IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION – MAHIKENG

Case No: 4804 / 2024

In the matter between:

HENDRIK CHRISTOFFEL BREEDT	**1st APPLICANT**
CHRISTO BREEDT	**2nd APPLICANT**
CHRISTELLE MAREE (BORN BREEDT)	**3rd APPLICANT**
And	
LYNX INTELLIGENT SOLUTIONS (PTY) LTD	**1st RESPONDENT**
JCQUES GENTLE	**2nd RESPONDENT**
LYNX SECURE (PTY) LTD	**3rd RESPONDENT**
JIMMY'S SECURITY CC	**4th RESPONDENT**
BOALEMANG JIM MOLEFE	**5th RESPONDENT**
WES TRANSVAAL SEKERHEIDSDIENSTE BK	**6th RESPONDENT**
TUMELO ISAK MARCH	**7th RESPONDENT**
CORNELIUS JACOB OOSTHUIZEN	**8th RESPONDENT**
WTSS GUARDING (PTY) LTD	**9th RESPONDENT**
MULTILAYER TRADING 444 CC	**10th RESPONDENT**
JAN CAREL DE BEER	**11th RESPONDENT**
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**12th RESPONDENT**

CORAM: MAODI AJ

Date judgment reserved: 20 November 2025

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **26 March 2026** at **10h00**.*

ORDER

1. Each party to pay their own costs in respect of part A
2. The application is granted in respect of prayers 1 to 9 of the amended notice of motion.
3. The first and second respondents are ordered, jointly and severally the one paying the other to be absolved, to pay costs on scale C including costs of counsel.

JUDGMENT

MAODI AJ

Introduction

[1] This is an application to declare certain contracts void ab initio and to have members' interest restored to the sellers. There are other ancillary orders sought, amongst which is the delivery or return of certain assets. Only the first, second, third, sixth, ninth and tenth respondents participated. I was informed that the third respondent is a non-entity. The eighth and eleventh respondents filed affidavits explaining their positions on the matter.

[2] The matter consisted of two parts, with part A being an urgent application for an interdict and part B being the remedy sought. Part A was granted by agreement between the parties on 21 October 2024. However, the costs of part A were reserved for consideration in part B.

[3] The applicants' claim is set out in part B of the amended notice of motion as follows:

> "1. That it be declared that the written agreements referred to as Annexures "FA3 to "FA7" to the founding affidavit are unenforceable and invalid from the beginning (void ab initio).
>
> 2. That the first, second and third respondents jointly (the one complying the other to be absolved) be directed to deliver, within 14 days of this order, to the applicants, or their representatives (duly authorised in writing):
>
> > (a) The assets contemplated in paragraph 1.1 (including all the sub-paragraphs thereof) of the written agreement, (between Wes Transvaal Sekerheidsdienste CC and Lynx Secure (Pty) Ltd (Annexure "FA6" to the founding affidavit in this application).

(b) The assets contemplated in paragraph 1.1 (including all the sub-paragraphs thereof) of the written agreement between WTSS Guarding (Pty) Ltd and Lynx Secure (Pty) Ltd (Annexure “FA7” to the founding affidavit in this application).

3. That the first applicant is entitled to submit the necessary documents to the “Companies and Intellectual Property Commission of South Africa” (CIPC, the twelve respondent) in order to have:

(a) his resignation as a member of the fourth respondent close corporation (Jimmy’s Security CC) in the records of the CIPC reversed and to have him reinstated as a member of that close corporation with a 49% membership interest; and

(b) the membership interest of Boalemang Jim Molefe (the fifth respondent) in the latter close corporation amended from 100% to 51%.

4. That the first applicant is entitled to submit the necessary documents to the CIPC in order to have:

(a) his resignation as a member of the sixth respondent close corporation (Wes Transvaal Sekerheidsdieneste CC) in the records of the CIPC reversed and to have him reinstated as a member of that close corporation with a 100% membership interest; and

(b) to have the names of second, seventh and eighth respondents removed as members of that close corporation.

5. That the second and third applicants are entitled to submit the necessary documents to the CIPC in order:

(a) to have their resignations as members of the tenth respondent close corporation (Multilayer Trading 444 CC) I the records of the CIPC reversed and to have them reinstated as members of that close corporation each with a 50% membership interest, and

(b) to have the names of the second, eighth and eleventh respondents removed as members of that close corporation.

6. That the second applicant is entitled to submit the necessary documents to the CIPC in order:

(a) to have his resignation as a director of the ninth respondent company WTSS Guarding (Pty) Ltd in the records of the CIPC reversed and to have him reinstated as a director of that company; and

(b) to have the names of the second and eighth respondents removed as directors of that company.

7. That the second, seventh, eighth and eleventh respondents be and are hereby directed to sign all documents which are in law necessary to be signed by them in order to give effect to the orders in the aforegoing paragraphs, within 7 days from the date on which they are presented with the relevant documents and are requested in writing by or on behalf of the applicants to sign same.

8. That, in so far as any of the respondents herein are ordered or directed to sign any documents within a specified period of time and such respondents should fail or refuse to sign such documents within the specified period of time, then and in such event the Sheriff of the above Honourable Court be authorised and directed to sign the relevant documents for and on behalf of the relevant respondents.

9. That the CIPC, twelfth respondent, be authorised and directed to give effect to the orders herein above in so far as they related to it.

10. That the first, second and third respondents pay the costs of this application jointly and severally, the one paying, the other to be absolved and that, in the event of any of the other respondents opposing this application, the opposing respondents pay the costs of this application jointly and severally with the first, second and third respondents, the one paying, the other to be absolved.

11. Further and/or alternative relief.

11A. In the alternative to the finding of invalidity in paragraphs 1 above, and to the extent of it being found by the Honourable Court that the said agreements are enforceable, then and in such event the applicants seek the following orders:

11A.1 That it be declared that the said written agreements have been duly cancelled.

11A.2 That the first, second and third respondents jointly (the one complying the other to be absolved) be directed to deliver (within 14 days of this order, or such longer period that the applicants might agree to in writing) one thousand five hundred (1 500) monitoring clients of the first, second or third respondents and all the accompanying operational equipment, between Wes Transvaal Sekerheidsdienste CC and Lynx Secure (Pty) Ltd (Annexure “FA6” to the founding affidavit in this application) and in clause 9.7 of the written agreement between WTSS Guarding (Pty) Ltd and Lynx Secure (Pty) Ltd (Annexure "FA7" to the founding affidavit in this application)."

