



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 15113/2020

REPORTABLE

In the matter between:

**MINISTER IN THE DEPARTMENT OF PUBLIC
WORKS AND INFRASTRUCTURE**

PLAINTIFF/APPLICANT

and

**TUINIQUA (PTY) LTD t/a
TUINIQUA CONSULTING ENGINEERS**

FIRST DEFENDANT

REDER CONSTRUCTION (PTY) LTD

**SECOND DEFENDANT
/RESPONDENT**

Coram: **MOOSA AJ**

Heard: **5 AUGUST 2025**

Delivered: **5 September 2025 (delivered electronically to the parties)**

Summary: Civil procedure – Uniform Rule 21 – request for further particulars – sufficiency of response – application to compel – discuss when further particulars permissible for plea of denial – Uniform Rule 21(4) and (5) interpreted – timing re cost order – costs deferred until the end of civil trial.

ORDER

1. The application under Uniform Rule 21(4) succeeds.
2. Within 10 days of this order, the Respondent shall furnish the Applicant with sufficient particulars in response to paragraphs 5.6, 7.2, 7.3, and 10.7 of the Applicant's request for further particulars for trial dated 29 April 2022.
3. In the event of non-compliance with the order in 2 above, Applicant is authorised to apply to this Court for the striking out of the Respondent's defence in the main action filed under the above case number, and to do so on the same papers filed in this application under Uniform Rule 21(4), duly amplified if needs be.
4. Costs of the application is held over for determination under Uniform Rule 21(5).

JUDGMENT

Moosa AJ

Introduction

[1] This judgment relates to an interlocutory skirmish rooted in Uniform Rule 21(4). I refer to the parties as in the application before me. The Applicant, who is the plaintiff in the main proceeding, seeks to compel the Respondent, who is cited as the second defendant in the main action, to give sufficient particulars for the Applicant's trial preparation. The protagonists were represented at the hearing by Mr Edmunds SC (for the Applicant) and Mr Potgieter SC (for the Respondent). At the onset, I will briefly narrate some relevant background facts to the application.

Background: the factual matrix

[2] On 14 November 2014, the National Department of Public Works and Infrastructure (“the Department”) accepted Respondent’s tender to construct a police station at Dysseidorp in the Karoo for R39 468 931,99. A Principal Building Contract was concluded. On 20 November 2014, the site was handed over to the Respondent so that construction could take place as per the agreed terms of the contract.

[3] Whereas Second Defendant/Respondent was appointed as the building contractor, the First Defendant was appointed as the structural engineer. They each accepted their appointment and rendered services as provided in their contracts.

[4] On 21 September 2016, practical completion (as distinct from final completion) of the construction works was achieved. The event that is the Applicant’s cause of action occurred in and during May 2017.

[5] Before final completion was achieved, one of the buildings, Block C, collapsed. The collapsed building housed, amongst other things, the police station’s charge office, public waiting room, administrative and safe custody areas, as well as archives.

[6] For this reason, Block C was declared unsafe for use and occupation. Consequently, it has been vacated and is no longer suitable for its intended purposes.

[7] The collapse of Block C is widely attributed to subsidence and/or differential settlement of its foundation. It is alleged that this was caused by negligence on the part of the First Defendant and the Second Defendant/Respondent. Therefore, they are being sued jointly, alternatively jointly and severally. As against the Second Defendant/Respondent, it is alleged that, amongst other things, it failed to use fill material of G5 quality in the sub-base of the surface-bed.

[8] G5 fill material ‘is a non-specific engineering material that is *inter alia* used in construction particularly in foundation fill or backfill. It consists of a mixture of natural or crushed aggregate (stone) particles and is specified in the South African National Standards (SANS) 1200 series. It is typically characterised by: particle size;

aggregate type; compaction properties; and strength and durability' (Founding Affidavit: para 23).

[9] On 19 October 2020, the Applicant, as plaintiff, instituted an action against the First Defendant and the Second Defendant/Respondent. The Applicant sues them for damages in the sum of R9 795 220,02 arising from an alleged breach of contract.

[10] The particulars of claim ("the POC") alleges the Second Defendant/Respondent caused the Applicant's damages by: (i) defective workmanship due to inadequate compaction of the surface-bed and fill underlying the police station; and/or (ii) the use of defective construction materials, specifically, the use of subgrade filling material and the failure to 'utilise fill of G5 quality in the surface bed' (the POC: para 74.4.2).

[11] An integral part of the Second Defendant/Respondent's plea ("the plea") is its averment that Applicant's recourse lies against the First Defendant. The latter was 'tasked with quality assurance and monitoring of the construction processes' (the plea: para 13.3). The Second Defendant/Respondent avers, at para 13.2 of the plea, that its workers acted according to instructions given by the First Defendant in its capacity as supervisor of the construction. It was the contracted party put in charge by the Applicant of quality management in respect of the construction of the police station. Concerning materials used for the construction works, Second Defendant/Respondent avers that 'all materials utilized by the Second Defendant were either prescribed by the First Defendant or approved by the First Defendant where same did not comply with the First Defendant's prescriptions' (the plea: para 73.2).

[12] The plea avers further that 'the subsidence which occurred resulted from the First Defendant's instructions pertaining to what backfill materials should be used (the First Defendant having authorised the use of excavated finds as backfill material), and/or the First Defendant's approval of all facets of the foundations and the First Defendant's authorisation that construction work on those foundations could proceed' (the plea: para 41.5.3).

[13] The same theme as in paragraph 41.5.3 appears in paragraphs 74 and 82.2.

[14] These grounds form the basis of Second Defendant/Respondent's denial that it acted negligently in the manners alleged, or at all. It expressly avers that the First Defendant 'was guilty of one or more or all of the failures averred ... and [the Second Defendant] pleads that same were the cause of the subsidence and/or differential treatment which caused the damages to the Police Station' (the plea: para 70).

[15] Thus, the Second Defendant/Respondent seeks dismissal of Applicant's claim.

[16] In its particulars of claim, the Applicant, as plaintiff, alleges the following:

'54. On or about 5 April 2018, a meeting was held at the offices of the Department between the Department's Project Manager, Mr W Roodman, and Reder Construction's member, Mr Davids, in connection with the remediation of the defects. At the meeting, Mr Davids undertook to furnish the Department with a written proposal for the fixing of the latent defects identified in the Department's letter of 4 July 2017, by 9 April 2018.'

