IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

JUDGMENT

Appeal Case No. A29/2024

Court *a quo* Case No. 4186/2021

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

[redacted]

13 January 2026 ....

DATE SIGNATURE

IHANE ALBERT DU PLESSIS	**FIRST APPELLANT**
CHARL DU PLESSIS	**SECOND APPELLANT**
JOHAN KOK	**THIRD APPELLANT**

and

KRUGER & PARTNERS INC.	**FIRST RESPONDENT**
DREYER AND DREYER ATTORNEYS	**SECOND RESPONDENT**

***Coram*:** RATSHIBVUMO DJP, MAYET *et* NSIBANDE AJJ

Heard: 17 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down of the judgment is deemed to be 10h00 on 13 January 2026.

Summary: *Appeal — Fiduciary duty of an attorney in respect of trust funds – Money paid into a trust account intended to be a deposit of immovable property belongs to the purchaser until the property registration. An attorney's duty to the purchaser who is not a client.*
Legal Practice Act 28 of 2014 —Financial Intelligence Centre Act 38 of 2001
Bias of the Presiding Officer — Judicial Recusal – Duty to recuse Mero Motu.

ORDER

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(1) The Appeal is upheld.

(2) The Order of the Court *a quo* is substituted in the following respects in relation to Orders 1, 3, 4 and 5 as follows;

(i) The First and Second Respondents (in these proceedings) who were the Second and Third Respondents in the *court a quo* jointly and severally (with the First Respondent in the *court a quo* as ordered) are ordered to make payment to the Appellants in the sum of R 200 000.00 (Two Hundred Thousand Rands), the one paying the other to be absolved.

(ii) The First and Second Respondents are ordered to pay the Appellants' interest accrued at the legally prescribed rate from the date of demand to the date of full and final payment, both days included.

(iii) The First Respondent and Second Respondent are to pay the costs of the Appellants in the *court a quo* jointly and severally, the one paying the other to be absolved.

(iv) The First and Second Respondents are to pay the costs of the Appeal, such costs to include the costs of the Application for Leave to Appeal in the court *a quo* and to the Supreme Court of Appeal.

JUDGMENT

VM NSIBANDE AJ

Introduction

[1] This is an Appeal against the Judgment and Order by Roelofse AJ of this Division (the *court a quo)* handed down on 08 August 2023, insofar as it relates to the First and Second Respondents (jointly referred to as the Respondents) in these proceedings, who were the Second and Third Respondents in the proceedings in the *court a quo*.

[2] The appeal to the Full Court is with the leave of the Supreme Court of Appeal (the SCA), after leave was refused by the court *a quo*.

[3] The Appeal is against the whole of the Judgment and Order (including the Costs Order), alternatively against the costs only, granted in the *ex tempore* judgment handed down by the court *a quo*.

Background

[4] The Appellants paid an amount of R 200 000.00 (Two Hundred Thousand Rands) into the trust account of the First Respondents, Kruger and Partners Inc. This payment was pursuant to a Deed of Sale of an immovable property, and it consisted of R 100 000.00 (One Hundred Thousand Rands) as deposit towards the purchase price and another R100 000.00 (One Hundred Thousand Rands) in respect of anticipated transfer costs.

[5] It is common cause between the parties that the Deed of Sale entered into was *void ab initio*, and as a result no obligations can flow therefrom. As a result of this (the

invalidity of the Deed of Sale), the Appellants demanded the return of the funds paid into the trust account of the First Respondents.

[6] Upon demand for the return of the funds paid by the Appellants, certain facts came to light, which include the following:

(1) That the Seller of the immovable property, Vivier Trust (the First Respondent before the court *a quo*), had terminated its mandate with the First Respondent to transfer the property.
(2) That the Seller, Vivier Trust, then instructed the Second Respondent to proceed with the transfer of the property.
(3) That, as a result of the two events above, the Seller, Vivier Trust, proceeded to instruct the First Respondent to transfer the funds received in anticipation of the sale of the immovable property into the trust account of the Second Respondent, to be held on its behalf.
(4) That the First Respondent transferred the funds into the trust account of the Second Respondent, less the amount of R 6 187.00 (Six Thousand One Hundred and Eighty-Seven Rands), which the First Respondent retained as its fees for the drawing of the new Deed of Sale, which was never signed by the parties. As a result, an amount of R193 813.00 (One Hundred and Ninety-Three Thousand Eight Hundred and Thirteen Rands) was paid into the trust account of the Second Respondent by the First Respondent.
(5) The Second Respondent paid over the amount to the Seller, Vivier Trust, and to the estate agent.
(6) All the above happened without the knowledge and/or consent of the Appellants.

