REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2023-118418

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

DATE SIGNATURE

In the matter between:

MAVHUNGU TRACY NELWAMONDO	First Plaintiff
NDIVHUWO ADELAIDE DLAMINI	Second Plaintiff

and

FINANCIAL JUNCTION INVESTMENTS (PTY) LTD	First Defendant
HUBERT THOMAS SHERRATT	Second Defendant
RODNEY DANIEL GILCHRIST	Third Defendant

JUDGMENT

WENTZEL-THOMPSON J

Introduction

[1] This matter concerns an opposed application for leave to amend the plaintiffs' particulars of claim after the respondents delivered a Rule 23 notice and thereafter an exception on the basis that the particulars of claim were vague and embarrassing and lacked averments necessary to sustain a cause of action. The principal issues are whether the proposed amendments cure the defects identified by the respondents, whether further clarification is still required in certain respects, and whether the plaintiffs' case is properly formulated in contract, in delict, or in some combination of the two.

[2] The litigation also raises a further and more fundamental question of classification. The plaintiffs seek to recover pure economic loss arising from an alleged financial-advisory and investment mandate; the respondents contend that the pleading is incoherent and that the plaintiffs impermissibly blur contractual and delictual concepts. That question must be approached in light of the principles stated in *Lillicrap, Wassenaar and Partners v Pilkington Brothers (SA) (Pty) Ltd*,[1] namely that where the source of the duty relied upon is contractual, an Aquilian claim for pure economic loss is not lightly superimposed upon that contractual relationship. This is an issue I raised with the plaintiffs' counsel at the outset.

Background

[3] The plaintiffs instituted action by combined summons issued on 13 November 2023 under case number 2023-118418. The particulars of claim alleged that during the period February to April 2011 the plaintiffs entered into an oral agreement with the defendants, represented by the second defendant, in terms of which the first defendant, through the second defendant, would provide financial advice and intermediary services, act as the plaintiffs' financial services provider, and procure the investment of the plaintiffs' funds for improved returns.

[4] The pleaded case was that, acting on the defendants' advice, the plaintiffs withdrew funds from Momentum and paid R1 566 694.97 and R570 000.00 respectively into RMB account number 6[…], which it was stated to be the account into which the funds should be paid for re-investment. This was an account held by the third defendant that the plaintiffs were led to believe was an account held on behalf of the first defendant.

[5] The plaintiffs further alleged that the funds were never invested, that the second defendant later acknowledged his failure and indebtedness in 2020, and that the

[1] 1985 (1) SA 475 (A)

defendants were in breach both of the oral agreement and of duties arising under the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act") and the relevant Codes of Conduct.

[6] On 27 November 2023 the respondents served a notice to remove cause of complaint in terms of Rule 23. On 15 January 2024 the respondents delivered their exception, maintaining that the particulars of claim were vague and embarrassing and, in certain respects, did not disclose a cause of action.

[7] On 16 January 2024 the plaintiffs served a notice of intention to amend in terms of Rule 28, and when that notice was objected to on 30 January 2024, the plaintiffs brought an application for leave to amend under Rule 28(4).

The original particulars of claim

[8] The original particulars of claim advanced, in substance, three overlapping theories of liability.

a. First, they pleaded an oral contract concluded in Johannesburg in or between February and April 2011 under which the first defendant, represented by the second defendant, undertook to provide financial advice and services, to act in the plaintiffs' best interests, not to misrepresent material facts, and to reinvest the plaintiffs' withdrawn Momentum monies on the basis that improved returns would be received on such investments.

b. Second, the particulars invoked duties arising from the FAIS Act and the applicable General and Discretionary Codes of Conduct, alleging that the defendants failed to comply with those obligations in the course of rendering financial services.

c. Thirdly, the particulars used language suggestive of delict, including allegations that the defendants acted unlawfully, in bad faith and dishonestly, and in a grossly negligent manner.

[9] The respondents' complaint was that this blended formulation obscured rather than clarified the case they were required to meet. They submitted that the pleading did not identify with sufficient precision the contract relied upon, the obligations resting on each defendant, the basis of the first defendant's liability for the conduct of the second and third defendants, the role of the third defendant personally, or the proper juridical basis of the damages claimed.

