



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
JUDGMENT**

Case Number: **9651/2017**

In the matter between:

THE SPECIAL INVESTIGATING UNIT

First Plaintiff

THE MINISTER OF RURAL DEVELOPMENT

Second Plaintiff

AND LAND REFORM

and

LINDA VERLENTIA BEUKES N.O.

First Defendant

CHRISTIAAN CLOETE N.O.

Second Defendant

WILLEM CORNELIUS KRIEL N.O.

Third Defendant

REGINALD ROBERT LE FLEUR N.O.

Fourth Defendant

ISAK ALBERTUS SAAL N.O.

Fifth Defendant

EUNICE DESIREE SMITH N.O.

Sixth Defendant

MANUEL COHEN	Seventh Defendant
MANUEL COHEN N.O.	Eighth Defendant
SUSANNA MAGDALENA COHEN N.O.	Ninth Defendant
HENDRIK PETRUS DE VOS N.O.	Tenth Defendant
ABRAHAM DE KLERK	Eleventh Defendant
JOHN GEORGE SHARPE	Twelfth Defendant
RALPH DAMONSE	Thirteenth Defendant

Coram: HOLDERNESS J

Heard: 17 November 2025

Delivered: 2 March 2026

JUDGMENT

Holderness J:

Introduction

[1] At issue in this matter is the convenience of the separation of the hearing of the seventh to tenth defendants’ Special Pleas of prescription (“the Special Pleas”).

The pleadings

[2] The plaintiffs’ action against the defendants arises from an alleged fraudulent scheme related to a land reform project (“the project”) in terms of

which the plaintiffs allege that the defendants, through a series of fraudulent transactions extracted unlawful payments from the second plaintiff, the Minister of Rural Development and Land Reform (“the Minister”).

[3] In September 2007, the Griekwa Burger Landbou Trust (“the GBLT”) purchased a farm in Vredendal, Western Cape (“the property” or “the farm”) from the Cohen Boerdery Trust (“the Cohen Trust”), duly represented by the eighth defendant, using funds provided by the Minister, pursuant to the successful application by the fourth defendant, for a Land Redistribution for Agricultural Development (“LRAD”) Grant on 15 August 2005.

[4] The agreed purchase price was R1 150 000 for the property and R250 000 for 150 ewes, 5 rams and a light delivery vehicle.

[5] The property was registered in the name of the Cohen Trust.

[6] The GBLT was registered on 7 June 2007 and was constituted to serve as the land-holding entity of the property to be purchased from the Cohen Trust. The first to sixth defendants were appointed as trustees of the GBLT and acted in their capacities as such at all relevant times.

[7] On 18 December 2007 the Minister approved the LRAD grant in favour of the GBLT in the amount of R2 900 000, and a further amount of R441 701.50 towards a planning grant.

[8] The amount of R2 900 000 was comprised of R1 150 000 for the purchase of the property, R250 000 for the purchase of livestock and the bakkie,

and R1 500 000 as the Balance of Grant (BoG) as working capital for farming operations.¹

[9] In the particulars of claim the plaintiff pleads that the Minister ‘approved and made the payment...pursuant to information and supporting documentation submitted to it by the first to eight defendants through the agency of the thirteenth defendant, and by various service providers, at the behest of first to eight defendants...and on the basis that the money would be utilised for the purposes set out above.’

[10] The plaintiffs assert that the BoG was fraudulently used to pay a debt owed by the GBLT to the seventh and/or eighth to tenth defendants.² The Minister seeks repayment of these grant payments.

The alleged fraudulent scheme

[11] The essence of the fraudulent scheme devised by the defendants, as pleaded by the plaintiffs, is as follows:

(a) The sale agreement submitted to the minister, as concluded between the GBLT and the Cohen Trust, specified the purchase price of the farm as being R1 400 000.

(b) Without the Minister’s knowledge, the GBLT and the Cohen Trust had in effect agreed to a purchase price of R2 400 000 for the farm.

¹ Which included the purchase of more sheep, farming implements, two Wendy houses, shares in Hantam Abattoir, a vehicle and the lease of additional property.

² According to the plaintiffs, the seventh defendant established the Cohen Trust and was and is the controlling mind thereof.

(c) The shortfall in the actual purchase price for the farm was made-up by the defendants, and various service providers with whom they acted in concert, generating and submitting to the Minister fraudulent invoices for goods and services that were never provided, and which monies were thereafter transferred into the bank accounts of the seventh defendant and/or the Cohen Trust.

