

REPUBLIC OF SOUTH AFRICA



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

Case No: 096485/2023

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	
SIGNATURE	DATE
	15/1/2026

In the matter between:

DEVELOPMENT BANK OF SOUTHERN AFRICA

Applicant

and

HOLLARD INSURANCE COMPANY LIMITED

First Respondent

G5 GROUP (PTY) LTD

Second Respondent

and in the matter between:

Case No: 008205/2024

HOLLARD INSURANCE COMPANY LIMITED

Applicant

and

NJR PROJECTS (PTY) LIMITED

First Respondent

NHLABANELE JEOPHREY RAMAHLALEROA

Second Respondent

PHEANE EDWIN SODI

Third Respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on 15th January 2026.

JUDGMENT

MALI J

Introduction

- [1] This matter concerns two consolidated applications. The first application is between the Development Bank of Southern Africa (DBSA) and Hollard Insurance Company Limited (Hollard). DBSA claims payment from Hollard in terms of an advanced payment guarantee issued by Hollard in respect of advanced payments made by DBSA to G5 Group which used to be known as NJR Projects, the Contractor (second respondent), in terms of the construction contract concluded between DBSA and G5 Group.
- [2] The subject of the first application is the payment of the amount of R11,547,075.65 by Hollard who provided a payment guarantee on behalf of G5 Group when DBSA advanced G5 Group an amount of R23,060,000.00 to meet its obligations towards infrastructure development.
- [3] The second application is between Hollard and NJR Projects (Pty) Limited (the first respondent), Mr. Nhlabanele Jeophrey Ramahlaleroa (the second respondent) and Mr. Pheane Edwin Sodi (the third respondent). The claim advanced by Hollard is one for payment of an amount of money. Payment is being claimed in terms of an advanced payment guarantee and a performance guarantee, together with a deed of indemnity, read in conjunction with a deed of suretyship and indemnity. The claim against NJR was triggered when the DBSA issued a demand on Hollard to make payment in terms of the advanced payment guarantee.

The first application

- [4] DBSA is a public entity established, in terms of the Development Bank of Southern Africa Act,¹ and an organ of State as envisaged in section 239 of the Constitution of the Republic of South Africa, 1996. Amongst others, DBSA is an Infrastructure Delivery Division ("IDD"), which is an implementing agent for the South African National Department of Public Works and Infrastructure in various infrastructure projects.
- [5] The first respondent is Hollard Insurance Company Limited; a limited liability company incorporated in accordance with the laws of Republic of South Africa. The second respondent is G5 Group (Pty) Ltd, a private company incorporated in accordance with the laws of Republic of South Africa.

Background facts

- [6] During 2018, the applicant in its capacity as an IDD, issued a tender for the appointment of a contractor for the construction of additional accommodation at the Parys Department of Correctional Services, in terms of tender number: RFP 167/2018. The second respondent was appointed to upgrade and construct additional accommodation for the Parys Department of Correctional Services for the value of R282,736,949.24 (including VAT). On or about 7 March 2019, upon acceptance of the appointment, the DBSA as the Employer and G5 as the Contractor concluded a Principal Building Agreement JBCC (the "Construction Agreement").
- [7] The Construction Agreement consisted of, inter alia, the Conditions of Contract and the Contract, including the Contract Data and the relevant material terms. Subsequently, G 5 Group requested advanced payment in the amount R35,009,018.50 from DBSA for the procurement of certain materials required under the Construction Agreement to comply with timelines. DBSA required G5 Group to provide an advance payment

¹ Act 13 of 1997.

guarantee (guarantee). Hollard issued the guarantee in favour of DBSA. Some of clauses of the guarantee provide as follows:

"Work means: Contract RFP 167/2018 - Parys Department of Correctional Services-Upgrading of Additional Accommodation.

Site means: Parys

Guarantee Advance Payment sum means (amount) R23 060 000.00

Guarantee expiry date means (date) 31 October 2022

Recoupment period (no of month) 18 (Eighteen)

1.1. Recoupment period commencement (Start month) May 2021

Monthly recoupment (amount) R1 281 111.11

Note! Where the recoupment amounts and/or periods are irregular a schedule of recoupment amount and dates is to be attached.