First to Third Applicants' case (Applicants)

[4] The first respondent is a registered company, with the second respondent being the sole director thereof. The second respondent is a businessman who conducts security business in Lichtenburg under the first respondent. He is cited in his personal capacity, in his capacity as director of ninth respondent as well as in his capacity as member of close corporations referred to herein.

[5] The third respondent is an entity with whom the first applicant concluded a sale agreement. The sale agreement refers to the third respondent as a company with the same registration number as the first respondent. However, the third respondent is in fact not registered under the said registration number or at all with the CIPC as a company. The fourth respondent is a registered close corporation. The fifth respondent is a businessman, owner and holder of 51% membership interest in the fourth respondent. Before the sale of his (first applicant's) membership interest in the fourth respondent, the first applicant and fifth respondent were the only two members of the fourth respondent.

[6] The sixth respondent is a registered close corporation. By the time the various agreements were entered into, the first applicant was the sole member of the sixth respondent. However, relevant company documents show that after the agreements were concluded on 31 August 2020 and the first applicant resigned as member, the second, seventh and eighth respondents were registered as members of the sixth respondent. The

seventh respondent is a businessman and holder of 51% membership interest in sixth respondent. The eighth respondent is a businessman and holder of 25% membership interest in the sixth respondent. The eighth respondent is also a director of the ninth respondent and has membership interests in sixth and tenth respondents.

[7] The ninth respondent is a registered company. By the time the various agreements were entered into, the second applicant was the only director of the ninth respondent. However, relevant company documents show that after the agreements were concluded on 31 August 2020 and the second applicant resigned as director, the second and eighth respondents were registered as directors of the ninth respondent. The second applicant cannot recall that he had resigned as director of the ninth respondent, but by the time he was called to sign the relevant agreements, he was provided with many documents and was told by the second respondent's attorneys that his signature was required on the said documents in order to give effect to the said agreements. He therefore signed the documents without reading same and in the bona fide belief that they were so required.

[8] The tenth respondent is a registered close corporation. By the time the various agreements were entered into, the second and third applicants were the only (equal) members of the tenth respondent. However, relevant company documents show that after the agreements were concluded on 31 August 2020 and they both resigned as members, the second, eighth and eleventh respondents were registered as members of the tenth respondent. The second and third applicants cannot recall that they had resigned as members of the tenth respondent, but by the time they were called to sign the relevant agreements, they were provided with many documents and were told by the second respondent's attorneys that their signatures were

required on the said documents in order to give effect to the said agreements. They therefore signed the documents without reading same and in the bona fide belief that they were so required.

[9] The eleventh respondent is a businessman and holder of 33% membership interest in the tenth respondent. The twelfth respondent is the Companies and Intellectual Property Commission (the CIPC).

[10] The first applicant has, since approximately 1993 and over a period of years, conducted a security business in the name of a number of legal entities. During or about August 2020 he sold and transferred the business (legal entities) and the assets thereof by means of five separate written agreements. However, unbeknown to him, the agreements were, for a number of reasons, null and void. On the other hand, the purchasers failed to make full payment of the purchase price in terms of the agreements and if the agreements are found not void ab initio, he cancels the agreements. He seeks an order that the agreements be declared void ab initio, orders for return of goods sold in terms of the agreements, interim relief and related relief as sought in the notice of motion.

[11] In summary, the nature of his business is that contracts were entered into with various businesses and owners of private as well as government properties (the clients). The clients' properties were connected to a security system on computer in the control centre at his business premises where an alarm system would indicate whenever there occurred any attempt to enter unlawfully the premises of a client. In reaction to such alarm, armed security personnel would then visit the client's premises in an attempt to prevent any unlawful entry to that property and to safeguard, in so far as possible, the said property and people lawfully on it against any damage or

harm. Armed security guards were also provided to guard properties of clients upon request. Clients compensated his business on an agreed fee.

[12] At all relevant times and up to the sale of the business, the first applicant was the holder and owner of 49% membership interest in the fourth respondent while the fifth respondent held 51% membership. The fourth respondent was used as a vehicle to conduct his business with Wonderstone Mine near Ottosdal since the client insisted on security services who are "BEE compliant". At all relevant times and up to the sale of the business, the first applicant was the holder and owner of 100% membership interest in the sixth respondent. The bulk of his business was conducted through the sixth respondent.

[13] The ninth respondent was registered in 2016 when the second applicant joined first applicant in business. The second applicant was the only director of the ninth respondent. The second and third applicants were equal (50/50) holders of membership interests in the tenth respondent. Although the third respondent was registered 50% membership interest in the tenth respondent, she was not involved in the business and derived no benefits or responsibilities. Her membership was supposed to be transferred to first applicant but the business was sold before that could be given effect to.

[14] During July or August 2020, the second respondent, who was conducting a security business similar to that of the first applicant in Lichtenburg, showed interest in buying the first applicant's business. The purchaser was to be the third respondent. Negotiations were conducted over a period of time with the assistance of second respondent's attorney, Mr Ruan Le Roux. By August 2020 the negotiations culminated in the parties reaching

consensus on the terms of the proposed sale of the business to second respondent and/or entities under his control.

[15] The terms of the agreement were set out in a letter attached to founding affidavit as "FA2". However, it was agreed that the second respondent's attorneys would prepare legal documents in line with the said letter. Shortly thereafter, the first applicant received a bundle of documents amongst which there were the five different written agreements he was told represented the terms of sale. The said documents were also made available to the second and third applicants for signature. He is not legally trained and relied on the word of second respondent's attorney by signing the documents without reading them in the bona fide belief that they were in order.

[16] Contract 1 was signed on 31 August 2020 and attached as "FA3". This agreement provides for the sale of 49% of his membership interest in fourth respondent to the third respondent. In terms of clause 3 thereof, the purchase price was R 3 million of which R 2 million was payable on or before 15 September 2020 which was indeed paid. The balance of R 1 million was payable in instalments with the last payment to be made on/before 31 October 2025.

[17] Contract 2 was signed on 31 August 2020 and attached as "FA4". This agreement was between the second respondent and the second applicant together with the third applicant who were holders of membership interest in the tenth respondent. In terms of the agreement, the second applicant sold 50% membership to the second respondent. Clause 5.1 provided that the purchase price was R3, 5 million payable in sixty monthly instalments starting 30 September 2020.

