

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

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

PILLAY J

SIGNATURE  DATE 31 AUGUST 2026

CASE No: HCAA 21/2026

HCAA 22/2026

Court *a quo* CASE No: 2026-040134

In the matter between:

SEBENZA AGRI INVESTMENTS(PTY)LTD

APPELLANT

V

NDF(PTY)LTD

1ST RESPONDENT

CHRISTOPHER RAYMOND RAY N.O

2ND RESPONDENT

KYLENE WEYERS N.O

3RD RESPONDENT

Delivered : 31 August 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date for hand down of the judgment is deemed to be 31 August 2026.

Judgment Reserved : 6 August 2026

Coram : Muller J *et al.* Pillay J, Nkoana AJ

JUDGMENT

PILLAY J:

INTRODUCTION

- [1] The appellant before Court sought to have two Judgments of Masilo AJ set aside on appeal. The first being the main Judgment and Order on the merits and the second being the Section 18(4) appeal. Both appeals pertain to a dispute concerning eighteen farming properties measuring approximately 1 019.14 hectares, which were restored to and under the control of the Moletete Communal Property Association ("Moletete CPA") in terms of the Restitution of Land Rights Act¹. These properties were leased for commercial citrus operations to the parties, and it is these lease agreements that have led to the proceedings before this Court.
- [2] The dispute centred on competing claims to the farms by NDF (Pty) Ltd (in business rescue) ("NDF") and Sebenza Agri Investments (Pty) Ltd ("Sebenza"). NDF relied on a ten-year lease concluded on 1 July 2017, whilst Sebenza relied on a lease concluded with Moletete CPA on 25 August 2025.
- [3] On account of competing rights claimed by the lessees in respect of the properties, various letters, applications, intervening applications and Orders were sought by various parties involved in this dispute on various occasions and in many instances on an urgent basis. Ultimately, this Court was seized with the determination of the validity of the 2017 lease, the legal effect of the purported cancellation of that lease, the validity and enforceability of the 2025 Sebenza lease, and whether Sebenza was lawfully entitled to occupy and harvest on the farms. This flowed from the Judgment and Order of Masilo AJ wherein the Court *a quo* ordered that the 2017 lease remained

¹ See Act 28 of 1996

valid and enforceable, declared the Sebenza lease invalid, ordered Sebenza's eviction, and granted ancillary relief.

- [4] For completeness of the record the Moletele CPA although cited, failed to meaningfully participate in the proceedings and after the Order was granted by Masilo AJ filed a rescission application as well as an application for leave to appeal. On the date of these appeal proceedings, the Attorney for the Moletele CPA was present in Court, this Court directed that the matter stand down pending Counsel's receipt of instructions in relation to the application for leave to appeal by the Moletele CPA, which had not yet been determined, and whether or not it would have an impact on this appeal. On resumption, both Counsel confirmed after consultation with the Attorney for the Moletele CPA, that the Moletele CPA had elected to withdraw the application for leave to appeal and that this appeal could therefore proceed. Based on the information provided, this Court proceeded to hear arguments in respect of both appeals, accepting the decision by the Moletele CPA to withdraw the notice of leave to appeal, in respect of the main matter.
- [5] The second appeal under Section 18(4)(ii) of the Superior Courts Act,² dealt with the enforcement of paragraphs 56.1 to 56.5 of the Court Order dated 5 May 2026 granted by Masilo AJ. This Court will deal with the main appeal first and flowing therefrom, proceed with the merits of the second appeal in terms of Section 18(4)(ii) of the Superior Courts Act.

² 10 of 2013

BRIEF BACKGROUND

- [6] The Moletele CPA is lawfully in control over the restituted farms which are the subject matter of this appeal. NDF is a joint venture company in which Moletele CPA holds 51% and Strategic Farm Management (Pty) Ltd ("SFM") holds 49% shareholding. Moletele CPA originally leased the farms to NDF in 2008. Before the lease expired, the parties concluded a further lease agreement in 2017, extending the lease to 2027. For approximately eight years NDF occupied and operated the farms under the 2017 lease, with both parties complying with their respective obligations.
- [7] On 25 August 2025, the Moletele CPA resolved to terminate the lease agreement with NDF and on the said date entered into a long-term lease of the abovementioned farms to Sebenza for a period of 25 years. On 26 August 2025, Moletele CPA gave notice requiring NDF to vacate the properties. On 28 August 2025, a meeting of certain NDF directors including Mr Rossouw (the sole director of Sebenza), subsequently resolved to accept the cancellation and vacate the farms. During September 2025 the same directors placed NDF into voluntary winding-up by a special resolution and on 29 September 2025 the Master appointed liquidators. Sebenza in the meantime took up occupation and commenced farming operations in respect of the 2025 lease agreement.
- [8] On 21 October 2025 the High Court converted the voluntary winding-up of NDF into a Court supervised business rescue with the appointment of the second and third respondents as the Business Rescue Practitioners (BRPs). Their ability to discharge their statutory functions was hampered by Sebenza to the extent that on 16 January 2026 they were granted a Court Order to enforce their rights which still did not

materialize. Further Court intervention was the removal of Mr Rossouw from the board of directors and the reinstatement of the board of directors removed from the board during September 2025.

[9] Whilst this was unfolding the Moletele Community was divided with opposing factions concerning which of the two businesses the community best sought to operate the farms, resulting in there being disruptions to the business operations of Sebenza and the need for Judicial intervention.

[10] On 4 December 2025, the Minister of Land Reform and Rural Development recorded the outcome of a meeting convened under Section 11 of the CPA Act,³ between the Minister, the Office of the CPA and the Moletele CPA, and other interested parties wherein it was resolved that:

"(1) The contract between MCPA and New Dawn (NDF) is valid remained valid and must be honoured. The contract is still valid for 2 years.

