IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 5287/19

(1) REPORTABLE:

(2) OF INTEREST TO OTHER JUDGES:

(3) REVISED.

DATE 31/10/25

SIGNATURE

In the matter between:

H J WOLMARANS Plaintiff

and

VERBIZEST (PTY) LTD Defendant

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] This is a claim for the recovery of money on the grounds of unjust enrichment (*Condiction indebiti*).

[2] The plaintiff is Hendrik Jacobus Wolmarans, an adult male engineer and a South African citizen.

[3] The defendant is Verbizest (Pty) Limited, a company with limited liability duly incorporated in terms of the Company Laws of the Republic of South Africa with registered offices situated at 1[...] B[...] House, Wellington Park, Wellington Roar, Durbanville, Western Cape Province.

FACTUAL BACKGROUND

[4] The plaintiff's evidence was that in 2018 he responded to an internet invitation to invest and engage in overseas trade via a company named Wisebanc International ('Wisebanc'). To facilitate his trading, the plaintiff was required to make an electronic deposit of money into a banking account purportedly of Wisebanc. The plaintiff was also given the name and contact details of an advisor who would provide him with the necessary advice and guidance when trading.

[5] During the period 18 June 2018 until 10 October 20218, the plaintiff made several payments into the banking account provided totaling R297,298.32 (Two Hundred and Ninety-Seven Thousand Two Hundred and Ninety-Eight Rand and Thirty-Two Cents).

[6] Despite the advice that he could withdraw money from his investment account, the plaintiff was unable to withdraw money when he tried. Instead, the plaintiff was called upon to deposit more funds to continue trading. Although he had obliged, the plaintiff became skeptical and set out to investigate the legitimacy of the defendant. Amongst other things, the plaintiff

discovered that the funds he had deposited had, in fact, been diverted to a Nedbank banking account of the defendant here in South Africa.

[7] The plaintiff launched an urgent *ex parte* application in this court on 4 December 2018 under Case Number 86921/2018, citing, *inter alia*, the defendant and Nedbank as respondents and sought an order in terms of which an amount to the maximum of R297,298.32 in the banking account of the defendant be preserved pending the return date on 28 May 2019. The matter culminated in the trial before me.

REMEDY SOUGHT

[8] The plaintiff seeks restitution on the ground that the defendant was unduly enriched to the extent of the deposits the plaintiff made purportedly to Wisebanc, but were diverted to the Defendant's banking account.

[9] The defendant denies liability, contending that it acted as an agent for Wisebanc International, to whom it paid over the money deposited by the plaintiff after deducting the agency commission.

COMMON CAUSE FACTS

[10] The following facts were said to be common cause between the parties; that

10.1 The defendant received the funds claimed by the plaintiff.

10.2 The plaintiff had intended to make the payments to Wisebanc International.

10.3 There was no relationship between the plaintiff and the defendant.

[11] This court was advised at the commencement of the trial that the parties have agreed that, notwithstanding the pleaded alternative grounds, the plaintiff's claim against the defendant is for undue enrichment (*condictio indebiti*). To that extent, this court was asked to determine whether the defendant was unduly enriched and the Plaintiff impoverished consequent to the transactions concerned in this matter.

LEGAL FRAMEWORK

[12] For a claimant to succeed in an undue enrichment claim, it must demonstrate the existence of the undermentioned requirements aptly laid down by the Supreme Court of Appeal in *McCarthy Retail Limited v Short Distance Carriers CC*[1], as follows:

12.1 The payment to the defendant must have been made erroneously, and

12.2 was without legal cause.

12.3 The defendant was unduly enriched thereby, and

12.4 the plaintiff impoverished.

12.5 The plaintiff is, therefore, entitled to restitution against the first defendant.

DEFENCES RAISED BY THE DEFENDANT

[13] The defendant has raised the following defenses against the plaintiff's claim:

13.1 that the defendant was not liable to the plaintiff as it had acted as an agent of Wisebanc International and, as such;

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[1] 2001 (3) SA 482 (SCA) 489F – G

13.2 the defendant had paid over the plaintiff's deposits to Wisebanc after deducting its agency commission.

