



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

[1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SIGNATURE

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DATE: 25 September 2025

Court *A Quo* Case No.: 2023-018601

Appeal Case No.: A2024-041481

In the matter between:

PCM MINING SUPPLY (PTY) LTD

First Appellant

PETROS MAFAKALADA TONGA

Second Appellant

and

MANULI FLUICONNECTO (PTY) LTD

First Respondent

ANGLO AMERICAN PLATINUM LTD

Second Respondent

Coram: Dippenaar, Crutchfield JJ *et* Pullinger AJ

Heard: 03 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail and by being uploaded to the electronic platform. The date and time for hand-down is deemed to be 10h00 on 25 September 2025.

Summary: Appeal against dismissal of application on the basis that no clear right to interdictory relief was established – appellant relying on partly oral, partly tacit agreement - appellant failing to prove existence of partnership or joint venture – principles applicable to motion proceedings restated – no case made out for agreement contended for in founding papers.

ORDER

On appeal from: The Gauteng Division of the High Court, Johannesburg (Manoim J sitting as court of first instance).

1. The appeal is dismissed;
2. The appellants are to pay the first respondent's costs jointly and severally, including any reserved costs, with the costs of counsel to be taxed on scale B.

JUDGMENT

PULLINGER AJ (DIPPENAAR AND CRUTCHFIELD JJ CONCURRING)**INTRODUCTION**

- [1] This appeal concerns an alleged partnership or joint venture between the first appellant ("PCM") and the first respondent ("Manuli"). PCM contends that it entered into a partnership or joint venture with Manuli for purposes of a tender the second respondent ("Amplats") was to issue and known as the "Mototolo Contract Management contract" ("the Tender"). This appeal is with the leave of the Supreme Court of Appeal.
- [2] PCM sought a final interdict against Manuli from appointing any other partner, declaring any such appointment *void ab initio* and declaring that a partnership did, and still, subsists between them for the purposes of the Tender, together with ancillary relief.
- [3] The court *a quo* found that PCM failed to establish that a partnership existed between it and Manuli. It dismissed PCM's application on the basis that PCM did not establish a clear right to the relief sought.
- [4] In this appeal, as in the proceedings before the court *a quo*, the parties were in agreement that this issue is determinative of PCM's success.

THE FACTS

- [5] In March 2021 Manuli compiled a Community Development Programme. This Programme is a three-year local company development and roll-out plan overview prepared for the Tender that was shortly to be advertised. PCM was identified by Manuli as a beneficiary of this programme. In the lead up to the tender being advertised, Manuli referred to PCM as its “partner” and PCM attended at a site meeting with Manuli and Amplats. Subsequent to the advertisement of the Tender, PCM and Manuli separately, submitted bids to Amplats. Manuli assisted PCM to prepare its bid.
- [6] On 9 February 2023, PCM ascertained that Manuli had issued an invitation for an expression of interest in hydraulic hose management. This is the same work that Manuli would provide to Amplats in terms of the Tender. The following day, Amplats awarded the Tender to Manuli.
- [7] PCM, in the belief that it was Manuli's partner, or was a part of a joint venture with Manuli for the Tender, caused its attorneys to transmit a letter of demand to Manuli on 14 February 2023. In that letter, PCM's attorneys state:
- "3. We have been instructed that on 20 March 2021, [Manuli] and [PCM] entered into an agreement in terms of which [PCM] was contracted as the sole beneficiary of [Manuli]'s Local Community Development program. This partnership was confirmed by Mr Hennie Roets in a [sic] correspondence dated 31 May 2021.
4. The salient terms of the agreement is that Manuli has adopted a 3 year plan with phased approach into working. The plan comprises of 8 phases, the first phase

being training, and the final phase being that our client will be allowed to manage the Anglo Platinum Mototolo contract on your behalf, and at the end of phase 8 the contract with Anglo Platinum will be handed over to our client with a full product supply agreement in place.

5. These terms and the agreement were on the strength that [PCM] has been identified and assessed as the Local Community Based Company to partner with Manuli".

[8] The letter of 14 February 2023 goes on to assert that the invitation was unlawful because of the existing partnership. Demand was made on Manuli to retract the invitation.

[9] On 18 February 2023, Manuli's attorneys denied *inter alia*, the conclusion of any agreement as contended for by PCM and advised, *inter alia*, that PCM had referenced a proposed scope of supply for Amplats. With reference to the 8-phase plan referred to in PCM's letter of 14 February 2023, Manuli's attorneys advised that this formed part of Manuli's Community Training and Enrichment Program which included local SME development through which Manuli would identify and select a local SME beneficiary which would, in turn, develop a business in the hydraulic industry. In respect of that SME beneficiary, Manuli's policy states:

"Once they [a reference to the SME beneficiary] have been fully developed, they will be geared & ready to take on a contract that is of a similar nature to the current on-site service & supply of hydraulic hose and fittings to a variety of industries."