[18] Contract 3 was signed on 31 August 2020 and attached as “FA5”. The contract was between the third applicant and eighth respondent. The terms of the contract are similar to contract number 2. Contract 4 was signed on 31 August 2020 and attached as “FA6”. This contract was between sixth respondent represented by first applicant and third respondent represented by second respondent. In terms of the contract, sixth respondent sold its assets, (list provided), to third respondent. Clause 5.1 provided that the purchase price was R 182 532, 17 payable in instalments.

[19] Contract 5 was signed on 31 August 2020 and attached as “FA7”. The contract was between ninth respondent represented by second applicant and third respondent represented by second respondent. The ninth respondent sold its assets to third respondent. Clause 4 provided that the purchase was R 968 250, 70 payable in instalments.

[20] By the time the agreements were entered into, all movable assets of the respective entities were in the possession of the first applicant at his business address. Pursuant to the sale agreements, all assets were delivered to the second respondent. Neither the first, second or third applicant can remember signing any document in terms of which they resigned as members of directors of the entities. However, they established this fact at some point. This is because many documents were placed before them and they were under a bona fide belief that the said agreements were valid.

[21] The CIPC reports show that the first applicant resigned as member of fourth respondent on 1 September 2020 and that the fifth respondent remained the sole member (contract 1). This is wrong because in terms of clause 2.2 ownership, risk and benefits attaching to membership interest will pass to purchaser upon payment of consideration set out in clause 3.

In terms of clause 3 consideration will only be paid in 2025. His membership as reflected on the CIPC report is premature and in conflict with the agreement.

[22] In respect of tenth respondent, the CIPC report shows that the second applicant and third applicant resigned as members on 25 January 2021 and that the second respondent and eighth respondent became active members whilst eleventh respondent became member on 17 February 2021 (contract 2).

[23] In respect of sixth respondent the CIPC report shows that the first applicant resigned as member on 16 September 2020 and that second respondent became member on the same date while eighth and eleventh respondents became members on 1 December 2020 (contract 4). In terms of contract 4, only assets were sold and not members interest. The first applicant's resignation is not in line with the agreement. In respect of ninth respondent the CIPC report shows that the second applicant resigned on 25 January 2021 and that both second respondent and eighth respondent were appointed as directors (contract 5).

[24] Pursuant to conclusion of the agreements up to 30 November 2023, the second respondent made monthly payments into a bank account in the names of first applicant in the amount of R 100 375, 63 and into a bank account of second applicant in the sum of R 36 000, 00. Since December 2023 the second respondent made monthly payments of R 36 000, 00 into second applicant's account. In addition thereto, a monthly amount of R 3 042, 20 into the first applicant's bank account instead of a full amount of R 100 375, 63. There is a substantial amount due and payable.

[25] Paragraphs 15 and 16 of the applicants' founding affidavit provide grounds for stating that the agreements are void ab initio as follows:

> "15.1 I did not, at the time of the signing of the agreements, know why it was necessary to draw five agreements but that was the advice of the said Mr Ruan Le Roux which advice the other applicants and I then accepted as correct. However, the agreements are all linked to one another and were clearly drawn in order to jointly achieve one purpose, namely to effect the sale and transfer of my business to Mr Gentle or to entities under the latter's control and that in the event of one of the agreements falling away, then the entire group of agreements would fall away.
>
> 15.2 In this regard I say that all agreements contain the following clause (I refer, as an example, to clauses 6.3 and 6.3.1 to 6.3.5 of the said agreement number 1). The latter clauses provide as follows:
>
> > '*6.3 This agreement is complemented by 4 other agreements (totalling 5 agreement). The 5 agreements are generally and individually referred to as:*
> >
> > *6.3.1 the C Maree sale of membership interest agreement (Multilayer CC);*
> >
> > *6.3.2 the C Breedt sale of membership interest agreement (Multilayer CC);*
> >
> > *6.3.3 the Wes-Transvaal Securitisation Services (Pty) Ltd agreement;*
> >
> > *6.3.4 the Wes-Transvaal Guarding agreement; and*
> >
> > *6.3.5 the Jimmy Security CC agreement*.'
>
> 15.3 Clause 6.4 of the agreement number 1 is also relevant in this context and reads:
>
> > '*If a party to thus agreement breach any of his/her/its obligations in terms hereof and the agreement is cancelled by the aggrieved party (as regulated hereinabove), the aggrieved party is entitled to also, at its/his/her sole and absolute discretion, cancel all the other contracts referred to hereinabove. To this end, the parties agree that breach of any of the party's obligations in terms of this agreement will constitute a breach of the terms of the other agreements*.'

15.4 For the sake of clarity I reiterate that all the other agreements have clauses (although differently numbered) which are identically worded as the clauses referred to in the previous two sub-paragraphs mutatis mutandis to provide for the relevant changes of parties etc.

15.5 I therefore say that the agreements, properly interpreted, provide that if one of the agreements would fall away, the rest of the agreements would also fall away.

16. Again acting on legal advice, I respectfully say that the said agreement number 1, referred to above, is for at least three reasons invalid from its beginning (void ab initio).

16.1 Firstly, in terms of this agreement I sold my 49% membership interest in Jimmy's Security CC to an entity described in the agreement as a company: Lynx Secure (Pty) Ltd (the third respondent). In this regard I refer to the following further facts:

> 16.1.1 A company is not in law entitled to hold any membership in a close corporation. Section 29(1) of the Close Corporation Act, 1984 (Act Number 69 of 1984) in this regard provides:
>
> *'(1) Subject to subsection (1A) or (2)(b) and (c), only natural persons may be members of a corporation and no juristic person or trustee of a trust inter vivos in that capacity shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member's interest in a corporation.'*
>
> 16.1.2 The exceptions referred to in sub-sections (1)(A) and 2(b) and (c) of the latter section are not relevant for present purposes.
>
> 16.1.3 Consequently the third respondent company (Lynx) was not capable in law to enter into that agreement which renders the agreement null and void.

16.2 Secondly, there is a further reason why the said agreement number 1 is null and void to which I now refer.

> 16.2.1 At the time when he agreement was entered into, Mr Jim Molefe (5th respondent) was the holder of 51% of the membership interest in the said close corporation (Jimmy's Security CC). This fact appears also from the relevant CIPC document (Annexure FA8 hereto).

16.2.2 Mr Molefe was not a party to that agreement and he also had not consented to the sale of my 49% membership interest.