[7] Before the *court a quo,* the Appellants demanded a refund of the funds from the First Respondent, the Second Respondent and the Seller, Vivier Trust, the one paying the others to be absolved, as the transfer of the property did not materialise.

Proceedings in the court a quo

[8] After hearing the submissions by all the parties, the Presiding Officer made an Order in the following terms;

(1) That the Application against the Second and Third Respondents is dismissed.
(2) The First Respondent is hereby ordered to make payment of the sum of R 200 000.00 (Two Hundred Thousand Rands) to the Applicants, including interest at the legally prescribed rate from the date of this judgment to the date of payment, both dates included.
(3) The Applicants are ordered to jointly and severally pay the Second Respondents' costs on an attorney and client scale jointly and severally, one paying the other to be absolved.
(4) The Applicants are ordered to pay the Third Respondents' costs jointly and severally, the one paying the other to be absolved.
(5) The First Respondent shall pay the Applicant’s costs.

[9] Dissatisfied with this Judgment and order, the Appellants sought to appeal the order and filed for Leave to Appeal, which leave was dismissed, and the Appellants were further ordered to pay the Respondent’s costs on a client and attorney scale.

[10] Upon the dismissal of the Leave to Appeal, the Appellants applied for special leave to appeal from the SCA, which granted the following order:

(1) Leave to appeal is granted to the Full Court of the Mpumalanga Division of the High Court, Nelspruit.
(2) The costs order of the *court a quo* in dismissing the Application for Leave to Appeal is set aside, and the costs of the Application for Leave to Appeal in this Court, and the *court a quo* are the costs in the Appeal.
(3) If the Applicant does not proceed with the Appeal, the Applicant is to pay these costs.

[11] As a result of the above order, an appeal was filed with this Court and was heard by a Full Court on 17 October 2025.

Submissions on appeal

Appellants

[12] The Appellants submitted that the Respondents failed in their duty of care in handling trust funds entrusted to them, and/or that they were negligent. They further submitted that, in the absence of negligence in handling the trust funds, the Respondents had a fundamental duty of care to the Appellants for the money deposited into their trust account.

[13] It was further submitted that as the agreement of sale of the immovable property was *void ab initio*, the deposited funds remained those of the purchaser, in this case, the Appellants. The Appellants never instructed the payment of the funds to a third party. It was submitted that the trust creditor is the Appellants, and only they may give instructions concerning the funds in the trust account; any other instructions are unlawful and a fundamental breach of the duty of care bestowed on the Respondents, being Kruger and Partners Inc. and Dreyer and Dreyer Attorneys.

[14] It was further submitted that the Respondents had a statutory obligation in terms of the Financial Intelligence Centre Act 38 of 2001, as amended (FICA), to establish and ascertain the identity of the depositor of funds, and the Second Respondent failed to establish this.

[15] It was submitted further that had the Second Respondent complied with FICA, it would have known the identity of, and the owner of the funds paid to it by the First Respondent, and as a result of this failure, the Second Respondent also breached the fundamental duty entrusted to legal practitioners in dealing with trust monies by paying the funds over to the Vivier Trust.

[16] It was also submitted by the Appellants that Roelofse AJ, the presiding judge in the court *a quo*, had a close relationship with the First Respondent at the time of the hearing, in that the First Respondent was a firm of attorneys representing him in live personal litigation, wherein he is cited as a respondent. Such a relationship was never disclosed by Roelofse AJ or by the First Respondent, and the Appellants only came to know of it after the *court a quo* had made the determination in the matter.

[17] It was submitted that the Presiding Officer should have recused himself from the proceedings as his impartiality was compromised. It was also alleged that, because of the compromised impartiality, Roelofse AJ was biased in favour of the First Respondent and that this was evident on the punitive costs order made against the Appellants, and as such, the Appeal should succeed.

First Respondent

[18] The First Respondent submitted that it only became aware of the allegations of bias on the part of the Presiding Officer when the supplementary affidavit was filed. It further submitted that such an affidavit presents new evidence and cannot form a ground for appeal, as it was not addressed on the papers filed on record. The First Respondent further submitted that proper affidavits should have been filed, and this ground (bias) should not be entertained for the purpose of this Appeal.

[19] The First Respondent submitted that the Judgment and Order of Roelofse AJ cannot be faulted and that costs orders are rarely set aside on appeal as they are, in the main, in the discretion of the court.