The Rule 23 notice and exception

[10] The Rule 23 notice and the subsequent exception identified a series of specific alleged defects.

a. The first was a timing inconsistency in that paragraph 9 alleged that the agreement was concluded during the period February to April 2011, whereas paragraph 11 alleged that in February 2011, "*pursuant to the Agreement*", advice was already given to transfer the funds, thereby suggesting performance before the contract had fully come into existence.

b. The second broad class of objection concerned insufficient particularity under Rule 18(4) and Rule 18(6). The respondents complained that the plaintiffs had not stated whether the advice in paragraph 11 was oral or written; had not pleaded who would specify the accounts mentioned in paragraph 11.4 or whether any such directions were ever given; and had made a bald allegation in paragraph 13 that they had performed all obligations, without identifying what those obligations were.

c. The third set of objections went to the legal characterisation of the claim. The respondents contended that no contractual basis had been pleaded for personal liability on the part of the third defendant; that paragraph 28's reliance on "*vicarious liability*" was conceptually unsound in the context of a contractual claim as it was the terminology of delict; that the allegation of dishonesty lacked the necessary particularity; and that the damages claim was not pleaded in accordance with the proper measure of contractual damages. They also pointed to an inconsistency between paragraph 11.1, which alleged that the plaintiffs were advised that the RMB account was owned by the third defendant, and paragraph 32.2, which alleged a failure to inform them that the account was owned by the third defendant personally.

d. Finally, the respondents took issue with the prayer for mora interest from "*the date of the letter of demand*", pointing out that the particulars referred to more than one demand.

The first set of proposed amendments and the amendment application

[11] The plaintiffs' notice of intention to amend sought, among other things, to alter paragraph 9 so as to allege that the oral agreement was concluded "*on or about*

February 2011" and that its terms were amended between February and April 2011 to accommodate the transactions. The amendment further sought to identify the second defendant's 11 December 2020 written acknowledgement as annexure POC4B, to clarify that the RMB account was owned by the third defendant in his personal and not his professional capacity, to reformulate paragraph 28 to allege that the second defendant represented orally and through his conduct that he was acting within the scope of his employment and expertise, and to fix 6 October 2023 as the date from which *mora* interest was claimed.

[12] The plaintiffs' founding affidavit contended that the respondents' objections were overly technical; that particulars of claim are required to plead material facts, not evidence; and that the proposed amendments would enable the real dispute between the parties to be ventilated without causing prejudice to the respondents. The plaintiffs' heads of argument emphasised the permissive approach to amendments reflected in authorities such as *Moolman v Estate Moolman*,[2] *Affordable Medicines Trust v Minister of Health*,[3] and *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH*,[4] and argued that the respondents' objections amounted to a delay tactic.

[13] The respondents' heads of argument, by contrast, maintained that the amendment did not cure the original excipiability because it left intact, or in some instances introduced afresh, uncertainty as to the content of the oral agreement, who specified the destination accounts, the conceptual basis of the first defendant's liability, the pleaded role of the third defendant, the allegations of dishonesty, and the measure of damages. The respondents also argued that the court considering the application to amend is entitled to refuse leave where the amended pleading would remain excipiable.

Whether the current amendments cure the objections

a. Paragraph 9: Conclusion and amendment of the oral agreement

[14] The amendment to paragraph 9 materially improves the pleading in one respect; it removes the most obvious inconsistency by alleging that the oral agreement was concluded "*on or about February 2011*" and only thereafter amended between February and April 2011. In that limited sense, the amendment cures the first objection raised in the Rule 23 notice.

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[2] *Moolman v Estate Moolman* 1927 CPD 27
[3] *Affordable Medicines Trust v Minister of Health* 2006 (3) SA 247 (CC)
[4] *Villa Crop Protection (Pty) Limited v Bayer Intellectual Property GmbH* 2022 JDR 3648 (CC)

[15] That said, the respondents are correct that the amended paragraph still lacks some precision. Once reliance is placed on an oral agreement as later orally amended, Rule 18(6) requires, at minimum, sufficient particularity as to when, where and by whom the contract relied upon was concluded. The amended paragraph adequately identifies the conclusion of the original oral agreement in February 2011 at Johannesburg, but the additional allegation that the "*terms of the oral agreement were amended*" between February and April 2011 would ideally identify, at least in broad terms, by whom those amendments were agreed and what feature of the original agreement those amendments were intended to amend. Further clarification on that point is therefore be warranted.

b. Paragraph 11 and paragraph 11.4: the advice, the directions, and the specified accounts

[16] The amendments do not fully cure the objections directed at paragraph 11. The respondents complained that the plaintiffs had failed to plead whether the advice was oral or written and, more importantly, that paragraph 11.4 made the duty to execute withdrawals conditional upon directions by the plaintiffs and transfer to accounts "*specified*" by them, without any allegation that such directions were ever given or accounts were ever specified.

