is a practicing attorney and a cost consultant. She attested to the fact that she has assessed the invoices issued by the Applicant for services rendered in his capacity as attorney. In addition, she has assessed an unsigned mandate and fee agreement and confirmed that the fees invoiced were in accordance with it. Her ultimate assessment is that the Applicant's fees were reasonable.
- [50] The Respondent disputed the reasonableness of the Applicant's invoices. It also said that the Applicant was not entitled to render legal services and be paid for doing so. I am willing to accept that the contractual instruments concluded between the parties did expressly provide that the Applicant was entitled to render legal services to the Respondent, but the fact is that he did, and did so on instruction.
- [51] To expand this, the Respondent briefed and consulted with a number of advocates who then rendered services for the Respondent on the basis of the mandate given to them by the Applicant. The Respondent did not question why the Applicant was involved in the litigation, and why the services of advocates were procured by the Applicant on its behalf, when it used the services.
- [52] I am not with the Respondent on this score. Its refusal to pay for the services rendered by the Applicant is opportunistic. Also, the agreement between the parties does not state that the Applicant was employed in the capacity as an attorney. He needed to be in practice to be able to act in that capacity and to brief advocates. The Respondent has to pay for the services that it has

received from him in his capacity as attorney. I find its refusal to pay the Applicant ingenuine.

(iii) Claim for directorship fees

[53] At paragraph 3 of the Notice of Motion the Applicant seeks the following relief:

“Payment of director’s fees in the total amount of R1 620 000.00, up to date hereof, and payment of R20 000.00 per month from 1 July 2023 until the date of my removal as director.”

[54] This prayer is misaligned to the pleaded case. My understanding is that the Applicant was removed as a director in June 2023 already. Humans are prone to err and I do not penalize him for the mistake. In any case, it has been made clear in paragraph 56 of the founding affidavit that the amount of **R20 000-00** per month is calculated from October 2016 until the date of his removal which I have mentioned above.

[55] The Applicant was not paid for his role as director of the company. That is common cause. According to him the other directors who served with him were remunerated. He wants to be paid equal remuneration, dating back from October 2016 when he began serving in that capacity.

[56] In its answer the Respondent admitted that the non-executive directors were paid **R20 000-00** per month for their services. The reason advanced as to why the Applicant was not so remunerated was that he was appropriately remunerated under the parties’ agreement. As I have shown, it is correct that the Applicant was remunerated for some of his services during the period in which he was playing dual roles. Does that mean he was not entitled to be remunerated in his capacity as director?

- [57] The Applicant seeks a remedy in terms of section 163 of the Companies Act.¹¹ Subsection (1) empowers shareholders or directors of a company to apply to Court for relief where any of the the circumstances enumerated to in subsections (a) to (c) prevail.
- [58] These provisions are intended to afford shareholders and directors the opportunity to act against and correct oppressive or prejudicial conduct in a company. The remedies are as provided for in subsection (2) of section 163. In *Grancy Property Ltd v Manala*¹² the SCA held that:
- “[S]ection 163 must be construed in a manner that will advance the remedy it provides rather than limit it. Such an approach is consonant with the objectives of section 7 of the Companies Act, which include balancing the rights and obligations of shareholders ad directors within the company and encouraging the efficient management of companies.”
- [59] The question is whether the Applicant can be afforded relief under section 163 of the Companies Act. As things stand, the Applicant is neither a shareholder nor director in the Respondent. This is important given that subsection (1) reads that “... **shareholder or director of the company, may apply to court** ...”. This appears to talk of a person who is enduring
- [60] A director is defined in the Companies Act as contemplating a person “... **occupying ...**” the position.¹³ Present continuing tense is used in the definition, and I do not interpret the term to include a company’s past directors.

¹¹ Act No. 71 of 2008.

¹² [2013] ZASCA 57; [2013] 3 All SA 111 (SCA); 2015 (3) SA 313 (SCA).

¹³ Section 1 of the Companies Act reads *inter alia* that:

“**director**” means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated;”

The term shareholder is defined similarly. The language and context¹⁴ of the statutory provision are telling in terms of who the provision was intended to provide remedy to. I am of the view, therefore, that it is not intended for past directors and shareholders, whatever the nature of their complaints against the company.

- [61] Accordingly, it is not necessary for me to consider the Applicant's claim in this regard in any further detail. The claim is accordingly dismissed.

Consideration of costs

- [62] The Applicant has been treated unfairly by the Respondent in its refusal to pay him the outstanding increments. He sought to assist the Respondent to overcome its challenges by agreeing to suspend payment due to him, having reached an understanding with Mr Maritz who at the time was the Respondent's most senior representative. Why the company persists in its refusal to pay him, based on spurious reasons, is to my mind unfathomable.
- [63] The Applicant has succeeded in respect of two of his claims against the Respondent. That is substantial success and in my view he is entitled to be awarded the costs of the litigation.

Order

- [64] In the result, it is ordered that:
- [a] The Respondent is ordered to pay the Applicant outstanding payments totaling an amount of R1 089 435-09, with interest at the applicable

¹⁴ Novartis v Maphil (20229/2014) [2015] ZASCA 111; 2016 (1) SA 518 (SCA); [2015] 4 All SA 417 (SCA) (3 September 2015) paras [28] – [30].

rate from the date on which each of the amounts fell due to the date on which final payment is made;

- [b] The Respondent is ordered to pay the Applicant outstanding attorney's fees in the amount of R490 953-69, with interest at the applicable rate from 01 April 2023 to the date on which the final payment is made;
- [c] The Applicant's claim under section 163 of the Companies Act is dismissed; and
- [d] The Respondent shall pay the costs of this application on party and party scale B.



M. Z. MAKOTI

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION

DATE RESERVED : 18 NOVEMBER 2024

DATE DELIVERED : 07 JULY 2025

APPEARANCES:

**FOR APPLICANT : ADV R DU PLESSIES SC
MT DE BRUIN ATTORNEYS
C/O SUNE DU PLESSIS ATTORNEYS
POLOKWANE**

**FOR FIRST RESPONDENT : ADV G QUIXLEY
BERNADT VUKIC POTASH & GETZ ATT.
C/O DDKK ATTORNEYS
POLOKWANE**