[10] Manuli's attorneys went on to state that PCM had, since then, been awarded "a Glencore project in the capacity as a local community program" and that

having already been “awarded the position of beneficiary within the Glencore project”, PCM was no longer eligible for appointment by Manuli to the Tender as this “would undermine the purpose of community development”.

[11] The letter concluded by declining the demand for a retraction of the invitation.

[12] As a result, PCM launched an urgent application on 22 February 2023.

[13] On 2 March 2023, PCM's urgent application came before Wilson J who removed the matter from the roll and afforded PCM an opportunity to deliver a supplementary founding affidavit.

[14] In its supplementary founding affidavit, PCM referred to the various terms of the alleged partnership agreement as being express oral or tacit. No facts were adduced to support the purported tacit terms.

[15] PCM then re-enrolled its application on the urgent court roll. On 14 March 2023, PCM's application came before Randera AJ. He postponed the application *sine die* "to be dealt with in the ordinary course", granted an interim interdict against Manuli from "appointing any company as a joint venture partner or local community development partner" in respect of the Tender "pending the finalisation of this matter in the ordinary course" and reserved the question of costs.

- [16] The matter then came before Manoim J (the court *a quo*) on 7 August 2023. He dismissed PCM's application with costs on 12 September 2023.

THE ORAL AGREEMENT

- [17] The Supreme Court of Appeal's decision in *Quartermark*¹ serves as a powerful reminder to litigants of the two-fold purpose of affidavits in application proceedings as being both the pleadings and the evidence necessary to sustain the cause of action or defence that a litigant seeks to make out.
- [18] In the instant case, where PCM was required to make out a case for a partnership by establishing the *essentialia* of such a contractual relationship in its founding papers, it failed to do so. In these circumstances, a material factual dispute as contemplated in the authorities does not arise.²
- [19] The reason why a cogent case for the subsistence of a partnership between PCM and Manuli, as understood in our law, could not be made out emerged during argument.
- [20] The central theme of this dispute concerns the meaning of the word "partnership" (and its various synonyms including "joint venture") as used by

¹ *Quartermark Investments Pty Ltd v Mkhwanazi and Another* 2014 (3) SA 96 (SCA) at [13]

² *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163 followed in *African Congress for Transformation v Electoral Commission of South Africa; Labour Party of South Africa v Electoral Commission of South Africa; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa* 2024 (8) BCLR 987 (CC) at [94]

Manuli in its various engagements with PCM, Amplats and others. It is clear that PCM and Manuli were at cross purposes as to the arrangement between them.

- [21] The prominent American philosopher and psychologist, William James, is widely said to have expressed the view that "language is the most imperfect and expensive means yet discovered for communicating thought".³ In some way, this echoes the sentiment of 5th century Chinese philosopher Confucius. He is said to have expressed himself as follows:

"If language is not correct, then what is said is not what is meant; if what is said is not what is meant, then what must be done remains undone; if this remains undone, morals and art will deteriorate; if justice goes astray, the people will stand about in helpless confusion. Hence there must be no arbitrariness in what is said. This matters above everything."⁴

- [22] As will appear below, a proper consideration of the context in which the word "partnership", "partner" or "joint venture" was used by Manuli, evinces no more than an expression of its intention to sub-contract certain portions of the work under the Tender to PCM as part of its community development initiative.

³ Stuhr *et al*, *100 years of Pragmatism William James Revolutionary Philosophy*, Inanda University Press, 2010 at 85

⁴ *The Analects of Confucius*, Book 13, Verse 3 (James R Ware translation, 1980)

[23] Seen in this way, the references to "partner" and any synonyms of that word, were used in the colloquial sense often used in marketing parlance to identify, for instance, a service provider or a sponsor.

[23.1] This colloquial language can be seen in advertisements referring to a logistics company being the "official partner" to an event expressed as "z, the official logistics partner to the w music group".⁵

[23.2] In some instances, "partner" means a "sponsor" as seen in the often-used expression "x watch brand, the official timing partner of y".⁶

[23.3] But this does not necessarily mean that a "partnership" as understood in our law came about between the service provider or sponsor and the other party.

[24] It is for this very reason that context is important, particularly where a litigant relies on tacit terms to a contract.⁷ A tacit term can only be imported if it is proven that the parties to the alleged contract would have agreed to such a term had it

⁵ *For instance*, DHL is the "official logistics partner" of the Rolling Stones and Coldplay.

⁶ *For instance*, the watch brand Rolex is an "official partner" of the Wimbledon tennis championships, in the same way Barclays Bank Limited is an "official partner" of Wimbledon. Both Rolex and Barclays are sponsors of the championship.

