REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

Case No: 34034/ 2020

Reportable: No
Of interest to other Judges: No
Revised: No

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SIGNATURE

Date: 15 May 2026

In the matter between:

MASANA PETROLEUM SOLUTIONS (PTY) LTD	Plaintiff
and	
Q-TIQUE 27 (PTY) LTD	1st Defendant
ABEL MOLASE MODISE	2nd Defendant

JUDGEMENT

MOOKI J

1 The matter came before the Court by way of a trial. The defendants were initially represented by John Broido Attorney, who then withdrew. The second defendant (Mr Modise) appeared in person during the proceedings.

2 The matter was certified a commercial court matter. The parties presented their respective evidence by way of witness statements. The plaintiff (Masana) submitted two witness statements, in the names of Rhyan Rajkishore and Morena Sithole, respectively. Only Mr Sithole confirmed his statement and was cross-examined on that statement. The Court disregarded the witness statement by Rhyan Rajkishore. Mr Modise submitted a witness statement on behalf of the defendants.

3 Masana sues the defendants on a fuel supply agreement between Masana and the first defendant (Q-Tique). Mr Modise is sued based on having bound himself as a surety and as a co-principal debtor. The defendants have pleaded a counterclaim, seeking relief against Masana.

4 Masana pleaded that Masana and Q-Tique concluded a fuel supply agreement which commenced on 16 September 2015. Q-Tique on-sold the fuel to the eThekwini Municipality (the Municipality). Q-Tique agreed to pay for the supply within 30 days of the invoice date. Q-Tique had other accounts in addition to the account with the Municipality.

5 Masana was entitled to cease supply should Q-Tique fail to settle any invoice. Masana was also entitled to oblige Q-Tique to furnish security. Masana and Mr Modise, a director of Q-Tique, concluded a suretyship agreement on 15 June 2016. Mr Modise bound himself as surety and co-

principal debtor for Q-Tique's existing and future obligations to Masana. Mr Modise renounced the usual benefits.

6 Masana issued summons against Q-Tique and Mr Modise, based on Q-Tique's failure to settle invoices for fuel supplied to the Municipality and the road water accounts. Masana claimed R26 730 013.05 in respect of the Durban Municipality account and R1 679 330.30 in respect of the Road Water account.

7 Q-Tique denied liability on the pleadings. It raised several defences, including that Masana raised non-existent charges and raised charges on invoices that were late. Mr Modise admitted the suretyship and its terms but denied liability. He pleaded the same defences as those raised by Q-Tique, and what the defendants raised in their counterclaim.

8 The defendants pleaded an agreement with Masana in 2018 in terms of which Masana will only supply diesel at the grade 50 ppm. The defendants say Masana breached this agreement by allowing Q-Tique's customers to use diesel 500 ppm, which resulted in additional charges being added to Q-Tique's account.

9 The defendants counterclaimed as follows. Masana wrote to the Municipality on 16 April 2020, recording, among others, that Masana supplied Q-Tique with fuel which in turn then supplied to the Municipality; that Q-Tique owed Masana certain amounts, and that Masana would cease supplying Q-Tique with fuel during the week commencing 20 April 2020, unless Q-Tique had paid-up.

10 The defendants counterclaim on the further bases that Masana wrote to the Municipality being aware that there was no privity between Masana and the Municipality, in circumstances in which there was a *bona fide* dispute between Masana and Q-Tique; that the Municipality would appoint the plaintiff, as that would result in a seamless transition of a fuel service provider.

11 The defendants pleaded that Masana could not invoke clause 13.6 of the supply agreement and Masana's conduct was unlawful, rendering enforcement of clause 13.6 of the supply agreement *contra bonos mores*. Masana's writing of the letter resulted in the Municipality cancelling its contract with Q-Tique and appointing Masana. Q-Tique say it suffered damages in the amount of R 18 000 000,00, being a loss of R4,5 million per year over the remaining 48 months of Q-Tique's contract with the Municipality.

12 Masana denied liability in its plea to the counterclaim. It denied wrongdoing in sending the letter, and that it was acting as *bonus pater familias* in sending the letter; Masana denied that there was a *bona fide* dispute between the parties, in that Masana terminated the supply agreement in April 2020 whereas the parties had been in discussions since at least November 2018. Masana denied that Q-Tique suffered damages, and that the defendants were warned in advance but failed to avoid and/or mitigate their loss.