16.2.3 Section 37 of the said Close Corporation Act in this regard provides as follows:

'*Every disposition by a member of a corporation of his or her interest, or a portion thereof, in the corporation, other than a disposition provided for in section 34, 35 or 36, whether to the corporation, any other member or any other person qualifying for membership in terms of section 29, shall be done –*

(a) in accordance with the association agreements (if any); or

(b) *with the consent of every other member of the corporation: Provided that no member's interest shall be acquired by the corporation unless it has one or more other members*.'

16.2.4 I confirm that no 'association agreement' as contemplated in the latter section was entered into.

16.2.5 I am advised that our courts have ruled that a sale of membership interest in conflict with the latter provisions is invalid, i.e null and void ab initio.

16.3 Thirdly, the said contract number 1 is null and void for a further reason to which I now refer.

16.3.1 In terms of the agreement the purchaser is Lynx Secure (Pty) Ltd with registration number 2017/207581/07, which I have referred to herein above as the third respondent.

16.3.2 However, according to the relevant CIPC report (Annexure FA1 hereto) the latter registration number was allocated in respect of the first respondent, being 'Lynx Intelligent Solutions (Pty) Ltd'.

16.3.3 My said attorney could not find a registered company with the name and number of the third respondent and it therefore appears as if the third respondent was not, and is not in existence as a legal entity.

16.3.4 I am advised that where a party to an agreement does not exist at the time when the agreement is entered into, the agreement is null and void ab initio.

16.4 If it is indeed so that Lynx Secure (Pty) Ltd (the third respondent) has not been duly registered as a company, then and in such event and for the reasons stated in paragraph 16.3.4 above, the following agreements are also null and void ab initio since they have also been concluded with Lynx Secure (Pty) Ltd (which apparently does not exist):

(a) Agreement number 4 (the sale of the assets in WTSD)

(b) Agreement number 5 (the sale of the assets in WTSS Guard (Pty) Ltd.

16.5 The applicants respectfully reiterate that they are not legally trained, that, at the time when the said agreements were entered into, they were not aware of the said illegal status of the agreements and that, had they been aware thereof, they would not have entered into the agreements."

[26] As the full payment had stopped, the applicants made several demands for payment. However, there was no proper response to the demands. The applicants have found out that some of the clients who were with second respondent have terminated their contracts with him due to lack of proper service. The applicant launched this application on urgent basis with the fear that the second respondent would dispose of the assets once served with the notice of motion.

First, Second, Sixth, Ninth to Tenth Respondents' case (Respondents)

[27] Only these respondents filed an answering affidavit which is titled combined answering affidavit. Purely from a commercial and costs perspective, the respondents elected not to oppose the urgent relief under part A, but requested that costs thereof be reserved. It is the respondents' view that there was no urgency and that part A was an abuse of court process. The applicants did not comply with the provisions of rule 6(12)(a) or (b).

[28] With regard to part B, prayer 1, only "FA3" could notionally be invalid ab initio. With regard to "FA4" to "FA7", not only were the agreements valid

but both sets of parties performed in full and the agreements were perfecta. The applicants are estopped from raising any supposed invalidity in respect thereof.

[29] In respect of prayer 2, the applicants do not have locus standi to claim the assets as they were never owners or possessors of such assets. The sole allegation applicants make is that the assets were in possession of the sixth and ninth respondents. No assets were listed in any of the annexures in clause 1.1 of the agreements. The applicants admitted to this in the rule 35(12) notice. The relief is accordingly unenforceable. In respect of assets which were handed over to first respondent, same were handed over pursuant to a real agreement, as such ownership of the said assets was transferred to first respondent. The applicants have no valid legal right to it.

[30] There is no record of which monitoring clients were those of the sixth and ninth respondents as they now belong to first respondent. There is no way to identify same and they have been mixed with those already existing clients of the first respondent. In the event of it being found that there is a basis to order restitution the applicants have not tendered restitution of money they have received by monthly payments, which, on their version is R 5 572 695, 94 but on respondents' version is R 6 451 037, 41. In addition it is common cause that there was a cash deposit of R 2 000 000, 00 in contract 1. In respect of prayer 3, the applicants do not have locus standi to act on behalf of fourth respondent. With regard to prayer 4 and contract 4, the applicant and second respondent acting on behalf of himself, seventh and eighth respondents entered into an oral agreement whereby the membership interest of sixth respondent was transferred to second respondent.

[31] With regard to prayers 5 and 7, paragraph 5.4 of applicants constitutes repudiation. The second respondent has been advised by the eighth respondent that should contract 3 be declared void, the eighth respondent accepts same and tenders return of members' interest to third applicant and to sign all documents necessary. The business relationship in terms of which the eleventh respondent received membership interest in tenth respondent has ended and it is agreed that the eleventh respondent's membership interest be returned. The second respondent is to receive 17% of the members' interest while the third applicant is to receive 16% members interest.

[32] In respect of prayers 6 and 7, subsequent to contract 5, the second applicant and second respondent entered into an oral agreement whereby the shares of the ninth respondent were transferred to the second respondent and for the second applicant to resign as director. What the applicants seek is contrary to the provisions of Companies Act 71 of 2008 and there is no basis in law pleaded that justifies the relief claimed. Prayers 7 to 9 are doomed to fail due to the previous relief's demise.

[33] The second respondent denies conducting business under the first respondent. The first respondent is the one conducting security business under the name and style of Lynx Secure. There is no juristic person known as Lynx Secure (Pty) Ltd. "Lynx Secure" is the trading name of the first respondent. Notice to oppose was given purely out of an abundance of caution so that the applicants could not invoke the provisions of rule 14. It is denied that the applicants did not read the contracts that they signed. The eleventh respondent no longer intends to be involved in the business of tenth respondent.

[34] The respondents deny not having made full payment of the purchase price. The applicants have sold and transferred ownership of the entities. With regard to conclusion of the agreements, it appears that there was a great deal of confusion by Mr Le Roux and his co-author by incorrectly recording the first respondent's trading name together with abbreviation "(Pty) Ltd". As a layman, the second respondent trusted that there was nothing untoward by recording the trading name of the company following the said abbreviations. The agreements were not drafted by Mr Le Roux alone. The agreements were drafted by the son-in-law of the first applicant, who is also the brother-in-law of the second applicant and husband to the third applicant. The said son-in-law of the first applicant is a practising advocate.

