IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

CASE NO: A14/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

[redacted]

SIGNATURE

12/05/2026
DATE

In the matter between:

DA COSTA CONSTRUCTION WELDING CC	**FIRST APPELLANT**
JOHANNES JOCOBUS OOSTHUIZEN	**SECOND APPELLANT**
JABUKWANE JULY MOKWENA	**THIRD APPELLANT**

and

FIRST ASSET FINANCE	**RESPONDENT**

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand-down is deemed to be on 12 May 2026.

JUDGMENT

(Coram : Phahlamohlaka J et Mphahlele JP)

Phahlamohlaka J

Introduction

[1] This is an appeal against the whole of the judgment and order of the magistrate's court sitting at Bethal ("the court *a quo*"), where the court *a quo* granted judgment in favour of the respondent (the plaintiff in the court *a quo*) against the appellants (the defendants in the court *a quo).*

[2] The appellants and the respondent entered into a rental agreement in terms whereof the respondent leased certain equipment to the appellants. The cause of action in the particulars of claim was for payment of arrear rental and the balance of the contractual term.

[3] At the outset, the appellants are applying for condonation for the late filing of the appeal record. The application is not opposed. We have considered the application and are satisfied that we ought to exercise our discretion in favour of condoning the appellants' failure to file the appeal record on time.

Brief Factual Matrix

[4] On 12 December 2014, the first appellant and respondent entered into a written agreement for the rental of CCTV equipment. The second and third appellants signed written deeds of suretyship.

[5] The equipment was installed in December 2014. On 22 March 2016, the equipment was struck by lightning, resulting in a power surge that rendered the system

damaged beyond economic repair. This aspect was confirmed by the respondent's own expert technician. Despite the damage, the first appellant continued paying rentals via debit order until 20 June 2016. The respondent subsequently cancelled the agreement on 11 October 2016, alleging breach due to nonpayment from July 2016 onwards.

[6] The court *a quo* refused an application for absolution from the instance at the close of the respondent's case, finding that a *prima facie* case had been established. After the appellants closed their case without leading evidence, the court *a quo* handed down judgment in favour of the respondent. In the judgment, the court *a quo* held that clause 12.4 only applied if the equipment was actually insured in terms of clauses 12.1 and 12.2. The court *a quo* concluded that clause 12.4 did not deal with termination because clause 16 was the specific termination clause for breach.

Grounds of Appeal

[7] The appellants raised the following main grounds of appeal:

7.1 The appellants contend that the court *a quo* ought to have interpreted clause 12.4 in isolation from other clauses.

7.2 The court *a quo* erred by making a finding that the appellants were obliged to adduce evidence after their application for absolution from the instance was dismissed.

7.3 The court *a quo* erred by not disregarding the certificate of balance that was not presented as evidence by the author thereof.

7.4 The court *a quo* erred in making a finding that the first appellant breached the agreement by failing to make rental payments after June 2016.

Issues

[8] The appeal on merits turns on a very crisp issue of the proper interpretation of the rental agreement. The bone of contention between the parties centres on the proper interpretation of clause 12.4 of the agreement, namely, whether the rental agreement has self-terminated in terms of this clause.

[9] There are two other issues to be determined, namely failure to mitigate damages by the respondent and the validity of the certificate of balance.

The legal principles

[10] The case heavily relies on the established principles of contractual interpretation. The principles espoused in *Natal Joint Municipal Pension Fund v Endumeni*,[1] are crystal clear. *Endumeni* emphasises that when interpreting contracts, the court must take into consideration the text, context and the purpose of the agreement.

Analysis

[11] The court *a quo* identified that clause 12.4 cannot be read in isolation. Clause 12.4 provides that:

> "In the event of the equipment being lost, or stolen or, in the opinion of the (respondent) damaged beyond economical repair, this agreement will terminate and the first appellant will pay all rentals plus VAT outstanding in respect of the period prior to such termination provided that this agreement will not terminate if the parties reach agreement on the substitution of the equipment."

The court *a quo* further found that clauses 12.1 and 12.2 impose a strict obligation on the renter to insure the equipment.

[12] The following are the clauses of the agreement that are relevant to this appeal:

> "12.1 Subject to the clause 12.3 where applicable, from the time of delivery of the equipment to the Renter until time of delivery of the equipment back to FAF on the termination date (or the actual date of delivery if the Renter returns the equipment after the termination date), the Renter will bear all risk in regard to loss or damage to the equipment howsoever caused, fair wear and tear excepted, and will indemnify FAF accordingly.

