



**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: 588/2021

In the matter between:

SCHALK WILLEM VAN HEERDEN N.O.

(Cited in his capacity as a trustee of the

Langlaagte Trust IT 341/98)

1<sup>st</sup> Applicant

JOHANNES JACOB FREDERICK MARKRAM

t/a JJF MARKRAM BOERDERY

2<sup>nd</sup> Applicant

CHRIS STRAUSS & SEUNS CC

(Registration Number: 1996/045144/23

3<sup>rd</sup> Applicant

and

MCVIGAR SAND MINING (PTY) LTD

(Registration Number: 2016/19583707)

1<sup>st</sup> Respondent

RORISANG MCVIGAR LEBOKO

(Identity Number: 8[...]) 2<sup>nd</sup> Respondent

MCVIGAR CONSTRUCTION AND TRADING CC

(Registration Number: 2006/073609/23) 3<sup>rd</sup> Respondent

FIRSTRAND BANK LTD t/a FIRST NATIONAL BANK

(Registration Number: 1929/001225/06) 4<sup>th</sup> Respondent

ABSA BANK LTD

(Registration Number: 1986/004794/06) 5<sup>th</sup> Respondent

Coram: Lever J

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## JUDGMENT

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LEVER J:

1. This matter started as an urgent application brought under a Notice of Motion in two parts, dated the 26 March 2021. Part A was the urgent relief. Part A froze certain identified sums of money held by the fourth and fifth respondents in various bank accounts to the credit of the first, second and third respondents. In respect of Part A, my brother Eillert AJ in an *ex parte* hearing on the 26 March 2021, issued a *rule nisi* which effectively froze the said sums of money in the hands of the fourth and fifth respondents pending the outcome of Part B of the Notice of Motion. This *rule nisi* was extended by agreement from time to time and presently remains in effect.

2. Part B of the said Notice of Motion sought an order that: First respondent pay first applicant an amount of R380 668,75 (three hundred and eighty thousand six hundred and sixty eight Rand and seventy five cents), interest thereon from the date of issue of the application to date of final payment, and first respondent pay first applicant's costs on the scale as between attorney and client; Second respondent pay the third applicant the amount of R82000,00 (eighty two thousand Rand), interest thereon from the date of issue of the application to date of final payment, and second respondent pay third applicant's costs on the scale as between attorney and client; Third respondent be ordered to pay the second applicant the amount of R114434,36 (one hundred and fourteen thousand four hundred and thirty four Rand and thirty six cents), interest thereon from the date of issue of the application to date of final payment, and that third respondent be ordered to pay second applicant's costs on a scale as between attorney and client.
3. The underlying facts that give rise to the above monetary claims are that a large number of young calves were stolen from the farm "Sweet Home". These calves had not yet been branded, but they had the mark "LDJ" tattooed in their right ears. In addition to the tattoo, each calf had what was described as swallow tails cut into both ears. The breed of these calves was described as a Charolais mixed breed. It was common cause that Mr and Mrs Kriek owned these calves at the material time.

4. It is contended by the applicants that one or other of the first, second, or third respondents sold each of the applicants a number of these stolen calves. The first and third respondents are corporate entities controlled by the second respondent. The applicants became aware that the relevant calves had been stolen, and the police were summoned, and Mr Kriek was informed. Ultimately, Mr Kriek identified the relevant calves by virtue of their breed, the tattoo marks in their right ears, and the swallow tail markings cut into both ears of each calf. The said calves were returned to Mr Kriek.
5. In part B of the said application, the applicants seek to be reimbursed from the first to third respondents as set out above. The applicants base their respective claims for reimbursement on the implied warranty against eviction that flowed from the contracts of purchase and sale between the respective applicants and respective respondents.
6. Save for the interdict granted in Part A of the Notice of Motion, the applicants seek no relief against the fourth and fifth respondents (the banks). The banks do not actively oppose Part B of the said Notice of Motion.
7. The factual and legal defences raised by the first, second, and third respondents will be dealt with later in this judgment. At this point, it is

necessary to record that on 13 May 2022, Part B was referred for oral evidence by my sister, Erasmus AJ.

