



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

Not reportable / Reportable

Case no: 1617/2019

In the matter between:

HENDRIK MARTINUS LINDE N.O.

BENITA LINDE N.O.

DIRK CORNELIUS LINDE N.O.

FIRST PLAINTIFF

SECOND PLAINTIFF

THIRD PLAINTIFF

and

DONOVAN THEODORE MAJIEDT N.O.

ELRICH RUWAYNE SMITH N.O.

CLIFFORD THABANG MAREDI N.O.

HANLIE HENNING N.O.

STANDARD BANK OF SOUTH AFRICA LIMITED

MASTER OF THE FREE STATE HIGH COURT,

BLOEMFONTEIN

FIRST DEFENDANT

SECOND DEFENDANT

THIRD DEFENDANT

FOURTH DEFENDANT

FIFTH DEFENDANT

SIXTH DEFENDANT

Case no: 1623/2019

In the matter between:

HENDRIK MARTINUS LINDE

and

DONOVAN THEODORE MAJIEDT N.O

ELRICH RUWAYNE SMITH N.O.

CLIFFORD THABANG MAREDI N.O.

HANLIE HENNING N.O.

STANDARD BANK OF SOUTH AFRICA LIMITED

PLAINTIFF

FIRST DEFENDANT

SECOND DEFENDANT

THIRD DEFENDANT

FOURTH DEFENDANT

FIFTH DEFENDANT

**MASTER OF THE FREE STATE HIGH COURT,
BLOEMFONTEIN**

SIXTH DEFENDANT

Neutral citation: *Linde NO and Others v Majiedt NO and Others; Linde v Majiedt NO and Others* (1617/2019; 1623/2019) [2025] ZAFSHC 290 (12 September 2025)

Coram: Reinders J

Heard: 4 September 2025

Delivered: This judgment was handed down in open court on 12 September 2025 and thereafter electronically by circulation to the parties' representatives by email and released to SAFLII.

Summary: Application for re-opening of plaintiff's case – discretion of High Court – principles restated – application dismissed.

ORDER

1 The application is dismissed with costs on Scale C, such costs to include the employment of two counsel.

2 The matter is further postponed for purposes of closing argument in respect of the merits, to a date to be arranged between the parties.

JUDGMENT

Reinders J

[1] The matter before me is part-heard to such an extent that argument is to be heard, with judgment to follow thereon. In terms of a consolidation order dated 18 August 2022 granted by this Court, the two matters under cases numbers 1617/2019 and 1623/2019 were to proceed as one action. This interlocutory judgment, therefore, only concerns the application to reopen both cases. For ease of reference the first, second and third plaintiffs under case no 1617/2019 and the plaintiff under case no 1623/2019 will be referred to as the plaintiffs. Likewise, reference to the defendants would only be collectively, save where necessary to indicate otherwise.

[2] It suffices for purposes of this interlocutory judgment to state that the plaintiffs instituted action against the defendants, basing their claims on certain agreements in respect of livestock (sheep). The plaintiffs initially closed their cases after having led the evidence of Mr HM Linde (Mr Linde). This was done as far back as 15 November 2022. The defendants thereafter led the evidence of Mr GJ Pretorius (Mr Pretorius) and closed their cases on 12 September 2023.

[3] The proceedings were concluded on 12 September 2023 and the matter was ripe to be argued at the time. However, the plaintiffs indicated that they wish to amend their pleadings, as intimated (but never prosecuted) when the trial had commenced in 2022. On 1 December 2023, the plaintiffs issued a formal application to amend their pleadings,

which was opposed by the defendants. I refused leave to amend on 23 February 2024. The matter was thereafter postponed for oral argument on the merits to an agreed date of 21 July 2025. On the aforementioned date, by agreement between the parties, the matter was postponed to 4 September 2025. The purpose of the postponement was, amongst others, to allow the plaintiffs to prosecute an application to reopen their cases. Such formal application was issued on 23 July 2025. It is that application that now requires a ruling.

[4] The notice of motion seeks leave to allow the plaintiffs to reopen their cases for the purpose of presenting the evidence of a certain Mr G Steyn. Mr Linde, in an affidavit in support of the relief sought, states that the attorney of record made contact with Mr Steyn, ostensibly in September 2024 (the affidavit incorrectly refers to 5 September 2025 – however counsel informed me that it is a typing error). Be that as it may, the attorney had a discussion at that time with Mr Steyn. Mr Steyn informed the attorney that as far as he was concerned, the moment the plaintiffs effected payment into the bank account of the Paul Steyn Boerdery (currently, Paul Steyn Boerdery (Pty) Ltd (in liquidation)) he knew that he would in the future be farming with the numbers of sheep agreed upon and that the plaintiffs' sheep were indeed marked separately. This evidence was ostensibly also tendered during an insolvency enquiry held before the commencement of this trial.