[17] In response to this, the Second Defendant/Respondent pleads as follows:

'AD PARAGRAPH 54 THEREOF

54.1 The meeting and the date thereof as well as the attendance of the parties

are admitted.

54.2 The balance of the allegations contained herein are denied.'

[18] The plea was served on 14 April 2022. On 29 April 2022, Applicant's attorney, acting pursuant to Uniform Rule 21(2), served a detailed request for trial particulars.

[19] On 23 May 2022, the Second Defendant/Respondent's attorney served the 'Further Particulars' in response to the 'Request for Further Particulars for Trial'.

[20] For the next 2 years (i.e., from 24 May 2022 until 21 May 2024), everything went quiet (on all fronts).

[21] During May 2024, Applicant's legal team were in the throes of trial preparation. During that process, they engaged with Second Defendant/Respondent's 'Further Particulars'. The Applicant's legal team consulted its geotechnical engineering expert to prepare and file its expert report and/or summaries, focusing on various aspects, including the quality of fill or backfill used in the construction process.

[22] During the course of their trial preparation, the Applicant's legal team took the view that the further particulars received were, in certain key respects, insufficient. A letter was then dispatched on 22 May 2024 in which the Applicant's attorney complained that the responses provided in paragraphs 5.6, 7.2, 7.3, 8.2, and 8.3 of the 'Further Particulars' notice were unsatisfactory. A better response was requested.

[23] The Applicant's attorney also complained that paragraphs 10.7 and 10.8 of the Applicant's request dated 29 April 2022 had not been answered at all. A response was requested, failing which the Applicant threatened to launch an application to compel.

[24] The letter dated 22 May 2024 went unanswered, leading to a follow-up letter on 9 July 2024. It too was ignored. As a result, this application was launched on 10 December 2024. Second Defendant/Respondent filed an affidavit in opposition to it.

Issues for adjudication

[25] At the hearing, Mr Edmunds SC, informed me that Applicant no longer persists with the relief claimed in its Notice of Motion concerning paragraphs 8.2, 8.3, and 10.8 of its requests for trial particulars; nor does it seek an order compelling discovery. The Applicant persists with the remainder of the relief particularised in its Notice of Motion.

[26] In relevant part, the Applicant seeks an order in the following terms:

- ‘1. The second defendant is ordered within 10 days of date of this order to furnish:
 - 1.1 A sufficient response to paragraphs 5.6, 7.2, 7.3 ... of the plaintiff’s request for further particulars for trial dated 29 April 2022 (“the plaintiff’s request”);
 - 1.2 A response to paragraphs 10.7 ... of the plaintiff’s request. ...
4. Costs on Scale A in terms of Uniform Rule 67A.’

[27] The primary issue arising for determination is whether the Applicant discharged its onus under Uniform Rule 21(4) for this Court to come to its aid by ordering the Second Defendant/Respondent to answer, with greater sufficiency, the Applicant’s request for further particulars as concerns paragraphs 5.6, 7.2, 7.3, and 10.7 thereof. This issue involves a factual enquiry.

[28] If the application succeeds, then a second issue arises for adjudication, namely, whether, for purposes of Uniform Rule 21(4), costs follow the cause immediately, or whether costs are to be dealt with under Uniform Rule 21(5). This is a legal question involving an interpretation of the intersection between Uniform Rules 21(4) and (5).

Applicant’s request for trial particulars and the relevant response thereto

[29] The main question to be answered involves a factual enquiry that depends largely on a consideration of the contents of the questions posed in paragraphs 5.6, 7.2, 7.3, and 10.7 of the requests for further particulars, and the contents of the answers given to each question. It is to this aspect that I turn my attention first.

[30] The Applicant’s request for further particulars comprises 8 pages with requests itemised 1 to 16, most of which include sub-paragraphs. In aggregate, the Applicant posed 70 individual requests for particulars. Thus, the list of particulars

requested was substantial in its breadth. However, no objection was made to its scale.

[31] Second Defendant/Respondent delivered a detailed reply comprising 10 pages. The response purports to answer each of the 70 requests for particulars. The relatively few complaints raised to the response, which was delivered within 3 weeks of the request being served, is a strong indicator that the Second Defendant/Respondent engaged meaningfully with the substantial number of requests directed to it. This conduct aligns with the spirit underlying Uniform Rule 21(2).

[32] I will now deal with Applicant's complaints of lack of sufficiency (i.e., adequacy) relating to certain responses received from the Second Defendant/Respondent. To facilitate an understanding thereof within its context, I will quote verbatim the Applicant's relevant requests and the Second Defendant/Respondent's responses, while at the same time providing some background to each request with reference to averments in the Applicant's particulars of claim and/or its explanation in the founding affidavit as regards the motivation for making a particular request. To the extent necessary, I will also provide the Second Defendant/Respondent's reasons for its answer. This is distilled from the answering affidavit ("the AA") filed of record.

[33] In the plea at paragraph 41.5.3 (see quote in paragraph [12] above), Second Defendant/Respondent avers that it was the First Defendant who instructed what backfill materials should be used for the sub-base of the foundation. It pleaded further that the materials used comprise 'excavated finds'.¹ In relation to this defence, the Applicant directed the following request for further particulars:

'5.6 Did the instruction/authorisation relate to any particular "excavated finds" (i.e. as to location, or nature, or quality of such), or did it relate to excavated finds from the site generally? Full particularity is required.'

¹ In this context, the term 'excavated finds' refers to material that had been excavated elsewhere on the construction site and then used as backfill material.

This request elicited the following response from the Second Defendant/Respondent:

‘5.6 The Second Defendant’s plea is clear and unambiguous where it refers to “excavated finds” and no further particularity is required alternatively this is a matter for evidence.’

[34] The Applicant avers that this response is inadequate to enable it to prepare for trial on the defence pleaded. It seeks a better response which, it contends, will satisfy the sufficiency test in Uniform Rule 21(4). Hereafter, this is referred to as “the first complaint”. In its affidavit, the Second Defendant/Respondent avers that the ‘answer to paragraph 5.6 is more than sufficient and the details requested in paragraph 5.6 ... are not required by the applicant to achieve the main purpose of a request for further particulars for purposes of a trial, namely to avoid the element of surprise’ (para 10.5).