(d) The amount of approximately R1 million came from the BoG of the LRAD grant and was intended for farming activities by the GBLT.

[12] According to the plaintiffs:

(a) The eleventh and twelfth defendants were service providers who allegedly participated in the fraud. They have settled the plaintiffs' claims against them and will be called as witnesses at the trial.

(b) The thirteenth defendant facilitated the application for the LRAD grant on behalf of the GBLT and participated in the fraud.

The Special Pleas

[13] The seventh defendant and the eighth to tenth defendants have filed an amended Special Plea of prescription in identical terms, as follows:

(a) The plaintiffs' claims are based on alleged fraudulent misrepresentations made over a period during or/about 2007 and/ or 2008.

(b) The plaintiffs' claims fell due on or about those dates, alternatively and in any event before 1 June 2014.

(c) The plaintiff's summons was served on or about to June 2017, which is more than three years after the plaintiffs' alleged claims arose.

(d) In the premises, the plaintiffs' alleged claims are prescribed in terms of the Prescription Act 68 of 1969 ("the Act").

[14] The first to sixth defendants, the trustees of the GBLT, have also filed a Special Plea of prescription, in which they allege:

(a) The plaintiffs' claims are based on alleged fraudulent misrepresentations made over a period between August 2005 and March 2008.

(b) Employees of the Minister were aware of the identity of the debtor and all the facts from which the debt arises, alternatively such knowledge could have been acquired by exercising reasonable care, by no later than March 2008, upon which date the claims became due and payable.

(c) Summons was served more than three years after the date upon which the claims arose.

(d) In the circumstances, the claims are prescribed in terms of section 11 of the Act.

[15] The plaintiffs' summons was served in May 2017. The seventh to tenth defendants (the defendants) accordingly contend that, the Ministers' claim has prescribed.

[16] In the replication to the Special Pleas, the plaintiffs aver that the first to eighth defendants, and eleventh to thirteenth defendants wilfully prevented them from coming to know of the existence of the alleged debt, that the plaintiffs had no knowledge of the identity of the debtors or the facts from which the debt arose, and could not have acquired this information by the exercise of reasonable care.

Issues to be separated

[17] The defendants contend that as the plaintiffs' claim is based on what they assert were fraudulent misrepresentations and transactions occurring in 2007 and or 2008, the evidence to be led in relation thereto will be confined to conduct that occurred around and during this time.

[18] This will include evidence in respect of the facts and circumstances from when the application was made for the LRAD grant on 15 August 2005 up to and including the last of the alleged fraudulent transactions relied upon by the plaintiffs, which, according to their pleadings, was completed on or about 19 August 2008.

[19] The defendants aver that the evidence relevant to the Special Pleas concerns when the plaintiffs, specifically the Minister, became aware of the alleged cause of action, or reasonably could have become aware thereof, and that this necessarily concerns events which occurred after the alleged fraudulent transactions.

[20] Arising from the foregoing, in support of the separation application, the defendants argued that there is a clear delineation between the evidence which

will be led on the merits of the claim and the evidence relevant to the Special Pleas.

[21] In broad terms, the plaintiffs plead, in defence to the Special Pleas, that they only became aware of the alleged fraud after investigations had been conducted in 2015, and did not, nor could have reasonably obtained the requisite knowledge before then.

[22] Relying on section 12(2) of the Act³, the plaintiffs plead that the first to eighth defendants, and the eleventh to thirteenth defendants wilfully prevented the plaintiffs from coming to know of the existence of the claims and that prescription only commenced to run when the plaintiffs became aware of such claim during 2015.

[23] The defendants rely *inter alia* on evidence in the criminal proceedings which were instituted against the defendants in 2019, based on the same facts and circumstances. These proceedings concluded in November 2023 when the court discharged all the accused under section 174 of the Criminal Procedure Act 51 of 1977.

[24] The seventh to tenth defendants aver that, without limiting the evidence to be led at the hearing of the Special Pleas, they intend to lead evidence regarding the disclosure of the impugned transactions made to a representative

³ Section 12 of the Act provides as follows: (1) Subject to the provisions of subsections (2) and (3), prescription shall commence to run as soon as the debt is due. (2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt. (3) A debt which does not arise from contract shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

of the Minister during a meeting in early 2020 – seven years before summons was served in these proceedings.⁴

[25] The defendants accept that whilst this court is not bound by the criminal court's finding, it does lend support to their submission that there are strong prospects that the Special Pleas will be upheld and hence a 'reasonable degree of likelihood that the asserted advantages of separation will in fact result.'