8. This referral of Part B to oral evidence was not restricted to any issues and it was also not restricted to any named witnesses. Although, procedures relating to notice were set out if any witness called to give oral evidence was not a deponent to an affidavit in the original application. Further, the following Rules set out in the Uniform Rules of Court, rules 35, 36, 37, and 37A, were specifically mentioned in the order referring the matter to oral evidence and made applicable to the said referral to oral evidence. In respect of costs, the said referral to oral evidence order provided that costs that were not already determined shall be determined by the court hearing the oral evidence.

9. The parties held a pre-trial conference by way of exchanging emails and filing a minute duly signed by the legal representative of the respective parties. In the said pre-trial minute, the parties recorded that the following issues were not in dispute:

“21.1 That 1<sup>st</sup> respondent sold 16 calves to 1<sup>st</sup> applicant on 6 March 2021 for R111 500,00;

21.2 That 1<sup>st</sup> respondent sold 29 calves to 1<sup>st</sup> applicant on 8 March 2021 for R192 700.00;

21.3 That 1<sup>st</sup> respondent sold 23 calves to 1<sup>st</sup> applicant on 15 March 2021 for R181 000,00;

- 21.4 That 3<sup>rd</sup> respondent sold 14 calves to 2<sup>nd</sup> applicant on 24 February 2021 for R114 434,36;
- 21.5 That second respondent sold 13 calves to 3<sup>rd</sup> applicant for R82 000,00;
- 21.6 That the applicants have paid for all calves so purchased from the respondent (sic);
- 21.7 All calves so sold by respondents to applicants were attached by the SAPS, not an issue in the papers;
- 21.8 The terms of the various sale agreement (sic) save where denied and listed under paragraph 22 below;
- 21.9 Applicants were evicted from possession of the calves so purchased from the respondents.”<sup>1</sup>

10.The issues in dispute were listed in the said pre-trial minute as follows:

- “22.1 That 53 of the calves seized from 1<sup>st</sup> applicant by the SAPS were subject to the sale agreements with 1<sup>st</sup> respondent;
- 22.2 Only one calf sold by 1<sup>st</sup> respondent to 1<sup>st</sup> applicant during the sale of the 6<sup>th</sup> March 2021 was seized;
- 22.3 All other calves sold by 1<sup>st</sup> respondent to 1<sup>st</sup> applicant during the 8 and 15 March 2021 sale were seized by the SAPS;
- 22.4 The date on which 2<sup>nd</sup> respondent sold the 13 calves to 3<sup>rd</sup> applicant;
- 22.5 Whether respondents could legally sell the calves to applicants;
- 22.6 Whether respondents, or either one or more of them were the lawful owners of the calves so sold by them to the applicants;
- 22.7 That all calves so seized were marked with the tattoo mark “LDJ” in their ears and were recently marked.”<sup>2</sup>

11.In respect of the duty to begin and the onus of proof, the said pre-trial minute records that the parties agreed that:

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<sup>1</sup> This pre-trial minute appears at pages 490 through 502 of volume 4 of the record.

<sup>2</sup> As in footnote 1 above.

- “9.1 The applicants bear the duty to begin and have the onus of proof in respect of their claims.
- 9.2 The respondents bear the onus of proof and duty to begin in respect of their claims of ownership.”

12. It is tempting to look no further than 21.7 and 21.9 of the pre-trial minute quoted above and conclude that this settles one of the major disputes between the parties. However, if one reads paragraph 21 of the said minute together with paragraph 22 thereof, there is a certain ambiguity as to what is actually being admitted and what is disputed. In these circumstances, it is both prudent and necessary to examine the evidence adduced by the respective parties on this question.

13. It is convenient at this stage to briefly set out the defence invoked by the second respondent personally and his two associated corporate entities, being the first and the third respondents respectively. They deny the contention that the cattle they admittedly sold to the applicants were the stolen cattle already referred to above. On this first aspect, the first, second, and third respondents seek to rely on the delay between the earlier sales to the applicants and the date when the theft of the cattle was first noted and reported. The said respondents seek to argue that the thefts occurred after at least the earliest transactions. They want this court to conclude from that that the cattle sold in their respective transactions did not involve the relevant stolen cattle. They

also seek to invoke the *in pari delicto* rule, in that they contend that the legislation that governs trading in livestock imposes positive obligations on the applicants as purchasers. The first to the third respondents then argue that none of the applicants complied with these positive obligations and thereby make themselves guilty of a criminal offence.