Evidence for the plaintiff

13 Mr Sithole is Masana’s managing director. He exercises overall executive oversight over the Masana’s operations. The processing of customer accounts fall within divisions that report to him. He confirmed the supply agreement and the suretyship agreement. The supply agreement regulated products supplied by Masana, the pricing, invoicing, and payment arrangements.

14 Masana supplied Q-Tique under two separate accounts, namely the e-Thekwini on-road and the Rand Water account. Q-Tique defaulted on its payments on both accounts, with Masana issuing a demand on 14 April 2020. Masana also advised Q-Tique of Masana’s intention to suspend the fuel supply in respect of the e-Thekwini account with effect from 17 April 2020; unless Q-Tique paid as set out in the demand or gave further security in the form of a guarantee issued by a reputable financial institution.

15 Masana made a further demand on 13 May 2020 for payment in the amount of R66, 730,013.05 in respect of the e-Thekwini on-road account. Q-Tique did not pay, which led to Masana calling on a guarantee in the amount of R40 000 000.00. Q-Tique’s remained indebted to Masana in the amount of made up of R26, 730.013.05 in respect of the e-Thekwini account and the amount of R1 679 330.57 in respect of the Rand Water account.

16 Mr Sithole explained Masana’s accounting and invoicing system. The system recorded fuel supplied to customers. Fuel supplied and payments received or credits passed are recorded continuously. Invoices are

generated periodically and on a consolidated basis, reflecting transactions during the relevant billing cycle. Mr Sithole also explained that statements of account are generated from Masana's accounting system and such statements demonstrate the defendants' outstanding indebtedness. Mr Sithole also explained how the payments received from customers are allocated, and how credit notes are passed to correct an account.

17 The supply agreement requires that disputes be raised as stipulated in that agreement, by following the stipulated timeframes. Customers remain obliged to pay the undisputed portions notwithstanding the lodging of a dispute. Q-Tique continued making payments notwithstanding the allegations in the present dispute. The defendants rely on disputes that arose largely after arrears had accumulated and after Masana took steps to enforce its contractual rights.

18 The defendants, in support of the claim pertaining to late invoices, rely on information prepared retrospectively and which is not based on Masana's accounting system. The information did not record contemporaneous objections raised by Q-Tique when the invoices were rendered.

19 Masana, from time to time, passed credit notes to Q-Tique. This was done on a transaction-specific basis and following discussions between the parties. The adjustments were treated as part of ordinary commercial account management.

20 Mr Sithole denied that Masana agreed that invoices would only be rendered within 60 days from the date of supply. Masana did not agree that payment

of invoices would depend on Q-Tique's downstream contractual arrangements with the Municipality. The supply of fuel was based on the supply agreement. Q-Tique was invoiced accordingly.

21 Mr Sithole denied that Masana entered a contract for the supply of diesel as pleaded by the defendants. He continued that Masana, for example, never altered its invoicing, pricing or payment arrangements under the supply agreement. There were exchanges in April 2018 about the grade of diesel to be supplied. Masana continued to supply Q-Tique with fuel as in the past. Q-Tique paid for the fuel.

22 Mr Sithole contended that the disputes raised by the defendants such as in relation to price discrepancies and the charging of amounts when the CTP system was offline were raised opportunistically. There was no instance during which Q-Tique rejected an invoice and then invoked the dispute mechanism in the supply agreement. Q-Tique would, from time to time, raise queries such as relating to offline paymaster transactions and reconciliation discrepancies.

23 It was only in early 2020, when Q-Tique had fallen into arrears and became obliged to make payment or provide security, that the defendants raised more complaints and asserted the existence of disputes. The invoices referenced by the defendants were already due when the defendants raised their complaints. Masana's decision to suspend supply and to communicate with the Municipality followed sustained non-payment.

24 Mr Sithole gave the following evidence in relation to the counterclaim. The supply agreement entitled Masana to suspend supplying fuel should Q-Tique fail to pay in accordance with the terms of the agreement. Masana invoked clause 13.6, which entitled suspension of supply without prejudice to Masana's other rights in the agreement. The suspension of supply is not depended on the resolution of disputes not raised in accordance with the agreement.