Grounds advanced by the defendants in support of separation

[26] The defendants contend that the Special Pleas constitute a narrow, discrete and limited issue that can conveniently be excised from the other issues in the action and determined separately, as the upholding of such pleas would be dispositive of the action.

[27] According to the pleaded claim, the Minister's entire cause of action was completed in August 2008. To determine whether the claim has prescribed, the court must decide when, after August 2008, the Minister obtained the requisite knowledge. The plaintiffs assert that they only gained knowledge of the facts that gave rise to the debt, as well as the identity of the debtors, after they conducted investigations in 2015.

[28] To succeed with their special pleas, the seventh to tenth defendants must prove that the Minister specifically, became aware of the identity of the debtor and of the facts from which the debt rises, or reasonably could have acquired it

⁴ Based on similar evidence lead in the criminal proceedings, the Criminal Court found that at this meeting it was explained and discussed, in the presence of Ms Mattheus (from the Minister) and Mr. Dyason (from the Department of Agriculture, Western Cape), the usage of the BoG to pay the GBLT's indebtedness to the seventh defendant. According to the evidence of Mr. Dyason he stated at this meeting that this amounted to fraud.

by exercising reasonable care, between August 2008 and May 2014⁵. This concerns evidence of events taking place between August 2008 and May 2014.

[29] The defendants emphasised that events that took place after August 2008 will have no bearing on the merits of the plaintiffs' claim. The evidence in respect of the Special Pleas is not inextricably linked to the plaintiffs' claim as the plaintiffs assert and that the Special Pleas can be adjudicated at a significantly shorter hearing than if the entire matter were to be heard.

[30] At a minimum, the seventh to tenth defendants would no longer be involved in the matter with the consequential reduction in time required for cross-examination and the leading of evidence by these defendants. As such, separation has the potential to greatly save time and costs for all the parties, and the court. Any costs saved by the plaintiffs would be for the public benefit, as the plaintiffs are public entities using taxpayer money to fund this action.

[31] Lastly, the defendants assert that it is in the interests of justice and fairness to grant the separation as the seventh defendant and some of the other defendants have been made to endure the ordeal and crippling costs of defending criminal charges based on the same facts and circumstances at issue in this matter, where the State was not able to establish even a *prima facie* case against the seventh defendant (and the other co-accused).

The plaintiffs' submissions

[32] The plaintiffs contend that separation would not be convenient for the following reasons:

⁵ Three years before summons were served.

- (a) The evidence necessary to prove the plaintiffs claim is inextricably linked to the evidence necessary to decide the special pleas, as the defendants' alleged fraudulent conduct prevented the Minister from discovering the true state of affairs. Such evidence would thus need to be repeated in separate proceedings if the issues are separated.
- (b) There are practical problems in relation to the duty to begin, which witnesses would be called, and the extent of the evidence permissible.
- (c) As the first to sixth defendants have not applied for separation of their special plea of prescription, a separation would result in a duplication of evidence required to address their special pleas.
- (d) The plaintiffs' fair trial rights require that they be allowed to leave their evidence against all defendants, have their witnesses cross-examined once, and for the court to determine all the issues thereafter.
- (e) The plaintiffs may be obliged to appeal in any decision to uphold the special pleas, which would delay the matter further.
- (f) Lastly separation will prolong the matter and lead to possible different judgments on similar issues, and a disjointed determination of the issues common to all parties.

[33] The defendants' stance is that the first to sixth defendants, who have chosen to abide by the court's decision in the present application, will 'ride the seventh to tenth defendants' coattails' if the Special Pleas are upheld.

[34] Regarding onus, they pointed out that the seventh to tenth defendants bear the onus in respect of the Special Pleas and accept that should the separation be granted, they will have the duty to begin.

[35] The seventh to tenth defendants contend that the plaintiffs have failed to present evidence of how separation would prejudice them in the presentation of their case or how any such prejudice outweighs the ‘significant savings in both time and costs that a curtailed hearing is likely to achieve. Overall, the convenience of deciding the Special Pleas separately outweighs any putative inconvenience to the plaintiffs.’

