

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 19825/2022

(1)	REPORTABLE: yes
(2)	OF INTEREST TO OTHER JUDGES: yes
(3)	REVISED: NO
29 September 2025	
DATE	 SIGNATURE

In the matter between:

CHESTWUN ROMARIO SELLO

Applicant

and

ROAD ACCIDENT FUND

Respondent

JUDGEMENT

Default judgment – contingency fee agreement to exclude VAT in the 25% limit on success fee – interpretation of Contingency Fee Act 66 of 1997 and more specifically section 2(2). Whether the 25% limit on a success fee provided for in section 2(2) of the Contingency Fee Act 66 of 1997 includes value-added Tax (VAT) in terms of the Value-Added Tax Act 89 of 1991.

KRÜGER AJ

- [1] This matter came before me in the Trial Court and was argued before me on 19 May 2025. The matter was lodged with the defendant on 24 November 2021 and summons was served on 6 April 2022. The defendant then served a notice of intention to defend on 20 July 2022 and served a plea. The notice of set down for trial was served on the defendant on 6 June 2023. On the day of trial being 19 May 2025, there was no appearance for the defendant and the matter proceeded by default of appearance.
- [2] The plaintiff served and filed a substantive application in terms of Rule 38(2) requesting that leave be granted for the evidence of 12 experts to be allowed by affidavit. The application in terms of Rule 38(2) was granted at the outset of the hearing of the matter.

Merits

- [3] The plaintiff was injured in a motor vehicle accident on 14 August 2020. At the time of the accident the plaintiff was 20 years old. The merits were conceded by the defendant in an offer and acceptance of the offer dated 15 September 2022.

Quantum

- [4] The plaintiff was treated in a public hospital and there was no claim for past medical expenses. The plaintiff did claim for future medical expenses in respect

of an undertaking to be awarded in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[5] Prior to the accident the plaintiff was a student at Namakwaland College, O'kiep, where he studied Human Resources and was in his final year of the theoretical studies which would then be followed by 18 months of practical studies. The plaintiff had completed grade 12 at school before commencing with his studies in Human Resources. The plaintiff resided with his mother, who was a single parent pre-accident. his mother passed away during 2021.

[6] According to the experts that assessed the plaintiff's injuries and damages the plaintiff had no pre-existing conditions prior to the accident. The plaintiff sustained the following injuries as a result of the accident on 14 August 2020:

- a. Head injury
- b. Multiple abrasions to left hand, left knee and face
- c. Multiple lacerations to face and left shoulder
- d. Neck injury, dens process fracture

[7] The plaintiff was a passenger at the back of a bakkie at the time of the motor vehicle collision. The plaintiff was taken by ambulance to Dr van Niekerk hospital in Springbok and was admitted until 16 August 2020. At the time of admission, the plaintiff's GCS score was measured as being 15/15. It was also documented that on 16 August 2020 the plaintiff lost consciousness and the plaintiff vomited after the accident. After release from Dr van Niekerk hospital, the plaintiff was then seen at Dr Harry Surtie Hospital in Upington on 16 August 2020. The plaintiff was diagnosed after a CT scan of the brain, with two intracranial bleeds and a mastoid fracture. The plaintiff was transferred from Dr Harry Surtie Hospital in Upington on 17 August 2020 to Kimberley Hospital, which transfer was accommodated by the Neurosurgeon on call.

Experts appointed by plaintiff

[8] The Orthopaedic Surgeon, Dr. P.R. Engelbrecht, reported that the plaintiff's upper limbs were neurologically intact and that a mild localising tenderness as well as muscle spasm was recorded in the upper cervical spine of the plaintiff.

- [9] According to the neurosurgeon, Dr Moya, the plaintiff sustained a moderate to severe “focal” brain injury based on the following:
- a. Abnormal CT brain scan with evidence of inter-cerebral haemorrhage (two) and overlying skull fracture;
 - b. A Glasgow Coma Scale of 15/15 can present at a moderate to severe “focal” traumatic brain injury;
 - c. The plaintiff is suffering from residual neurocognitive and neuropsychological problems related to his traumatic brain injury;
 - d. The consequences of the traumatic brain injury is inter alia, a 8% to 10% risk of post traumatic epilepsy.
- [10] Dr Smuts, the neurologist appointed confirms the traumatic brain injury and adds that the plaintiff suffers from chronic daily headaches, which he terms as traumatic headaches. Further states that the plaintiff’s memory is very poor after the accident and that he is unable to return to his studies since he struggles to concentrate. The plaintiff is forgetful and has become very intolerant and gets angry easily. Had it not been for the accident then the plaintiff would have likely completed his diploma studies in 2021.
- [11] Dr M Naidoo was of the opinion that the plaintiff sustained a head injury that was intensely investigated when he was admitted to the second hospital and that the investigation by neuroimaging revealed abnormalities which included two intracranial bleeds and mastoid fracture. It was documented that the plaintiff received prophylactic treatment for post-traumatic epilepsy with loading dose of phenytoin. The changes in his functioning is impacting negatively on his mental wellbeing and he is presenting with depressive and some travel related anxiety symptoms. He diagnosis the plaintiff with mild complicated traumatic brain injury. He is of the opinion that the plaintiff is presenting with mild neurocognitive disorder due to traumatic brain injury, as well as mood disturbance which he describes as clinical significant behavioural disturbance e.g. psychotic symptoms.