[20] On the issue of the funds paid by the Appellants, it was submitted that the funds were paid over to the Second Respondent at the instruction of the Vivier Trust, as the Trust had terminated the mandate of the First Respondent.

[21] The First Respondent was therefore not liable for the funds as it had disposed of the funds. The First Respondent argued that the Appellant's claim was premised on the

repayment of money by any of the Respondents who were in possession thereof. It was argued that as the First Respondent was not in possession of the funds at the time that the Appellants demanded the payment, and as a consequence thereof, the Appellants' claim is defective.

[22] The First Respondent also argued that the transaction occurred between the purchaser and the seller and that a payment was made to the conveyancing attorney as the conduit, who, in the discharge of their duty, paid the amount over to the attorneys that substituted it as conveyancing attorneys (the Second Respondent).

[23] It was further argued that the Appellants were not clients of the First Respondent and, consequently, there was no contract or mandate between them.

[24] The First Respondent further argued that when money is paid into the trust account of an attorney, it does not follow that such is, in fact, trust money. If money is simply handed over to an attorney by a debtor who thereby wishes to discharge a debt, and the attorney has a mandate to receive it on behalf of the creditor, it is difficult to establish entrustment. The First Respondent prayed, therefore, for the dismissal of the Appeal with costs.

Second Respondent

[25] In its opposition to the appeal, the Second Respondent submitted that it was appointed by the Vivier Trust to be its conveyancers in the transfer of the immovable property, it had no instruction from the Appellants and that at the time it received the funds from the First Respondent, it was not aware that the funds belonged to the Appellant, but was under the impression that they were the funds belonging to the Vivier Trust.

[26] The Second Respondent acted on the obligation it believed it had to the Vivier Trust to pay from the funds, the estate agent, as well as to pay the balance of the funds

to the Vivier Trust itself. It argued that by the time it became aware of the Appellants' demand for the funds, the funds were already paid over as instructed by the Vivier Trust; as a result, no claim can be directed to it.

[27] On the supplementary affidavit filed by the Appellants, the Second Respondent argued that there is no duty on a judicial officer to disclose any reasonable apprehension of bias if the same has not been raised by the parties. As a result, the Second Respondent also prays for the dismissal of the Appeal.

Legal Principles

[28] It is clear that the issue between the parties is the amount of R 200 000.00 (Two Hundred Thousand Rands) paid by the Appellants into the trust account of the First Respondent in anticipation of the payment of a purchase price on immovable property, as well as the anticipated transfer costs.

[29] It is common cause between the parties that such a transfer did not proceed as the First Respondent advised the parties (Appellants as buyers and the Vivier Trust as the Seller) that the Deed of Sale was void *ab initio.*

[30] The question to be answered is whether the order by the *court a quo* should be set aside as prayed for by the Appellants or be upheld and the appeal be dismissed as prayed for by the Respondents.

[31] It is important to first clarify the difference between funds paid to an attorney’s trust account in anticipation of work to be undertaken that has not yet been done and funds paid into an attorney’s trust account in settlement of a debt to a creditor, wherein the attorney had been instructed to collect the debt on behalf of the creditor.

[32] The former, at all times, the funds belong to the depositor until such time that the anticipated work has been done. In the latter, once paid into the attorney’s trust account, the funds immediately belong to the creditor. This distinction of funds paid

into an attorney's trust account is important to note. In this matter, we are dealing with the former.

[33] The manner in which the trust funds referred to above are to be treated is governed by the Legal Practice Act 28 of 2014 (LPA), together with the Rules and Regulations thereof. The courts have also made numerous decisions regarding the treatment of such funds. FICA also finds application here, in respect of such funds, in that section 87(1) of the LPA provides as follows;

> "(1) A trust account practice must keep proper accounting records containing particulars and information in respect of—
>
> (a) money received and paid on its own account;
>
> (b) any money received, held or paid on account of any person;
>
> (c) money invested in a trust account or other interest-bearing account referred to in section 86; and
>
> (d) any interest on money so invested which is paid over or credited to it.",

[34] The importance and relevance of this section is that it makes it compulsory for any trust account practice to keep proper accounting records. This section must further be read together with section 22 and section 22A of FICA, which read as follows;

"22. Obligation to keep customer due diligence records —

> (1) Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, the accountable institution must keep record of-
>
> (a) the identity of the client;
>
> (b) if the client is acting on behalf of another person-

(i) the identity of the person on whose behalf the client is acting; and

(ii) the client's authority to act on behalf of that other person;