3.0. Subject to the Guarantor's maximum liability referred to in 1.0 the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 3.1 to 3.3:

3.1 A copy of a first written demand Issued by the Employer to the Recipient stating that payment of a sum certified by the Principal Agent has not been made in terms of the Agreement, and failing such payment within seven (7) calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 3.2;

3.2 A first written demand issued by the Employer to the Guarantor at the Guarantor's physical address with a copy to the Recipient stating that a period of seven (7) calendar days has elapsed since the first written demand in terms of 3.1 and that the sum certified has still not been paid therefore the Employer calls up this Advance Payment Guarantee and demands payment of the sum certified from the Guarantor;

3.3 A copy of the recovery statement and payment certificate which entitles the Employer to receive payment in terms of the Agreement of the sum certified in 3.0.

6. Payment by the Guarantor in terms of 3.0 or 4.0 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.

7. The Employer shall have the absolute right to arrange his affairs with the Recipient in any manner which the Employer deems fit and the Guarantor shall not have the right to claim his release from this Advance Payment Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.

10. This Advance Payment Guarantee, with the required demand notices in terms of 3.0 or 4.0, shall be regarded as a liquid document for the purpose of obtaining a court order."

- [8] It is common cause that G5 Group defaulted towards the payment of the advanced payment based on the guarantee. DBSA had only recovered an amount of R10,931,544.09. On 11 October 2022, DBSA issued a notice of default in terms of clause 36.1 of the Construction Agreement to G5 Group and gave notice of its intention to terminate the Construction Agreement should the default persist for more than ten (10) working days from the date thereof. On 17 October 2022, the Principal Agent certified an amount due to the Group G5 (by the Department) of **minus** R11,547,075.65 in interim payment certificate. The certificate showed a **minus** sign (-48) indicating that Group G5 is indebted to DBSA in the amount R11,547,075.65.
- [9] On 28 October 2022, DBSA sent a written demand to Hollard by email demanding a payment of the certified amount of R11,547,075.65 owing to it in consequence of Group G5's failure to make payment of the certified amount within 7 calendar days of the demand. On 31 October 2022, DBSA sent the same demand to Hollard's physical address. DBSA attached both the demands to Hollard a copy of the letter dated 21 October 2022 addressed to Group G5 with an amount of R12 128 815.91 which was an error and the letter dated 25 October 2022 rectifying the certified amount

to R128 445.91 and a copy of interim payment certificate No. 48 reflecting the certified amount of minus R11 547 075.65.

- [10] On 3 November 2022, Hollard's attorneys responded to the demand of 28 October 2022, complaining that the demand was premature because 7 calendar days would not yet have lapsed from the date of demand which Hollard assumed to be 25 October 2022. Further, written exchanges occurred and on 5 December 2022, Hollard's attorneys wrote to DBSA contending that the recovery statement had been materially altered to indicate a recovery due and that this alteration was intended to rectify a patent defect in the certificate previously furnished which was impermissible in law. Hollard concluded by welcoming any litigation instituted by DBSA to recover the amount owing.

Issue

- [11] The issue is whether Hollard is liable to pay DBSA an amount of R11 547 075.65 in terms of the Advance Payment Guarantee issued by Hollard on 21 February 2021.

Discussion

- [12] Hollard raises 3 arguments: (i) DBSA has not complied with the procedures relating to the demand; (ii) the advance payment advanced to the G5 Group has been recouped in full; and (iii) DBSA's claim is tainted with fraud.

Compliance

- [13] Hollard's argument is that DBSA's demand for payment is non-compliant with the terms of the advance payment guarantee and therefore fatally defective. This is because DBSA breached the clauses of the guarantee in that the recoupment had to occur on monthly basis. And in the event of breach on the part of the G5 Group, DBSA was supposed to have complied with clauses 3.1 to 3.3 of the guarantee. DBSA unilaterally changed the terms of the contract by not claiming monthly recoupments.
- [14] Furthermore, DBSA's demands to G5 Group that payment be made by 28 October 2022 are premature because 7 calendar days would not yet have

lapsed from the date of demand - which Hollard assumed to be 25 October 2022. DBSA's advanced payment recoupment schedule is irregular and not in accordance with the provisions of the guarantee. The payment certificate attached to the demand did not attach to it the accompanying recovery statement. On the other hand, Hollard submitted that the guarantee had expired. On Hollard's calculations DBSA provided the recovery statement on 14 November 2022 after the expiry of the guarantee.