Separation of issues - Legal principles

[36] Rule 33(4) of the Uniform Rules of Court, which provides for the separation of issues, provides that:

'If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the question cannot conveniently be decided separately.'

[37] The purpose of Rule 33(4) is to determine the fate of a plaintiff's claim (or one of the claims) without the costs of a full trial:

'An important consideration will be whether or not a preliminary hearing for the separation decision of specified issues will materially shorten the proceedings. The

convenience must be demonstrated and sufficient information must be placed before the Court to enable it to exercise its discretion in a proper and meaningful way.⁶

[38] A court granting a separation order must direct the disposal or resolution of that issue which it decides can conveniently be decided separately, in a manner it deems appropriate, and is enjoined to issue a corresponding order to stay further issues until the separated issue has been decided or resolved.⁷

[39] In considering whether to grant a separation order, a court will consider its convenience, as well as the convenience of the parties and the potential prejudice that either party may experience if separation is granted. The court is obliged to order separation unless it determines that the issues cannot be conveniently separated.⁸

[40] Nugent JA in *Denel v Vorster*⁹ (*Denel*) described the process to be undertaken when faced with a separation application, as follows:

‘Rule 33(4) of the Uniform Rules – which entitles a court to try issues separately in appropriate circumstances – is aimed at facilitating the convenient and expeditious disposal of litigation. It should not be assumed that that result is always achieved by separating the issues. In many cases, once properly considered, the issues will be found to be inextricably linked even though at first sight they might appear to be discrete. And even where the issues are discrete the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing, particularly where there is more than one issue that might be readily dispositive of the matter. It is only after careful thought has been given to the anticipated course of the litigation as a whole that it will be possible properly to determine whether it is convenient to try an issue separately. But where the

⁶ *CC v CM* 2014 (2) SA 430 (GJ) at para 27.

⁷ *First National Bank v Clear Creek Trading 12 (Pty) Ltd and Another* 2018 (5) SA 300 (SCA) at para 8.

⁸ *CC v CM* 2014 (2) SA 430 (GJ) at para 25.

⁹ 2004 (4) SA 481 (SCA) at para 3.

trial court is satisfied that it is proper to make such an order – and in all cases it must be so satisfied before it does so – it is the duty of that court to ensure that the issues to be tried are clearly circumscribed in its order so as to avoid confusion. The ambit of terms like the ‘merits’ and the ‘quantum’ is often thought by all the parties to be self-evident at the outset of a trial but in my experience it is only in the simplest of cases that the initial consensus survives. Both when making rulings in terms of Rule 33(4) and when issuing its orders a trial court should ensure that the issues are circumscribed with clarity and precision.’

[41] It is therefore incumbent on this court at the outset to determine not only whether a separation is convenient for the court and the parties involved, but also whether issues which appear *ex facie* to be distinct are, in fact, significantly interwoven. Furthermore, it must be considered whether it is preferable to address all disputes in a single hearing, even if some appear to be separate.

[42] The duty imposed upon the court hearing a separation application was described as follows by the Supreme Court of Appeal in *Molotlegi and Another v Mokwalase*¹⁰:

‘A court hearing an application for a separation of issues in terms of rule 33(4) has a duty to satisfy itself that the issues to be tried are clearly circumscribed to avoid any confusion. It follows that a court seized with such an application has a duty to carefully consider the application to determine whether it will facilitate the proper, convenient and expeditious disposal of litigation. The notion of convenience is much broader than mere facility or ease or expedience. Such a court should also take due cognisance of whether separation is appropriate and fair to all the parties. In addition the court considering an application for separation is also obliged, in the interests of fairness, to consider the advantages and disadvantages which might flow from such separation. Where there is a likelihood that such separation might cause the other party some prejudice, the court may, in the exercise of its discretion, refuse to order

¹⁰ [2010] 4 All SA 258 (SCA) at para 20.

separation. Crucially in deciding whether to grant the order or not the court has a discretion which must be exercised judiciously.’

[43] In exercising my discretion regarding whether or not to grant the separation, I therefore need to consider not only whether it is convenient and will facilitate the expeditious disposal of the pending litigation, but also whether it is fair to both parties, and the possibility of prejudice to the plaintiffs, who oppose such an order.