(c) if another person is acting on behalf of the client-

(i) the identity of that other person; and

(ii) that other person's authority to act on behalf of the client;

(d) the manner in which the identity of the persons referred to in paragraphs (a), (b) and (c) was established;

(e) the nature of that business relationship or transaction;

(f) in the case of a transaction-

(i) the amount involved; and

(ii) the parties to that transaction;

(g) all accounts that are involved in-

(i) transactions concluded by that accountable institution in the course of that business relationship; and

(ii) that single transaction;

(h) the name of the person who obtained the information referred to in paragraphs (a), (b) and (c) on behalf of the accountable institution; and any document or copy of a document obtained by the accountable institution in order to verify a person's identity in terms of section 21(1) or (2).

(2) Records kept in terms of subsection (1) may be kept in electronic form."

[35] Section 22A on the obligation to keep transaction records provides—

"(1) An accountable institution must keep a record of every transaction, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, that are reasonably necessary to enable that transaction to be readily reconstructed.

(2) Without limiting subsection (1), records must reflect the following information:

(a) The amount involved and the currency in which it was denominated;

(b) the date on which the transaction was concluded;

(c) the parties to the transaction;

(d) the nature of the transaction;

(e) business correspondence; and

(f) if an accountable institution provides account facilities to its clients, the identifying particulars of all accounts and the account files at the accountable institution that are related to the transaction."

[36] Item 1 of Schedule 1 to FICA includes, as an accountable institution:

"(a) A person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) (LPA) and who is–

(i) an attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of that Act; or

(ii) an advocate contemplated in section 34(2)(a)(ii) of that Act. (b) A commercial juristic entity, as contemplated in section 34(7) of the LPA."[1]

[37] In *DCL Interiors CC (In Liquidation) v Weavind & Weavind INC and Others*[2] Holland-Mutter J held:

"It is clear from the provisions of section 78(7) of the Attorneys Act that monies held in the trust account by an attorney belong to the depositor and not the attorney. The essence of a trust fund is the absence of risk and the confidence created thereby. Such money is held in the trust

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[1] Public Compliance Communication 47A as listed in item 1 of Schedule 1 to the Financial Intelligence Centre Act 28 OF 2001 (FICA).

[2] (3024/2018) [2024] ZAGPPHC 949 (23 September 2024) para 32.

by a practitioner on behalf of another person. The attorney may only deal with that such money as instructed by the depositor. This is underlying in many applications by the Legal Practitioners Council and its predecessor for the disciplinary action against practitioners where the practitioner misappropriated trust money for reason that the money it that of the depositor and not the practitioner."

[38] In *Hlabane and Another v Sebotsa and Others*[3] Lekale J held:

"Retika's attitude and conduct in this regard accord with the letter and spirit of the Code insofar as the retention of the funds, in its account, until registration of transfer of the property in the applicants' names has taken place safeguards the applicants' interests, as purchasers, by minimising the financial risks to them. This is, further, the same reason why conveyancers, as practitioners in terms of Attorneys Act, keep monies entrusted to them, as consideration for the sale of immovable properties, in trust until registration has taken place in favour of the purchasers in the absence of any agreement or instruction to the contrary. The Code regards registration of transfer in favour of purchasers as a payment-triggering-event and requires the purchaser, if he is so advised, to consent to earlier payment to the seller "in writing in a document executed independently of the... contract'.

[39] In *Frikkie Pretorius and Another v GG*[4], the Full Bench of the KwaZulu-Natal Pietermaritzburg Division of the High Court held that an attorney who receives funds into his/her trust account for the benefit of the depositor must deal with it as instructed by the depositor. This also applies to depositors who are not clients. Thus, where the proceeds from the sale of the jointly owned immovable property of ex-spouses are paid into an attorney's trust account, he or she holds the money for the benefit of both spouses and must deal with each spouse's half-share as instructed by that spouse. The fact that one spouse is the attorney's client, and the other is not, does not alter the situation: the attorney is bound to exercise the same standard of care (*uberrima fides*) in respect of each spouse's share of the sale proceeds.

[40] The statutes referred to under paragraphs 33-36 above are directly applicable to the Respondents insofar as they concern the handling of trust monies. That is to operate

[3] (858/2013) [2013] ZAFSHC 113 (6 June 2013) para 16
[4] 2011 (2) SA 407 (KZP) para 19-20.

a trust account as contemplated in Section 87(1) of the LPA, as well as the identity and verification of the information of the client or prospective client, the intended purpose of the business relationship, and the source of the funds to be utilised in the course of the business relationship in terms of FICA.