- [12] Ingrid Jonker the neuropsychologist is of the opinion that the nature and severity of the brain injury sustained by the plaintiff should be taken into account especially with regard given the plaintiff's educational and occupational background as well as his best test performances, his results were expected to fall in the average to high average ranges, however several test scores fell in the low average, below average and below average to impaired and severely impaired ranges.
- [13] Professor Seabi, the educational psychologist concluded, based on all the available information (such as depressed cognitive profile, behavioural difficulties including distractibility, poor working memory, lapse of concentration, which will serve to add barriers to the plaintiff's studies, emotional trauma due to the accident and the sequelae of his injuries), given the accident in question, grade 12 (NQF 4) will in all likelihood remain the plaintiff's highest qualification.
- [14] Dr Pienaar, the plastic and reconstructive surgeon, stated that upon physical examination the plaintiff presented with the following scars:
- a. Over his posterior scalp there is a y-shaped 5cm x 1.5cm and a 1.5 cm scar that is visible through his hair which is very unsightly;
 - b. On his left cheek there are abrasion scars of 3.5cm x 3.5 cm and 3 cm x 1 cm. they are irregular, hyperpigmented, visible and unsightly;
 - c. Over his right cheek and upper lip there is a 5cm x 1 cm scar that is hyperpigmented, irregular, visible and very unsightly. He has a 1cm x 1cm scar on his chin that is hypertrophic and hyperpigmented;
 - d. There are multiple abrasion scars over both his hands and fingers on the right of 1 cm x 1 cm, 2.5 cm x 1.5 cm, 3 cm x 1 cm, 1.5 cm x 1 cm and 2 cm x 1.5 cm and on the left 3 cm x 2 cm, 6 cm x 2 cm, 2 cm x 1.5 cm and eight 1 cm to 1.5 cm. they are irregular, visible and very unsightly
 - e. Over his left shoulder, on the anterior and posterior aspect, there is a 15 cm x 20 cm hyperpigmented abrasion scar that is very visible and unsightly;
 - f. On his left knee there is a 5 cm x 15 cm hyperpigmented, hypertrophic, irregular, visible and unsightly scar.

[15] K Cumming the Occupational Therapist opined in summary that the plaintiff presents with cognitive deficits which hamper his capacity to study towards a more academic career path. His physical deficits hamper his capacity for more technical learning. His endurance and emotional deficits denote that he is unlikely to pursue and sustain further studies. The physical assessment reveals that the plaintiff has the strength for light physical work. Even in a sedentary or light physical position, he will require an employer who is understanding of his limitations. He will require a reduced workload, adaptations to his workstation, reduced work pressure and extended deadlines to compensate for his fear avoidance behaviour, discomfort, endurance deficits and headaches. The plaintiff will not be a candidate for skilled employment and will be limited to unskilled employment. His depressive symptoms would hamper his resilience. He would not be considered capable of handling the work stressors of formal open labour market employment. Occupational Therapy will allow for independent living but will not improve the aforementioned occupational potential. The abovementioned conclusions, therefor remain valid even with treatment. At best, if his family assist, he may be a candidate for sympathetic work in the unskilled market, however this is an unlikely scenario given his lack of experience.

[16] T Talmud, the Industrial Psychologist postulated the following in regard to pre-morbid career postulation:

- a. The plaintiff would have completed the theory aspect of his studies in 2020. It would have then taken him 3-5 years to enter the formal labour sector. During this period he would have earned R 59 482.80 per annum.
- b. On entry into the formal sector he would have earned a market related basic salary for roles graded at the Paterson B1 median level.
- c. With further training and work experience, the plaintiff would have progressed to reach his career ceiling by the age of 45 at which time he would have earned at a level of job complexity and remuneration commensurate with the annual guaranteed package at Paterson C3 median level.

- d. Thereafter he would have received inflationary increases until retirement at the age of 65.

[17] T Talmud further postulated the following post-morbid:

Past loss of earnings

- a. The plaintiff has never secured work. Given that the pre-morbid postulation indicates that he would have entered the labour market in 2021, but for the accident, past loss of earnings applies to this period of unemployment. Past loss of earnings is fully attributed to the accident.

Future loss of earnings

- b. The plaintiff will enter the labour market 3 to 5 years from now and will earn in line with the 25th percentile of the demographics (Northern Cape, informal sector, male, black African and unskilled) for the reasons above no further progression is foreseen, but he will earn inflationary increases until retirement age of 65.
- c. He would be at significant risk of not even earning at the suggested level or sustaining this level of earnings until the retirement age of 65. Therefore it is proposed that a significantly higher than normal contingency is applied.

[18] The Actuary, GW Jacobson, calculated the loss of earnings of the plaintiff, taking into account the postulations of the Industrial Psychologist. The calculation is dated 11 April 2025. Total, past loss after applying 5%/0% contingencies and future loss after applying 20%/40% contingencies came to the amount of R 6 376 275.00

[19] The Court is satisfied that the amounts and suggested contingency deductions is justified in the circumstances. The Court is however not convinced on the argument of the counsel for the plaintiff in respect of the costs on scale C and in this regard the Court will award scale B in respect of costs for counsel.

Contingency fee agreement

[20] The counsel for the plaintiff, then addressed the Court on the validity of the contingency fee agreement. The contingency fee agreement in this instance was entered into between the plaintiff and the attorney on 12 September 2020. It provides inter alia in paragraph 6.1 thereof:

“The Attorney shall be entitled to a success fee of 25% (excluding VAT) of the full monetary value of the claim, provided that the success fee shall not exceed the Attorney’s normal fee by more than 100% or exceed 25% (excluding VAT) of the total amount awarded or any amount obtained by Client in consequence of the proceedings, whichever is the lesser.”

[21] The Contingency Fee Act 66 of 1997 (“CFA”) provides:

In section 1 thereof:

*“**‘normal fees’**, in relation to work performed by a legal practitioner in connection with proceedings, means the reasonable fees which may be charged by such practitioner for such work, if such fees are taxed or assessed on an attorney and own client basis, in the absence of a contingency fees agreement”*

in Section 2 thereof:

“2 Contingency fees agreements

(1) Notwithstanding anything to the contrary in any law or the common law, a legal practitioner may, if in his or her opinion there are reasonable prospects that his or her client may be successful in any proceedings, enter into an agreement with such client in which it is agreed-

(a) That the legal practitioner shall not be entitled to any fees for services rendered in respect of such proceedings unless such client is successful in such proceedings to the extend set out in such agreement;

(b) That the legal practitioner shall be entitled to fees equal to or, subject to subsection (2), higher than his normal fees, set out in such agreement, for any such services rendered, if such client is

successful in such proceedings to the extend set out in such agreement.