[17] The alteration from "*specified by the Plaintiffs*" to "*specified to the Plaintiffs*" entirely changes the meaning of the paragraph and creates more confusion verbal. It is not clear whether the plaintiffs are referring to the third defendant's account that the plaintiffs were directed to transfer their savings from Momentum into (which is what the amendment would suggest) or whether reference is made to the subsequent obligation on the first defendant to withdraw the funds from the third defendant's account and transfer them to an account specified by the plaintiffs as the previous pleading had suggested.

[18] The proposed amendment also does not answer the real complaint, namely that the pleading leaves unclear who was to specify the accounts and whether the giving of such directions was a precondition to the defendants' performance.

[19] If the plaintiffs' true case is that the defendants' primary breach was the failure to invest the funds upon receipt, then that ought to be pleaded as an unconditional obligation distinct from the later, instruction-based duty to effect withdrawals.

[20] If, on the other hand, the plaintiffs rely on a failure to pay out on demand, then the giving of instructions and the nomination of destination accounts should be alleged expressly. In this respect the amendment does not cure the objection and further clarification is required.

c. Paragraph 13: performance by the plaintiffs

[21] The objection to paragraph 13 also remains substantially valid.nA bare assertion that the plaintiffs "*duly performed their obligations*" is not sufficiently informative where the respondents are entitled to know what obligations are said to have been performed in order to plead properly under Rule 18(5). The subsequent allegations of de-investment from Momentum and payment into the RMB account do indicate performance of the plaintiffs' primary obligations but the pleading would be clearer and less vulnerable if paragraph 13 were reformulated to identify those acts expressly as the plaintiffs' contractual performance.

d. Paragraphs 27 and 32.2: the RMB account and dishonesty

[22] The amendment to paragraph 27 goes some way toward curing the inconsistency between paragraph 11.1 and paragraph 32.2. The amended allegation makes clear that the account was in the third defendant's personal name and not held by him in a professional capacity on behalf of the first defendant.

[23] Read with the particulars as a whole, the plaintiffs' complaint is not that they knew nothing of the third defendant's connection to the account, but that they were not told the true juridical character of the account, namely that it was his personal account and not an account maintained on behalf of the first defendant for the plaintiffs' investment purposes. To that extent the amendment substantially cures the eleventh objection.

[24] However, the objection concerning the bald allegation of dishonesty remains only partially cured. A pleading that alleges bad faith or dishonesty should ordinarily set out the factual basis for that conclusion with greater precision than appears in the present draft. The particulars should identify the specific misrepresentation, who made it, when it was made, why it was false, and how the plaintiffs relied upon it. That does not mean that the claim should be struck out at this stage, but it does mean that further particularity would be warranted if dishonesty is to remain part of the pleaded case.

[25] There is, however, a further difficulty with the plaintiffs' pleading of dishonesty: Whose dishonesty is relied upon-the second or third defendant? And what is the legal basis of the claim based upon dishonesty-is it contractual or delictual?

e. Paragraph 28: first defendant's liability

[26] The amendment to paragraph 28 does not, in the present form, satisfactorily resolve the conceptual difficulty identified by the defendants. To allege that the second defendant represented himself to be acting within the scope of his employment and expertise does not, by itself, explain how the first defendant is bound in contract. In contract, the relevant concept is agency or representation in the conclusion and performance of the contract, whereas "*vicarious liability*" is ordinarily the language of delict.

[27] That said, the substance of the plaintiffs' case is sufficiently clear: they contend that the first defendant acted through the second defendant as its authorised representative in advising the plaintiffs, procuring the transfer of their funds, and undertaking to invest them. However, the difficulty of *Lillicrap* looms large as the plaintiffs cannot pursue both a claim in contract and in delict where the breach of the contract creates the basis of the duty of care in delict and pure economic loss is claimed.