- [15] DBSA responding to the above referred to the letter of demand to G5 Group sent on 21 October 2022 which constitutes the first written demand in terms of clause 3.1 of the guarantee. Therefore, by 28 October 2022 the 7 calendar days would have expired when DBSA sent the demand to Hollard. Even if the Court were to find that the 21 October 2022 demand to the Contractor does not constitute the first written demand, the written demand of 25 October 2022 which merely rectified the certified amount would not constitute non-compliance with the terms of the guarantee.
- [16] According to DBSA, it is not mandatory to attach all the document referred to in clauses 3.1 to 3.3 in paragraph 9 above. For example, in present, the accompanying recovery statement was not attached to the certified payment document. Hollard has an obligation to pay within 7 days of receipt of the first demand without having to be in receipt of all the above-mentioned documents. This is in terms of clauses 6 and 10 of the guarantee. The payment certificate with an amount of R11,547,075.65 is a liquid document. There is nothing in these clauses pointing to any conditions like further documentation to be provided by DBSA.
- [17] DBSA further submits that the demand dated 21 October 2022 was a valid demand and constituted the first written demand as contemplated in clause 3.1 of the guarantee. DBSA would have been entitled to wait for the full 7 calendar days (in terms of clause 3.1 of the guarantee) to expire before the 7 calendar days, within which Hollard was to make payment commenced in terms of clause 3.2 of the guarantee.
- [18] DBSA has explained the reason for the letter of demand of 25 October 2022. It is not the second demand, and it is not a cancellation of the

demand of 21 October 2022. It was meant to rectify the typographical error in the letter of 21 October 2022 which depicted the amount of R12 128 915.91 instead of the amount of R12 8445.91 certified by the Principal Agent. There is nothing sinister in DBSA's explanation, human error or typographical errors happens. Of utmost importance herein is that in principle the letter of 21 October 2025 remains the correct demand. To ease matters, DBSA does not seek to increase the value of the demand, the rectification is not prejudicial to Hollard. Both notices were received by Hollard before 31 October 2022.

- [19] Pertaining to the allegation of unilateral changes, a sensible meaning should be preferred to one that leads to insensible or unbusinesslike result.² It would not been sensible for DBSA to make a monthly recoupment of R1 281 111.11, contrary to real time different recoupment amounts and schedules. Furthermore, the guarantee expressly provides for recoupment amounts and/or periods that are irregular or different to the recoupment schedule as contemplated in the guarantee. It is for this reason that it is expressly recorded in the guarantee that where the amounts and/or periods are irregular, a schedule of recoupment amounts and dates are to be attached.

Did DBSA make full recoupment?

- [20] Hollard's argument is that DBSA relies on certificate 48 to pursue its claim for payment. Hollard's interpretation is that the certificate reveals that an advance payment in the amount of R23 060 000.00 has been made and that the amount has been fully recovered. The advance payment recoupment is unequivocally recorded as R23 060 000.00.
- [21] Hollard's submissions are that the guarantee is an "advance payment guarantee". It is not a performance guarantee in terms of which Hollard undertakes to make payment of money in lieu of performance. What is guaranteed is the due repayment of the advance payment, totaling the

² *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

amount of R23 060 000.00, which DBSA had paid to G5 Group, the contractor. The guarantee was scheduled to expire on 31 October 2022.

- [22] The duration of the guarantee is limited to the time it would take to recover the advance payment which has been made. DBSA omitted the agreed payment terms. The repayment period in which the advance payment had to be repaid in terms of the guarantee is a set period of 18 months, commencing in May 2021. Regular monthly repayments, in the amount of R1 281 111.11 per month, were required to be recouped from the Contractor. As such, the recoupment amount and the recoupment period are fixed and regular.
- [23] In terms of the guarantee, Hollard undertook payment to the applicant a sum of money, as certified, upon receipt of the documents listed in clauses 3.1 to 3.3 of the guarantee. Clause 1.2 of the guarantee, if read with clause 1.2.2, limits Hollard's liability to the outstanding diminishing amount of the capital amount guaranteed. In terms of the advance payment guarantee it was agreed that a fixed amount would be recovered monthly. Deductions in respect of each recoupment were required to be made on each of the monthly payment certificates that are issued to the Contractor.
- [24] In retort to the above DBSA disputes that there was a full recovery as is evident from certificate 48, DBSA criticises Hollard's interpretation of the certificate, on the backdrop of the recovery statement and G5 Group's documents. G5 Group does not deny that it is indebted to DBSA in terms of the amount claimed from Hollard. In fact, Hollard does not dispute that G5 Group sent an "Application for advance in respect of unfixed material off site in terms of the conditions of contract backed by advance guarantee" in August 2022. G5 Group states that: "Current Surplus (Shortfall) on recovery" is an amount of R12 513 516. 60).
- [25] Moreover, in the supplementary affidavit filed by DBSA, DBSA states that Hollard claims R39 Million in the second application herein. The amount of R39 Million is inclusive of R11,547,075.00 claimed by DBSA from Hollard in terms of the guarantee. Thus, on Hollard's own version DBSA has not recovered the full amount from G5 Group.