⁷ *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1974 (3) SA 506 (A) at 531 - 2

been suggested to them at the time the alleged partnership agreement was concluded.⁸

- [25] The context, in this instance, does not lend itself to that which PCM contends and this explains why PCM could not cogently formulate the terms of the alleged partnership agreement. To this end, it is long established that a vague or inchoate agreement does not establish a partnership. Bale, CJ held, in *Butcher & Sons*⁹, that:

“As the plaintiffs rely on a partnership the burden of proof is necessarily upon them, and so far as the case for the plaintiffs is concerned, the evidence of any partnership is of the slightest, and in my opinion, quite insufficient. Practically the only evidence is that Werner, one of the partners of Harris & Co., when ordering the goods sued upon in March, 1899, informed Butcher & Sons that Baranov Bros. were partners, and that upon such assurance and understanding the account was opened, and the goods supplied. This representation, however, would not affect Baranov Bros. if there was, as a matter of fact, no partnership between them, and the absence of representation would not avail them if there were.”

- [26] In the same way the representations made by Manuli to third parties concerning PCM are only material if there was a partnership between PCM and Manuli.

- [27] The legal concept of "partnership" concerns the coming together of two or more people or entities in the pursuit of a common profit-making objective. In so doing, a separate partnership estate comes into existence. The partners,

⁸ *City of Cape Town (CMC Administration) v Bourbon-Leaftley* 2006 (3) SA 488 (SCA) at [19]

⁹ *S Butcher & Sons v Baranov Bros* (1905) 26 NLR 589 at 594

having a patrimonial interest in the business of the partnership, will share in the expenses, profit and loss but will not individually own any assets which may accumulate as a result of the creation of the partnership.¹⁰

- [28] Holmes AJA, in *Bester*¹¹ cited Pothier's distillation of the *essentialia* of a partnership as adopted in *Joubert*¹² and approved in *Rhodesia Railways*¹³ where the *essentialia* of a partnership agreement was stated thus:

"First, that each of the partners brings something into the partnership, or binds himself to bring something into it, whether it be money, or his labour or skill. The second essential is that the business should be carried on for the joint benefit of both parties. The third is that the object should be to make profit. Finally the contract between the parties should be a legitimate contract. . . . Where all these four essentials are present, in the absence of something showing that the contract between the parties is not an agreement of partnership, the Court must come to the conclusion that it is a partnership. It makes no difference what the parties have chosen to call it; whether they call it a joint venture, or letting and hiring. The court must decide what is the real agreement between them."

- [29] The import of these elements was considered by Wallis JA in *Gihwala*.¹⁴ Here the learned judge of appeal made the point that the business of the alleged partnership must be carried on for the joint benefit of the partners, with the intention of making a profit. He held these two elements to be intertwined.

¹⁰ Consider: LAWSA, 2nd Ed (2016), volume 19 paragraph 254

¹¹ *Bester v Van Niekerk* 1960 (2) SA 779 (A) at 873 - 4

¹² *Joubert v Tarry & Company* 1915 TPD 277 at 280 - 281

¹³ *Rhodesia Railways and Others v Commissioner of Taxes* 1925 AD 438 at 464 - 5

¹⁴ *Gihwala and Others v Grancy Property Ltd and Others* 2017 (2) SA 337 (SCA) at [60]

- [30] So, if the parties to this application were to receive income in their own right from a proposed business venture, the agreement between them is not one of partnership.¹⁵
- [31] PCM did not allege any terms in respect of a partnership in its founding affidavit. PCM's supplementary founding affidavit was barely an improvement. It was in this affidavit that PCM alleged the conclusion of a partly oral, partly tacit agreement of partnership between it and Manuli in March 2021.
- [32] The terms of the agreement alleged by PCM are inchoate at best. There is no elucidation to be had from any of the documents annexed to the founding or supplementary founding affidavits even if PCM had precisely identified the portions thereof on which reliance was placed.¹⁶ What is more, the terms of the partnership alleged in the supplementary founding affidavit do not bear much resemblance to the terms of the agreement referred to in PCM's letter of demand dated 14 February 2023.
- [33] The alleged oral agreement with express, alternatively tacit terms were that Manuli appointed PCM as the "sole" joint venture partner or local community development partner ("LCDP") "for the whole Steelpoort or Greater Tubatse Region"; that it was appointed as LCDP in respect of the Tender; that the

¹⁵ *Novick v Benjamin* 1972 (2) SA 842 (A) at 851A - H

¹⁶ *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 324F - H

"partners" would bid separately for the Tender but if the Tender was awarded to Manuli, PCM would be its sole partner; and if awarded to PCM, PCM would order supplies from Manuli. The "partners" would "work together in the fulfilment of the contract".