[28] Paragraph 28 should accordingly be reformulated to state directly that the first defendant concluded the agreement through the second defendant acting as its authorised representative and is bound by the contractual undertakings so made. To the extent the plaintiffs intend also to rely on delict, that should be pleaded separately and without conceptual overlap breaching *Lillicrap*. This is an aspect to which I will return below.

f. The third defendant and the sixth ground of objection

[29] The respondents' sixth ground of objection remains well founded on the particulars as presently framed. The pleading does not allege with adequate clarity that the third defendant personally undertook any contractual obligations to the plaintiffs, particularly as it is pleaded that their dealings were with the second defendant acting on behalf of the first defendant. The fact that he was a director of the first defendant and the holder of the RMB account into which they were directed to transfer their savings does not, without more, make him a contracting party liable in contract to the plaintiffs.

[30] If the plaintiffs wish to pursue a contractual claim against the third defendant, they would need to plead explicitly that he personally undertook to receive, hold, segregate, preserve and invest the plaintiffs' funds in terms of the mandate. As the particulars stand, however, the more natural inference is that the third defendant's alleged liability arises from his participation in the deception concerning the account into which the second defendant instructed the plaintiffs to transfer their Momentum savings and in the misuse or diversion of the plaintiffs' funds to an unauthorised account.

[31] That, however, is a delictual, not a contractual, basis of liability, despite the plaintiffs' counsel repeatedly emphasising that the plaintiffs' claim was based entirely upon a breach of contract.

g. Paragraph 32.5 and the damages claim

[32] The respondents' complaint regarding paragraph 32.5 also remains substantially unanswered. The particulars allege that the second defendant withdrew and invested the funds "*in the manner that he did*", but do not plead what was withdrawn, how the funds were dealt with, or where they went. Given that much of that information may lie peculiarly within the defendants' knowledge, exhaustive detail cannot be demanded at pleading stage, but the plaintiffs should at least plead in broad terms that the funds were not invested as agreed and were instead withdrawn or diverted for purposes inconsistent with the mandate.

[33] The objection to the damages formulation is more serious. A contractual claim requires the plaintiffs to plead the loss flowing from breach in accordance with the prescribed measure of contractual damages (entirely distinct from that in delict), namely the position the plaintiffs would have been in had the contract been properly performed.

[34] The present particulars plead the plaintiffs' entitlement to return of the capital that was supposed to have been invested, plus a conservative return of 3 per cent per annum by reference to deposit rates, but do not expressly link that methodology to the contractual positive interest or allege that such loss flowed naturally from the breach or was within the contemplation of the parties.

[35] Any damages claim based on delict would need to be framed in the negative-what the position would have been had the delict not been committed.

[36] It is apparent to me from reading the proposed amendment that what is intended is that the plaintiffs be compensated for the loss in increment in the capital sum transferred to the first defendant (and in fact the third defendant personally) had it been invested as intended and agreed with the second defendant acting on behalf of the first defendant.

[37] It may be that the way the particulars are framed at this stage is sufficient and the probable return on investment will have to await discovery and expert evidence as to the return on similar RMB client's investments over the relevant period.

h. The prayer for mora interest

[38] The proposed amendment identifying 6 October 2023 as the date of demand cures the objection to the uncertainty in the prayer for mora interest.

The juridical character of the claim against the first respondent

[39] The first defendant's alleged liability is, in the view of this court, properly rooted in contract.

[40] The pleaded relationship is not one between strangers in which the law must decide whether to recognise a duty of care to avoid pure economic loss. It is a professional financial-advisory and investment relationship consciously created by agreement, in terms of which the first respondent, acting through the second respondent, undertook to advise the plaintiffs, receive and manage their money, invest it for improved returns, and act in their best interests in accordance with the FAIS Act and the applicable Codes.

[41] In such circumstances the source of the relevant duties lies in the mandate and advisory contract itself. The duties to exercise care and skill, to avoid conflicts of interest, to disclose material information, to act in the clients' interests, and not to misuse client funds are either express terms of the agreement as pleaded or terms implied by law by virtue of the statutory regime governing authorised financial services providers. The FAIS Act and its subordinate codes do not merely supply a background regulatory atmosphere; they inform the legal content of the contractual relationship and, where applicable, are read into that relationship as incidents of the services the first respondent undertook to render.