[35] The next complaint of an inadequate response, which requires adjudication (hereafter referred to as “the second complaint”), relates to the request concerning the Second Defendant/Respondent’s plea to paragraph 54 of the POC. The Applicant’s allegation and the Second Defendant/Respondent’s plea thereto are quoted respectively in paragraphs [16] and [17] above.

[36] The averments in paragraph 54 of the POC are grounded in the contention that the Second Defendant/Respondent, prior to its denial of liability, was prepared to take remedial steps to repair the latent defects which manifested during the contractually agreed 10-year warranty period. As a result of the manner in which the residual denial was formulated in paragraph 54.2 of the plea (see paragraph [17] above), the Applicant posed the following requests for further particulars:

‘7.2 Is it denied that Mr Davids undertook to furnish the Department with a written proposal:

7.2.1 by 9 April 2018; or

7.2.2 at all?

7.3 If the former, by what date did Mr Davids undertake to furnish the Department with a proposal?’

[37] These requests elicited a response in paragraph 7 of the 'Further Particulars'. That response is repeated in paragraph 11.8 of Second Defendant/Respondent's answering affidavit as grounds for its opposition to the application. The reply reads:

'Paragraph 54 of the Second Defendant's plea is unambiguous and requires no further elucidation. Furthermore the questions posed herein pertain to a denial and the Plaintiff is not entitled to request further particulars pertaining to a denial. In addition the questions posed herein constitute impermissible interrogatory. In the premises the Second Defendant refuses the requested information.'

[38] The final complaint of an inadequate response, which requires adjudication in this application (hereafter "the third complaint"), pertains to the request in relation to the plea in paragraph 73.2 (see quote in paragraph [11] above). The essence of that plea is the averment that the Second Defendant/Respondent denies liability on the basis that all materials used by it in the construction work 'were either prescribed by the First Defendant or approved by the First Defendant'. In other words, the Second Defendant/Respondent shifts blame onto the First Defendant.

[39] The Applicant then directed the following request for further particulars:

'10.7 Who on behalf of the first defendant approved the use of the materials?'

Although the Applicant alleges that this question was not responded to, the answering affidavit avers that it was indeed responded to in the further particulars as follows:

'10.5 Vide the Site instructions tabulated supra.'

At the hearing, the Applicant's position is that this response is inadequate. As a result, it seeks a more sufficient response for trial preparation purposes.

Submissions by the parties' counsels

[40] At this point, it is necessary to provide a synopsis of the arguments presented.

[41] Concerning the first complaint, Mr Edmunds SC argued that the response provided by the Second Defendant/Respondent in paragraph 5.6 (see quote in paragraph [33] above) serves as an obfuscation intended to justify the refusal to disclose the particulars sought for a purpose consistent with Uniform Rule 21(2).

[42] Mr Edmunds SC argued that the plea in paragraph 41.5.3 (see paragraph [12] above) amounts to a confession and avoidance which, when analysed grammatically, is vague in the sense that it is ambiguous as regards the First Defendant's instructions pertaining, amongst other things, to where exactly the excavated finds were to be sourced on site. As authority for his proposition on vagueness, Mr Edmunds SC cited *Venter and Others NNO v Barrit Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd* 2008 (4) SA 639 (C). In that case, it was held (in this Division):

‘A statement is vague when it is either meaningless or capable of more than one meaning or can be read “in any one of a number of ways”. To put it at its simplest: the reader must be unable to extract from the statement a clear, single meaning.’ (para 11)

[43] Mr Edmunds SC contended further that when a plea lacks clarity due to an ambiguity, then a plaintiff's remedy is not confined to an exception. Citing *MN v AJ* 2013 (3) SA 26 (WCC) para 38 and *Hassim v Lishiva* (35381/2020) [2021] ZAGPJHC 120 (14 May 2021) para 22, he argued that a plaintiff may, as the Applicant seeks to do in casu, employ what he termed a ‘soft exception’ (specifically, to request further particulars aimed at ameliorating the vagueness by eliciting clarifying particulars).

[44] In his address, Mr Potgieter SC argued that the answer in paragraph 5.6 of the response to the Uniform Rule 21(2) request is clear and unambiguous. He submitted that an order under Uniform Rule 21(4) is not merited because the issue involved here is simple, and the answer given is itself simple. Thus, there can be no complaint.

[45] Citing *Molusi and Others v Voges NO and Others* 2016 (3) SA 370 (CC) para 28, Mr Potgieter SC argued further that particulars as to the location where the excavated finds were sourced are irrelevant. He pointed out that Applicant's pleaded position is that G5 quality fill was not used. Its pleaded position, according to Mr Potgieter SC, is essentially that, no matter where the fill was found, it was simply not of G5 quality. Therefore, so Mr Potgieter SC reasoned, it is unnecessary for the Applicant, and by extension its geotechnical expert, to know the location from where the excavated finds were sourced. On this basis, Mr Potgieter SC concluded that it is not 'strictly necessary' for the Applicant to conduct laboratory testing of fill excavated from the site to prove its pleaded position that G5 quality fill was not used at all. I deal with these submissions in paragraphs [70] to [77] below.

[46] Concerning the second complaint, Mr Edmunds SC pointed out that paragraph 54.2 of the Second Defendant/Respondent's plea (see quote in paragraph [17] above) is a residual denial of the averments made in paragraph 54 of the POC (see quote in paragraph [16] above). He argued that the residual denial is ambiguous because, on one reading, it is wholly denied that Mr Davids undertook to furnish the Department with a written proposal to fix the latent defects; on another reading, it is merely denied that Mr Davids undertook to furnish the Department with a written proposal by 9 April 2018. Mr Edmunds SC argued that, in these circumstances, paragraph 54.2 of the plea is vague in the sense discussed in *Venter supra* para 11. Consequently, so his argument proceeded, the Applicant is entitled to request further particulars with a view to clarifying the bad pleading and ameliorating its adverse effects.

[47] Citing *Snyman v Monument Assurance Corporation Ltd* 1966 (4) SA 376 (W) at 379, Mr Edmunds SC argued that the preclusion to a request for particulars concerning a denial is inapplicable in casu because, so he contended, the second plausible reading of the denial contains, what he termed a 'negative pregnant', namely, an implied *positive* averment of a fact (i.e., that Mr Davids undertook to furnish a written proposal by a date different to that alleged in the POC, being 9 April 2018).