14. In short, then, the nub of the dispute is whether the applicants have, on the evidence placed before this court, established on a balance of probabilities that the cattle respectively sold to them by the first, second, and third respondents involved the relevant stolen cattle. If the applicants have established this *nexus* between the stolen cattle and the cattle sold to them by the respective respondents, then they will be entitled to the confirmation of the *rule nisi* and the relief that they seek under Part B of the relevant Notice of Motion. If the applicants are unable to establish this *nexus*, then the first, second, and third respondents would be entitled to the discharge of the *rule nisi* and the dismissal of Part B of the present application.

15. At this stage, it is also necessary to point out that the first, second, and third respondents filed an answering affidavit in the application. They then sought to file two further supplementary affidavits. The applicants opposed the filing of further supplementary affidavits, and the said respondents took these applications no further. Accordingly, there is only one answering affidavit before this court. The two putative supplementary answering

affidavits were not admitted to the record. Mr Jacobs, who appeared for the respondents in this matter sought to refer the court to some of the evidence contained in such supplementary affidavits. In the circumstances, he was not allowed to do so.

16. It is convenient to turn to the *in pari delicto* rule invoked by Mr Jacobs on behalf of the respondents. Mr Sander who appeared for the applicants herein objected to the *in pari delicto* rule being raised on the basis that there was nothing in the papers that foreshadowed it or raised it in a manner that would have allowed the applicants to deal with it appropriately. In fact Mr Sander went further and pointed out that this rule was raised for the first time in oral argument after oral evidence that spanned a period of two years and several court sittings. In Mr Sander's submission this was unduly prejudicial to the applicants and ought not to be allowed. In my view Mr Sander is correct and it cannot be raised in this way.

17. Turning now to the evidence led in this matter. The applicants called seven witnesses, namely: Mr Fanie Koper; Mr Modisapudi; Mr Henk Schalk de Jager; Mr Nicolaas Jacob Kriek; Mr Chris Strauss; Mr Schalk van Heerden; and Mr Jacob Frederick Markram. All three respondents relied on the evidence of the second respondent Mr Rorisang McVigar Leboko.

18. Mr Koper's evidence was to the effect that he works under Mr Markram and that he buys cattle on Mr Markram's behalf. Mr Koper's evidence establishes the *nexus* between the cattle purchased from Mr Leboko and those which were eventually seized by the SAPS and returned to the owner, Mr Kriek. Material aspects of his evidence were not disputed, and his evidence is, to that extent, uncontested. Mr Koper's evidence established that Mr Leboko sold Charolais cross cattle with a swallow tail cut into each ear. This corresponded with the cattle that were eventually seized by the SAPS and returned to Mr Kriek.

19. Mr Modisapudi gave evidence to the effect that he was employed on the farm "Sweet Home" at the time that Mr Kriek's cattle were stolen from the said farm. He worked with the farm manager, Mr De Jager. His evidence established the usual practice of counting the cattle on the farm "Sweet Home". The counting of the cattle was done by the farm manager, not by him. He could not provide a date when the cattle were last counted before the relevant theft. However, it was apparent from his evidence that the cattle were not counted in accordance with the usual practice on the farm "Sweet Home". His evidence also establishes the *nexus* between the stolen cattle and those returned to the farm "Sweet Home." His evidence also explains how the relevant cattle were stolen without it being noticed until 15 March 2021. Mr Modisapudi was quite put out by the fact that he was considered a suspect in the theft, and he evidently wanted to clear his name.

20. Mr Henk Schalk de Jager gave evidence to the effect that he was a manager on the farm “Sweet Home”. His evidence was that the cattle on the farm “Sweet Home” were not counted between the dates 24 February 2021 and 14 March 2021. Prior to the theft coming to light on 15 March 2021, the cattle were last counted on the farm “Sweet Home” on 23 February 2021, when the cattle were vaccinated/dosed. Mr De Jager produced his pocketbook, which was written in his own shorthand contemporaneously with the relevant events; despite being in his own shorthand, the said pocketbook corroborated his version of the events.

21. Mr De Jager’s evidence established the *nexus* between the cattle stolen from the farm “Sweet Home” and those cattle that were eventually returned. His evidence on this aspect was not contested. Mr De Jager’s evidence also established how the theft came to light. On this aspect, his evidence and that of Mr Modisapudi corroborated each other.

22. Mr De Jager’s evidence was to the effect that Mr Kriek’s calves had the letters “LDJ” tattooed in their right ears. That the relevant calves had ‘swallow tails’ cut into both ears. That each calf also had an ear tag attached to its left ear.