[35] The terms of "FA3" to "FA5" are admitted as pleaded. In respect of "FA6", the agreement was conclude between the sixth respondent and first respondent trading as Lynx Secure. The error in the description of the first respondent was incorporated into the agreement. After conclusion of contract number 4 (FA6) no actual agreements with customers were provided to the first respondent. The first applicant eventually provided first respondent with the former accounting software, pastel and the alarm monitoring software, listener, from which some of the customers of the sixth respondent could be identified and approached to conclude new contracts with first respondent.

[36] The first respondent uses Sage as its accounting program and en Watch Manager as its alarm monitoring program and no longer has the former programs used by the sixth respondent. Whichever clients were identified and with whom subsequent contracts were concluded with first respondent is impossible to identify. There is no way of knowing which of the clients

were previously the clients of sixth respondent as clients who were taken over were mixed with first respondent's clientele. Contracts are also cancelled often, whether due to non-payment or because a customer no longer wishes to make use of the services of first respondent. Save for two repeaters, all of the computers and electronic equipment of the sixth respondent had been replaced and updated and no longer exists or is in the first respondent's possession.

[37] The first respondent, in a separate transaction, did acquire some bakkies on 1 March 2021 and the transaction was perfected. However, the said bakkies have since been written off due to odometer readings in excess of 150 000km and are no longer in first respondent's possession. The first respondent is in possession of the 21 firearms. The terms of "FA7" are admitted except that there was no assets listed in the annexure. The applicants were aware that they had to transfer their membership interests.

[38] It would be nonsensical for the business of fourth respondent to be transferred together with membership interest, without the members to whom it was transferred to be entitled to conduct its business as members. Until the membership interest was paid for, the transfer constituted a cession in securitatem debiti in the form of an out and out cession. On 2 September 2020 at Lichtenburg, the first applicant and second respondent orally agreed that second respondent would acquire 100% members interest in sixth respondent at a nominal amount in cash. The members interest has since been transferred to seventh and eighth respondents. The eighth respondent is in the process of transferring his membership interest back to second respondent. A copy of the minutes of sixth respondent dated 2 September 2020 is attached as annexure "AA3". An oral agreement was also concluded between second applicant and second respondent where it

was agreed that second respondent would become sole shareholder of ninth respondent.

[39] It is common cause that an amount of R 2 000 000, 00 deposit was paid in respect of contract number 1. The first respondent and second respondent still had to pay R 1 000 000, 00 in respect of contract number 1. In respect of contract 2 an amount of R 3 500 000, 00. An amount of R 182 532, 17 in respect of contract 4. In respect of contract 5 an amount of R 968 375, 13. That gives a total of R 5 650 783, 04.

[40] On applicants' own version, between the first respondent and second respondent, they paid a total amount of R 5 572 695, 94 (38 instalments from the first instalment due in September 2020, until 30 November 2023 equates to 38 payments of R 100 375, 63 and 48 instalments from the first instalment due in September 2020 until September 2024 being the date of the founding affidavit, equates to 48 payments of R 36 000, 00 and 10 instalments since December 2023 to date of R 3 042, 20). The respondents' version is that the first respondent has paid first applicant an amount of R 6 451 037, 41. Not only was more paid to what the first and second applicants were entitled to, but there is no tender for repayment of the amount of R 8 451 037, 41.

[41] With regard to paragraphs 15.1 to 15.5 of the founding affidavit, the clauses are limited to a breach of the terms thereof and do not pertain to any voidness ab initio due to invalidity. In addition, the clause could only find application in respect of instances where the aggrieved party is also a party to the other contracts, otherwise that party would have no rights insofar as that contract is concerned.

[42] The respondents admit paragraphs 16.1 and 16.2 of the founding affidavit. With regard to 16.3 to 16.5, the respondents state that the contracts stand to be rectified should the need arise. The parties were satisfied to perform in terms of the contracts for a period of four years and applicants cannot now, subsequent to representing their satisfaction, wish to have the fourth and fifth agreements declared null and void ab initio. By the first and second applicants delivering assets in respect of the said agreements and accepting payment for over a period of four years, represented that they would be bound by the said agreements.

[43] The first respondent accepted as correct, and duly acted on the correctness of such representation and made payment in respect of such agreements to its detriment in that, it shall be impoverished in the amounts set out above, as well as other significant amounts, including R 65 000, 00 in respect of the default judgment which second respondent had to service and also debit orders to the tune of R 200 000, 00 shortly after the implementation of contracts, which was the responsibility of first applicant at the time.

[44] The aforesaid representation was negligently made (if negligence is a requirement to a successful invocation of the doctrine of estoppel) as the applicants were free to conduct a company search in respect of the first respondent or the non-existent third respondent, but clearly failed to do so. They were also free to record that the identity of the purchaser was a material terms, but they did not. An error in persona on the erroneous description of the first respondent was not material to the agreement and as such, they are patently not void ab initio. To the extent required, the applicants are estopped from relying on the misdescription of first respondent as a basis to contend that the fourth and fifth contracts are void ab initio.

Eighth respondent's affidavit

[45] The eighth respondent consents to prayer 1 in part B in so far as it relates to "FA5". He also consents to prayers 5(a) and (b) in so far as it relates to him. Should it be found that the agreement cannot be declared void and that the third applicant's application constitutes repudiation of agreement number 3, the eighth respondent accepts such repudiation and tenders transfer of his membership back to third applicant. He has signed documentation to transfer 50% of his membership to third applicant and balance to second respondent. He did not make any payment in terms of the void agreements.

Eleventh respondent's affidavit

[46] The eleventh respondent states that he does not have substantial interest in the litigation as he only became member of tenth respondent in 2021 through a separate agreement to which the applicants were not party. The membership has formally been terminated by oral agreement, but has not been formally reduced to writing and filed with CIPC. He does not have objection if his membership in tenth respondent is transferred to whomever as he has resigned.

Applicant's reply

[47] The respondents have admitted that the agreement "FA3" is void ab initio. The eighth respondent also has accepted that the agreement "FA5" is void ab initio. The applicants deny the existence of any agreements other than the written agreements referred to in the founding affidavit. The agreements, specifically clause 8 of FA3, contains a whole agreement clause. Other clauses provide that no amendment to the agreement is valid unless reduced in writing.

[48] In respect of monitoring clients there were contracts in place before transactions between the parties. The second respondent was provided with the said contracts and is able to identify the clients. In the case of voidness of the agreements, there is no duty on applicants to tender restitution. In the case of the agreements found to be valid and enforceable, clause 6.8 of FA3 states that in case of breach by purchaser of any of its obligations, all amounts paid to the seller will be forfeited. The other agreements contain the similar clauses.