25 Q-Tique was already materially in arrears when Masana engaged Q-Tique on payment, security and enforcement. Q-Tique's indebtedness to Masana existed before any communication between Masana and the Municipality. He pointed out that documents used in support of the counterclaim do not reflect contemporaneous reconciliations showing that the losses are directly linked to Masana's conduct.

26 There was no malicious intent in Masana letter to the Municipality. Masana was acting as a responsible corporate citizen because the Municipality would be rendering emergency services at the time, which was in the middle of the COVID-19 pandemic. Masana's letter to the Municipality followed Masana's engagement with Q-Tique regarding payment and the provision of security. The correspondence was part of Masana's efforts to manage its commercial exposure from the sustained non-payment.

27 Mr Sithole gave the following evidence under cross-examination. He notified the Municipality of Masana's intended action because there was going to be a negative impact on the municipality's provision of essential services.

28 He agreed that Masana obliged Q-Tique to sign an acknowledgement of debt pertaining to an invoice for the City of Tshwane. Masana insisted on the acknowledgement before Masana could conclude an agreement with Q-Tique for Q-Tique to supply the Municipality. He denied that the Municipality paid Masana R7 million which should instead have been paid to Q-Tique. He said the Municipality never paid Masana money that was due to Q-Tique.

29 He agreed that there could have been errors with the fuel master service, but that the parties would meet and Masana would pass a credit where necessary. He denied that Masana supplied the wrong grade of diesel. He accepted that the tender specified the supply of diesel grade 50 ppm, but that the agreement between the parties mattered the most. That agreement specified the supply of diesel at both grade 50 ppm and 500 ppm.

30 Masana informed Q-Tique on 14 April 2018 that Masana would suspend supplying Q-Tique with fuel unless Q-Tique paid amounts that were overdue. Masana informed the Municipality on 16 April 2018 that Masana intended to stop supplying Q-Tique with fuel during the week commencing 20 April 2018. The Municipality notified Q-Tique on 27 April 2018 that the Municipality had cancelled its agreement with Q-Tique.

31 It was put to Mr Sithole that the Municipality reacted to Masana's letter by cancelling the Municipality's contract with Q-Tique. Mr Sithole replied that notification that Masana would cease supply was not done overnight and that Masana acted after exhausting all options. Masana did not notify the Municipality based on a contractual obligation. It was based on a moral

duty, for the Municipality to become aware and to make contingency arrangements. The Municipality, following cancellation of its contract with Q-Tique, requested Masana to supply the Municipality with fuel whilst the Municipality ran a process to secure an alternative supplier.

32 It was put to Mr Sithole that Masana dad no right to interfere in Q-Tique's contract with the Municipality. Mr Modise stated that he agreed that Masana has a right to choose what is due to it, and that the R26 million was consumed.

33 Mr Sithole gave the following evidence on re-examination. The defendants did not raise disputes within 14 days as stipulated in the agreement. Reference in the minute of 5 July 2018 to the supply of diesel at grade 50 ppm was to an undertaking by Masana. Masana met this commitment.

Evidence for the defendants

34 Mr Modise confirmed his witness statement. He gave the following evidence on behalf of the defendants. An oral agreement was reached in April 2018 that Masana would supply the Municipality only with diesel at 50ppm. There were three parties to the agreement, namely Q-Tique, Masana (represented by Ryan Rajkishore and Mbuwa Ngomani), and the Municipality. He represented Q-Tique in the agreement.

35 Masana breached the agreement by allowing Q-Tique's customers to use diesel on grade 500ppm. That resulted in additional charges being added to Q-Tique's account and the Municipality refused to pay Q-Tique.

36 Mr Modise also contended that there were various accounting errors by Masana. The errors included Masana raising additional charges. The Municipality refused to pay invoices pertaining to additional charges. Masana also raised late invoices which Q-Tique is not liable to pay.

37 Masana forced Q-Tique to sign an agreement in which a disputed amount pertaining to supply to the City of Tshwane, was added to Q-Tique's account. It was unlawful for Masana to force Q-Tique to sign the agreement.