23. Mr De Jager was confronted with the affidavit he gave to the SAPS at the time of the theft. He confirmed his signature but testified that at the time he signed such affidavit, he had not read it and that it was not read back to him. Also, at that time, he testified that he was preoccupied with searching the different camps on the farm for the missing cattle.

24. Overall, Mr De Jager made a favourable impression as a witness. He answered questions frankly and directly. He did not give the impression of trying to embellish his evidence, nor did he try to mislead the court.

25. Then the owner of the affected cattle Mr Nicolaas Jacob Kriek, gave evidence. Due to circumstances that could not be avoided at the time, his evidence was split into two parts, with a period of approximately 8 months between each session in which he gave evidence.

26. Mr Kriek's evidence confirmed that the cattle stolen from the farm "Sweet Home" and subsequently identified in the presence of the SAPS and returned to the farm "Sweet Home" belonged jointly to him and his wife. This corroborated the evidence of Mr Modisapudi and the evidence of Mr De Jager.

27. Mr Kriek's evidence confirmed the manner in which the relevant calves were marked and identified. On Mr Kriek's evidence, there was blood on the ears

of the cattle when he went to identify his cattle in the presence of members of the SAPS. On his evidence, he concluded that the ear tags of his calves had been roughly removed, causing the bleeding he observed. None of the applicants' other witnesses testified to their being blood on the ears of the relevant calves.

28. Mr Kriek also testified that the manager, Mr De Jager, did not comply with the usual practice for counting the cattle on the farm "Sweet Home" prior to the theft coming to light. In terms of the usual practice, the cattle had to be counted on the preceding Friday, and the totals relayed to him on the following Monday. He could not recall prior to the theft coming to light when Mr De Jager last reported on a count of the cattle concerned.

29. Mr Kriek conceded that he was more dedicated to his tax practice than his farming endeavours. On Mr Kriek's evidence, he last visited the farm on Saturday, 28 February 2021, for a brief period. He did not attempt to count the cattle on this occasion as he could not do it alone. On this occasion, when he visited the farm "Sweet Home," he also did not notice anything amiss, as the cattle are kept in two separate camps on the farm. At that time, he also explained that he was inundated with his clients' provisional tax and VAT returns.

30. Then Mr Chris Strauss gave evidence on behalf of the third applicant. Mr Strauss testified that he prepared the invoice, being annexure “FA14” to the founding affidavit, which he presented to Mr Leboko to sign. The evidence of Mr Strauss was to the effect that the thirteen cattle he purchased from Mr Leboko were mixed-breed Charolais calves. That such calves also had swallowtails cut into their ears. This aspect of Mr Strauss’ evidence was undisputed. This established the *nexus* between the cattle stolen from the farm “Sweet Home” and the cattle purchased from Mr Leboko. Mr Strauss testified that he asked Mr Leboko if he was the owner of the cattle he was selling, and Mr Strauss accepted Mr Leboko's assurance that he was the owner of the cattle he was selling to Mr Strauss. On the strength of that assurance, Mr Strauss did not look for any further identifying marks on the relevant calves. Mr Strauss testified that the information set out on the invoice “FA14” was provided to him by Mr Leboko. This aspect of his evidence was not disputed and must be accepted. It was put to Mr Strauss that Mr Leboko would deny signing the said “FA14”.

31. Then Mr Schalk van Heerden gave evidence on behalf of the first applicant. His evidence was to the effect that invoices were prepared for the seller, but that this was done by his wife. However, his evidence that the invoice was prepared based on information provided by Mr Leboko went uncontested. Mr Van Heerden’s evidence established the *nexus* between the calves he

bought from Mr Leboko and the ones that were subsequently seized at his farm, as well as those that he sold on to Mr Markram and Karan Beef. His evidence that the cattle he bought from Mr Leboko had ‘swallow tails’ cut into both ears on each calf went uncontested and is direct evidence of the *nexus* referred to above. The breed of the calves concerned, being Charolais cross calves, provided further evidence of this *nexus*. This was the case in respect of all three sales where the first applicant bought cattle from or through Mr Leboko.

32. Mr Van Heerden came across an article circulated on WhatsApp relating to Mr Kriek's stolen calves. His evidence in this regard was challenged. However, Mr Van Heerden contacted Mr Markram, and Mr Markram contacted the police as a result of the information received from Mr Van Heerden. This is what one would expect from an honest person who subsequently learns that he may have been tricked into buying stolen property.