[49] The first applicant denies that his son-in-law drafted the agreements and attached an affidavit by Mr Le Roux who was the attorney for second respondent who confirms having drafted the agreements after negotiations between the parties. The first applicant has printed the contracts of clients from his back-up computer that reflects approximately 1700 clients. This printout can be made available to second respondent. The averments relating to estoppel are denied as it was the second respondent who misled the applicants by representing to them that the third respondent is a legal entity as described in the agreements.

The authorities and reasons for judgment

[50] I will deal with each contract and legal principles applicable thereto. I will refer to the contracts as cited in applicant's papers. FA3 is contract 1. FA4 is contract 2. FA5 is contract 3. FA6 is contract 4. FA7 is contract 5.

FA3 and FA5

[51] It is the applicant's case that the third respondent does not exist and that even if it existed, it cannot hold membership interest in a close corporation being the fourth respondent. The respondents confirmed that the third respondent does not exist and admitted to its non-compliance with the Close

Corporations Act. The respondents further admitted that FA3 (contract 1) is void ab initio (paragraph 7.1.1 of answering affidavit). The third respondent itself did not participate or file any affidavit in this matter. As such, there is no version before me on behalf of the third respondent. I find that the applicants have succeeded in terms of prayers 1; 3; 7; 8 and 9 in respect of FA3.

[52] With regard to FA5, the eighth respondent was the only purchaser on FA5. The second respondent was not party to this contract. It is not clear how he (second respondent) acquired members interest in this contract. There is no evidence of sale between second respondent and eighth respondent, except what eighth respondent has stated in his affidavit filed as annexure "AA18" to answering affidavit. The eighth respondent has further consented that prayers 1; 5(a) and (b) of the notice of motion can be granted. I find that the applicants have succeeded in terms of prayers 1; 5(a) and (b); 7; 8 and 9 in respect of FA5.

FA4

[53] This is an agreement entered into by and between the second applicant and second respondent. It seems, through a separate agreement to which the second applicant was not a party, the eighth and eleventh respondents obtained membership interests. The eighth and eleventh respondents have filed affidavits in which they do not oppose the application, however, the eighth respondent indicated that his membership interests be distributed to include the second respondent. The second respondent has not filed any counter application.

[54] The authorities are clear that where documents are interconnected, they form a composite transaction and must be read as a whole to understand the full

scope of obligations. The primary source of negotiation seems to be the letter FA2 and contract 1 which is FA3. All the contracts contain almost similar clauses, although not numbered the same. The legal position when it comes to interpretation was stated in the case of ***Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)*** at par 18 by Wallis JA as follows:

> "[18] Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in *Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School.* The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. <u>In a contractual context it is to make a contract for the parties other than the one they in fact made</u>. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document." (Emphasis)

[55] From the history of the contracts, it seems the first applicant negotiated all contracts on behalf of all applicants, although each applicant signed the relevant contract in which they are stakeholders. One of the documents relating to the coming into existence of the contracts is the letter written by the respondents' attorney and attached as FA2. This document must be read together with the contracts and it shows that they were intended to be taken as a whole in respect of the transaction negotiated. Therefore, the businesslike position of these contracts is that one affects the others. I do not think the applicants would have agreed to sell one business if the respondents did not intend purchasing all other businesses. More so since the third applicant was never involved in the business and it was intended that the first applicant would take over her stake in the businesses. It is only natural that if one contract collapsed, it would have an effect on the others.

[56] FA3 and FA5 are void ab initio. The third applicant was a member of the tenth respondent. Clause 14.3 of FA4, (equivalent and verbatim to clause 6.3 of FA3), is very important and contains the words

> "14.3 This agreement is complemented by 4 other agreements (totalling 5 agreements). The 5 agreements are generally and individually referred to as:
> 14.3.1 the MC Maree sale of membership interest agreement (Multilayer CC);
> 14.3.2 the C Breedt sale of membership interest agreement (Multilayer CC);
> 14.3.3 the Wes-Transvaal Securitisation Services (Pty) Ltd agreement;
> 14.3.4 the Wes-Transvaal Guarding agreement; and
> 14.3.5 the Jimmy Security CC agreement."

[57] This together with clause 14.4, (equivalent and verbatim to clause 6.4 of FA3), which states that:

> "If a party to this agreement breach any of his/her/its obligations in terms hereof and the agreement is cancelled by the aggrieved party (as regulated hereinabove), the aggrieved party is entitled to also, at its/his/her sole and

> absolute discretion, cancel all the other contracts referred to hereinabove. To this end, the parties agree that breach of any of the party's obligations in terms of this agreement will constitute a breach of the terms of the other agreements."

[58] The choice of words is very important to show what the parties intended. It is clear that the 5 agreements have to complement each other and find general application to each other. As individual as they are, they have a general application to an extent. If we are to give commercial sense to these agreements, they have to be read together. More so since they were negotiated as a group and not individually. The contracts were drafted by and negotiated by the second respondent's own attorneys and therefore he cannot easily be absolved from his attorneys actions. I therefore find that the applicants have succeeded in terms of prayers 1; 6(a) and (b); 7; 8 and 9 in respect of FA4.

FA6

[59] In this agreement the third respondent was the purchaser and bought movable assets from sixth respondent. The applicants want return of the assets. The list of assets are identified on clause 1.1 of the agreement. I have already found that the purchaser (third respondent) is non-existent and has not participated in these proceedings. The respondents have not sought rectification of the contracts, despite making allegations to the effect that the first respondent is the actual purchaser.

[60] Clause 9.3 of FA6, (equivalent and verbatim to clause 6.3 of FA3), is very important and contains the words:

> "9.3 This agreement is complemented by 4 other agreements (totalling 5 agreements). The 5 agreements are generally and individually referred to as:
>
> 9.3.1 the MC Maree sale of membership interest agreement (Multilayer CC);
>
> 9.3.2 the C Breedt sale of membership interest agreement (Multilayer CC);

9.3.3 the Wes-Transvaal Securitisation Services (Pty) Ltd agreement;

9.3.4 the Wes-Transvaal Guarding agreement; and

9.3.5 the Jimmy Security CC agreement."

[61] This together with clause 9.4, (equivalent and verbatim to clause 6.4 of FA3), which states that:

> "If a party to this agreement breach any of his/her/its obligations in terms hereof and the agreement is cancelled by the aggrieved party (as regulated hereinabove), the aggrieved party is entitled to also, at its/his/her sole and absolute discretion, cancel all the other contracts referred to hereinabove. To this end, the parties agree that breach of any of the party's obligations in terms of this agreement will constitute a breach of the terms of the other agreements."