[26] Furthermore, Hollard's submission ignores that the guarantee also expressly entitles DBSA as the Employer the absolute right to arrange its affairs with G5 Group as the Contractor in any manner it deems fit. This includes the absolute right to alter the recoupment regime. There is nothing more to be said about this, Hollard's contention that DBSA has made full recoupment must fail.

Is DBSA's claim tainted with fraud?

- [27] Hollard argues that DBSA's claim might be fraudulent due to discrepancies between two versions of payment certificate 48. Hollard compares "FA4" (attached to the founding affidavit) with a different version attached as part of "FA7" (accompanying DBSA's demand dated October 28, 2022) to highlight material changes, despite both certificates sharing the date of Monday, October 17, 2022.
- [28] Key differences highlighted by Hollard include Item 2.2 Description: On FA4, the item description reads "materials off site", while on FA7, it reads "materials on site". Architects Listed: The FA7 version lists Gildenhuys & Jooste as architects; Hollard contends it is unlikely the same architects would issue two different certificates with the same number and date. There is also an issue pertaining to VAT Amount (Item 12): The VAT entry on FA4 is approximately R2.4 million higher than the entry for the same item on FA7.
- [29] Furthermore, Advance Payment Recovery (Item 13): which is most concerning to Hollard is that FA4 records the advance payment of R23,060,008.00 as fully recovered, whereas the annexure to FA7 suggests otherwise.
- [30] DBSA, in reply, explains the discrepancies. It states that the alterations visible in Annexure "FA7" were made by the Principal Agent at DBSA's request to provide clarity to Hollard regarding the interpretation of the recovery statement. DBSA emphasises that these clarifications did not alter the certified amount due of R12,128,455.91.

[31] DBSA rejects Hollard's legal objection, arguing that the Principal Agent, in exercising its duty to certify amounts due and to act with reasonable judgment, has the implied power to correct errors reasonably. This explanation is supported by the confirmatory affidavits of Mr. Jooste and Mr. De Beer, both employed by the Principal Agent, who verified the challenged entries.

[32] In *Guardrisk Insurance Company Ltd and Others v Kentz (Pty) Ltd*,³ the SCA dealt with performance guarantee, whereas in the present case the subject matter is the advanced payment guarantee, nevertheless the common issue is the allegation of fraud. The SCA stated the following:

"[17] It would be useful to briefly consider the legal position in relation to the fraud exception. It is trite that where a beneficiary who makes a call on a guarantee does so with knowledge that it is not entitled to payment, our courts will step in to protect the bank and decline enforcement of the guarantee in question. The fraud exception falls within a narrow compass and applies where:

'... the seller, for the purpose of drawing on the credit, fraudulently presents to the confirming bank documents that contain, expressly or by implication, material representations of facts that to his (the seller's) knowledge are untrue.'

[18] In so far as the fraud exception is concerned, the party alleging and relying on such exception bears the onus of proving it. That onus is an ordinary civil one which has to be discharged on a balance of probabilities but will not lightly be inferred. In *Loomcraft Fabrics CC v Nedbank Ltd & another* it was pointed out that in order to succeed in respect of fraud exception, a party had to prove that the beneficiary presented the bills (documents) to the bank knowing that they contained material misrepresentations of fact upon which the bank would rely and which they knew were untrue. Mere error, misunderstanding or oversight, however unreasonable, would not amount to fraud. Nor was it enough to show that the beneficiary's contentions were incorrect. A party had to go further and

³ [2014] ZASCA 182, [2014]1 ALL SA 307 (SCA) at [17] – [18].

show that the beneficiary knew it to be incorrect, and the contention was advanced in bad faith.” [Emphasis added]

[33] The SCA dismissed the appeal having held as follows:⁴

“[22] In my view, Guardrisk has not established the fraud exception. In fact, what it has sought to do is to have this court determine the rights and obligations of the parties.... The finding by the high court that the appellants had not discharged the onus resting on them to establish fraud on the part of Kentz cannot be faulted. I agree with the reasoning of the high court that:

‘The evidence before court clearly demonstrates that Kentz held the view that it was entitled to lawfully pursue its claims under the guarantees. The mere fact that it presented its claims knowing that Brokrew held a contrary view about the cancellation with which it disagreed is not fraudulent.’”