ANALYSIS AND THE APPLICABLE LEGAL PRINCIPLES

[14] The three common cause facts between the parties set out in para 10, supra, establish the five requirements set out in the *McCarthy Retail Limited* matter referred to above. The defendant's admission that it had no relationship with the plaintiff demonstrates the absence of a legal cause for it to retain the money that the plaintiff paid to it in error. The plaintiff is, accordingly, in my view, entitled to restitution. The defendant is clearly unduly enriched in the circumstances.

[15] It is important at this stage to consider the defence of agency raised by the defendant. The absence of a contractual link between the plaintiff and the defendant does not preclude enrichment liability. It is pertinent that the defendant received the plaintiff's funds despite the absence of ties between them. In *Kudu Granite Operations (Pty) Ltd v Caterna Limited*[2], the court emphasized that what matters is '*the factual flow of value and the absence of legal justification.*' In the matter of *African Diamond Exporters (Pty) Ltd v Barclays Bank International Limited*[3], the Appellate Division held that even passive receipt of funds without legal entitlement may trigger restitution.

[16] The defendant's reliance on its alleged agency for Wisebanc flies in the face of its failure to prove that it had paid over to Wisebanc the rest of the money

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[2] 2003 (5) SA 193 (SCA)
[3] 1978 (3) SA 699 (A)

(after allegedly deducting the agency commission). That failure persisted notwithstanding the service of no less than two Rule 35(3) notices on the defendant, calling for the discovery and provision of copies of proof of the transfer of the residue of the funds to Wisebanc. The existence of the alleged principal is doubtful in the circumstances. In *ABSA Bank Limited v Moore*[4], the court held that an intermediary who receives funds without a valid legal basis may be liable to restore them, even if acting on behalf of another. The agent's liability arises where it cannot establish a mandate or show that the funds were properly transferred to the principal. The defendant's assertion that the funds were paid over to Wisebanc, even if it could be proven, would not absolve it from liability. As clarified in *Prasa Corporate Real Estate v Community Property Company (Pty) Ltd and Another*[5], where it was held that enrichment is assessed at the time of receipt of the funds, and that subsequent dissipation of the benefit does not negate the obligation to restore it.

[17] In the matter of *Minister van Finansies en Ander v Gore N.O.*[6], the court held that enrichment may be unjustified even where part of the funds were retained as 'fees' if the underlying transaction lacked a legal foundation. In *Mhlari NO and Others v Nedbank Limited*[7], where the Supreme Court of Appeal held that a restitution claim under *condictio indebiti* succeeds if the mistake was reasonable and the transfer/ payment lacked legal cause.

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[4] 2017 (1) SA 255 (SCA).
[5] (384/2023 [2024] ZASCA 35 (28 March 2024) (unreported).
[6] 2007 (1) SA 111 (SCA).
[7] *251/2023* [2024] ZASCA 39 (4 April 2024).

CONCLUSION

[18] The plaintiff was impoverished by the loss of his investment. The defendant was enriched by the receipt and retention of the funds or part thereof. The enrichment occurred directly at the plaintiff's expense and was without legal cause. In my view, the plaintiff has satisfied all the requirements for an enrichment claim; the defendant was enriched for no justifiable cause, and the plaintiff impoverished. Restitution is, accordingly, warranted.

ORDER

[19] Consequent to the findings in this judgment, I make the following order:

1. The defendant is ordered to pay the plaintiff the amount of R297,298.32 (Two Hundred and Ninety-seven Thousand Two Hundred and Ninety-Eight Rand and Thirty-Two Cents).
2. The Defendant is ordered to pay interest in the amount in 1 at the rates of 10.25% per annum calculated from the date of summons, 19 February 2019, to the date of payment.
3. Costs on Scale B.

MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

APPEARANCES

For the Plaintiff:	Adv H P Wessels
Instructed by:	Van Der Merwe & Associates
For the Defendant:	Adv J H F Le Roux
Instructed by:	DBM Attorneys
Date of hearing:	6, 7 November 2024 and 14 February 2025.
Date of judgment:	31 October 2025