[5] In opposing the application, the first to fourth defendants disputed that this was the testimony provided by Mr Steyn during the insolvency proceedings. Mr DT Majiedt, on behalf of the first to fourth defendants, points out that the allegations made by the plaintiffs in this respect are not supported by an affidavit deposed to by Mr Steyn. With reference to the insolvency interrogation, I am referred to a transcription of Mr Pretorius and Mr Linde's evidence during the said proceedings where Mr Pretorius, amongst others, stated that the marking of the 'claimant's' sheep was only attended to by himself pursuant to the fifth defendant having perfected its notarial bonds. Mr Linde, on the other hand, confirmed during the aforesaid interrogation that he had no personal knowledge of whether Mr Pretorius, in fact, marked the sheep to which the plaintiffs lay claim. Mr Pretorius testified during the trial but has sadly since passed on. So viewed, the defendants are prejudiced in that Mr Pretorius cannot be consulted or recalled. With reference to the record of the trial proceedings itself, the defendants argue that the plaintiffs were well aware of the fact that, in the event they relied upon the separation or

marking of the sheep, they probably had to call Mr Steyn to testify. There is no indication that Mr Steyn was unwilling or refused to testify, and ultimately no reasons were furnished as to why the plaintiff closed its case without calling Mr Steyn to testify.

[6] In *Mkwanazi v Van der Merwe and Another*¹ (*Mkwanazi*) it was held that a high court has an inherent discretion to allow a party to reopen its case. The general considerations were stated thus:

- '(i) The reason why the evidence was not led timeously.
- (ii) The degree of materiality of the evidence.
- (iii) The possibility that it may have been shaped to relieve the pinch of the shoe.
- (iv) The balance of prejudice, i.e. the prejudice to the plaintiff if the application is refused, and the prejudice to the defendant if it is granted. This is a wide field. It may include such factors as the amount or importance of the issue at stake; the fact that the defendant's witnesses may have already dispersed; the question whether the refusal might result in a judgment of absolution, in which event whether it might not be as broad as it is long to let the plaintiff lead the evidence rather than to put the parties to the expense of proceedings de novo.
- (v) The stage which the particular litigation has reached. Where judgment has been reserved after all evidence has been led on both sides and, just before judgment is delivered, the plaintiff asks for leave to lead further evidence, it may well be that he will have a harder row to hoe, because of factors such as the increased possibility of prejudice to the defendant, the greater need for finality, and the undesirability of throwing the whole case into the melting pot again, and perhaps also the convenience of the court which is usually under some pressure in its roster of cases. On the other hand, where a plaintiff closes his case and, before his opponents have taken any steps, asks for leave to add some further evidence, the case is then still in *medias res* as it were.
- (vi) The healing balm of an appropriate order as to costs.
- (vii) The general need for finality in judicial proceedings. This factor is usually cited against the applicant for leave to lead further evidence. However, depending on the circumstances, finality might be sooner achieved by allowing such evidence and getting on with the case, than by granting absolution and opening the intermediate way to litigation de novo in all its tedious amplitude. The appropriateness, or otherwise, in all the circumstances, of visiting the remissness of the attorney upon the head of his client.'²

[7] During argument, counsel for the plaintiffs pressed upon me that the application

¹ *Mkwanazi v Van Der Merwe and Another* 1970 (1) SA 609 (A).

² *Ibid* at 616G-617D. These principles were cited with approval in *Mostert v Cape Town City Council* 2001 (1) SA 105 (SCA) para 45 and *Minister of Safety and Security and Another v Rudman and Another* 2005 (2) SA 16 (SCA) para 79.

is most certainly not to be seen as a condonation application. I obviously agree with him. However, I have difficulty in understanding why this witness's evidence was not adduced by the plaintiffs. I fail to understand why he was only consulted after the closing of the plaintiffs' cases. To me it seems that the plaintiffs made the decision not to call him and hoped that the defendants would call the witness. That is not, in my view, a good explanation or reason why the evidence was not led timeously. It seems to me, from the evidence tendered by the defendants in respect of the witness's evidence during the insolvency interrogation, that the said witness cannot adduce weighty or material evidence in support of the plaintiffs' cases. The witness, Mr Pretorius, can unfortunately not be recalled nor consulted as he had passed on. Although not decisive, I have in summary pointed out above the stage which this litigation has reached and although I wish to be fair to the plaintiffs, I must likewise be fair to the defendants.

[8] Having considered the principles set out in *Mkwanazi*, I am not inclined to allow the plaintiffs to reopen their cases. It thus stands to be dismissed. Costs of this application should follow the cause. All parties employed senior counsel, and I see no reason why the unsuccessful party should not pay the costs on scale C.

[9] Accordingly, I grant the following order:

- 1 The application is dismissed with costs on Scale C, such costs to include the employment of two counsel.
- 2 The matter is further postponed for purposes of closing argument in respect of the merits, to a date to be arranged between the parties.


C REINDERS
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiffs:

Instructed by:

S Grobler SC

Stander & Partners.

Bloemfontein

For the First to Fourth Defendants:

Instructed by:

MP van der Merwe SC

S Tsangarakis

Hendre Conradie Inc.

Bloemfontein

For the Fifth Defendant:

Instructed by:

P Zietsman SC

EG Cooper Majiedt.

Bloemfontein