I find that the applicants have succeeded in terms of prayers 1; 2(a) and (b); 7; 8 and 9 in respect of FA6.

FA7

[62] In this agreement the third respondent was the purchaser and bought movable assets from ninth respondent. The applicants want return of the assets. The list of assets are identified on clause 1.1 of the agreement. I have already found that the purchaser (third respondent) is non-existent and has not participated in these proceedings. The respondents have not sought rectification of the contracts, despite making allegations to the effect that the first respondent is the actual purchaser.

[63] Clause 9.3 of FA6, (equivalent and verbatim to clause 6.3 of FA3), is very important and contains the words

> "9.3 This agreement is complemented by 4 other agreements (totalling 5 agreements). The 5 agreements are generally and individually referred to as:

9.3.1 the MC Maree sale of membership interest agreement (Multilayer CC);

9.3.2 the C Breedt sale of membership interest agreement (Multilayer CC);

9.3.3 the Wes-Transvaal Securitisation Services (Pty) Ltd agreement;

9.3.4 the Wes-Transvaal Guarding agreement; and

9.3.5 the Jimmy Security CC agreement."

[64] This together with clause 9.4, (equivalent and verbatim to clause 6.4 of FA3), which states that:

> "If a party to this agreement breach any of his/her/its obligations in terms hereof and the agreement is cancelled by the aggrieved party (as regulated hereinabove), the aggrieved party is entitled to also, at its/his/her sole and absolute discretion, cancel all the other contracts referred to hereinabove. To this end, the parties agree that breach of any of the party's obligations in terms of this agreement will constitute a breach of the terms of the other agreements."

I find that the applicants have succeeded in terms of prayers 1; 2(a) and (b); 7; 8 and 9 in respect of FA7.

[65] The assets were acquired through written agreements and are listed at paragraphs 1.1 of FA6 and FA7 respectively. First applicant has pleaded that the assets were in his possession at all material times at his business address. The second respondent alludes to a separate agreement, but has not provided proper evidence on this. The second respondent states that the assets are not identifiable as they have been mixed with the first respondent's assets. However, the second respondent does not inform me when did it discontinue the old programs. Where are the hardware and software? Have they been destroyed or untraceable? Nothing is said on this. How do I know that it is impossible to get this information. Be that as it may, the applicants have stated that they have recovered the information on the assets from their back-up computer systems. Therefore, it would not be impossible for respondents to identify the assets.

Rectification

[66] The respondents have not sought or raised rectification as a defence or counterclaim. Instead, the respondents indicated that rectification will be sought at the relevant forum, should the need arise (par 29.2 of answering affidavit). ***Amler's Precedents of Pleadings, LTC Harms*** states as follows on rectification:

> "The object of rectification is to have a written contract conform to the common intention of the parties. Rectification overrides the parol-evidence rule. A party who wishes to rely on rectification must claim rectification in the particulars of claim, the plea or a counterclaim. That party bears the onus of proof and must prove its case clearly. A defendant may rely on rectification as a defence without having to claim rectification. The facts necessary to establish rectification must be alleged in the plea. The court is then asked to adjudicate the matter on the contract as rectified"

Sixth and Ninth respondent

[67] The second respondent somehow obtained shares in the ninth respondent. The sale agreements were only for fourth, sixth and tenth respondents in line with FA3, FA4 and FA5. FA6 and FA7 relate to sale of assets and not member interest. The second respondent states that this occurred pursuant to a verbal agreement between the parties, which is denied by the applicants. The second respondent has not filed a counterclaim on this aspect. The documents annexed to respondents' answering affidavit as AA1 to AA9 are in respect of sixth respondent and not the ninth respondent. The applicant has informed me that the said annexures AA1 to AA9 were signed to give effect to the original agreements which have been found to be void ab initio. I am therefore not satisfied that there was an oral agreement between the parties in respect of these entities. I find that the applicants have succeeded in terms of prayers 1; 4(a) and (b); 6(a) and (b); 7; 8 and 9 in respect of the sixth and ninth respondents.

Restitution in contract law

[68] The respondents claim that the applicants seek to have the agreements declared void ab initio without tendering restitution. The applicants claimed breach in the alternative. My findings in casu are not based on breach but on voidness of the contracts (main claim). The authorities are clear that in void contracts, the remedy available to the aggrieved party is unjust enrichment. Restitution is not available in such cases. This approach was postulated in the case of ***Kudu Granite Operations (Pty) Ltd v Caterna Ltd 2003 (5) SA 193 (SCA)*** at par 15 where the court stated as follows:

> "[15] Kudu's first contention is well-founded. There is a material difference between suing on a contract for damages following upon cancellation for breach by the other party (as in *Baker v Probert* 1985 (3) SA 429 (A), a judgment relied on by the Court *a quo*) and having to concede that a contract in which the claim had its foundation, which has not been breached by either party, is of no force and effect. <u>The first-mentioned scenario gives rise to a distinct contractual remedy: *Baker* at 439 A, and restitution may provide a proper measure or substitute for the innocent party's damages. The second situation has been recognised since Roman times as one in which the contract gives rise to no rights of action and such remedy as exists is to be sought in unjust enrichment, an equitable remedy in which the contractual provisions are largely irrelevant</u>. As Van den Heever J said in *Pucjlowski v Johnston's Executors* 1946 WLD 1 at 6:
>
> 'The object of condiction is the recovery of property in which ownership has been transferred pursuant to a juristic act which was *ab initio* unenforceable or has subsequently become inoperative (*causa non secuta*; *causa finita*).'" (Emphasis)

Contravention of the Companies Act 71 of 2008

[69] Although the respondents have alleged that what the applicants are doing is in contravention of the Companies Act, they have failed to refer to a specific

article/section being contravened. I find that there is nothing in contravention of the Companies Act in this matter.

Estoppel

[70] The respondents have raised estoppel, that to the extent required, the applicants are estopped from relying on the misdescription of first respondent as a basis to contend that the fourth and fifth contracts are void ab initio. I find this defence not available to the respondents. This is because the applicants always acted on the understanding and representation by the respondents that the third respondent was an existing entity.