38 Mr Modise made the case on the counterclaim as follows. Masana wrote to the Municipality knowing that there is no contractual privity between Masana and the Municipality, which was a customer of Q-Tique. Masana was aware at the time that there was a *bona fide* dispute on a considerable portion of the amount claimed by Masana.

39 Masana, in writing to the Municipality, was aware that Q-Tique used Masana's system for supplying the Municipality, and that the Municipality would appoint Masana in the stead of Q-Tique to supply fuel, because of continuity. That is because there would be a seamless transition of the service provider for fuel.

40 Masana subsequently invoked clause 13.6 of the supply agreement and stopped supplying Q-Tique with fuel. Masana could not invoke the clause because there was a *bona fide* dispute between the parties as to Q-Tique's indebtedness to Masana. Mr Modise referred to various shortcomings on the part of Masana, including raising additional charges that were not due and the sending of late invoices, and pricing errors.

41 Masana stopped the supply of fuel drastically on short notice and with an ulterior purpose to induce the Municipality to terminate its contract with Q-Tique, with a view to appointing Masana. Masana's conduct was unlawful, rendering clause 13.6 *contra bonos mores* given the circumstances under which Masana invoked the clause.

42 Masana succeeded because the Municipality terminated its agreement with Q-Tique and engaged Masana as a supplier. Q-Tique's contract had 48 months to run when it was cancelled. This resulted in Q-Tique suffering a loss in the amount of R18 000 000.00, because Q-Tique was earning an average profit of R4 500 000.00 per year from its contract with the Municipality. Mr Modise, as surety, was entitled to raise the same defences as those raised by the first defendant.

43 Mr Modise gave the following evidence on cross-examination. He received the two demands by Masana. The amount in the demand has not been paid. He signed a suretyship in favour of Masana and that he is bound by any amount proven by Masana as owing by the Q-Tique.

44 He repeated that there was an oral agreement that was concluded in April 2018 that Masana will only supply diesel at grade 50 ppm. He agreed that the supply agreement described "product" as diesel and petrol. There is no mention 50 ppm or 500 ppm under 'product' and that both 50 ppm and 500 ppm were 'products'.

45 The supply agreement has a non-variation clause. Any change must be in writing. The supply agreement also states that parties are not bound by

tacit or implied terms. Any variation of the supply agreement had to be in writing, and the agreement constituted the whole agreement. Any term that is not recorded is invalid and that an unwritten term did not bind the parties.

46 There is no written amendment for the supply only of diesel at grade 50 ppm. He confirmed that the Municipality addressed correspondence about the grade of diesel to be supplied to Q-Tique, not to Masana. Ryan Rajkishore of Masana replied to the Municipality, recording that the supply agreement made no specific reference to diesel or to grade 50ppm. Mr Modise agreed that there was no agreement to supply diesel on grade 50 ppm when Ryan Rajkishore wrote the e-mail. Masana had not agreed on 19 April 2018 that it would only supply diesel on grade 50 ppm.

47 Mr Modise said the oral agreement was reached in July 2018. He agreed, with reference to a minute of a meeting on scheduled for 25 July 2018 that Q-Tique was not represented in that meeting. Mr Modise ultimately agreed that there was no agreement in 2018 that Masana will only supply diesel on grade 50 ppm.

48 Masana said it would supply diesel at grade 50 ppm from April 2019. Mr Modise was referred to transaction schedules, and he confirmed that Masana supplied diesel on grade 50 ppm after April 2019.

49 Mr Modise confirmed that Q-Tique continued trading with Masana, despite Q-Tique's allegation that Masana breached the supply agreement. He agreed that there is no record that Q-Tique objected to an invoice within 14

days as provided for in the supply agreement. He also agreed that the supply agreement made no provision that invoices had to be submitted by a particular date. The agreement between Q-Tique and the Municipality specified that invoices had to be submitted by a particular date.

50 He was referred to annexures in support of a claim based on late invoices. It was put to him that the spreadsheet did not show an invoice date for each transaction. He replied that he was running the company and did not deal with invoices. The Municipality told him that the invoices were late. He agreed that the invoices were late in relation to the agreement between Q-Tique and the Municipality. No dispute was raised in terms of clause 13.3 of the supply agreement in relation to the invoices.