[48] In opposition, Mr Potgieter SC argued that, considering the contents of the admission in paragraph 54.1 of the Second Defendant/Respondent's plea (see quote in paragraph [17] above), it is clear that paragraph 54.2 thereof denies that Mr Davids gave any undertaking whatsoever. On this basis, so he hypothesised, the Applicant is required to prove its averment to the contrary. I deal with this in paragraph [82] below.

[49] Mr Potgieter SC also submitted that paragraph 54.2 of the plea contains a bare denial without an implied and affirmative allegation of a fact. Therefore, citing *Hardy v Hardy* 1961 (1) SA 643 (W) at 646D-H, he argued that it is impermissible for the Applicant to request particulars in relation to the denial pleaded. I deal with this in paragraph [83] below.

[50] Concerning the third complaint, Mr Edmunds SC, appearing for the Applicant, argued that the reference in paragraph 10.5 of the further particulars to a tabulated list of site instructions is no answer to the question posed as to the identity of the person(s) 'who on behalf of the first defendant approved the use of the materials' admittedly used by the Second Defendant/Respondent in the construction work. Mr Edmunds SC pointed out that the First Defendant is a private company that can only operate through agents whose identities are known to the Second Defendant/Respondent.

[51] Mr Edmunds SC argued further that armed with the name(s) of the person(s) who issued the site instructions relied on by the Second Defendant/Respondent as part of its defence, the Applicant will be in a position to prepare for trial by testing the allegations with its own witnesses; and test the averment with the relevant person, either in cross examination or as a witness under subpoena to be issued by the Applicant (in the event that the person concerned is not called to testify by the First Defendant, or by the Second Defendant/Respondent).

[52] In opposition, Mr Potgieter SC argued that the site instructions adequately answer the question posed in paragraph 10.7 of the request for further particulars. He added that the particulars requested are, at any rate, matters for evidence and, thus, not 'strictly necessary' for Applicant's trial preparation. Relying on these

arguments, Mr Potgieter SC submitted that the Applicant is not entitled to the relief sought.

Applicable legal principles

[53] The main issue formulated in paragraph [27] is vigorously contested. To decide that issue, it is necessary to discuss the legal framework of Uniform Rule 21. It reads:

- '(1) Subject to the provisions of subrules (2) to (4) further particulars shall not be requested.
- (2) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting *only such further particulars as are strictly necessary to enable him or her to prepare for trial*. Such request shall be complied with within 10 days after receipt thereof.
- (3) The request for further particulars for trial and the reply thereto shall, save where the party is litigating in person, be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), has the right of appearance in the High Court, only by such attorney.
- (4) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.
- (5) The court shall at the conclusion of the trial of own accord consider whether the further particulars were strictly necessary, and shall disallow *all costs of and flowing* from any unnecessary request or reply, or both, and may order either party to pay the costs thereby wasted, on an attorney and client basis or otherwise.' (my emphasis added)

[54] Uniform Rule 21(1) contains a general prohibition against requests for further particulars. Sub-rule (2) contains an exception to this prohibition. Sub-rule (4) provides an enforcement mechanism if sub-rule (2) is breached.

[55] Uniform Rule 21(2) is framed in narrow terms. A litigant may request only such further particulars as are strictly necessary to adequately prepare for trial by knowing enough about the other party's case to decide what evidence is required to meet it. See *Klip Town Clothing Industries (Pty) Ltd v Marine and Trade Insurance Co Ltd of SA Ltd* 1960 (1) SA 446 (W) at 449F-H.

[56] The matter forming the subject of a request for further particulars must be 'strictly necessary' for trial preparation purposes. This bar is set relatively high.

[57] The adverb 'strictly' is a word that, in context, has the effect of narrowing to a considerable degree the reach (i.e., scope) of the word to which 'strictly' relates, namely, 'necessary'. The word 'strictly' emphasises that no more ('only') particulars may be requested than is truly (i.e., absolutely) needed for trial preparation purposes.

[58] The requirement that particulars must be 'strictly necessary' for trial preparation aligns with the thrust of the prohibition in Uniform Rule 21(1), and the rule maker's intention to permit a deviation therefrom 'only' when the particulars sought are 'strictly necessary' to achieve effective preparation on an issue(s) germane to the trial.

[59] The dividing line between particulars that are 'necessary' and ones that are 'strictly necessary' is somewhat blurred. It is unlikely to be capable of determination with arithmetical exactness or surgical precision. Whether particulars are 'strictly necessary' is a factual issue. In every case, it is a question of degree to be determined with reference to each request (not the notice viewed as a whole). In that enquiry, relevant factors include, but are not limited to, the nature and extent of the particulars sought; the correlation between particulars requested and an issue(s) referred to trial; the purpose for the request; and whether the particulars is/are matters for evidence.

[60] Uniform Rule 21(2) makes it plain that particulars requested must be required to facilitate ('to enable') trial preparation. Thus, logic dictates that particulars requested must relate to an issue which remains alive for determination at the time of its request under Uniform Rule 21(2), or when an application is made to court under Uniform Rule 21(4). It is in this context that pleadings are vital. Pleadings 'define the issues upon which a court will be called upon to adjudicate and to enable the parties to prepare for trial on the issues as defined' (*Bragaan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd and Another* (11096/20) [2020] ZAGPPHC 397 (5 August 2020) para 15).

[61] However, a court may determine the nature and extent of an issue for trial adjudication by going beyond the pleadings. See *Schmidt Plant Hire (Pty) Ltd v Pedrelli* 1990 (1) SA 398 (D) at 402 - 403. Pre-trial minutes may, thus, be used. See *Rautini v Passenger Rail Agency of South Africa* (19132/2014) [2024] ZAWCHC 6 (22 January 2024) paras 15 - 24. As regards preparing expert witness testimony, as in casu, the issues for trial may be determined by considering, inter alia, the pleadings, or any available expert summaries/reports (if any), and joint minutes of experts (if available). See *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) paras 64 - 69.

[62] Applications under the aegis of Uniform Rule 21(4) seek to compel compliance with notices delivered under Uniform Rule 21(2) where the recipient, for e.g., failed to answer a question to a *sufficient* degree. Applications may not be abusive of court rules, nor be frivolous, nor be brought for any other flimsy reason. See *Szedlacsek v Szedlacsek*; *Van der Walt v Van der Walt*; *Warner v Warner* 2000 (4) SA 147 (E) at 149 H-I.