[34] It cannot be inferred from the papers before court that DBSA intended to defraud Hollard. As clearly stipulated in *Guardrisk*, mere error, however unreasonable, would never amount to fraud. More is required. To make matters worse, G5 Group does not dispute a single entry by DBSA. DBSA went into lengths explaining the entries for the ease of reference of all involved. I state this fully aware about the autonomous status of the guarantee, even if G5 Group had issues, it would not have turned on anything.

[35] Furthermore, in *Set Square Developments (Pty) Ltd v Power Guarantees (Pty) Ltd and Another*,⁵ the court held that:

“... reliance on ‘mistake’ is unsustainable on the facts of this case. It bears emphasis that where parties seek relief on the ground of mistake, they must explicitly plead the details as to the nature of the mistake and show that the mistake was reasonable. In any event, invoking either unilateral or mutual error to impugn the underlying contract in this case is precluded because, as I have explained, our courts will not, save for proof of fraud, consider the

⁴ *Id* at [22].

⁵ [2025] ZASCA 64; 2025 (6) SA 552 (SCA) at [33].

underlying contractual disputes between an employer and a contractor when faced an on-demand or unconditional performance guarantee. To do so would undermine the autonomous nature and efficacy of such guarantee.”

- [36] Gleaned from the above, the autonomy of the guarantee is sacrosanct unless there is a proven case of fraud, which in this case has not been proven. In conclusion, under the circumstances, Hollard did not adduce sufficient evidence of fraud on the part of DBSA. Hollard’s contention cannot succeed. Overall, Hollard is found liable to pay DBSA in term of the advance payment guarantee.

The Second Application

- [37] This application is preceded by Part A which was granted against the respondents. This court is seized with Part B, wherein Hollard seeks an order for payment against the first, second and third respondents in the amount of R39 820.769.93 with interest, in terms of the notice of motion, as well as the order directing the third respondent (Mr. Sodi) to indemnify Hollard against all costs incurred by Hollard in opposing the application brought by DBSA (the first application). It transpired during the hearing of both applications that NJR Projects just got liquidated. An order for payment was already granted in favour of Hollard against Mr. Ramahleleroa and the adjudication is only against Mr. Sodi in this application.
- [38] The claim advanced by Hollard is one for payment of an amount of money. Payment is being claimed in terms of an advanced payment guarantee and a performance guarantee together with a deed of indemnity, read in conjunction with a deed of suretyship and indemnity. It is not in dispute that on 6 February 2018 NJR Projects duly represented by Mr. Ramahleleroa and Mr. Sodi signed and executed a deed of indemnity in favour of Hollard. Mr. Ramahleleroa and Mr. Sodi further signed and executed a written deed of suretyship and indemnity in favour of Hollard.
- [39] On or about 18 January 2019, Hollard issued a performance guarantee in favour of DBSA for the obligations of NJR Projects in the amount of

R28 273 694.93 (Twenty-Eight Million, Two Hundred and Seventy-Three Thousand, Six Hundred and Ninety-Four Rands and Ninety-Three Cents).

- [40] Thereafter and on or about 19 February 2021, Hollard issued the advanced payment guarantee in favour of DBSA for the obligations of NJR which later became G5 Group in the amount of R23 060 000.00 (Twenty-Three Million and Sixty Thousand Rands); as discussed in the first application. I shall commence with the claim for the advance payment guarantee.
- [41] The claim against NJR/G5 Group was triggered when the DBSA issued a demand on Hollard to make payment in terms of the advanced payment guarantee.
- [42] Pertaining to the advanced payment guarantee Mr. Sodi makes common cause with Hollard in the first application in decrying non-compliance and fraud by DBSA. This submission is coupled with the argument that the guarantee expired on 31 October 2022. In essence if the first application is decided in Hollard's favour, then Mr. Sodi literally walks in this application.
- [43] Without repeating the arguments and discussion in the first application, I have already decided that Hollard is not successful. It follows that Mr. Sodi is liable for the amount claimed by Hollard in terms of the advanced payment guarantee of R11,547,075.65.
- [44] Regarding the Performance Guarantee, on 12 December 2023, Hollard received a written demand for payment from DBSA in the amount of R28 273 694.93 (Twenty-Eight Million, Two Hundred and Seventy-Three Thousand, Six Hundred and Ninety-Four Rands and Ninety-Three Cents). The demand originates from NJR's failure to complete the construction work and DBSA having terminated its contract with NJR.
- [45] Lot of technical arguments were advanced on behalf of Mr. Sodi, for example, one of the arguments is that Hollard does not state that the guarantees were issued on the written request of NJR. In the founding affidavit, Hollard states that the guarantees were issued at the request. So, what is missing is written request. In the replying affidavit, Hollard annexed

the written request. There is nothing peculiar about this.⁶ In the present, Hollard's case is clear from the affidavits read with the relevant annexures. Hollard alleged what it needs to allege, that the claim is based on indemnity and suretyship.