33. Mr Van Heerden's evidence that he sold calves on to Mr Markram and Karan Beef was undisputed. This explains why some of the stolen cattle were retrieved from Mr Markram's farm and the premises of Karan Beef.

34. Mr Van Heerden was taken in by the regard he had for Mr Leboko. He accepted Mr Leboko's word that Mr Leboko was the owner of the calves

concerned. Mr Leboko did not provide his stock card for verification of the ownership of the calves concerned.

35. When Mr Leboko delivered the calves concerned to him, there was no blood on the ears of the respective calves.

36. Finally, for the applicants, Mr Jacob Frederick Markram gave evidence for the second applicant. Mr Markram's evidence confirmed the evidence of Mr Koper that Mr Koper purchased cattle on behalf of Mr Markram.

37. Mr Markram's evidence was to the effect that he inspected the cattle that evening for quality after Mr Koper had purchased the said cattle from Mr Leboko. He confirmed that the cattle purchased by Mr Koper were Charolais cross breeds. That each of the calves concerned had 'Swallow Tails' cut into each of their ears. Mr Koper provided Mr Markram with details of the number of calves purchased, the weight of the calves and the banking details of the seller.

38. The evidence of Mr Markram aside from establishing the breed and markings cut into the ears of the respective calves provided further evidence of the *nexus* between the calves stolen from the farm "Sweet Home" and the calves sold to Mr Markram through Mr Koper in that the calves purchased from each seller were kept in separate corrals or pens until Mr Markram had

a chance to inspect them for quality. Only twenty cattle were purchased by Mr Koper for Mr Markram on the relevant day. There was only one group of fourteen cattle bought on that day, being the fourteen Charolais cross breeds bought from Mr Leboko. They were kept together in a separate pen/corral from the other cattle purchased on that day. Mr Markram found these calves to have 'Swallow Tails' cut into their ears. The breed, markings and circumstances set out herein is persuasive evidence of the *nexus* between the cattle stolen from Mr Kriek and those sold by Mr Leboko to Mr Markram through Mr Koper.

39. Mr Markram testified that he was phoned by Mr Van Heerden and informed that the calves he had bought from Mr Van Heerden, which originated from Mr Leboko, appeared to be the calves that were stolen and referred to in the relevant article. Mr Markram testified that he phoned the police and asked them to come the next day, as it was already dark at that time.

40. Mr Markram's evidence as to what transpired at his farm and the premises of Karan Beef was not contested.

41. During cross-examination, Mr Markram confirmed that he inspected the calves concerned and found that there was no brand mark on such calves. He did not check whether the said calves were tattooed. This evidence was also undisputed and is relevant insofar as Mr Leboko testified that the cattle he

sold to the applicants bore his brand “RRL” on their legs. This was not put to Mr Markram or any of the other witnesses for the applicants.

42. It was put to Mr Markram that he refused to take a VAT invoice from Mr Leboko because he did not want to have to pay VAT. Mr Markram denied such contention and pointed out that when Mr Leboko delivered the calves concerned to his property, he was not present. That Mr Koper handled the transaction and that he was not there to refuse an invoice from Mr Leboko.

43. This concluded the evidence tendered on behalf of the applicants. Then Mr Leboko gave evidence on behalf of the respondents.

44. Mr Leboko’s testimony had several unsatisfactory features to it. Firstly, Mr Leboko’s evidence was not preceded by his version being put to the applicant’s witnesses. Where such version would be relevant to the evidence of that specific witness. An example of this is the contention that Mr Strauss offered a cash bribe to the SAPS so that he would apparently not be detained. There are several further examples of this conduct, including *inter alia* that the cattle sold to Mr Van Heerden bore Mr Leboko’s registered brand mark “RRL” on their legs. Also, Mr Leboko testified that he had a transportation book which he used in the transactions relating to the applicants. Not only was the existence of this transportation book not raised with any of the applicants’ witnesses, but it was also not discovered, nor was it produced in

circumstances where, if the sale of the calves was a legitimate transaction, the transportation book would have been important evidence to substantiate his version. The absence of the transportation book in these circumstances raises several questions regarding the evidence of Mr Leboko.

45. In his evidence in chief Mr Leboko testified that he had acquired an App on his phone that allowed him to issue invoices for the sale of cattle. This was also never put to any of the witnesses who testified on behalf of the applicants.