[63] The closing words in Uniform Rule 21(4) (i.e., 'whereupon the court may make such order as to it seems meet') indicate that an applicant is not entitled as of right to relief, even if s/he satisfies the threshold requirements. A court retains an overriding discretion to be exercised judiciously. See *Szedlacsek v Szedlacsek* supra at 150.

[64] To come home under Uniform Rule 21(4), an applicant must show, first, that the particulars sought in relation to each disputed request is/are 'strictly necessary' to enable proper trial preparation to occur; and, secondly, that any answer(s) already given in relation to each disputed request is insufficient thereby causing real prejudice in the sense that the requester is rendered unable to properly prepare for trial on the issue forming the subject of the inadequate response.

[65] A reply to a request for further particulars is not a pleading and, thus, does not serve the purpose of a pleading. See *Ruslyn Mining and Plant Hire v Alexcor Ltd* [2012] 1 All SA 317 (SCA) para 18. When evaluating whether to compel the furnishing of further particulars, consideration must be given to ensuring compliance with the letter of Uniform Rule 21(4) read with (2), and promoting their underlying spirit, which is geared to ensuring trial fairness so that justice may be done. That spirit underpins the purpose which further particulars serve, namely: (i) to prevent surprise at a trial; (ii) to inform the requester with greater precision what his/her opponent intends to prove at trial, thereby enabling the requester to prepare his/her case in a manner that is able to combat counter-allegations; (iii) 'having regard to the above, nevertheless not to tie the other party down and limit his case unfairly at the trial' (*Thompson v Barclays Bank D.C.O.* 1965 (1) SA 365 (W) at 369). See also *Lotzoff v Connel and Another* 1968 (2) SA 127 (W) at 129C-F; and (iv) the furnishing of particulars for trial limit the 'waste of time and costs by providing the other party with additional insight into the case which has been pleaded, thus avoiding, where possible, delays or postponements to seek evidence to meet a case' (*Ruslyn Mining and Plant Hire v Alexcor Ltd* supra para 18).

[66] Having discussed the principles relevant to requests for further particulars, I now proceed to adjudicate whether Applicant satisfies the twin requirements for the granting of relief (see paragraph [64] above). If yes, then I must determine whether my discretion ought to be exercised in the Applicant's favour (see paragraph [63] above).

Evaluation of the Applicant's case for relief

(a) The first complaint

[67] To recapitulate: in the course of denying liability for the Applicant's damages caused by subsidence, the Second Defendant/Respondent, at paragraph 41.5.3 of the plea, averred that 'the subsidence which occurred resulted from the First Defendant's instructions pertaining to what backfill materials should be used (the First Defendant having authorised the use of excavated finds as backfill material), and/or the First Defendant's approval of all facets of the foundations and the First Defendant's authorisation that construction work on those foundations could proceed'. In relation to this plea, the Applicant sought particulars as to whether 'the instruction/authorisation relate to any particular "excavated finds" (i.e. as to location, or nature, or quality of such), or did it relate to excavated finds from the site generally'. In response, the Second Defendant/Respondent says that its plea in paragraph 41.5.3 'is clear and unambiguous where it refers to "excavated finds" and no further particularity is required alternatively this is a matter for evidence'. This is a two-fold answer.

[68] The primary answer given is that the particulars requested are clearly and unambiguously embodied in paragraph 41.5.3 of the plea. This is, however, not borne out by the contents of the plea. I revert to this aspect later. The Second Defendant/Respondent states, in the alternative, that if the particulars sought are unclear or wholly absent from the plea, then the Applicant is still not entitled to the requested particulars because the material concerned are matters for evidence.

[69] Uniform Rules 21(2) and (4) ought not to be used to elicit evidence. There are well established exceptions where particulars may be sought, even when an answer involves the disclosure of evidence to be led at trial. In casu, the Applicant would be entitled to further particulars whose refusal would cause embarrassment or prejudice in the preparation of its case for trial by reason that the Applicant would not know what case it actually has to meet at trial. See *Lotzoff v Connel* supra at 129E - F; *Lutzen v Knysna Municipality* (695/2020) [2023] ZAWCHC 100 (8 May 2023) para 47.

[70] I find that the Applicant's trial preparation is being seriously compromised by the refusal of the particulars concerned. Merely because evidence may be led

thereon at trial does not disentitle the Applicant to the information in advance of the trial. The averment that the material concerned has been pleaded is an acknowledgement of its relevance to the defences raised. The particulars are, in my view, truly necessary.

[71] The necessity of the particulars concerned is linked to the twin defences raised. As recorded in the Second Defendant/Respondent's answering affidavit, its primary defence is its denial that it breached the contract terms by, inter alia, using sub-grade fill which is not of G5 quality. Therefore, the Applicant's averment to the contrary is disputed. In this context, the nature, quality, and source of the fill used in the foundation of Block C, which collapsed, are important matters for geotechnical expert testimony.

[72] The Second Defendant/Respondent raised an alternative plea, namely, that 'the First Defendant, as the responsible civil and structural engineer, had the final say as to what in the construction of the police station sufficed (such as, the materials used ...) and the Second Respondent was accordingly entitled to perform in accordance with the First Respondent's instructions and approvals'.

[73] I am satisfied that the particulars sought concerning the instructions given and the approvals made in relation to the location, nature, and quality of the excavated fill found on site and used in the construction work are 'strictly necessary' for trial preparation. They go to the root of the main and alternative defences. The Applicant's preparation is compromised: its geotechnical expert is unable to conduct the necessary laboratory testing of the soil, nor are they able to formulate an opinion on the nature and quality of the fill allegedly authorised and used. This inability stems from the refusal to divulge information alleged to be exculpatory in the circumstances.

[74] I am satisfied that the Applicant has shown that the further particulars concerned are absolutely ('strictly') required to enable its expert witness to conduct necessary testing to produce the expert findings which it needs to potentially establish the case that sub-grade fill was used (as alleged in the POC), and

potentially disprove the defence as to the properties and quality of the fill approved and/or actually used.

