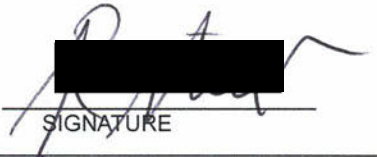


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A2024-056855

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED
24 APRIL 2026	
	
SIGNATURE	

In the matter between:

SHORELINE AUCTIONEERS CC

Appellant

and

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Respondent

JUDGMENT

STRYDOM, J

- [1] This is an appeal, with leave granted by the court *a quo*, against the judgment of the learned Judge, in which the just and equitable compensation payable to the appellant upon the expropriation of its immovable property was determined

to be R2 000 000 (two million rand). The appellant contends that the learned Judge materially misdirected herself in law and in the assessment of the evidence in arriving at that figure, and that the just and equitable compensation ought to be determined on appeal in the amount of R8 400 000 (eight million four hundred thousand rand), being the market value agreed upon by the parties. At the conclusion of the hearing before this court, counsel were *ad idem* that the matter be remitted to the court *a quo* for a rehearing.

- [2] The appellant, Shoreline Auctioneers CC, was the registered owner of the immovable property described as the Remaining Extent of Portion 144 of the Farm Doornfontein 92 IR, situated at 14 Cleveland Road, Cleveland Extension 6, Johannesburg ('the Property'). The appellant bought the Property at a public auction on 2 August 2007 for a purchase price of R1 010 000 (one million and ten thousand rand).
- [3] At the time of the appellant's acquisition, the Property was occupied by unlawful occupiers. In January 2009, the appellant instituted eviction proceedings against those occupiers. An order for eviction was ultimately granted by Victor J on 23 February 2015, some six years after the proceedings were instituted.
- [4] Subsequently, the respondent, the City of Johannesburg Metropolitan Municipality ('the Municipality'), resolved to expropriate the Property for the purpose of providing the unlawful occupiers with land for housing. The Municipality initiated the expropriation process in accordance with the provisions of the Expropriation Act 63 of 1975 (since repealed but applicable to these proceedings, given the timeline ('the 1975 Act')).
- [5] The Municipality offered the appellant compensation of R2 000 000 (two million rand). The appellant rejected this offer as inadequate. Unable to reach an agreement, the appellant instituted action proceedings in the court *a quo* for the determination of just and equitable compensation as contemplated in section 12 of the 1975 Act, read with section 25(3) of the Constitution of the Republic of South Africa, 1996 ('the Constitution').
- [6] When the parties could not agree on what constituted just and equitable compensation, both parties commissioned expert valuers to determine the

Property's market value. The respondent's expert determined the market value at R8 400 000. The appellant's expert determined it at R9 118 800. On 6 June 2021, the respective experts met and compiled a joint minute in which they agreed that the method that they had both applied was "the most appropriate" and both conceded, given the limited quantum difference between them, that "either valuation could be correct", although "there is a high probability that the market value lies somewhere in between".

- [7] In October 2022, before the imminent trial, the appellant amended its particulars of claim to reduce the quantum of its claim from R9 118 800 to R8 400 000, adopting the respondent's expert valuation. Notably, this amendment meant that the appellant's claim was now pegged to the precise market value figure set out in the respondent's own expert report.
- [8] In a joint trial practice note prepared and signed by both parties' legal representatives prior to the trial, the parties expressly referred to and recorded certain contents of the joint minute, noted the amendment of the plaintiff's claim, and stated that it would be submitted at the trial that it was common cause that the property's market value was R8 400 000.00.
- [9] Despite this, the parties correctly recognised that "[t]he amount of compensation payable by the Defendant to the Plaintiff pursuant to the expropriation" remained the issue in dispute and indicated that the estimated duration of the trial was 2 days. It was common cause that the learned judge issued a directive to counsel before the trial that they should come prepared to run a trial, as the amount of compensation (i.e. as opposed to the market value) was still in dispute.

What transpired at the trial

- [10] Neither party elected to present any evidence at the trial, and the court did not require them to do so. In addressing the court, the appellant's legal representative submitted a draft order to the learned Judge, stipulating R8 400 000.00 as the amount of compensation payable to the appellant, based on the experts' agreement regarding the market value.