[34] It is not apparent what PCM would contribute to the alleged partnership. While I accept that the parties could notionally "work together in the fulfilment of the contract", it is not certain that any "partnership" would derive a benefit from the parties "working together". It is equally uncertain that any "partnership" would derive a profit from the Tender rather than Manuli and PCM individually. When we pressed counsel for PCM in argument on how the "partners" would be paid from carrying on the Tender "together", he was unable to give a clear answer. To the extent that Manuli and PCM would derive a profit individually through "working together", no partnership as contemplated in our law came about between them.¹⁷

[35] As foreshadowed in the correspondence preceding the institution of these proceedings, Manuli denied any partnership between the parties.

¹⁷ *Novick (supra)*

- [36] Manuli's case is that it had adopted a community training and development program to align itself with the transformation strategy within the mining houses. It is this program that led to its involvement with PCM.
- [37] For these purposes, PCM was the beneficiary of Manuli's program and its "partner" for the purposes of being "developed" to undertake work in its own right for mining houses in due course.
- [38] Given PCM's failure to make out a case for a partnership as is understood in our law, I do not need to consider the effect of PCM's relationship with Glencore. In any event, this would appear to be *res inter alios acta* if PCM had established a partnership agreement with Manuli.
- [39] As a consequence any agreement between the parties is not one of partnership.
- [40] In the court below, PCM prayed for a final interdict premised on Manuli's breach of the alleged partnership agreement. For purposes of this relief, the alleged partnership agreement underpins the clear right for which PCM contends.
- [41] PCM, having failed to pay due regard to the dual purposes of affidavits in application proceedings, also failed to establish that it was the bearer of any contractual right capable of being enforced against Manuli.

- [42] It is axiomatic that, absent a right being established, no right can be infringed. It follows then, that a claim for interdictory relief cannot be founded in such circumstances because interdicts are intended to protect rights and not to create them.¹⁸

CONCLUSION

- [43] The court *a quo* held:

“the difficulty for PCM is that it seeks to rely on enforcing an oral agreement by motion proceedings. The oral agreement is alleged to be express alternatively tacit. It is as vague as that. ...The applicant fails on these papers to make out the existence of the alleged oral agreement they contend for and hence they are unable to establish a clear right entitling them to an interdict.”

- [44] For the reasons set out above, the conclusion of the court *a quo* cannot be faulted. Furthermore, it cannot be concluded that the court *a quo* misdirected itself in reaching it. The appeal must therefore fail.

- [45] The correspondence preceding the institution of these proceedings should have alerted PCM to the difficulties it faced in establishing any partnership agreement. Nonetheless, it launched an ill-considered urgent application where the founding affidavit did not make out a case for the relief sought.

¹⁸ *CSAAW Oak Valley Estates (Pty) Ltd and Another* 2022 (5) SA 18 (CC) at [19]; *Plettenberg Bay Entertainment (Pty) v Minister van Wet en Orde en 'n Ander* 1993 (2) SA 396 (C) at 400G - H

[46] Even after being afforded a second opportunity to put up a proper case in a supplementary founding affidavit, PCM was unable to do so.

[47] On the issue of costs, I consider it appropriate that the appellants pay the first respondent's costs jointly and severally. The second appellant is the sole shareholder and director of the first appellant. It ought to be clear that our law maintains a strict distinction between juristic entities and its members.¹⁹ Where a company is the litigant, it serves no purpose for the directors and members to enter into the *lis* save and unless they claim relief distinct from the juristic entities. In his personal capacity, the second appellant made common cause with the first appellant²⁰ thereby entering into the *lis* in circumstances where this was unnecessary. In these circumstances, it would be artificial to distinguish between the appellants.²¹

[48] In the result, I make the following order:

1. The appeal is dismissed;

¹⁹ *Capital City SA Property Holdings Ltd v Chavonness Badenhorst St Clair Cooper and Others* 2018 (4) SA 71 (SCA) at [27] citing *The Shipping Corporation of India Ltd v Evdomon Corporation and Another* 1994 (1) SA 550 (A) at 566 C/D

²⁰ *Drift Supersand (Pty) Ltd v Mogale City and Another* [2017] 4 All SA 624 (SCA) at [55]

²¹ Consider: *Justice Alliance of South Africa v Mncube N.O and Others and 2 related matters* [2015] 1 All SA 181 at [191]

2. The appellants are to pay the first respondent's costs jointly and severally, including any reserved costs, with the costs of counsel to be taxed on scale B.

A handwritten signature in black ink, appearing to read 'A W Pullinger', is written over a solid black rectangular redaction bar.

A W PULLINGER
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES:

COUNSEL FOR THE APPELLANT:	V J CHABANE
ATTORNEY FOR THE APPELLANT:	MANTJONE FREED ATTORNEYS
COUNSEL FOR THE FIRST RESPONDENT:	T TSHAVHUNGWA
ATTORNEY FOR THE FIRST RESPONDENT:	KHAMPALA ATTORNEYS