51 He agreed, with reference to the claim based on pricing errors, that the document which the defendants relied upon does not show how any price discrepancy is calculated. The document does not show the contractual price that should have been charged and what was charged. He agreed that the document did not show a discrepancy. It only showed prices that were charged. He confirmed that Q-Tique did not object within 14 days as required by the supply agreement.

52 Mr Modise, in relation to the defendants' claim that Q-Tique is not liable for transactions when the system was offline, agreed that the supply agreement between Masana and Q-Tique has no provision for Masana being liable for those transactions. There is such an agreement between Q-Tique and the Municipality: the Municipality did not pay for unauthorised transactions when the system was offline.

53 The Municipality refused to pay invoices for transactions made when the system was offline. Defendants did not raise the invoices with Masana to say they were manual invoices or that the system was offline. He conceded that Q-Tique did not object to the invoices during the 14-day period. The supply agreement made no provision for system inaccuracies. The only provision is that queries be raised within 14 days.

54 Mr Modise agreed that there was no documentation before the Court in relation to the claim based on the supply of fuel to the City of Tshwane. He said Masana forced Q-Tique to sign the acknowledgement, because that was the only way for Q-Tique to succeed in its tender to supply the Municipality. The Municipality preferred Masana's fuelmaster system. Mr Modise said Q-Tique signed under protest and that Masana is not allowed to have included this charge. He had no choice not to sign the acknowledgement of debt because he otherwise risked being sued for damages by the Municipality. He agreed that no invoices for the claimed amount are before the Court. He also agreed that the acknowledgement of debt itself was not before the Court. He agreed that there is no proof that Masana added the amount in the acknowledgement of debt to Q-Tique's account. He ultimately agreed that there was no evidence to show that he was forced to sign the acknowledgement of debt.

55 Mr Modise agreed that clause 13.6 of the supply agreement entitles Masana to suspend supply in the event of non-payment. Q-Tique was in arrears and Masana was acting in terms of the agreement by ceasing supply. The

Municipality terminated its contract with Q-Tique after Masana wrote to the Municipality that Masana would cease supply to Q-Tique.

56 He contended, however, that Masana was aware that Q-Tique's tender with the Municipality was premised on Masana's fuelmaster system and that Q-Tique would be in breach of its agreement with the Municipality absent the fuelmaster system; which would result in Q-Tique losing its contract and suffering a loss and a potential claim for damages by the Municipality.

57 Mr Modise agreed that Masana had a right to suspend its supply to Q-Tique. He took issue with Masana interfering with Q-Tique's contract with the Municipality. Masana put conditions to the Municipality for the supply and the Municipality accepted those conditions, resulting in Q-Tique being kicked out when the Municipality summarily terminated Q-Tique's contract. The Municipality did not terminate the contract for lack of performance by Q-Tique, but because of interference by Masana.

Analysis

58 Masana and Q-Tique supplied the Municipality with fuel. This was in terms of a tender for "Provision of on road and home bowser fuel, with automotive fuelling solution for Thekwini Municipality for a period of ninety-six (96) months." Masana supplied the Municipality in terms of the "home based" agreement, whereas the Q-Tique supplied in terms of the "on road" contract.

59 The supply agreement between Masana and Q-Tique did not specify that Masana had to supply diesel at grade 50 ppm. Mr Modise sought to rely on

a minute of a meeting held at the Municipality on 5 July 2018 as the basis for an oral agreement in terms of which Masana would supply diesel at grade 50 ppm. Q-Tique was not represented at this meeting according to the minute. Rhyan Rajkishore of Masana wrote to Q-Tique on 19 April 2018, pointing out that the supply agreement did not prescribe the supply of diesel at grade 50 ppm. There is no contemporaneous correspondence in which Q-Tique disputed that the supply agreement did not stipulate the supply of diesel on grade 50 ppm.

60 Mr Sithole explained that reference to April 2019 in the minute of the meeting on 5 July 2018 was an undertaking by Masana because the industry was transitioning the supply of diesel from grade 500ppm to 50 ppm. It was not a contractual undertaking by Masana. Mr Modise agreed that Masana supplied diesel at 50 ppm grade from April 2019.

61 It bears pointing out that the agreement contended for by the defendants is said to be a tripartite arrangement, with Masana, Q-Tique and the Municipality as parties. There was no evidence as to who concluded the agreement on behalf of the Municipality.