[75] The particulars sought are peculiarly in the Second Defendant/Respondent's knowledge. It does not deny possessing the information. Indeed, it contends that the particulars were pleaded, and clearly and unambiguously so. A plain reading of the plea reveals that the particulars concerned were not pleaded, let alone clearly and unambiguously. Therefore, I am satisfied that the answer forming the subject of the first complaint is inadequate and renders Applicant unable to properly prepare for trial.

[76] The 'excavated finds' mentioned in paragraph 41.5.3 of the plea is a key aspect for evidence. If the particulars are not furnished, then the Applicant's case may well become compromised at the trial which may expose it to an absolution from the instance application. I also agree with Mr Edmunds SC that the Applicant will be caught by surprise if the Respondent is later able to lead its witnesses on the instructions given by First Defendant as to the location, nature, and quality of the excavated fill, and its authorisation for the fill actually used. By the time such evidence is led, the Applicant's case would be closed. Owing to the refusal of the particulars, it would not have been able to lead evidence that tended to disprove the defence raised. This situation would likely result in the Applicant applying for a reopening of its case so that it could belatedly lead relevant evidence in rebuttal. Such eventuality is likely to cause delay through a postponement of the trial and cause its associated increase in costs. All this favour an order compelling the furnishing of the further particulars sought.

[77] My aforementioned conclusion is supported by my view that Mr Edmunds SC's argument to the effect that the plea in paragraph 41.5.3 (see paragraph [12] above) is a confession and avoidance appears to be merited. I make no definitive finding on this. It is an issue best left for the trial court because the question of onus is implicated. See *Merryweather v Scholtz and Another* 2020 (3) SA 230 (WCC) paras 13 - 14. Accordingly, my view is expressed purely to adjudicate the application before me.

[78] In a confession and avoidance, a defendant admits the material facts alleged as regards liability, but then seeks to avoid liability by relying on other material facts averred. See *Mabaso v Felix* 1981 (3) SA 865 (A) at 875A-H. To my mind, there appears merit in the submission that this is the import of the plea in paragraph 41.5.3.

[79] On the pleadings, there is an admission that Block C was constructed by the Second Defendant/Respondent; and it is admitted that Block C collapsed; and it is admitted that the collapse was due to subsidence as alleged in the POC. Liability is denied in paragraph 41.5.3 on the basis that the subsidence was caused by the First Defendant. However, the grounds averred for the avoidance are vague as regards the instructions from the engineer(s) employed by the First Defendant pertaining, amongst other things, to where exactly the fill was to be sourced on site, as well the nature and quality of the fill to be excavated for use in the construction of Block C's foundation.

[80] Given the circumstances, I find that the vagueness referred to renders the plea concerned non-compliant with Uniform Rule 18(4). In the premises, the Applicant is justified in seeking the particulars outlined in paragraph 5.6 of its request. As a result, an order to this effect will be granted in its favour.

(b) The second complaint

[81] To recapitulate: in paragraph 54 of the POC (see quote in paragraph [16] above), the Applicant avers that at a meeting with the Second Defendant/Respondent on 5 April 2018, the representative of the latter, Mr Davids, verbally undertook to provide the Department, by 9 April 2018, with a written proposal to remedy the latent defects forming the subject of Applicant's claim. Whereas paragraph 54.1 of the plea (see quote in paragraph [17] above) admits that a meeting was held on the date averred and that it was attended by the persons alleged, paragraph 54.2 denies the remainder ('the balance') of the allegations made in paragraph 54 of the POC.

[82] Uniform Rule 22 requires the Second Defendant/Respondent to plead its case by stating which of the facts averred in paragraph 54 of the POC (see paragraph [16] above) 'are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies'. For the reasons advanced here, this provision in the rules of court was not strictly adhered to.

[83] I reject Mr Potgieter SC's submission that paragraph 54.2 of the plea clearly and unequivocally denies that the undertaking was made at all. When the denial in paragraph 54.2 is understood vis-à-vis the corresponding averment in the POC and the admissions in paragraph 54.1, then it is unclear whether the denial relates to the undertaking as a whole, or merely to its specific terms. If the undertaking as alleged in the POC was indeed given, then it appears that the Applicant construed it, with some merit in my view, as a form of admission of liability. On this basis, I find that the requests for further particulars in paragraphs 7.2 and 7.3 are 'strictly necessary'. They are designed to give the Applicant a proper insight into the case of the Second Defendant/Respondent as pleaded to decide what evidence is required to meet it.

[84] I concur with Mr Edmunds SC that the denial in paragraph 54.2 of the plea includes an implied, affirmative assertion of a fact. The absence of an explicit statement regarding the fact averred does not prevent an order to compel a response to the particulars requested in paragraph 7.2, in order to avoid any embarrassment or prejudice. Doing so is 'strictly necessary' to bring clarity to an unclear pleading regarding a vital issue for trial preparation. See *Lutzen supra* paras 51 - 52.

(c) The third complaint

[85] To recapitulate: Second Defendant/Respondent's defence is that it constructed Block C of the police station under the First Defendant's supervision and control. It avers that it constructed the police station by acting on instructions given to it by the First Defendant, and on authorisations/approvals issued by the latter. Accordingly, the Applicant requested particulars as to the identity of the person(s) who, acting for the First Defendant, issued the relevant construction instructions and approvals pertaining to the location, nature, and quality of the fill used for the

foundation. The response received was: 'Vide the Site instructions tabulated supra.' (see paragraph [39] above).

[86] When adjudicating this aspect of the Uniform Rule 21(4) application, I align myself with Rose-Innes AJ's decision in a similar context. In *Houtlands Investments (Pty) Ltd v Traverso Construction (Pty) Ltd* 1976 (2) SA 261 (C) at 268A - D, he held:

'A further criticism of the further particulars was that they fail to indicate who on behalf of plaintiff received each instruction, as is requested in para. 2 (c) of the request for further particulars. ... *Applicant is entitled to know who the person was to whom the instructions for variations are alleged to have been given in order to be apprised of the case which it has to meet by being placed in a position to identify the giving and receipt of the instruction referred to, so that it can admit or deny that such instruction was given to respondent. ... Where, however, the parties are companies, which can only act through persons representing them, a party is entitled to know who the person is who is alleged to have represented his opponent in a transaction forming part of the cause of action.* I accordingly hold that respondent should furnish the name or names of the person or persons who received each of the instructions listed in annexure 'B' to the further particulars.' (my emphasis) (footnotes omitted)

[87] The 'Site instructions tabulated supra' are those 'site instruction numbers' appearing at paragraph 2.2 of the Second Defendant/Respondent's reply to the request for further particulars. The numbers listed are: 65605; 65606; 65609; 65610; 65616; 65617; 65618; 65619; 65621; 65622; 65631; 65632; and 65633.