[71] The principles on estoppel were discussed in the case of ***Africast (Pty) Ltd v Pangbourne Properties Ltd 2 All SA 574 (SGSJ)*** at paragraphs 44 to 45 the court held as follows:

> "[44] Thus, so it is argued on defendant's behalf there was no 'deception' that misled the plaintiff, and without a deception and reasonableness in the estoppel asserter's reliance on the deception, there can be no room for estoppel to be invoked. (See: Pangbourne Properties Ltd v Basinview Properties (Pty) Ltd (supra) at [16] and [17]; andRabie & Sonnekus, The Law of Estoppel in South Africa, Butterworths (2nd Edition, 2000) at p 63, Para 5.1, where the authors state:
>
> "In general, the premise applicable in all circumstances is that the estoppel assertor can only successfully rely on estoppel if the reasonable person in the street, in the position of the estoppel assertor would also have been misled by the conduct on which the estoppel is founded. To determine whether the reasonable person would have been misled, it might be helpful to answer the applicable question in the negative: The reasonable person would have been misled if it can be ascertained that the circumstances were such that they would have put the reasonable person on his guard and compelled him to ask more questions before accepting the allegations or representations of the representor at face value. If in reality the estoppel assertor had under the same circumstances

neglected to ask for further explanation or had not been on his guard due to the fact that he tends to be more gullible than reasonable person would have been, then the conduct of the representor is not to objectively be classified as unreasonable or wrongful, and the reliance on estoppel must fail. It has already been emphasised that the doctrine of estoppel cannot be misused to protect the naïve or gullible against his own stupidity. Even the man in the street must take cognisance of facts that may have a bearing on his legal position.

Formulated otherwise, this qualification is also referred to when it is said that the reliance on representation must be reasonable.

The person who bases an estoppel on a representation made to him, must establish that he reasonably understood the representation in the sense contended for by him. It follows that he has to prove that his reliance on the representation was reasonable. He will therefore have to show that he did not know that the representation was untrue or incorrect, that he did not have information which put him upon enquiry, or, if he did, that he exercised reasonable care and diligence to learn the truth, and, generally that he was not mislead by a lack of reasonable care on his part."

(see too: LAWSA, Vol 9; 2nd Ed, (2005) *Estoppel* (Rabie & Daniels): Para 657.)

[45] Moreover, in my view, it seems plain that a 'misrepresentation' that qualifies to be a misrepresentation for the purposes of an estoppel must be a misrepresentation of a fact; ie, the estoppel denier must be shown to have initially told or insinuated by conduct, a falsehood or induced a reasonable belief in a falsehood. In this case, no misrepresentation of a fact is relied upon; ie that the suspensive condition was met. The defendant's 'belief' that it had a binding agreement, as evidenced by its common cause conduct, is invoked as the 'misrepresentation'. This, in my view, is not good enough. An estoppel cannot be raised against a party who says that it thought it had a contract but, it turns out that, in law, it was wrong to think so. In Hauptfleisch v Caledon Divisional Council **1963 (4) SA 53** (C) at 56H – 57 D it was held:

" The following statement of the doctrine of estoppel by Spencer Bower *Estoppel by Representation* para. 15, was cited, apparently with approval, by WATERMEYER, J.A. (as he then was) in *Union Government v Vianini Ferro-Concrete Pipes (Pty.) Ltd., supra* at p. 49:

'Where one person (the representor) has made a representation to another person (the representee) in words, or by acts and conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive), and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time and in the proper manner objects thereto.'

In amplification of this statement it may be emphasized that the representation must relate to a statement of an existing fact (see *Baumann v Thomas, supra* at p. 436; *Spencer Bower*, pp. 39 - 48; Halsbury, 3rd ed. vol. 15 pp. 224 - 5) and that a mere statement as to, for instance, a future intention will not found an estoppel (see *Kelsen v Imperial Tobacco Co. Ltd.*, 1957 (1) A.E.R. 343). The representation may be made expressly or by conduct. It must be made with the intention that it should be acted upon in the manner in which it was acted upon or the conduct of the representor must be such as to lead a reasonable man to take the representation to be true and believe that it was meant that he should act upon it in that manner (see *Halsbury*, 3rd ed., vol. 15 p. 228; *Service Motor Supplies* (1946) (*Pty.) Ltd v Hyper Investments (Pty.) Ltd.*, 1961 (4) SA 842 (AD) at p. 849). The person to whom the representation was made must act thereon in the manner intended and in doing so must alter his position to his prejudice. He must act upon the representation believing it to be true. If he knows, or believes, that the real facts are not as stated in the representation, he cannot be heard to say that he was induced to act to his prejudice on the faith of the representation. (*Spencer Bower*, paras. 137, 138, 199; *Halsbury*, 3rd ed. vol. 15 pp. 229 - 30; cf. *Angehrn & Piel v Federal Cold Storage Co. Ltd.*, 1908 T.S. 761)."

[72] The respondents' defence of estoppel cannot succeed. I find that the applicants have succeeded in all the claims in this matter. Only costs remain for determination.

Costs

[73] I have to deal with the costs of part A. If part A was granted by agreement the issue of urgency has fallen off. I do not know what influenced the parties to agree as that affected urgency. Nothing much has been placed before me in respect of argument on costs relating to part A. The respondents state that the applicants are not entitled to same while the applicants state that the contracts provided that they can approach the court on urgent basis. The fact that a contract states that a party can approach a court on urgent basis does not mean the court will treat the matter as urgent. Urgency is a determination that a court has to make. The order in part A was granted by agreement between the parties. I therefore order each party to pay their own costs in respect of part A.

[74] It is common cause that the third respondent is non-existent and has not participated in these proceedings. Therefore, making an order against it would be a futile exercise. Courts must make orders which are practical and executable. The other respondents raised defences on issues which they could not succeed. Firstly, the contracts are interlinked and it should have occurred to the respondents that one contract affects the others. Secondly, the respondents relied on restitution in a case where unjust enrichment could or might have been a better option. This without filing a counter application. The respondents also failed on their defence of estoppel. On these basis I see no reason why costs should not follow the suit.

<u>Order</u>

[75] I therefore make an order as follows:

1. Each party to pay their own costs in respect of part A.
2. The application is granted in respect of prayers 1 to 9 of the amended notice of motion.
3. The first and second respondents are ordered, jointly and severally the one paying the other to be absolved, to pay costs on scale C including costs of counsel.

[redacted]

J. T. MAODI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA, NORTH WEST DIVISION, MAHIKENG

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Date of Judgment:	26 March 2026