[44] It is trite that a court should try and avoid a duplication of evidence by pre-empting that witnesses testify twice in the same proceedings because of the ever-present risk of different courts arriving at different and conflicting findings of fact and credibility.

[45] In *Denel*¹¹ the Supreme Court of Appeal cautioned against the assumption that the ‘*convenient and expeditious disposal of litigation*’ would always be achieved by a separation of issues:

‘Even though at a glance it may appear that the issues are discrete, they may ultimately be found to be inextricably linked. The Court found that the expeditious disposal of litigation is best [achieved] by ventilating all the issues at one hearing.’

[46] In *NK v KM*¹² the Court observed that in determining whether there should be a separation, the Court should bear in mind that the ‘*expeditious disposal of issues cannot outweigh the principle of fairness. The principle of fairness requires the balancing of the interest of both parties.*’

¹¹ Id para 3.

¹² 2019 (3) SA 571 (GJ) para 13.

[47] A cautionary note was sounded by the court in *Tshwane City v Blair Atholl Homeowners Association*, where it stated as follows:¹³

‘Careful thought should be given to a separation of issues and the issues to be tried separately have to be clearly circumscribed in order to avoid confusion. A decision on a separate issue should be dispositive of a portion of the relief claimed and essentially should serve expedition rather than cause delay in the resolution of the principal issue.’

[48] The court in *Hollard Insurance Company Ltd v Coetzee and Others*¹⁴ summarised the factors one may have regard to in determining whether a separation is convenient, which included the following:

- ‘1. Whether the hearing on the separated issues will materially shorten the proceedings: if not, this obviously militates against a separation.
2. Whether the separation may result in a significant delay in the ultimate finalisation of the matter: such a delay is a strong indication that the separation ought to be refused.
3. Whether there are prospects of an appeal on the separated issues, particularly if the issue sought to be separated out, is highly controversial and appears to be one of importance: if so, an appeal will only exacerbate any delay and negate the rationale for a separation.
4. Whether the number of court days saved by the separation weighs up favourably against the delay that may arise between the finalisation of the separated issues and the continuation and the remainder of the proceedings: if as a result of a separation, the delay of the separation may render the saving in court time less significant, the separation will not likely be granted.
5. Whether the evidence required to prove any of the separated issues on the merits may also be required to be led when it comes to proving the non-separated issues (i.e. witnesses leading evidence twice on the same facts: if so, a court will not grant a separation because it will result in the lengthening of the trial, the wasting of costs, potential conflicting findings on facts and on

¹³ *The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association* 2019 (3) SA 398 (SCA) para 2.

¹⁴ (24120/2011) [2015] ZAWCHC 212 (6 May 2015) at para 15, and the authorities there cited.

credibility of witnesses, and it will also hinder the opposing party in cross-examination.’

[49] In determining whether to grant a separation, I am accordingly enjoined to carefully weigh the advantages which may accrue to the party seeking the separation against the disadvantages which may result therefrom.

Evaluation

[50] In support of their application for a separation of issues, the defendants contend that if the special plea of prescription is heard separately and is determined their favour, this will curtail the duration and costs of the main proceedings significantly, if not dispose of it entirely. They further contend that at minimum, if not disposed of entirely, the seventh to tenth defendants would no longer be involved in the main action, which would be a reduction in time in the trial.

[51] On the evidence before me, I am not persuaded that the special plea will only take two to three days as postulated by the defendants.

[52] According to the defendants, if the special plea is heard separately, they will lead evidence which concern events that took place between August 2008 and May 2014. The nature, volume, content and extent of evidence to be led is, however, not clear, nor how evidence of events which took place over six years will be condensed into a hearing of two to three days.

[53] The defendants stated that they intend to lead evidence regarding the disclosure of the impugned transactions made to the second plaintiff during a meeting in 2010 – which will prove that the second plaintiff was, in fact, aware of the facts from which the debt arose and of the identities of the debtors.

[54] The plaintiffs contend that the law is unclear as to whether defendants are entitled to rely on section 12(3) of the Prescription Act in circumstances where the plaintiffs have invoked section 12(2) of the Prescription Act. Consequently, separation will not be convenient as it will be difficult for a court considering only the special pleas to determine what evidence is relevant and admissible in relation thereto.