[42] The plaintiffs' loss is pure economic loss. It consists of capital entrusted for investment and the returns which that capital ought to have earned had the mandate been properly performed. This is precisely the setting in which the principle in *Lillicrap* assumes importance.

[43] In *Lillicrap, Wassenaar and Partners v Pilkington Brothers (SA) (Pty) Ltd*[5] the Appellate Division held that where the negligence alleged consists in the failure to perform professional obligations arising from contract, the law does not, without more, superimpose an Aquilian action for pure economic loss upon that contractual matrix. The point is not that contract and delict can never coexist, but that in cases of this kind the contract ordinarily remains the primary and appropriate juridical source of the claim unless some independent basis for delictual wrongfulness is established.

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[5] supra

[44] In the present matter, the first respondent's alleged wrong is the very failure to do that which it contractually undertook to do: advise competently, invest the plaintiffs' funds, preserve those funds, disclose material facts, and pay out on instruction.

[45] Those duties do not arise independently of the contract; they arise from and are governed by it, supplemented by statutory incidents imposed upon an authorised financial services provider. The correct formulation of the claim against the first respondent is therefore contractual, not delictual.

The place of FAIS-implied terms in the contract

[46] The plaintiffs' pleading clearly seeks to incorporate the obligations on financial advisors in terms of the FAIS Act and the applicable Codes of Conduct as terms implied by law into the contract they allege has been breached by the first and second defendants. Those implied terms include, at least, a duty to render financial services honestly, fairly, with due skill, care and diligence, in the interests of the client and the integrity of the financial services industry, to avoid or disclose conflicts of interest, to keep client funds separate and properly administered, and not to make material misrepresentations. Where the first respondent accepted appointment as the plaintiffs' financial services provider, it did so within a statutory environment that attached these legal incidents to the services undertaken.

[47] It follows that breach of those statutory standards may simultaneously constitute breach of contract, without requiring the plaintiffs to resort to a free-standing Aquilian claim for negligence. The FAIS Act thus informs both the standard of performance and the content of the implied terms of the mandate relied upon against the first respondent.

[48] This is not to say that the FAIS Act and the Codes of Conduct do not form a self-standing cause of action and basis of relief for the loss suffered by the plaintiffs.

The proper characterisation of the claim against the third defendant

[49] The position of the third defendant is different. As presently pleaded, the third defendant is not shown to have concluded the mandate with the plaintiffs or to have assumed the primary advisory and investment obligations resting on the first respondent. The particulars instead allege that his personal bank account was used as the receptacle for the plaintiffs' funds, that the true holder of that account was not disclosed. It has not in fact been pleaded and that he participated in the dishonest or bad-faith handling of the plaintiffs' monies or their misappropriation, although this may be a necessary implication of the facts as pleaded.

[50] What is known from the facts pleaded that demand was made that he acknowledged that the funds were not invested as intended and has failed to return the amounts paid into his account despite repeated demand by the plaintiffs.

[51] Despite the plaintiffs' counsel insisting that the plaintiffs' claims are formulated solely in contract, the only claim appropriately directed against the third defendant on the pleaded facts set out above, is a claim in delict founded on intentional misconduct, namely dishonesty, fraudulent misrepresentation and/or knowing participation in the misappropriation of the plaintiffs' funds.

[52] Such a claim does not offend the principle in *Lillicrap* because it is not based merely on negligent performance of contractual duties resulting in pure economic loss. It is based, rather, on intentional wrongdoing said to be independent in character, namely the knowing presentation of a personal bank account as though it were an account held on behalf of the first respondent for the plaintiffs' benefit, the receipt of the plaintiffs' funds on that basis, and the dishonest failure to preserve and apply those funds as represented.

[53] To succeed on such a delictual formulation, the plaintiffs would need to plead the elements of that intentional delict with proper particularity, including the representations made, the knowledge of falsity, the intention to induce reliance, the plaintiffs' reliance, the misuse of the funds, and the resulting loss. This they have not done. This further supports the defendants' objection that it is not apparent from the original particulars of claim or the amendments what the legal basis of the relief against the third defendant is.