[46] Another technical point advanced against Hollard is that NJR did not sign for the acknowledgement for the default payment notice sent by DBSA. There is no requirement for this, of importance is that a copy of the default notice was annexed to DBSA's demand for payment and DBSA was satisfied with the service.

[47] Another argument mounted against Hollard is that when the contract was cancelled by the employer it follows that the performance guarantee was cancelled. The trite principle is that if a contractor is in breach with the employer, the employer can ask for specific performance and/or cancellation. If excused from further performance, the contractor will still liable for damages. It is trite that the cancellation of a building contract does not automatically cancel the performance guarantee, due to the autonomy principle which treats the guarantee as an independent, "on-demand" undertaking for payment.

[48] In *Lombard Insurance Co Ltd v Landmark Holdings (Pty) Ltd & others*⁷ the SCA held that: "...[a] guarantee...is not unlike irrevocable letters of credit issued by banks and used in international trade, the essential feature of [a guarantee] is the establishment of a contractual obligation on the part of a bank to pay the beneficiary (seller). This obligation is wholly independent of the underlying contract... Whatever disputes may subsequently arise between buyer and seller is of no moment insofar as the bank's obligation is concerned. The bank's liability to the seller is to honour the credit. The bank undertakes to pay provided only that the conditions specified in the credit are met. The only basis upon which the bank can escape liability is proof of fraud on the part of the beneficiary." In the present case there are no allegations of fraud proven against Hollard, they are not even alleged.

⁶ See *Botha v Smuts and Another* [2024] ZACC 22; 2024 (12) BCLR 1477 (CC); 2025 (1) SA 581 (CC) at [64] – [66]

⁷ 2010 (2) SA 86 para 20.

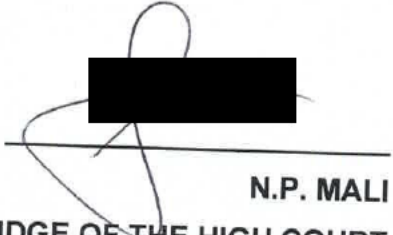
[49] For the foregoing the defenses raised against Hollard must not succeed. In conclusion the third respondent is liable to pay Hollard in respect of the guarantee.

Order

In the result, the following orders are granted:

1. In respect of case number 096485/2023:
 - 1.1. The first respondent is ordered to make payment to the applicant in the amount of R11 547 075.00 (Eleven Million, Five Hundred and Forty-Seven Thousand and Seventy-Five Rands) in terms of the Advance Payment Guarantee issued by the first respondent dated 21 February 2021, within seven days of this order.
 - 1.2. The first respondent is ordered to pay interest on the amount of R11 547 075.00 (Eleven Million, Five Hundred and Forty-Seven Thousand and Seventy-Five Rands) at the prescribed rate of interest, from the date of demand, 31 October 2022, to date of final payment.
 - 1.3. The respondents are ordered to pay the applicant's costs on party and party scale on Scale C.
2. In respect of case number 8205/2024:
 - 2.1 The rule *nisi* issued by Judge Keightley on 23 April 2024, in respect of the first respondent is extended to 9 March 2026 at 10h00.
 - 2.2 The applicant's claim against the first respondent is postponed *sine die*, no order as to costs.
 - 2.3. The third respondent is ordered, jointly and severally together with the second respondent, the one paying the others to be absolved: -
 - 2.3.1 To make payment to the applicant in the sum of R39 820 769.93.
 - 2.3.2. Pay interest at 12.5% per annum from 30 January 2024 to date of final payment.

2.4. The third respondent is directed to pay the applicant's costs, such costs to include the costs of two counsel, where so employed and to be taxed on scale C.


N.P. MALI
JUDGE OF THE HIGH COURT
JOHANNESBURG

Heard on: 24 July 2025
Delivered on: 15 January 2026

APPEARANCES:

First Application:

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Second Application:

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