[88] This tabulation of relevant site instruction numbers appears to be incomplete. Equally important, there is no indication as to whether the site instruction numbers also apply to the site authorisations/approvals forming part of the Applicant's request for further particulars. The tabulated site instructions do not provide the Applicant with insight into the identity of the person(s) who issued the relevant site instructions or the relevant approvals/authorisations, which go to the heart of the defence raised and, in my view, are 'strictly necessary'. As a result, Applicant is unable to

adequately prepare for trial on these key aspects of the Second Defendant/Respondent's defence. For e.g., it is unclear whether the person(s) concerned was a qualified engineer.

[89] All the foregoing considerations support my discretion being exercised in favour of an order which compels the Second Defendant/Respondent to provide further and better (sufficient) responses to the Applicant's requests forming the subject of the first, second, and third complaint. Finally, this brings me to the second issue raised in casu.

Costs

[90] Mr Edmunds SC argued that the usual rule that costs follow success should apply in the context of Uniform Rule 21(4), and immediately so. Mr Potgieter SC, on the other hand, argued that, if the application succeeds then costs, as a matter of course, should be held over for determination under Uniform Rule 21(5). These competing contentions raise a fundamental question in the law of costs within the realm of Uniform Rule 21 which, based on my research, has not yet been tested.

[91] The submissions advanced by the parties' counsels call for an interpretation of Uniform Rule 21(5) read with (4) within their setting and surroundings in Uniform Rule 21 read holistically. There is a dearth of jurisprudence dealing with the inter-relationship between the operation of Uniform Rule 21(4) and the duty imposed on a trial court under sub-rule (5). Thus, a considered discussion thereon is warranted here.

[92] Uniform Rule 21(4) and (5) are quoted in paragraph [53] above. The latter provision envisages special consideration being given by a trial court to the issue of costs in relation to every request for further particulars, and any response thereto. On the basis discussed in the ensuing paragraphs, I conclude that the wording used in Uniform Rule 21(5) is purposefully couched sufficiently broadly to encompass the issue of costs incurred for applications brought under the aegis of Uniform Rule 21(4).

[93] Some basic principles need restatement. Court rules are subordinate legislation dealing with procedure (not with substantive law). Court rules are designed to ensure a fair hearing and should, as such, be interpreted in a way which advances, and not curtails, the scope of the entrenched right to a fair trial.² See *DF Scott (EP) (Pty) Ltd v Golden Valley Supermarket* 2002 (6) SA 297 (SCA) para 9. Interpretation of court rules adhere to the same principles and follow the same process as that applicable to the interpretation of other forms of legislation. See *Minister of Public Works and Infrastructure and Others v NMPS Construction CC and Others* 2023 (6) SA 314 (ECB) paras 24 - 28. Interpretation is a unitary process that involves the use of textual, contextual, purposive, and constitutional values-based interpretive modalities.

[94] Interpretation, as an integrated process, involves the simultaneous consideration of the ordinary meaning of a text, its internal and external context, and its purpose. No single consideration dominates. See *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) para 65. The Constitution, 1996 has an abiding hand with a pre-eminent role when any kind of legislation is interpreted.

[95] By virtue of s 39(2) of the Constitution,³ at least one constitutional value should be promoted whenever a court rule is interpreted. See *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC) para 72; *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society and Others* 2020 (2) SA 325 (CC) paras 2, 14 - 18. In this context, fairness in dispute resolution should be advanced when Uniform Rules 21(4) and (5) are interpreted.

² Section 34 of the Constitution reads: 'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.' For a discussion of this right, see *De Beer NO v North-Central Local Council and South-Central Local Council and Others (Umhlathuzana Civic Association Intervening)* 2002 (1) SA 429 (CC) paras 10 - 15.

³ Section 39(2) reads: 'When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.'

[96] To curb the abuse of the procedure to request further particulars, Uniform Rule 21(5) requires a trial court to mero motu consider whether particulars requested 'were strictly necessary'. This is the mischief sought to be achieved. See *Moaki v Reckitt and Colman (Africa) Ltd and Another* 1968 (3) SA 98 (A) at 102C - D. To ensure the effectiveness of Uniform Rule 21(5) to combat abuse of process, the duty imposed is couched peremptorily ('shall'). See *Magagula v Senator Insurance Co Ltd* 1980 (1) SA 717 (N) at 723. This creates a procedural right in the hands of affected litigants. To further discourage abuse in relation to requests for further particulars and applications to compel same, Uniform Rule 21(5) caters for punitive costs. Naturally, this is a factual enquiry in each instance, and a court must exercise its discretion judicially.

[97] Erasmus *Superior Court Practice* 2025 D1 Rule 21 – 5 suggest that, in practice, the duty imposed by Uniform Rule 21(5) is seldom fulfilled. If true, then this is regrettable. Any such failure is prejudicial to litigants. Moreover, it fails to adhere to the direction emerging from binding dicta, such as in *Moaki* supra at 102.

[98] Uniform Rule 21(5) does not operate in isolation from the rest of Uniform Rule 21. Therefore, this sub-rule must be interpreted in the context of the rule read as a whole. Properly interpreted, Uniform Rule 21(5) applies by operation of law whenever Uniform Rules 21(2) and (4) are invoked in search of further and better trial particulars.

[99] The phrase in Uniform Rule 21(5), namely, 'disallow all costs ... flowing from any unnecessary request or reply, or both', is sufficiently broad in its scope to encompass the costs associated with a Uniform Rule 21(4) petition. The matter before me shows clearly that a proceeding grounded in Uniform Rule 21(4) flows directly from a request made under Uniform Rule 21(2), along with an alleged insufficient response thereto and/or a non-response. Therefore, the inescapable conclusion is that Uniform Rule 21(5) is integrally linked to the provisions of Uniform Rules 21(2) and (4).