(2) Any fees referred to in subsection (1) (b) which are higher than the normal fees of the legal practitioner concerned (hereinafter referred to as the 'success fee'), shall not exceed such normal fees by more than 100 per cent: Provided that, in the case of claims sounding in money, the total of any such success fee payable by the client to the legal practitioner, shall not exceed 25 per cent of the total amount awarded or any amount obtained by the client in consequence of the proceedings concerned, which amount shall not, for purposes of calculating such excess, include any costs."

[22] It was argued by Counsel for the plaintiff that the CFA does not impose any conditioning limiting the right to enter into a contingency fee agreement on any party with regard to his/her status as a registered or unregistered VAT vendor. Any interpretation of the CFA where VAT is concerned being included in the 25% limitation will impact negatively and unfairly on vat registered vendor (legal practitioner) and would have no effect on unregistered legal practitioners. It could therefor never have been the intention of the legislator that the 25% limitation on the success fee provided for in section 2(2) of the CFA should include VAT.

[23] It is noteworthy at this juncture to add that the CFA is completely silent as to the VAT registration status of any legal practitioner allowed to enter into a contingency fee agreement.

[24] The issue before the Court in regard to the Contingency fee agreement as argued by Counsel for the plaintiff is whether the 25% cap ("*the 25% cap*") on a success fee provided for in section 2(2) of the CF Act, includes value-added tax ("*VAT*") in terms of the Value-Added Tax Act 89 of 1991 ("*the VAT Act*"). Put otherwise, is a legal practitioner entitled to charge as his or her fees 25% of the capital amount recovered for his or her client, plus 14% VAT, in terms of

a contingency fees agreement concluded with the client under the CF Act.¹
According to Counsel this is to be referred to as the “*primary inquiry*”;²

[25] The value of the supply of goods or services must be established in accordance with section 10 of the VAT Act, which provides in this regard as follows:

a. Section 10(2):

“The value to be placed on any supply of goods or services shall, save as is otherwise provided in this section, be the amount of the consideration for such supply, as determined in accordance with the provisions of subsection (3), less so much of such amount as represents tax: Provided that ...”.

b. Section 10(3)(a):

“For the purposes of this Act the amount of any consideration referred to in this section shall be – (a) to the extent that such consideration is a consideration in money, the amount of the money; and (b) to the extent that such consideration is not a consideration in money, the open market value of that consideration”.

[26] The statutory duty to account and pay the VAT liability to SARS (the amount by

¹ This is how the issue was formulated by Mojapelo DJP in the Honourable Judge’s judgement in the Gauteng Local Division of the High Court, Johannesburg, in the matter of *Masango v RAF* 2016 (6) SA 508 (GJ) (“*the Masango judgment*”). The only difference being that at that stage the standard rate for VAT was still 14%. The Honourable Ms Justice Van der Schyff J in her recent judgment in the matter of *Martin Eddie Van der Westhuizen v RAF* delivered on 29 July 2024 under case number 21947/2022 (“*the Van der Westhuizen judgment*”), found that she is based on the principle of *stare decisis*, bound to follow the principle in the *Masango* judgment.

² Van der Schyff J in the *Van der Westhuizen* judgment at paragraph 4 further crystallized this issue where she held that: “*I am of the view that the question is more nuanced. No issue arises if the payment, including the VAT charged on fees, remains within the 25% cap provided for in section 2(2) of the [CF Act]. The actual question is whether the levying of VAT that renders payment by a client in terms of a contingency fee agreement to exceed the statutorily decreed 25% of the total amount awarded or any amount obtained by the client in consequence of the proceedings concerned is in line with the provisions of the CFA.*”

which the output tax exceeds the input tax) is imposed on a VAT vendor in terms of section 28(1) of the VAT Act. Section 28(1) provides as follows:

“Every vendor shall, within the period ending on the twenty-fifth day of the first month commencing after the end of the tax period relating to such vendor or, where such tax period ends on or after the first day and before the twenty-fifth day of a month, within the period ending on such twenty-fifth day- (a) furnish the Commissioner with a return reflecting such information as may be required for the purpose of the calculation of tax in terms of section 14 or 16; and (b) calculate the amount of such tax in accordance with the said section and pay the tax payable to the Commissioner or calculate the amount of any refund due to the vendor.”

[27] Section 64 of the VAT Act provides as follows:

“64 Prices deemed to include tax

(1) Any price charged by any vendor in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in terms of section 7 (1) (a) in respect of such supply, whether or not the vendor has included tax in such price.

(2) The amount of any deposit payable to or refundable by a vendor in respect of a returnable container shall be deemed to include tax.”

[28] Section 65 of the VAT Act provides as follows:

“65 Prices advertised or quoted to include tax [my emphasis]

Any price advertised or quoted by any vendor in respect of any taxable supply of goods or services shall include tax and the vendor shall in his advertisement or quotation state that the price includes tax, unless the total amount of the tax chargeable under section 7 (1) (a), the price excluding tax and the price inclusive of tax for the supply are advertised or quoted by the vendor: Provided that-

(i) where the price inclusive of tax and the price excluding tax for a supply are advertised or quoted, both prices shall be advertised or quoted with equal prominence and impact;

(ii) price tickets on goods need not state that the prices include tax if this is stated by way of a notice prominently displayed at all entrances to the premises in which the enterprise is carried on and at all points in such premises where payments are effected;

(iii) the Commissioner may in the case of any vendor or class of vendors approve any other method of displaying prices of goods or services by such vendor or class of vendors or, where the rate of tax is increased or reduced, the date on which the increased or reduced rate of tax takes effect;

(iv) a vendor may not state or imply that any form of trade, cash or any other form of discount or refund is in lieu of the tax chargeable in terms of section 7 (1) (a).

*(iv) added by s. 174 of Act 60 of 2001.]
[S. 65 amended by GN 2695 of 8 November 1991 and by s. 37 of Act 136 of 1992.]”*

[29] I pause at this juncture to caution that care must be taken as to the applicability of Section 65 to attorneys and advocates, as they do not advertise *per se*. furthermore they must adhere to specific criteria to ensure that their advertising falls within the ambit of professional conduct and does not breach the rules of the relevant professional societies or the Legal Practice Council.