62 The contention that there was an oral agreement is belied by the fact that Q-Tique never queried Masana supplying diesel at grade 500ppm. The issue arose during litigation. I conclude that there was no oral agreement as contended for by the defendants.

63 Q-Tique relied on certain terms being part of the supply agreement, and invoked those terms for relief against Masana. I find that the terms

contended for were not part of the supply agreement. Mr Modise accepted that the terms contended do not form part of the supply agreement, because, among others, the supply agreement made no provision for representations that are not recorded in the agreement itself and that the supply agreement expressly excludes reliance on, among others, tacit terms.

64 Mr Modise accepted that he is bound as a surety and co-principal debtor with Q-Tique. There is no merit to the pleaded defence that he enjoys the same defences as those raised by Q-Tique. I have found that those defences lack merit, including as detailed below.

65 The defendants raised various issues in defending the claim by Masana. These included Masana being said to have raised charges that should not have been made; the sending of invoices late; Q-Tique incurring expenditure when cars were allowed to be refuelled when the fuelmaster system was offline, and various errors as contended for. All these defences are resolved with reference to the supply agreement obliging Q-Tique to raise a query within 14 days. This was never done. Q-Tique raised objections to Masana’s demand for payment only after Masana terminated the supply agreement.

66 Mr Modise, in making the case to substantiate the defendants’ counterclaim, essentially contended that Masana interfered in the contract between Q-Tique and the Municipality, leading to the Municipality terminating the contract and engaging Masana as a supplier. Mr Modise relied on Masana’s letter to the Municipality as a basis for this claim. Mr

Modise said in evidence that Masana put conditions on the Municipality, which agreed to those conditions and then summarily terminated the contract with Q-Tique.

67 The counterclaim is not substantiated. Masana, Q-Tique and the Municipality have a long history of working together. It bears repeating that Q-Tique and Masana bid to be suppliers to the Municipality. Thus Q-Tique and Masana had a close working relationship, respectively, with the Municipality. There was no evidence to support the claim that Masana put conditions to the Municipality which made the Municipality terminate its contract with Q-Tique. Mr Sithole explained that Masana wrote to the Municipality, acting as a responsible person. Masana was aware that the Municipality is required, for example, to provide emergency services, for which the Municipality would need fuel. There is nothing to suggest that Masana was sinister in informing the Municipality of Masana's intention to stop supplying Q-Tique. This is more so because Masana did not immediately write to the Municipality. Masana wrote to the Municipality after extensive discussions between Masana and Q-Tique on invoices which Q-Tique still had to pay. There is nothing to disturb Mr Sithole's evidence that Masana's letter was to allow the Municipality to prepare for obtaining fuel from another supplier, given that Masana were to stop supplying Q-Tique.

68 The defendants did not seek to disprove the quantum of the claim by Masana. The quantum is well motivated. The defendants did not dispute any of the invoices that make-up the quantum. The defendants accepted

that the supply agreement entitled Masana to stop supplying fuel where invoices remained unpaid and, eventually, to terminate the supply agreement.

69 Masana acted within the four corners of the supply agreement. It supplied Q-Tique with fuel as detailed in the pleadings and invoiced Q-Tique accordingly. Q-Tique did not query the invoices. Mr Modise bound himself as a surety and co-principal debtor, together with Q-Tique. The defences raised by the defendants lack merit, so too the defendants' counterclaim.

70 I make the following order:

(1) The counterclaim by the defendants is dismissed with costs.

(2) The first and second defendants, jointly and severally, the one paying to be absolved, are ordered to pay the Plaintiff as follows:

a. Payment in the sum of R26, 730, 013.05 (twenty-six million seven hundred thirty thousand, thirteen Rand and five cents).

b. Payment in the sum of R1 679 330.57 (one million six hundred and seventy-nine thousand three hundred and thirty Rand, fifty-seven cents).

c. Interest on each of the sums referred to above at the rate of 4% above prime rate from 14 May 2020 to date of payment.

(3) Costs of suit, including costs of counsel on Scale B.

O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the plaintiff:	K Magagula
Instructed by:	Thomson Wilks Inc.
Appearance for the defendants	A M Modise (in person)

Date heard:	10 – 11 March 2026
Date of judgement:	15 May 2026