46. Mr Leboko also did not discover or produce the invoices he alleges he produced, and that on his evidence the applicants refused to accept. In circumstances where, if it could be shown that such invoices existed, it would have corroborated his evidence. Instead, this court is left with the question as to why such invoices were never discovered or produced.

47. In cross-examination, Mr Leboko testified for the first time that he used a 'fishtail' cut into the ears of his calves, which, according to him, is similar to the 'swallow tail'. This was also never put to any of the applicants' witnesses. It smacks of Mr Leboko tailoring his evidence as the case against him and the other respondents developed over a period of some two years, in which evidence in this matter was led.

48. Mr Leboko's proffered explanation as to why his legal representative did not raise these, and other issues with the applicants' witnesses, is simply improbable and untenable. Mr Leboko testified that he provided his legal representatives with all of this information, but that they informed him that it was not necessary to put everything in the answering affidavit, as he would get his day in court to tell his side of the story. Having regard to the fact that when the answering affidavit was drawn up and settled, the matter was still an opposed motion. The referral to oral evidence only occurred much later. This explanation is so inherently improbable and so blatantly self-serving that it can safely be disregarded.

49. Above is a summary of the evidence adduced in this matter. It is clear from such evidence that Mr Kriek's claim to the relevant calves was unassailable. It is implied in the contract of sale between the individual applicants and the respective respondents that the sellers would deliver to the applicants vacant possession, together with a warranty against eviction.

50. It is also clear from the evidence adduced before this court that the applicants have established on a balance of probabilities that there is a *nexus* between the calves stolen from the farm "Sweet Home" and those sold by the respective respondents to the respective applicants.

51. The version set up by Mr Leboko is so improbable, coupled with the fact that his evidence was unsatisfactory to the extent set out above, that his version stands to be rejected.

52. In these circumstances, I find that the applicants have established their case on a balance of probabilities. In these circumstances, the applicants are entitled to the confirmation of the *rule nisi* issued out of this court on 26 March 2021. They are further entitled to the relief sought in Part B of the Notice of Motion dated 26 March 2021.

53. Accordingly, that leaves the issue of costs to be considered. The applicant has asked for costs on a punitive attorney and client scale. At this point, I am not inclined to grant costs against the respondents on a punitive attorney and client scale. This is a case where costs should follow the result. I believe it would be appropriate having regard to the circumstances, to award the applicants costs on scale "B".

Accordingly, the following order is made:

1. That the *rule nisi* issued out of this court on 26 March 2021 be and is hereby confirmed.

2. That the first respondent is ordered to pay the first applicant R380668.75 (three hundred and eighty thousand six hundred and sixty eight rand and seventy-five cents).
3. That the first respondent pay interest on the aforesaid amount of R380668.75 (three hundred and eighty thousand six hundred and sixty eight rand and seventy-five cents) from the date of issuing this application to date of final payment, *a tempore morae* at the rate of 7% per annum.
4. That first respondent is to pay the costs of the first applicant on a party-and-party basis on scale “B”.
5. That second respondent is ordered to pay the third applicant an amount of R82000.00 (eighty-two thousand rand).
6. That second respondent is ordered to pay interest on the aforesaid amount of R82000.00 (eighty-two thousand rand) from the date of issuing this application to date of final payment *a tempore morae* at the rate of 7% per annum.
7. That second respondent is to pay the costs of the third applicant on a party-and-party basis on scale “B”.
8. The third respondent is ordered to pay the second applicant the amount of R114434.36 (One hundred and fourteen thousand four hundred and thirty four rand and thirty-six cents).

9. That third respondent pay interest on the aforesaid amount of R114434.36 (One hundred and fourteen thousand four hundred and thirty-four rand and thirty-six cents) from date of issuing this application to date of final payment, a *tempore morae* at a rate of 7% per annum.
10. That third respondent is ordered to pay the costs of the second applicant on a party-and-party basis on scale “B”.

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L.G. LEVER  
JUDGE OF THE HIGH COURT  
NORTHERN CAPE DIVISION, KIMBERLEY

#### Appearances

For the applicant:	Adv Sander
Instructed by:	Van De Wall Inc.
For the respondent:	Adv Jacobs
Instructed by:	Juries Attorneys
Date Heard:	27 February 2025
Delivery Date:	19 June 2026