[30] Section 2(2) of the CFA does not expressly say whether VAT is included in the 25% cap or not. To arrive at a conclusion regarding the primary issue, either way, this Court therefore needs to interpret the section.

[31] It was argued by Counsel that in interpreting section 2(2) of the CF Act, this Court ought to approach the issue in line with the principles laid down in *Natal Joint Municipal Pension Fund v Endumeni Municipality* where the Supreme

Court of Appeal held that:³

“The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.”

[32] The Court was further referred to the matter of *Capitec Bank Holdings Limited and another v Coral Lagoon Investments 194 (Pty) Ltd and others* 2022 (1) SA 100 (SCA) the Court with reference to *Endumeni* held *inter alia* as follows at paragraph 25:

“The much-cited passages from Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni) offer guidance as to how to approach the interpretation of the words used in a document. It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitute the enterprise by recourse to which a coherent and salient interpretation is determined. As Endumeni emphasised, citing well-known cases, ‘(t)he inevitable point of departure is the language of the provision itself’.”

³ Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) para 18 at 603F.

[33] Counsel also referred the Court to paragraph 39 where the following was stated, which clarified that in interpretation “*context is everything*”:

“[39] In the recent decision of University of Johannesburg v Auckland Park Theological Seminary and Another (University of Johannesburg), the Constitutional Court affirmed that an expansive approach should be taken to the admissibility of extrinsic evidence of context and purpose, whether or not the words used in the contract are ambiguous, so as to determine what the parties to the contract intended. In a passage of some importance, the Constitutional Court sought to clarify the position as follows:

'Let me clarify that what I say here does not mean that extrinsic evidence is always admissible. It is true that a court's recourse to extrinsic evidence is not limitless because "interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the court and not for witnesses". It is also true that "to the extent that evidence may be admissible to contextualise the document (since "context is everything") to establish its factual matrix or purpose or for purposes of identification, one must use it as conservatively as possible". I must, however, make it clear that this does not detract from the injunction on courts to consider evidence of context and purpose. Where, in a given case, reasonable people may disagree on the admissibility of the contextual evidence in question, the unitary approach to contractual interpretation enjoins a court to err on the side of admitting the evidence. There would, of course, still be sufficient checks against any undue reach of such evidence because the court dealing with the evidence could still disregard it on the basis that it lacks weight. When dealing with evidence in this context, it is important not to conflate admissibility and weight.'” (our emphasis)

[34] In *Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd*⁴ the SCA stated with reference to *Commissioner SARS v Bosch*⁵ that the approach in *Endumeni* to the interpretation is equally applicable to a taxing statute being that: “*A statute must be interpreted in line with ordinary rules of grammar and syntax taking cognisance of the context and purpose thereof*”.

⁴ ***Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd*** (1354/2018) [2019] ZASCA 163 (29 November 2019).

⁵ ***Commissioner SARS v Bosch*** (394/2013) [2014] ZASCA 171 (19 November 2014).

[35] Counsel argued that it was clear that the Court in *Masango* misinterpreted the CFA. The Court was then referred in detail to the *Masango* matter starting with paragraph 13 thereof which reads:

“[13] In a sense the validity of the clause depends on the meaning of ‘fees’, ‘normal fees’ and ‘success fees’, as used in the CFA. The term ‘fees’ and its derivatives ‘normal fees’ and ‘success fees’ are not defined in the CFA. One should therefore consider the ordinary meaning of these concepts.”

This is clearly patently wrong as normal fees is defined in section 1 of the CFA.

[36] The *Masango* judgment in paragraph 27 held that:

“For purposes of the VAT question and the VAT Act the word ‘fees’ appears to have the same meaning as ‘price’. Normal fees and success fees will have meanings that correspond to normal price and success price respectively”.

[37] There are several sections in the VAT Act where the term “fee” is used. However, upon a reading of these sections it is clear that the VAT Act does not regard fees and price to be the same thing.⁶ The *Masango* judgment did not consider that a fee is what is charged for the rendering of services by the service provider, but that the fee has a price: It was explained by Counsel that both Attorney A and B charge a fee. But, for example, attorney A’s hourly fee is priced at R2,000 per hour and attorney B’s hourly fee is priced at R2,500 per hour. They both charge a fee, but their price per hour differs. Price does not have to be stated as an amount of money – in the CFA it is set by percentage - i.e. the price of the fee may not exceed 25%.⁷ This means that the price of the fee is

⁶ See for instance section 2(1) (financial services) of the VAT Act; section 12 (exempt supplies); section 17 Permissible deductions in respect of input tax; and section 67 (Contract price or consideration may be varied according to rate of value-added tax).

⁷ Bank charges and fees are % based, Sale of properties are % based, etc.

anything between in excess of nil up to and including 25% the attorneys can agree with their clients – they all agree fees – but at different prices. Thus, it was argued by Counsel that the court could not equate success fee or normal fee with success price or normal price – these are not synonyms.

[38] The *Masango* judgment found that the VAT registered vendor pays the VAT. This is not correct according to Counsels argument. In its analysis of the VAT Act, in particular sections 7(1)(a) and 7(2), the court in the *Masango* judgment found that:

- a. At 29: *“The tax is levied on the supply by the vendor and not on the acquisition of goods or services by the consumer. The vendor is the supplier.”*
- b. At 30: *“The tax levied is to be paid by the supplier. It ‘shall be paid by the vendor’;*
- c. At 34: *“Similarly in terms of s 7(2) VAT is paid by the vendor. VAT is therefore a tax on the legal practitioner and not on the client. Consequently, the legal practitioner pays the tax to the South African Revenue Service (SARS)”.*

[39] Counsel continued that the Court in the *Masango* judgment, in its findings seems to have confused the concepts of the payment of VAT on supplies over to SARS, with whom bears the cost of the VAT so charged:

- a. The registered vendor charges output VAT on its taxable supplies. After reconciliation with the allowable input VAT, it pays the net amount (“*Valued added*” per the *Metcash*⁸ case) over to SARS, or claims a refund from SARS if there is a shortfall.
- b. The registered vendor is always obliged and mandated in terms of the VAT Act to charge and recover VAT from the recipients of its goods and services in addition the value of its supplies.⁹
- c. As such, the court in the *Masango* judgment did not consider what the Constitutional Court stated in the *Metcash* case supra, namely that in a sense the vendor is an “*involuntary tax collector*”. Put otherwise, the legal practitioner is an involuntary tax collector, recovering / collecting the VAT from the client for SARS.
- d. In this regard, the court in the *Masango* judgment also for example failed to recognise that VAT vendors can be registered on the cash basis.¹⁰ This means that VAT is paid over to SARS only to the extent that the taxable supply has been paid by the recipient (whether registered vendor or not).
- e. The vendor registered on the cash basis is probably the best example, since it provides the most simplified explanation of the VAT system and

⁸ *Metcash Trading Ltd v Commissioner South African Revenue Services and Another* 2001 (1) SA 1109 CC

⁹ The VAT Act in sections 64 and 65 explains how the registered vendor is to go about this.

¹⁰ Section 15(2)(b) of the VAT Act.

that the VAT burden is not designed to be carried and paid by a registered vendor who makes the supply, but by the recipient. In such an instance, the recipient first have to pay the cash basis registered vendor for the supply, before such supplying vendor incurs the obligation to account for and pay over the pro-rata VAT to SARS.

- f. The court in the *Masango* judgment was clearly wrong when it stated that the registered vendors who makes the taxable supplies pay the output VAT it charged on supplies it makes.
- g. Even if the registered vendor making the taxable supply, is registered on the invoice basis, the vendor at most, and in line with the “*involuntary tax collector function*”, “*finance*” the VAT for a while until the recipient pays. But, if the supply is not paid by the recipient, and for instance becomes irrecoverable, the registered vendor is allowed to make an adjustment to the output VAT. It can, if already paid to SARS, effectively recover it from SARS. In the result, the vendor does not pay the VAT, it always has this recovery option from the fiscus.¹¹

[40] Counsel contended that the matter of *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa 2003 (3) SA 54 (SCA)* is not applicable because:

- a. The *Masango* judgment at paragraph 51 refers to the judgment of the

¹¹ See section 22 of the VAT Act. The same principle applies when taxable supplies are cancelled or reduced for whatever reason. A tax credit is issued by the supplier adjusting the output VAT.

SCA in the above matter and quotes in this regard with approval paragraph 21 of the above judgment.

- b. However, the *PwC* judgment is not applicable regarding the issues relevant for purposes of the present matter.
- c. That judgment concerned whether in taxing a bill of cost the successful party may claim the input VAT it paid as part of the costs on taxation.
- d. Where the SCA refers to vendor in that context it is a reference to the recipient vendor. Not the vendor making the supply.
- e. In any event, as appears from paragraph 22 of the *PwC* judgment it is clear that the SCA's view on the matter is that for those purposes it is unnecessary for it to concern itself with the statutory requirements for input VAT deductibility.

[41] It was further Counsel's argument that the client bears the cost of VAT and the Court in the *Masango* judgment did not consider who bears the cost for VAT at all. It appears as if the Court also ignored attorneys' obligation to levy VAT on taxable supplies. The court in the *Masango* judgment also did not consider the explanation in the *Metcash* case that: "*The basic idea of VAT is that it is calculated on the value of each successive step as goods move from hand to hand along the commercial production and distribution chain from their original source to their ultimate user*".

[42] The question that is thus relevant in the VAT system is who the ultimate user is. In the present case it is obviously the client who is not a registered vendor. In this regard it is important to note that the ultimate user of goods or services can either be a registered vendor, or an unregistered vendor in terms of the VAT Act. Counsel contended in this regard, the Court in the *Masango* judgment's finding that the obligation to levy VAT is determined by who the vendor is, and not by the fact that a recipient acquires something, is flawed. A vendor making a taxable supply is, in general, not concerned with the recipient's VAT registration status when it has to levy and account for VAT or not.¹² It in general terms simply has no bearing on the vendor's obligation to levy VAT and the amount thereof.

[43] With regards to who the ultimate user is and the person's VAT registration status, the following was said in *Metcash* case *supra*: "*As goods move along the distribution chain, everyone making up the sales chain is first a recipient, then a supplier. The Act calls these recipients/suppliers, who are engaged in enterprises, vendors*"

[44] Thus, Counsel continued, when the recipient of a supply from a registered vendor, is not a registered vendor, or the service is not received in the furtherance of an enterprise, the VAT system ends at that recipient. On the other hand, as long as the recipient is a registered vendor, the VAT system continues. For example, a registered vendor's legal practitioner enters into a 25% cap contingency fee agreement with a registered vendor client, on the basis that the

¹² It excludes certain specific zero rated and exempt supplies, that are not relevant for present purposes.

fee excludes VAT.¹³ Then the legal practitioner would levy VAT on the 25% capped fee as output VAT. The client would have to pay the VAT on the 25% capped fee as input tax. However, the legal practitioner will have to pay the output VAT over to SARS. On the other hand, the client may reclaim the input VAT from SARS. The net VAT effect of the transaction for the two parties are therefore zero. This is because the client is not the end user. Where the client is the end user, it will have an effect on the VAT implications, but it should not have an impact on the fees.

[45] The Court in the *Masango* matter the Court misinterpreted that VAT is an indirect tax. Indirect taxes are levied on transactions (goods and services). Usually these taxes are collected by an intermediary and not paid to SARS directly by the person who bears them. The best example of an indirect tax is VAT. Indirect taxes do not take individual circumstances into account.

[46] Counsel explained this as follows:

a. Thus, simply stated, the 25% that an attorney as a registered vendor charge to his or her client, is never a cost to the registered recipient. The registered recipient in terms of the VAT system, recovers it from the output VAT charged in its taxable supplies. The fee is not increased with VAT.

b. The Court in the *Masango* judgment when considering the fee in excess

¹³ We accept that this may not usually be the scenario in RAF matters. However, the CF Act applies to all matters not specifically excluded. Its provisions ought not to be interpreted differently for RAF and other matters.

of the 25% cap, erred when it disregarded the simple fact that VAT accrues to SARS if levied by a registered vendor. This is despite it concluding that the relationship between registered vendor and SARS is that of debtor and creditor.