[41] All legal practitioners are expected to comply with these two pieces of legislation, particularly in the day-to-day operation of their law practices. Failure to do so will result in adverse legal consequences for the practitioner(s) and will attract a sanction from the Legal Practice Council.

[42] The courts have also added to the expectations regarding how practitioners are to handle trust funds, consistent with the statutes named above. In *Vassen v Law Society of Cape of Good Hope* [5], in which the Court held:

> "In this regard it must be borne in mind that the profession of an attorney, as of any other officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members; and it is the duty of the respondent Society to ensure, as far as it is able, that its members measure up to the high standards demanded of them. A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly.
>
> When money is entrusted to an attorney or when money comes to an attorney to be held in trust, the general public is entitled to expect that that money will not be used for any other purpose than that for which it is being held, and that it will be available to be paid to the persons on whose behalf it is held whenever it is required."

[43] The Appellants paid funds into the trust account of the First Respondent, which were intended to constitute the purchase price of the immovable property and the associated transfer costs.

[44] It is common cause that the transfer did not proceed; as such, the funds remained the funds of the Appellants, as trust creditors of the First Respondents. The Appellants

[5] *Vassen v Law Society of Cape of Good Hope* 1998 (4) 532 SCA at 538F-I.

had a legitimate expectation that whenever they required the funds to be paid, such fund will be readily available, in fact, the Appellant need not demand repayment of the funds, the First Respondent, upon realizing that the purpose for which the funds were paid was not going to proceed, should have paid back the funds to the Appellants without any deductions as there was no work done.

[45] The funds paid by the Appellants to the First Respondent were intended for the transfer of immovable property and not for the settlement of the debt; such funds ought not to have been paid over to the Vivier Trust.

[46] Had the First Respondent kept a proper accounting record, it could have easily realised that the termination of its mandate by the Vivier Trust and the subsequent instruction by the Vivier Trust to pay over the funds of the Appellants to the Second Respondent would expose it to a trust deficit. The First Respondent should have known better.

[47] The Appellants were the owners of the funds until the transfer of the property was finalised; as such, they were the ones to instruct the First Respondent on how to deal with the funds. In *South African Legal Practice Council V Mabhena and Another*[6] it was held:

> "It is now settled that the law expects from [a] legal practitioner, *uberrima fides* – the highest possible degree of good faith in his dealings with his client, which implies that at all times his submissions and representations to [the] client must be accurate, honest and frank."

[48] This is the standard of good faith expected of all legal practitioners; in particular, it is the degree of good faith that was expected of the First Respondent once it was entrusted with the funds by the Appellants. Once the First Respondent paid the funds to

[6] *South African Legal Practice Council v Mabhena and Another* B306 / 2023 (2024) ZA GPPHC *593* at para 76.

the Second Respondent, the Second Respondent was expected to exercise the same degree of good faith in handling the funds. Unfortunately, both Respondents fell short of reaching and upholding this expected standard of good faith.

[49] It is trite that Legal Practitioners have a fiduciary duty towards their clients to handle trust funds with the utmost good faith; and that such funds may not be used for any other purpose, but for the purpose for which they are held.

[50] It is clear that the funds paid to the First Respondent and subsequently paid over to the Second Respondent were never used for the purpose for which they were paid and held in trust; as such, a breach of fiduciary duty towards the Appellants occurred by both the First and Second Respondents.

[51] It is further clear that there was gross negligence on the part of the First Respondent and later the Second Respondent in handling the trust funds of the Appellants, and that they failed to uphold the standard and degree of good faith expected of them.

[52] As a result, this Court has no doubt that both the Respondents are liable to pay the Appellants the funds paid into the Trust Account of the First Respondents, which funds were paid over to the Second Respondents and subsequently paid by the Second Respondent over to the Vivier Trust.

Bias of the Presiding Officer

[53] It is also important to evaluate the evidence provided in the Appellant's supplementary affidavit. It is indeed correct that such evidence did not form part of the appeal record. The allegations, however, are very serious. The proof in respect of the allegations is not in dispute, as it is contained in publicly available documents, and its consideration would have no impact on the outcome of the appeal. Due to the nature of the allegations, it is important that they be dealt with in the interests of justice and for the proper administration of justice.