[100] When a court, acting pursuant to Uniform Rule 21(4), compels a litigant to provide sufficient particulars based on the perceived strict necessity thereof for an

anticipated trial then, in my view, logic dictates that the most appropriate time to determine where the liability should lie for the costs associated with the request made under Uniform Rule 21(2) and the application under Uniform Rule 21(4) is after the trial has run its course fully. It is only then that a court can, with the benefit of hindsight, determine with appreciable certainty if the particulars ordered to be furnished were *actually* 'strictly necessary'. This view aligns with the contents of Uniform Rule 21(5). It too sets the timing for the determination of the liability for costs after a trial.

[101] The view expressed here was also expressed in *Wilson v Spitze* 1987 (4) SA 118 (C) at 132, albeit in relation to the old Rule 21(7), being the predecessor of the present-day Uniform Rule 21(5). In that case, Van den Heever J (in this Division) held:

'It is true that in the Cape, in unopposed applications to compel, the Court often makes a blanket order (usually 'with costs') for compliance with a request, on the assumption that the respondent retains some sort of residual right to challenge applicant's entitlement to the information sought when dealing with the individual questions posed in the request. Perhaps it is this approach and the fact that Rule 21(7) is seldom if ever invoked that is responsible for the proliferation I perceive in this Division in requests for particulars in which the basic rules are honoured far more in the breach than the observance. I never cease to be amazed at the number of questions practitioners are capable of thinking up to even the most prosaic and straightforward of allegations. In my respectful view this approach is wrong. Not only does an initial blanket order, especially one granted with costs against the respondent in default, make it difficult to comply with the injunction contained in Rule 21(7), but it is illogical that the Court should be asked to make an order twice in regard to the same matter; moreover, on the second occasion notionally contradicting the first order made'

[102] When Uniform Rule 21(5) is viewed alongside Uniform Rule 21(4), then an interpretation must be given to their provisions which harmonises their respective texts, their contexts, and their purpose within their setting and surroundings in

Uniform Rule 21 read as a whole. Accordingly, an interpretation should be ascribed to Uniform Rule 21(4) read with (5) which best advances the achievement of fairness in dispute resolution and the attainment of the rule maker's objectives. I now turn to this.

[103] A bad request for trial particulars may be delivered in good faith. However, it may also be delivered for tactical reasons. A request tainted with an ulterior motive is incongruent with the aim sought to be achieved by Uniform Rule 21(2). Any such request would be an abuse of process, which may merit punitive costs. See *Spitze* supra at 132. This also aligns with Uniform Rule 67A(2)(e), which makes a litigant's conduct during litigation relevant to determining an appropriate award on costs.

[104] A request for trial particulars and court application for sufficient particulars, even if made bona fide, imposes burdens on time and cost for the litigant on the receiving end thereof. Uniform Rule 21(5) aims to indemnify litigants after the fact for waste of time and costs caused by an unnecessary request for trial particulars; and/or an unnecessary reply thereto; and/or for engaging with what turned out to be an unnecessary application under Uniform Rule 21(4); and/or for attending to provide trial particulars under fear of contempt of court, which proved not to be 'strictly necessary'.

[105] In my view, and for reasons already proffered in paragraph [100] above, Uniform Rule 21(5), when properly interpreted, renders the rule that costs follow a successful result inapplicable when an order to compel is issued under Uniform Rule 21(4). In that context, the applicable test is catered for in Uniform Rule 21(5), namely, whether the particulars sought were unnecessary for trial purposes. Logic dictates that this determination should be made with the benefit of hindsight after a trial.

[106] In sum: When the provisions of Uniform Rule 21(5) are interpreted and its practical working in tandem with sub-rule (4) is considered in the light of the objects sought to be achieved, then, in my view, in cases such as the present where an order to compel is granted under Uniform Rule 21(4), the interpretive result which best promotes the attainment of the purpose underpinning Uniform Rule 21(5) is for

costs to be determined at the end of the trial. This result advances the constitutional value of fairness in the administration of justice as engrained in s 34 of the Constitution.

[107] Even if my interpretation of Uniform Rule 21(5) read with (4) is incorrect, I am still inclined to the view that costs of the application brought in casu ought to be deferred until the end of the anticipated trial. I will now briefly account for my reasons.

[108] Mr Potgieter SC contended that some of the trial particulars requested under the rubric of Uniform Rule 21(2), including ones forming the subject of this application, were not 'strictly necessary' for the Applicant's trial preparation. As indicated earlier, the Second Defendant/Respondent replied to the Applicant's requests in a detailed response. Procedurally, it is not necessary for it to reserve a procedural right to argue that, despite responding to the substantial request, some particulars are not 'strictly necessary'. This right exists ex lege under Uniform Rule 21(5).

[109] Despite my findings favouring the Applicant, it may be that Mr Potgieter SC's argument, alluded to in the preceding paragraph, is vindicated in the fullness of time. If so, then the granting of costs against the Second Defendant/Respondent at this stage would be unfair. If costs are awarded in the Applicant's favour at this stage but a trial court grants a cost order to the Second Defendant/Respondent under Uniform Rule 21(5), then the latter order will not have the effect of indemnifying its beneficiary to an optimal degree. Rather, it will have a somewhat neutralising effect vis-à-vis the earlier cost order granted. In casu, this consideration supports the deferment of costs until the end of the trial. Doing so ensures that a cost order actually serves its purpose of indemnifying the cost creditor to the maximum degree. See *Houtlands Investments (Pty) Ltd v Traverso Construction (Pty) Ltd* supra at 271G - H.

Order

[110] As a result, the following order is made:

- (a) The application under Uniform Rule 21(4) succeeds;
- (b) Within 10 days of this order, the Respondent shall furnish the Applicant with sufficient particulars in response to paragraphs 5.6, 7.2, 7.3, and 10.7 of the Applicant's request for further particulars for trial dated 29 April 2022;
- (c) In the event of non-compliance with the order in (b) above, Applicant is authorised to apply to this Court for the striking out of the Respondent's defence in the main action filed under the above case number, and to do so on the same papers filed in this application under Uniform Rule 21(4), duly amplified if needs be; and
- (d) Costs of the application is held over for determination under Uniform Rule 21(5).

F. MOOSA
ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant: MD Edmunds SC
Instructed by: State Attorney (Mr L Manuel)

For Second Respondent: T.A.L.L. Potgieter SC
Instructed by: Savage & Jooste Adams Inc (Mr M Haasbroek)