- c. The non-registered vendor who receives the service from the registered vendor, will be charged VAT, and as such it is a cost to the recipient (as the ultimate recipient). If the price of the fee is 25% plus VAT, the cost to the recipient exceeds 25%. But, the CFA is not concerned with the cost to the recipient, but the accrual of the fee to the supplier (registered vendor or not).
- d. The question thus is whether the VAT levied by the registered vendor unconditionally accrues to him: The answer is no – the registered vendor must account to SARS that it owes the VAT so charged or collected,¹⁴ and include same in the reconciliation of output and input VAT and either pay to SARS or claim a refund – the origin of the debtor creditor relationship.
- e. It is therefore obvious that the VAT portion of the fee never accrues to the legal practitioner as VAT registered vendor, in the sense that he is an involuntary tax collector – he cannot retain the VAT but must pay same over to SARS. Alternatively, such output reduces any refund due to it by

¹⁴ **Grayston Technology Investment (Pty) Ltd and another v The State**, case number A225/2014 [2016] 4 All SA 908 (GJ) dated 23 September 2016, at paragraph 50 to 55.

SARS.

[47] According to Counsel the Court in the *Masango* judgment does not only conflate the concepts of fee / price, but also got the value to be placed in terms of section 10(2) of the VAT Act on the supply of goods and services wrong in its equation. The Court found at paragraph 35 that: *“What the client pays to the legal practitioner (vendor) is the “price” (fee). The client does not pay VAT, although the price may be structured to account for the VAT payable by the legal practitioner (vendor) to SARS. Regardless of how the price is structured or quoted, the final price charged by a vendor is inclusive of VAT. This court accordingly agrees with Mr C. Badenhorst SC, for the first amicus curiae, that it is a common misnomer to state that a client or customer pays VAT”*. Inexplicably, the court then found at paragraph 36 of the *Masango* judgment that: *“The foregoing becomes even clearer when one has regard to section 10(2) of the VAT Act. The section provides: “(2) The value to be placed on any supply of goods or services shall, save as is otherwise provided in this section, be the amount of the consideration¹⁵ for such supply, as determined in accordance with the provisions of subsection (3), less so much of such amount as represents tax.....”*.

[48] Counsel continued that in order to consider the Court’s comments, it is necessary also to consider subsection 10(2)(ii) which reads as follows:

¹⁵ Consideration is defined as “consideration, in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain:.....”

“Provided that: (ii) where the portion of the amount of the said consideration which represents tax is not accounted for separately by the vendor, the said portion shall be deemed to be an amount equal to the tax fraction of that consideration.” Thus, it was Counsel’s contention that the value of the supply of goods or a service, is always the amount excluding VAT, which the legal practitioner charges. Thus, the value of a supply, whether it is made by a registered or a non-registered vendor – is always determined in the same way (off course in respect of the same supply). If not, the value of a supply is dependent on a vendor’s VAT registration.

- [49] Counsel then referred the Court to sections 64 and section 65 of the VAT Act and argued the Court makes much of these sections, but it must be seen against the Court’s confusion that fee equates to price. The phrase whether or not the vendor has included tax in such price in section 64(1) was added to section 64(1) by section 36 of the Taxation Laws Amendment Act 139 of 1992. According to clause 36 of the Explanatory Memorandum this amendment: *“negatives any suggestion that where tax is payable, it is not recoverable from the vendor because he has not included it in his price.”* It was clearly not meant to prevent contracting parties from providing for the payment of VAT (in addition to the price), but to prevent a vendor from the claiming that he is not liable for VAT where VAT has not been included in the (negotiated price). ¹⁶Section 64(1) deals with prices charged by vendors. However, it would be non sensical that if parties agreed to a price and state that the price excludes VAT – of say R100 excluding VAT, and on settlement, the consideration given is R115, (adding R15

¹⁶ 1996 (59) THRHR, page 704: To Tax or not to tax: Vat is the question”. RCH Franzen, BA van der Merwe

VAT(15%)), that SARS keeps them to R100 as consideration (i.e. including VAT) – thus collecting VAT as 15/115 of R100 as output VAT, instead of 15/115 of R115 as output VAT. The second interpretation is correct and applied by SARS. Section 65 is there to protect the public against incorrect pricing and surprises when they have to pay for goods and services, or enter into contracts for goods and services if not yet paid. It prevents unscrupulous vendors of adding or purporting to add VAT to goods and supplies normally after contracting i.e. when the recipient is bound. The important phrase in the section is *advertised or quoted*, thus before any agreement is entered into. What the Court considered in the *Masango* judgment was not a quote or advertisement, but an agreement between parties dealing at arm's length expressly agreeing that the fee excludes VAT. Section 65 simply does not apply to agreements, which follows quotes / advertisements. The deemed inclusion is only applied if the price is fixed one-sidedly, or where the agreement between the parties is silent on VAT. If an agreement expressly provides that VAT is excluded, that cannot simply be ignored. Counsel submitted that the requirements of section 65 in respect of advertisements and agreements are superfluous when it comes to agreements, where the parties have already agreed on the price and the exclusion or the inclusion of VAT. No reliance can be placed on these sections of the VAT Act to attack the agreement for any reason – the VAT consequences are clearly spelled out: the price excludes VAT. In addition to the above, the Court makes an important conflicting statement at paragraph 34 – last sentence where it held: *“The quoted price (fees) is deemed to include VAT, unless the price is broken down into its components in terms of section 65 of the VAT Act”*. The above is repeated at paragraph 38 last sentence: *“The consumer only pays a*

price (fee) which is always inclusive of VAT, unless the three components stipulated in section 65 are stated separately". Thus, if the legal practitioner would just have broken down the fees, it would not include VAT. The argument actually falls flat here. It is illogic, and irrational, not a business-like interpretation.