- [11] The court *a quo* was referred to the Constitutional Court's ("CC") judgment in the matter of *Du Toit v Minister of Transport* 2006 (1) SA 297 (CC)¹ where the majority of the CC held, at paragraphs [35] and [37], that, as the first step, what compensation is payable under the 1975 Act, and as the second, to consider if that amount is just and equitable compensation under section 25(3) of the Constitution. This section provides as follows:

*"The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including, (a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation."*²

- [12] The appellant's counsel then pertinently pointed out that "there is no evidence put before Your Ladyship from the [Municipality's] side" as to the other factors referred to in s 25(3) and that the Court was thus "left with only the evaluation and that seems to be ... common cause". When the learned Judge observed that she had considered the summaries of both of the expert valuers and noted that neither had taken any of the s 25(3) factors other than market value into account, the appellant's counsel reiterated that "your Ladyship is left with [the] factors that might have been put before your Ladyship by the defendant. ... So now if Your Ladyship is not given those other factors which can further bring down that amount, Your Ladyship unfortunately is stuck with the market value and that must be the value that is then ordered ... but maybe my learned friend can address you more on that ...".
- [13] Counsel for the respondent, during his address to the court after the draft order was handed to the learned judge, proceeded to inform the court that she could accept that the market value of the property for the purposes of expropriation was the agreed amount of R8 400 000.00 and that this, together with the common cause fact that the purpose of the expropriation had been to provide

¹ *Du Toit v Minister of Transport* 2006 (1) SA 297 (CC).

² Section 25(3).

accommodation for the unlawful occupants of the Property, “are the factors that the court has to take into consideration”.

[14] The learned judge posed questions to counsel as to how she could determine just and equitable compensation with only an agreement on the market value. The learned judge pointed out that she must also consider the other criteria set out in section 25(3) of the Constitution. Counsel for the plaintiff then asked the court whether she would require counsel to provide her with a list of common-cause facts to assist the court in its determination. Although the learned judge declined this offer, counsel for the plaintiff nevertheless mentioned facts that he stated were common cause as per the pleadings in relation to each of the factors expressly set out in section 25(3) of the Constitution. The transcript of the hearing gives the impression that the learned Judge accepted the submissions: (i) that the market value had “been established”; (ii) that “there is certainly no evidence before Your Ladyship from the defendant ... that would reduce that amount of R8.4 million ... [a]nd by the same token there is no evidence that it should be higher”; and (iii) that the expert valuers would have exceeded the scope of their expertise had they been required to express opinions on matters other than the market value.

[15] Towards the end of the submissions advanced by counsel, the learned Judge expressly enquired whether both parties were satisfied that she could and should make her finding on the basis of “the evidence that is before me”, namely “your draft order and the points that you are agreeing upon”, and that there was no “other submission” that either counsel wished to make as to just and equitable compensation. Although both counsel confirmed this, the respondent's counsel indicated that he did not have ‘specific instructions’ to agree to the draft order, which included the figure of R8 400 000.00.

[16] The learned judge then stated that the court was enjoined by section 25(3) of the Constitution to “look at the evidence that is before me and this draft order to determine whether indeed the [agreed] amount for compensation is just and equitable”. Judgment was then reserved.

The judgment of the court a quo

[17] The court *a quo* delivered a comprehensive judgment. In her judgment, the learned Judge determined that the just and equitable amount of compensation was R2 000 000. In doing so, she rejected the market value as agreed upon by the respective experts of the parties, primarily because the valuation methodology that the joint minute records the experts as having agreed to be “most appropriate” was “unduly strained, if not inapplicable to the valuation of this property”. She also reasoned that even if she was wrong in this view (i.e., regarding the correct market valuation methodology), both experts had improperly “wished away” the potential geotechnical impediments to the development of the property, and that the market value would have had to be determined on the property's current use and not its potential development possibilities. She further held that the presence of unlawful occupiers on the land constituted an impediment to value, and that the appellant had purchased the property knowing of this occupation. In view of these concerns, the learned Judge reached the conclusion that “there is no evidence that has been placed before me to prove the actual financial loss ... occasioned by the expropriation”, and that “at best” the market price could only be determined with reference to the purchase price paid for the property together with inflationary increases. After referring to the remaining factors enumerated in section 25(3) of the Constitution (but without indicating whether she considered that these should be regarded as increasing or decreasing the amount of compensation), the learned Judge went ahead to determine what she perceived to be the just and equitable compensation. She made the following order:

- “1. The Defendant's offer of R2 000 000 (Two million Rands) as compensation to the plaintiff pursuant to the Expropriation is just and equitable.*
- 2. The Defendant is ordered to pay to the Plaintiff the remainder amount of R400 000, within 30 days from the date of this order*
- 3. The Defendant is ordered to pay the plaintiff an amount of R55 000 as solatium;*
- 4. The Defendant must pay interest temporae morae from 16 May 2017 to date of payment.*
- 5. Each party shall bear their own costs.”*

[18] In arriving at her judgment, the learned judge had access to the electronic platform, CaseLines, which contained the pleadings, the bundles of discovered documents, and the expert reports of both parties' potential witnesses. She scrutinized these reports, including a Geotechnical Report of an expert dealing with the geotechnical constraints posed by certain geotechnical conditions of the property, and made a finding of what she considered to be just and equitable compensation payable to the appellant.