[55] In my view, the evidence which will be required to be led on the issue of prescription is not as discrete as the defendants make it out to be. A separation of this issue may well lead to the prolonging of the matter, possible different judgments on the same or similar aspects, and a disjointed determination of the issues, which are common to all the parties, including the first to sixth defendants. This is likely to significantly delay the finalisation of the matter, which is in no one's interests.

[56] I find myself in agreement with the plaintiffs that whatever the outcome of the special plea may be the losing party is likely to appeal. It goes without saying that a piecemeal appeal would be undesirable and inconvenient. The prospects of the matter going on to appeal are strong as the matter is of considerable importance. It is a matter of public interest whether the second plaintiff was defrauded by the defendants, given that the funds in question are public funds.

[57] As contended by the plaintiffs due to the lack of clarity on the evidence which will be required to be led should a separation be granted, I am not satisfied that the defendants will be entitled to lead evidence as to whether the plaintiffs could, by exercise of reasonable care, have discovered the true facts earlier than they did. Therefore, it would be more expeditious, cost-effective and convenient if all the issues were determined in a single trial.

[58] It is probable that there will be a material overlap in evidence to be led in the proceedings. The defendants will have to lead evidence *inter alia* of the events which transpired in 2007 and/or 2008, in support of their allegation that the plaintiffs knew both the identity of debtors and facts from which the debt arose. That is the same period covered by the particulars of claim where the plaintiffs allege that the fraud was perpetrated.

[59] Moreover, the plaintiffs allege that they did not have knowledge of the facts that gave rise to the debt, as well as the identity of the debtors, until after the investigations that were conducted in and during 2015 following a proclamation issued in 2011, which authorised investigations into land redistribution projects, including GBLT.

[60] The plaintiffs aver that they could not have acquired the aforesaid knowledge by exercise of reasonable care. Further, they had no reason to conclude that there was anything untoward with the application for a grant by the GBLT, or the transactions made from the BoG.

[61] It is apparent that the time periods are overstated, and issues may be inextricably linked. The defendants argue that the evidence that will be led to prove the claim has prescribed, is confined to evidence after the last alleged

fraudulent misrepresentation and transaction that occurred in 2008. They allege that prescription began to run no later than early 2010, following the meeting to discuss *inter alia* the transaction made to the seventh defendant, where representatives of the second plaintiff were present.

[62] It may prove difficult to lead evidence that a claim has or has not prescribed without including details of the actual claim and how it came to be. To determine whether prescription began to run, the Court will need to consider, *inter alia*, what the alleged fraudulent misrepresentations entailed (during the period from 2005 to 2008), the alleged steps taken to conceal the alleged fraud (during the period from 2005 to 2015), and what occurred at or after the 2008 transactions, including the meeting.

[63] The plaintiffs will be required to prove how the defendants wilfully prevented them from coming to know of the existence of the claim and that prescription only commenced to run after they came to know of the existence of the claim in 2015. Logically, that will include evidence from 2005 to 2015, including what tactics the defendants allegedly employed to not raise suspicion even after the last transaction was made in 2008.

[64] It appears that it will not be possible to separate the two time periods when one claim forms the basis of the other. Therefore, there may be duplication of evidence which may create conflicting factual findings, further delay and a waste of costs.

Conclusion

[65] In all the circumstances I am not persuaded that a separation of the special plea of prescription is convenient, nor that it will materially shorten proceedings, particularly considering the protracted time period over which the events took place, the detailed evidence which will be required to be led in respect of both the merits and the special plea, the importance to the public and to the parties, and the high probability that the judgment on the special plea will be taken on appeal, irrespective of the outcome.

[66] I am therefore inclined to adopt the more cautious approach, not to separate the special plea.

[67] A final consideration mitigating against separation is the fact that the other defendants have also raised a special plea of prescription but have not sought a separation of issues.

[68] There is no reason why the costs should not follow the event. In my view and in light of the complexity of the issues and the importance of this matter, costs are to include costs of two counsel, to be taxed on Scale C.

Order

1. The application in terms of Rule 33(4) is dismissed with costs, including costs of counsel of two counsel, to be taxed on Scale C.

M HOLDERNESS

JUDGE OF THE HIGH COURT

Appearances

Applicants:

Seventh to Tenth Defendant

JB Engelbrecht

Instructed by:

JNJ Pieterse

Respondents:

Seventh to Tenth Defendant

Adv. I Jamie SC

M Mokhoaetsi

Instructed by:

State Attorneys