[50] Counsel contended that if the *Masango* judgement is followed in respect of the issue whether VAT must be included in the success fee, a non-registered VAT vendor will always get the maximum 25% cap. A registered VAT vendor is unfairly and for no reason limited to a maximum of 21,73913% ($25 \times 15 / 115$) - this is not a business-like interpretation. Besides it is also a business-like to reduce the fees /value of the service by charging VAT. The issue is that the VAT concept is about value and not price. See in this regard for instance the article by T Emslie SC in "*The Taxpayer*".¹⁷ Here the author states that the 25 per cent maximum fee that may be charged is the amount of the fee exclusive of VAT, because if the position were otherwise, the 25% maximum success fee chargeable by an attorney who is not a VAT vendor would be more than that chargeable by one who is a VAT vendor – a result which would disturb the tranquillity of even the most phlegmatic interpreter of legislation.

[51] A vendor who deals with a claim, and registers for VAT during the process and charges 25%, sits with an invalid agreement after his VAT registration as he is now entitled to 25% per agreement, but his VAT charge makes the agreement invalid – this is not a business-like interpretation. The alternative to the

¹⁷ The Taxpayer, September 2015 at page 164.

preceding scenario is that the vendor has to agree that his fee drops to 21,73913% - this is not a business-like interpretation.

[52] The Court ignores that a vendor can recover input VAT, thus no cost to him, but the attorney who is entitled to max 21,73913% per the court's interpretation, loses the difference to 25% (15%) in a scenario where the VAT on the fee comes to nil for the recipient since it claims it as an input. This is not a business-like interpretation. If the Court's interpretation in the *Masango* judgment is applied, SARS and the legal practitioner will be out of pocket and the client would get an unintended discount, but only if the legal practitioner is registered for VAT.

[53] In the result, Counsel submitted, the *Masango* judgment's interpretation of the VAT Act is flawed. The *Van der Westhuizen* judgment, which followed it, is therefore equally flawed. The approach the *Masango* judgement followed in so far as the interpretation of section 2(2) of the CFA is concerned, was not in accordance with *Endumeni*. The Court in the *Van der Westhuizen* judgment equally failed to follow *Endumeni*. In doing so, those Courts reached incorrect findings. The context in which the definition of normal fees must be understood, is that if a legal practitioner's fees are taxed or assessed on an attorney and own client basis, the taxation is performed in accordance with the provisions of the rules. The context in which fees in section 2(2), read with the definition of normal fees should be understood, is therefore rule 70(3A) of the rules. It provides as follows: "*Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.*" It accordingly follows that VAT may be added to a legal practitioner's "*normal fee*". A normal fee does not include VAT. Counsel therefore submitted that in terms

of the CFA, a “*success fee*” also does not include VAT. It may be 100% of the normal fee.

- [54] In the premises, it is submitted by Counsel, that the provision in the contingency fee agreement limiting the success fee to the 25% cap excluding VAT, is not contrary to the provisions of the CFA. The Court in the *Van Der Westhuizen* judgment also failed to consider the definition of a “*normal fee*” in section 1 of the CFA, read with the provisions of rule 70 (3A). It was in any event not bound to follow the *Masango* judgment in view of the *stare decisis* principle because that judgment was misconstrued.¹⁸

Consideration of Contingency fee agreement and argument

- [55] Having considered the caselaw and the relevant statutes, I find myself in broad agreement with the submissions made by Counsel. It is my view that the Court in the matter of *Masango* is misconstrued on the interpretation of the CFA and more specifically section 2(2)(b) thereof being interpreted to require the success fee which is capped to 25%, to include VAT.
- [56] This is specifically relevant taking into account that in the *Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd*¹⁹ the SCA confirmed the approach in *Endumeni* in respect of interpretation as being: “A statute must be interpreted in line with ordinary rules of grammar and syntax taking cognisance of the context and purpose thereof”

¹⁸ Journals Collection, Juta's/South African Law Journal, The (2000 to date)/The South African Law Journal/2018 : Volume 135/Part 1 : 1 - 203/Articles/Whose decisis must we stare?

¹⁹ Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd (1354/2018) [2019] ZASCA 163 (29 November 2019)

- [57] The CFA has the purpose to legalise and regulate agreements between legal practitioners and their clients. CFA was created to promote access to justice and the Courts by individuals that can not afford the costs of litigation upfront. In return the attorney would be entitled to a higher normal fee or a success fee, whichever is the lesser as an incentive to 'fund' litigation with the hope of success.
- [58] It is my view that it could not have been the purpose of the legislator to distinguish between a legal practitioner that is VAT registered and one that is not, the former having to pay the VAT from his fees or profits and the latter where the client will pay the VAT. This would have the effect that where the former the legal practitioner would be the end user and the latter the client to be the end user.
- [59] The VAT Act came into operation during 1991 and the CFA came into operation some six years later, during 1997. It follows that the legislator would then have kept the VAT Act in mind, especially in circumstances where the VAT could be increased from time to time by publication in the Government Gazette. At the time the CFA came into operation the VAT was 14%. Therefor in ideal circumstances where a legal practitioner may be entitled to the success fee as being the lesser between the legal practitioner's normal fee time 100% and 25% of the total amount sounding in money obtained for the client as a consequence of the litigation, then in that event the legal practitioner that is VAT registered would be entitled to the 25% less 14% whereas the legal practitioner that is not VAT registered would be entitled to the full 25%. This would defeat the purpose of the CFA.
- [60] It can not be taken for granted that a legal practitioner would almost never be entitled to the 25% as per the CFA because it is unlikely that the normal fees times 100% would rarely exceed the 25%. In many instances the amount obtained could be as low as R100 000.00 even though litigation had been protracted over several years. In such instance the 25% would be R 25 000.00

which the legal practitioner would have to take as being lesser than his normal fees times 100%. This would have the effect that the legal practitioner that is VAT registered would walk away with R25 000.00 minus 15% which equals R 21 250.00, as opposed to the legal practitioner that is not VAT registered, who would be entitled to the full R 25 000.00. The effect thereof would be that the legal practitioner that is VAT registered, would in effect be 'punished' for not only being an involuntary tax collector, but also for entering into a contingency fee agreement to allow access to justice to individuals that cannot afford the cost of litigation upfront.