The application for leave to appeal

[19] The appellant applied for leave to appeal. The application was opposed. The court *a quo* granted the appellant leave to appeal against the orders in paragraphs 1, 2, and 5 of the court order. In the judgment on leave to appeal, the court found that the appeal had a reasonable prospect of success on the ground that the learned judge should not have relied on the discovered documents and expert reports from various potential witnesses to arrive at her finding, as these documents did not constitute evidence before the court. She ordered the cost of the application for leave to appeal to be costs in the appeal.

The grounds of appeal

[20] Shortly before the appeal, the appellant amended its notice of appeal and filed further heads of argument. The late filing of these documents was condoned by this court. On behalf of the respondent, a further "note" was also provided to this court, which constituted further heads of argument. This court likewise, condoned the late filing of this document.

[21] The respondent in this "note" referred to its point *in limine* raised in its heads of argument and contended that the proceedings before the court *a quo* were irregular, as there was no compliance with Rule 33 of the Uniform Rules of Court insofar as a written statement of facts was not placed before the court for adjudication on points of law. It was asked that the matter be remitted back to the trial court. As to costs, it was stated that each party must pay its own costs, since both parties, through their legal representatives, contributed to the direction the trial took. The respondent annexed to this "note" a draft order in which this relief was sought.

[22] Considering the amended notice of appeal and the further heads of argument filed on behalf of the appellant, the appellant's case, in the main, was premised on two grounds, as set out in the amended notice of appeal:

- (a) That the court *a quo* should have accepted the agreed market value of the property in the amount of R8 400 000.00 and should have found that this amount constituted just and equitable compensation. A variation of the orders of the court *a quo* is sought to set aside paragraphs 1, 2 and 5 of the existing order and replace it with an order that provides for payment, interest, and costs to the appellant.
- (b) In the alternative, it asked for the setting aside of paragraphs 1, 2 and 5 of the order of the trial court on the basis that the trial court irregularly considered documents which were not properly placed before her through evidence; that the action be remitted to the trial court to be determined by a single judge and that all costs of the proceedings before the court *a quo* shall be costs in the cause, which costs are to be determined by the trial court.

[23] Before us, during the argument, the appellant abandoned reliance on the first ground of appeal as was contained in paragraphs 1 to 4 of the amended notice of appeal and referred to hereinabove as contained in paragraph (a). This left this court with the request to set aside the judgment of the court *a quo* and to remit the matter to a freshly constituted trial court. If this is done, it would not include paragraphs 3 and 4 of the order of the court *a quo*, as these orders were never the subject of the appeal.

Discussion

[24] I agree with the counsel for both parties that paragraphs 1, 2, and 5 of the existing order should be set aside for three reasons. The first is that the trial court relied on documentation that was never received in evidence before her. None of this "evidence" she relied upon to conclude that just and equitable compensation amounted to R2 000 000, had been formally admitted during a trial. Thus, she referred to evidence that was neither presented nor admitted at the trial.

- [25] The learned judge erred by doing this.³ Documents uploaded electronically onto a document storage platform are not evidence before the court. The ordinary rules of evidence would have to be followed for documents to be admitted into evidence. This was not done.
- [26] Secondly, in South African civil proceedings, the *Civil Proceedings Evidence Act 25 of 1965*,⁴ governs documentary evidence. Even where a document is sought to be tendered to prove the truth of its contents, the author must be called as a witness. If the author does not testify, the document constitutes hearsay and is inadmissible unless an exception applies, as outlined in section 3 of the *Law of Evidence Amendment Act 45 of 1988*.⁵
- [27] In the case of *Rautini v Passenger Rail Agency of South Africa* [2021] ZASCA 158 (8 November 2021),⁶ the Full Court relied on discovered medical and ambulance reports to reject the plaintiff's version of events, despite the authors of those reports not being called as witnesses. The SCA held this reliance to be unlawful. The SCA held that the medical records were hearsay evidence, on the basis that although it was agreed that the discovered documents were what they purported to be, the correctness of their contents was not admitted. Because the authors of the ambulance report and the medical records were not called as witnesses during the trial to give oral testimony, the contents of these documents remained hearsay evidence. The court held as follows at paragraph [12]:

"It is common cause that the respondent's counsel made no application for any of the hearsay evidence to be admitted in terms of s 3 of the Law of Evidence Amendment Act. In the circumstances, the full court's finding that material differences existed between the appellant's version and the medical records regarding where he fell from the train, the cause of his fall and his first lucid collection after the fall, was erroneous. The full court's reliance on hearsay evidence in that regard amounts to a material misdirection that vitiates its ultimate finding on the outcome of the appeal that was before it."