[54] The Appellants have raised serious allegations, supported by documentary evidence, that the Presiding Officer in the court *a quo*, as early as 2018, was a client of, and represented by, the First Respondent in connection with the transfer of immovable property known as Portion 33 of the farm Keeszyn Doorns. To support this allegation, the Appellants attached to the supplementary affidavit a letter written by Kruger and Partners Inc., dated 07 June 2018, addressed to Messrs Stegmans Inc., where in paragraph 2 of the said letter it is confirmed that the Presiding Officer in the *court a quo* is a client of the First Respondent.

[55] Another attachment to the supplementary documents, in support of the allegation that the Presiding Officer was a client of the First Respondent, was a Notice of Appointment as Attorneys of Record by Kruger and Partners Inc., in a matter before this Honourable Court under Case Number 1643/2021. At the time of the court *a quo*'s hearing of this matter, the First Respondent was still on record, representing the presiding officer as one of the parties took a ruling on appeal to the SCA.

[56] These revelations are, to say the least, unfortunate, and, as indicated earlier, should be addressed in the interest of justice and the proper administration of the court processes.

[57] This Court has no doubt that the above facts created a conflict of interest for the Presiding Officer, and the Presiding Officer ought to have, *mero motu* recused himself from the proceedings, even though none of the parties had raised the issue of conflict of interest. The maxim *nemo judex in causa sua* could not find a better expression of its practical application than the one that Roelofse AJ found himself in the proceedings in the court *a quo*.

[58] It is trite that the test for judicial recusal has been settled by scholars and our Constitutional Court in the matter of *President of the Republic of South Africa and*

Others v South African Rugby Football Union and Others[7], amongst other judgments, that:

> "The question is whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is, a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience."

[59] It is clear from the conduct of the Appellants that had they been made aware of the relationship that existed between the Presiding Officer and the First Respondent, they would have formed an opinion that the Presiding Officer would not be impartial and would have requested his recusal. This much is clear on the supplementary affidavit filed.

[60] An impartial Presiding Officer is a fundamental prerequisite for a fair hearing. This impartiality brings about public confidence in the judicial process. There is no doubt that a partial judicial process undermines public confidence in the judiciary.

[61] Judicial Officers, just like Legal Practitioners, are expected to measure up to, and hold the highest standards of integrity, good faith, and honesty in the exercise of their judicial duties. Unfortunately, Roelofse AJ failed to meet the expected standard of judicial integrity by not *mero motu* recusing himself from the proceedings. His failure to disclose his relationship with and interests in the First Respondent only worsens his position.

[62] The First Respondent owed a duty to the Appellants as well as the Second Respondents to disclose at the outset its relationship with the Presiding Officer, and they failed to do so.

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[7] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others - Judgment on recusal application* [1999] (4) SA 147 at para 48.

[63] Having assessed the submissions made by the parties in their totality, the Court is of the view that the Appellants are entitled to the relief sought.

Order

[64] As a result, the following Order is proposed.

(1) The Appeal is upheld.

(2) The Order of the Court *a quo* is substituted in the following respects in relation to Orders 1, 3, 4 and 5 as follows;

(i) The First and Second Respondents (in these proceedings) who were the Second and Third Respondents in the *court a quo* jointly and severally (with the First Respondent in the *court a quo* as ordered) are ordered to make payment to the Appellants in the sum of R 200 000.00 (Two Hundred Thousand Rands), the one paying the other to be absolved.

(ii) The First and Second Respondents are ordered to pay the Appellants' interest accrued at the legally prescribed rate from the date of demand to the date of full and final payment, both days included.

(iii) The First Respondent and Second Respondent are to pay the costs of the Appellants in the court a quo jointly and severally, the one paying the other to be absolved.

(iv) The First and Second Respondents are to pay the costs of the Appeal, such costs to include the costs of the Application for Leave to Appeal in the court *a quo* and to the Supreme Court of Appeal.

[redacted]

VM NSIBANDE

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

[redacted]

TV RATSHIBVUMO

DEPUTY JUDGE PRESIDENT

I agree.

[redacted]

N MAYET

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Appellants:	Adv. CE Thompson
Instructed by:	WJ Bezuidenhout Inc.
C/O:	Seymore Du Toit & Basson Mbombela
For the First Respondent:	Adv. VE Kruger
Instructed by:	Kruger and Partners Inc.

	Mbombela
For the Second Respondent:	Adv. HF Fourie
Instructed by:	Dreyer & Dreyer Attorneys
C/O:	Pieter Sanepoel Attorneys
	Mbombela
Date of hearing:	**17 October 2025**
Date of judgment:	**13 January 2025**