- [61] I agree with the argument of Counsel, that should it be that the CFA envisioned the inclusion of VAT on the 25% and a legal practitioner entered into a contingency fee agreement and became VAT registered during the process of litigation, then in that event, the contingency fee agreement so entered into would become invalid because it did not include VAT in the fees or 25%. This would defy the purpose of the CFA and the ends of justice.
- [62] I am of the view that the CFA specifically remained silent on the issue of VAT because it was never the intention of the legislator to include VAT in the 25% cap it induced in section 2(2)(b).
- [63] I do not agree with the interpretation of the CFA in the *Masango* judgment as I am of the view that such interpretation does not accord with the interpretation as discussed herein above and is clearly misconstrued. I find that it was not the intention of the legislator that VAT be included in the 25% cap placed on the success fee which a legal practitioner is allowed of the total amount awarded or any amount obtained by the client in consequence of the proceedings concerned, which amount shall not, for purposes of calculating such excess, include any costs.

Order

- [64] In the premises and in light of the above I make the following order:

- [1] The plaintiff's application in terms of Rule 38(2) is granted as per the prayers of the notice of motion and supporting affidavits uploaded on Caselines section 27;
- [2] Merits were previously finalised between the parties that the defendant is 100% liable for the plaintiff's agreed or proven damages;
- [3] The defendant will pay the plaintiff an amount of R 6 432 073.00 (Six million, four hundred and thirty-two thousand and seventy-three rand) in full and final settlement of the plaintiff's claim for Loss of Earnings, payable into the trust account of the attorneys of record for the plaintiff with the following details:
Account holder: Ehlers Attorneys
Bank Name: FNB
Branch Code: 261550
Account Number: 62024226799
- [4] the claim in respect of General Damages is separated in terms of the provisions of Rule 33(4) and postponed *sine dies*. The plaintiff is permitted to refer the issue of General damages to the HPCSA without the input and/or assistance of the defendant in order to obtain final outcome/resolution;
- [5] The defendant shall be liable for interest on the above-mentioned amount, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, from and including 15 days after date of this Order, up to and including date of payment thereof;
- [6] The defendant is ordered to furnish the Plaintiff with an undertaking, in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of administration of any proposed trust, accommodation in a hospital or nursing home or treatment of or rendering of service or supplying of goods to the plaintiff after such costs have been

incurred and on the proof thereof, relating to the injuries sustained by the plaintiff in the accident which occurred on 14 August 2020;

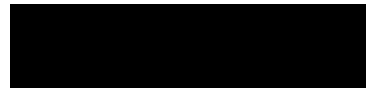
[7] The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on the High Court Scale, in accordance with Rule 70 of the High Court, subject to the discretion of the taxing master, which costs may include, but will not be limited to the following:

[7.1] the reasonable taxed fees for consultation with the experts mentioned below, together with delivery of expert bundles inclusive of traveling and time spent traveling to deliver such bundles, preparation for trial, qualifying and reservation fees (if any and on proof thereof), including the costs of all consultations (inclusive of telephonic consultations) with Counsel and/or plaintiff's attorney and the costs of all consultations, as well as costs of the reports, addendum reports, full day fees for Court attendance (if at Court) of the following experts:

- [7.1.1] Dr P Engelbrecht – Orthopaedic Surgeon;
- [7.1.2] Dr Moja – Neurosurgeon;
- [7.1.3] Dr JA Smuts – Neurologist;
- [7.1.4] I Jonker – Neuropsychologist;
- [7.1.5] Dr M Naidoo - Psychiatrist;
- [7.1.6] Dr Seabi – Educational Psychologist;
- [7.1.7] Dr Wetiz – Ophthalmologist;
- [7.1.8] Dr Pienaar – Plastic Surgeon;
- [7.1.9] Dr Fredrericks – Disability and impairment Assessor;
- [7.1.10] Kelly Cummings – Occupational Therapist;
- [7.1.11] T Talmud – Industrial Psychologist;
- [7.1.12] G Jacobson – Actuary.

- [7.2] The costs for accommodation and transportation (as per prescribed AA rates) of the plaintiff and/or family members, to the medical legal examination(s) arranged on behalf of the plaintiff;
- [7.3] The costs for accommodation and transportation by JT Transportation Services or any alternative transport provider, for the plaintiff as well as family members to attend Court;
- [7.4] The costs for preparation of plaintiff's bundles of documents for trial purposes, as well as the traveling costs (as per the prescribed AA rates), and time spent to deliver those bundles;
- [7.5] The costs for preparation of plaintiff's bundles of documents for experts, as well as the traveling costs (as per the prescribed AA rates), and time spent to deliver those bundles and loading same onto Caselines;
- [7.6] The costs of Advocate Jaco Bam shall be on scale B in accordance with Rule 69 and Rule 70 of the High Court Rules, briefed and appearing for trial, including but not limited to the following:
- [7.6.1] preparation for trial;
 - [7.6.2] consultations with plaintiff attorney in respect of preparation for trial;
 - [7.6.3] drafting heads of argument;
 - [7.6.4] day fee for 19 May 2025.09.05
- [7.7] The costs of the affidavits compiled by the listed experts in order for the plaintiff to proceed to the trial or on a default judgment basis.

- [8] The defendant is ordered to pay the plaintiff taxed and/or agreed party and party costs within 14 days from the day the account is taxed by the Taxing Master and/or agreed between the parties.
- [9] The defendant shall be liable for interest on the costs aforementioned at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act 55 of 1975, as amended per annum, from and including 15 days of allocator, up to and including date of payment thereof.
- [10] It is found that the contingency fee agreement signed by the client is valid.



M KRÜGER

ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION
PRETORIA

Date of hearing: 19 May 2025

Date of judgment: 29 September 2025

For the Applicant : Adv J Bam
Instructed by : Ehlers Attorneys

For the Defendant : Elain v Zyl (no appearance)
Instructed by : State Attorney