³ *Thomas v B.D. Sarens (Pty) Ltd* [2012] ZAGPJHC 161 at para 19.

⁴ 25/1965.

⁵ 45/1988.

⁶ *Rautini v Passenger Rail Agency of South Africa* [2021] ZASCA 158 (8 November 2021) [2021]JOL 51546 (SCA)

[28] Similarly, in the case of *Thomas v B.D. Sarens (Pty) Ltd* [2012] ZAGPJHC 161 at para 19,⁷ the court stated the following:

"Controversy also arose about the reference to documents in the bundle. The almost universal practice of preparing a bundle of all the documents that might be referred to in evidence is a boon to orderly litigation. However, it invariably occurs that not all the documents in a bundle are traversed in evidence. In my view, a document not traversed in evidence is not before the court, unless a prior agreement exists that it be admitted in a fashion other than through legitimate reference in evidence by a witness competent to comment thereon. The customary mantra that 'all documents in the bundle are what they purport to be without any admission to the truth of their contents' confers no evidential status on a document unless it is introduced through a witness capable of addressing the contents, called by one or other of the opposing parties."

[29] In the case of *Sheffryk v MEC for Police, Roads and Transport: Free State Province* [2022] ZAFSHC 142 (3 June 2022),⁸ the court stated the following in paragraph [1]:

"It is said that a document only proves what is written in it, but not the truth of what is written. Before the contents of a document may be presented as the truth, the admissibility requirement must be fulfilled... Because a document usually reflects somebody's knowledge and thoughts, particular care must be taken to ensure that it does not infringe the hearsay rule."

[30] Thirdly, the learned judge a quo's *mero motu* reliance on the documents and assessment of the expert reports in rejecting the appellant's experts' opinion regarding the market value of the property, infringed the principle of fairness in litigation. Counsel for the parties were not afforded an opportunity to address the court on the opinions expressed by the experts. While it is of course, correct that a trial court is not bound by an expert's opinion⁹ (even when it is agreed

⁷ *Thomas v B.D. Sarens (Pty) Ltd* [2012] ZAGPJHC 161 at para 19.

⁸ *Sheffryk v MEC for Police, Roads and Transport: Free State Province* [2022] ZAFSHC 142 (3 June 2022).

⁹ *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) at para 70. Approving *Thomas v B.D. Sarens* (above) para

with by an expert called for the other party),¹⁰ the Supreme Court of Appeal has pertinently observed that:

“... even where the agreed matter is one of opinion, fair play will, as I have said, generally require that a possible rejection of the agreed opinion be timeously raised. This is for the reason that litigants will quite properly not spend their resources on establishing matters of expert opinion which are not in dispute. Indeed, they would rightly be upbraided for wasting court time by doing so. If a court is minded to reject the opinion on the available evidence, the litigants should be alerted to this so that they can consider adducing further evidence”.¹¹

[31] In my view, counsel appearing at the trial are also, to some extent, to blame for what transpired. Both counsel assumed they could obtain an order in accordance with the draft order, by simply handing up a draft order, whilst failing to have proper regard to the nature of the two stage approach adopted by the majority of the CC in *Du Toit*. The first step, requiring the determination of the market value of the property, is fact-based in respect of which evidence, properly admitted, must be presented. The learned judge a quo should have accepted counsel's invitation to receive the common-cause facts in writing or should have indicated to counsel that evidence must be led. The learned judge therefore, should not have considered the uploaded documents as evidence.

[32] In my view, once the judge a quo formed the view that the joint minute and draft order was inadequate to make an order, only evidence could have remedied the difficulty. She should have alerted the parties thereto.¹² In particular the concerns dealt with in her judgment, which led her to reject the expert opinions, to thereby enable the parties to consider adducing further evidence, in accordance with the directions enunciated in SCA judgment in *Bee*, especially given her apparent acceptance of the evidence regarding the market value during the hearing.

¹⁰ *HAL obo MML v MEC for Health, Free State* 2022 (3) SA 571 (SCA) para 220.