Conclusion

[54] The amendments presently sought cure some, but not all, of the objections raised in the Rule 23 notice and exception.

[55] They satisfactorily address the temporal inconsistency in paragraph 9, clarify the date from which mora interest is sought, and materially reduce the inconsistency concerning the true nature of the RMB account.

[56] They do not, however, adequately cure the uncertainty in paragraph 11.4, the bald allegation of full performance in paragraph 13, the conceptual confusion in paragraph 28 concerning the first respondent's contractual liability, the absence of a proper contractual basis for liability on the part of the third defendant, the limited particularity regarding dishonesty, or the deficiencies in the formulation of damages.

[57] The plaintiffs' claim against the first respondent is properly contractual in character, with the FAIS Act and the applicable Codes informing and implying terms into that contract by law.

[58] The claim against the third defendant, by contrast, is not appropriately contractual on the pleadings as they stand, but is capable of formulation as a delictual claim based on intentional dishonesty or fraud, which would not infringe the principle in *Lillicrap*.

Ruling

[59] In the exercise of the court's discretion under Rule 28, the appropriate course would be to permit amendment, but to require that the particulars be further clarified along those lines so that the respondents may plead to a coherent and properly pleaded case.

[60] Having regard to what has been set out fully above and having considered the application for leave to amend, the respondents' objection in terms of Rule 28(3), the Rule 23 notice, the exception, the affidavits filed of record, and the parties' heads of argument and the argument advanced at the hearing, I propose to make an order in the following terms:

a. The plaintiffs are granted leave to amend their particulars of claim.

b. The defendants objections to the proposed amendments dismissed are as follows:

   i. The first objection to the proposed amendment of paragraph 9 is dismissed to the extent that the proposed amendment cures the temporal inconsistency between the conclusion of the oral agreement and the advice allegedly given pursuant thereto.

   ii. The objection relating to the prayer for interest is dismissed, and the applicants are granted leave to amend prayer 2 so as to identify 6 October 2023 as the date of the letter of demand from which mora interest is claimed.

   iii. The objection directed at the inconsistency between paragraphs 11.1 and 32.2 is dismissed to the extent that the proposed amendment to paragraph 27 sufficiently clarifies that the complaint is that the RMB account was held in the third respondent's personal name and not, as represented, for and on behalf of the first respondent.

c. The objections upheld are as follows:

i. The second objection to the proposed amendment of paragraph 11.4 is upheld.

ii. The objection to paragraph 13 is upheld.

iii. The objection to paragraph 28 is upheld.

iv. The sixth ground of objection concerning the claim against the third respondent in contract is upheld.

v. The ninth ground of objection concerning the allegation of dishonesty is upheld to the extent that greater particularity is required.

vi. The twelfth ground of objection concerning paragraph 32.5 is upheld.

vii. The thirteenth ground of objection concerning the formulation of damages is upheld.

Costs

[61] The defendants have enjoyed substantial success in their objection, although some of the objections have been cured or substantially narrowed by the proposed amendments.

[62] The costs of the Rule 28 objection and the application for leave to amend are therefore awarded in favour of the defendants, but only on the ordinary party and party scale.

[63] The respondents' request for costs of two counsel is refused as the employment of senior counsel was not justified at this stage of the proceedings.

Order

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

1. The plaintiffs' application to amend their particulars of claim on the basis of their proposed amendment as per paragraph 60. b above is granted.

2. The plaintiffs' application to amend their particulars of claim on the basis set out in paragraph 60.c above is refused.

3. The plaintiffs are granted leave to further amend their particulars of claim in line with this judgment or on such further basis as they deem fit within 10 days of delivery of this judgment.

4. The plaintiffs are ordered to pay the costs of this application for amendment on the party and party scale B.

5. The aforementioned costs are not to include the costs of senior counsel.

WENTZEL-THOMPSON J

JUDGE OF THE HIGH COURT

JOHANNESBURG

For the plaintiffs: Y.S Ntloko instructed by Mapongwana Attorneys
For the defendants: P van der Berg SC with A C Roestorf instructed by Thyne Jacobs Sundström Inc.

Date of the hearing: 4 May 2026
Date of the judgment: 5 May 2026