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

12.2 The Renter will keep the equipment insured against all risks for the full new replacement value thereof with a reputable insurer. The Renter will advise the insurer issuing such policy of FAF's interest in the equipment/asset and will procure that FAF's interest as owner of the equipment is endorsed on the policy. The policy will further provide for any proceeds under the policy to be paid to FAF unless FAF agrees otherwise in writing. The Renter will furnish FAF with a copy of such insurance policy within 10 (ten) business days of the commencement date. The Renter shall be liable for any insufficiency of the insurance as contemplated herein.

12.4 In the event of the equipment being lost, stolen or, in the opinion of FAF, damaged beyond economic repair, this agreement will terminate and the Renter will pay all rentals plus VAT outstanding in respect of the period prior to such termination, provided that this agreement will not terminate if the parties reach agreement on the substitution of the equipment.

12.5 In the event of loss or destruction of the equipment, the Renter will notify FAF within seven days of such loss or destruction."

[13] The appellants' case is that the equipment was damaged to the point of being unusable. However, because the respondent has not adduced evidence, one can hardly find any evidence that the appellants informed the respondent of the damage in compliance with clause 12.5 of the agreement.

[14] Indeed, clause 12.4 makes provision that in the event of the equipment being lost or damaged, the agreement shall terminate. The appellants argued that the agreement terminated in terms of clause 12.4 because the equipment was damaged beyond economic repair. The appellants further argued that the court *a quo* erred by reading clause 12.4 together with clause 12.2 and 12.5.

[15] In *Capitec Bank Holdings Limited v Carol Lagoon Investments*,[2] the court emphasised that contract interpretation should be a holistic process, avoiding the distortion of plain language by emphasising context. Unterhalter J stated as follows:[3]

"Our analysis must commence with the provisions of the subscription agreement that have relevance for deciding whether Capitec Holdings' consent was indeed required.

[2] *Capitec Bank Holdings Limited v Carol Lagoon Investments* 2022 (1) SA 100 (SCA).
[3] Ibid para 25.

> The much-cited passages from *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)* offer guidance as to how to approach the interpretation of the words used in a document. It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitute the enterprise by the recourse to which a coherent and salient interpretation is determined. As *Endumeni* emphasised, citing well-known cases, 'the inevitable point of departure is the language of the provision itself'."

[16] In my view, considering both *Endumeni* and *Capitec*, it would be absurd to read clause 12.4 of the agreement in isolation. The purpose of the agreement could not have been to provide for self-termination, even in circumstances where the other clauses of the agreement were not complied with.

[17] The agreement placed a duty on the appellants to report any damage to the equipment. No evidence was presented by the appellants that this was done. Further, no evidence was presented by the appellant that the equipment was ensured in compliance with the agreement.

[18] The agreement makes a provision that the certificate of balance shall serve as *prima facie* proof of indebtedness. The appellants failed to adduce evidence to rebut the certificate of balance. The appellants instead elected to close their case without adducing any evidence. Therefore, in my view, the court *a quo* did not misdirect itself by accepting the certificate of balance on the face of it.

[19] As alluded to earlier, the agreement placed a duty on the appellants to report any damage to the equipment. The record does not show whether the appellants reported the damage to the equipment as is required by the terms of the agreement. In my view, if one reads the agreement wholistically, one cannot fault the court *a quo* for having made an order in favour of the respondent.

[20] For the aforesaid reasons, the appeal stands to fail.

[21] I cannot find any reason to deviate from the trite principle that the successful party must be awarded costs.

Order

[22] In the result, I propose the following order:

1 The condonation for the late filing of the appeal record is granted.

2 The appeal is dismissed with costs, including costs of counsel to be taxed on scale B.

[redacted]

KF PHAHLAMOHLAKA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

I agree. It is so ordered.

[redacted]

SS MPHAHLELE
JUDGE PRESIDENT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the Appellants:	Adv Boonzaaier
Instructed by:	Cohen Cronje & Van der Walt Inc.
For the Respondent:	Adv Kloek
Instructed by:	Marianne Pretorius Attorneys
Judgment reserved:	14 November 2025