¹¹ *Bee* (above) para 71. This was reiterated in *HAL* (above) at para 220, where the court emphasised that a court should not reject an agreed opinion if it might “result in unfairness to the party that has relied on the agreed opinion”.

¹² *Minister of Police v Mzingeli and Others* (115/2021) [2022] ZASCA 42 (5 April 2022) at para 8.

[33] I therefore find that the reliance by the learned Judge on the documents not properly admitted, constituted an irregularity in the conduct of the trial; that the irregularity had a material and decisive effect on the outcome. Paragraphs 1, 2, and 5 of the court a quo's order, accordingly must be set aside on this ground.

[34] In terms of section 19(c) of the Superior Courts Act 10 of 2013, this Court has the power to remit the case to the court of first instance with such directions as it deems fit. In *Ewels v Francis and Others* (6497/2022) [2025] ZAWCHC 113, the Western Cape Division confirmed that where a court's reliance on inadmissible evidence had a material effect on the outcome of the proceedings, the court of appeal may set aside the judgment on that ground and, in an appropriate case, remit the matter. Similarly, in *Minister of Police v Muravha* (SCA, 2024), the Supreme Court of Appeal upheld an appeal and remitted the matter for rehearing before a different Judge where the trial court's misdirection in the treatment of evidence deprived the appellant of a fair trial. In the recent judgment of the SCA in *NAD Property Income Fund (Pty) Ltd v South African National Roads Agency SOC Limited and Another* (710/2024) [2026] ZASCA 42 (1 April 2026) para 51, following upon a finding that the expert evidence adduced at the trial suffered from certain difficulties, a remittal of the matter to the trial court so as to permit the parties to recall those witnesses they consider will assist the trial court to resolve those difficulties, was ordered, to which Unterhalter JA added:

"The parties will also have to apply Du Toit and ensure that they have adduced the evidence required to do so. Here too, the high court will be mindful that the determination of market value is but the first phase of the analysis, and what follows is a further step in the analysis to secure conformity with what is constitutionally sanctioned recompense. Here too, the court may seek the assistance of the expert witnesses called by the parties."

The present matter is clearly distinguishable: the court a quo made findings and adjudicated the matter on documents that were not properly admitted in evidence and premised on considerations of which the parties were not alerted.

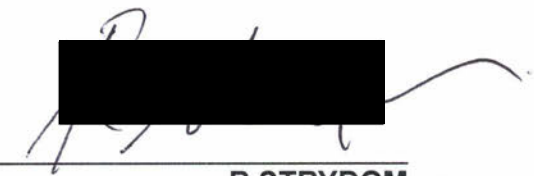
[35] Consequently, paragraphs 1, 2 and 5 of the court a quo's order must be set aside, and the matter be remitted to a differently constituted trial court for determination of the just and equitable compensation payable to the appellant.

[36] It remains for this court to decide the appropriate costs order in this appeal and the costs of the application for leave to appeal. The appellant was successful in regard to setting aside of the order of the court *a quo*, but ultimately abandoned its main ground of appeal, namely seeking to substitute the trial court's order with an order for payment. The respondent, in its heads of argument, asked for the setting aside of the trial court's order and for its remittal to the trial court. Thus, appellant initially pursued an appeal for an order for payment of compensation in the amount of R8 400 000.00. This was abandoned. The respondent initially defended the court a quo's decision but subsequently asked for a remittal. Both parties ultimately agreed on the relief to be granted in this appeal.

[37] As I have already found, both parties were partly responsible for what transpired at the hearing, and, accordingly, the appellant would not be entitled to an award of costs of the appeal despite partial success. I am of the view that the costs of this appeal should be costs in the cause. The same applies to the reserved costs of the application for leave to appeal. Such costs should also be costs in the cause.

[38] In the result, the following order is made:

1. The appeal is upheld.
2. Paragraphs 1, 2 and 5 of the order of the court *a quo* are set aside.
3. The matter is remitted to the trial court to start *de novo* before a different presiding judge.
4. Costs of the application for leave to appeal and the appeal to be costs in the cause.



R STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree.


FHD VAN OOSTEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree.


RJ MOULTRIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of hearing: 24 February 2026

Date of judgment: 24 April 2026

Appearances

For the Appellant: Adv. S. Pincus SC
with: Adv. B. Gradidge
Instructed by: Howard Woolf Attorneys

For the Respondent: Adv. E. Mokutu SC
with: Adv. K. Mashile
Instructed by: Popela Maake Attorneys