(2) The Sebenza Agri Investment (Pty) Ltd contract is not recognized by the CPA Office. It contravenes Section 12(1)(c) of the Communal Property Association Act No, 28 of 1996, as amended."

The Moletele CPA was required in law to submit documentation concerning the affairs of the Moletele CPA to the Registrar by 16 January 2026, which they failed to do resulting in the dissolution of the Executive Committee of the Moletele CPA by the Registrar. This ruling by the Registrar was appealed and subsequently set aside, reinstating the Executive Committee, however, the resolution itself concerning the validity of the two contracts was not set aside. The Minister's letter stated that the

³ See No 28 of 1996

issues relating to the New Dawn liquidation and Business Rescue are *sub-judice* and must be left to the jurisdiction of the Courts.

[11] In 2026 NDF's Business Rescue Practitioners launched urgent proceedings seeking declarations concerning the competing leases, eviction of Sebenza, and protection of NDF's assets. Masilo AJ granted the relief as per the Court Order which read as follows;

1. *"The non-compliance with the provision of Section 12 (1) (c) of the CPA is condoned. The lease agreement concluded between the First Applicant and the First Respondent dated 1 July 2017 is declared valid and full force and effect.*
2. *The lease agreement concluded between the First Respondent and the Second Respondent dated 25 August 2025 is declared invalid and of no force and effect.*
3. *The Second Respondent is evicted and all persons occupying through it, are directed to vacate the farming properties listed in schedule annexed marked "X" within 48 hours of service of this order.*
4. *Directing the Sheriff to evict and remove the Second Respondent, and all persons occupying through it, from the farming properties listed in schedule annexed marked "X" within 48hours of service of this order.*
5. *Interdicting and restraining the Second Respondent, all person occupying through it, from using, encumbering, alienating, disposing or removing any assets belonging to the First Applicant from the farming properties listed in schedule annexed marked "X" within 48 hours of service of this order.*
6. *The Second Respondent is directed to pay the costs of the main application on the scale as between attorney and client, including the costs of two Counsel where employed on Scale C."*

- [12] The Court *a quo* found that the 2017 lease agreement was valid even though the Moletete CPA Committee's term of office had expired when the agreement was signed and amidst the alleged non-compliance with statutory requirements. The Court *a quo* found that the signatory who represented the Moletete CPA had acted with authority, and that the parties had acted on that representation for many years. The Court *a quo* relied upon the principle of ostensible authority and estoppel when considering the validity of the 2017 lease agreement and relied on the resolutions in 2025 recognising the validity of the lease. The Court *a quo* further found that the Business Rescue Practitioners had standing to institute proceedings, as they had a direct and substantial interest in preserving NDF's assets and operations.
- [13] The Court *a quo* found the lease agreement with Sebenza invalid and unenforceable, relying partially on the resolution determining that the agreement contravened section 12(1)(c) of the CPA Act. The Court *a quo* expressed serious concern about the role of Mr Rossouw, who simultaneously occupied positions of authority in both NDF and Sebenza during this cancellation of the 2017 lease agreement. The Court *a quo* made specific reference to his participation in decisions affecting NDF, while benefiting Sebenza. According to the Court *a quo* this created serious conflicts of interest and was contrary to the fiduciary duties of a Director in terms of Sections 75 and 76 of the Companies Act⁴. The Court *a quo* ultimately concluded that NDF retained rights under the 2017 lease and that Sebenza's occupation was unlawful, leading to the eviction order being granted.

⁴ See Act 71 of 2008

- [14] The Court *a quo* granted the appellant's leave to Appeal these findings and Court Order and thereafter, granted the respondents execution in terms of Section 18(3) of the Superior Courts Act. This led to the automatic right of appeal sought by the appellants in respect of the execution order granted in terms of Section 18(3) of the Superior Courts Act.
- [15] The appellants disputed the authority of the first respondent to seek an eviction order against the appellant. The argument was that the respondent had no authority as the first respondent was not the lessor nor holding any right in terms of any valid lease agreement and thus had no *locus standi* to institute proceedings against the appellant. The appellant indicated that if it was found that the first respondent did not have the relevant *locus standi* that would dispose of the matter in its entirety.
- [16] The appellant's argument before this Court was two-pronged, the first was ostensibly that the 2017 NDF lease was invalid from inception because the Moletele CPA Committee lacked authority when it concluded the lease. The appellant argued that the Committee's term had expired years earlier and therefore they had no authority to bind the Moletele CPA. The appellant further contended that statutory approval requirements were not met and that the Court *a quo* lacked the relevant authority to "condone" non-compliance with Section 12(1)(c) of the CPA Act especially as such non-compliance could not be condoned. The Court *a quo* further erred in granting the unenforceable Preservation Order concerning the first respondent's movable assets which were not identified by the Business Rescue Practitioners on the various farms. There was no valid way in which this Order could be executed as it was unclear which movable assets belonged to the first respondent. Thus, as it stood there was

no clarity as to how to give effect to the said Order in respect of the alleged movable assets.

[17] The appellant's further argument was to the effect that the 2017 lease was terminated by agreement in that the Moletete CPA issued a notice terminating the lease and that NDF accepted that termination through a resolution taken by its directors. According to the appellant, cancellation was accepted and implemented with the first respondent voluntarily vacating the properties. The appellant highlighted that the termination was by mutual consent (*mutuus dissensus*), and that parties to an agreement could agree to terminate an agreement, regardless of whether the lease agreement contained an express cancellation clause, which was required to be triggered to warrant a cancellation of the contract. Moreover, the appellant argued that this was accepted as being the case, by the liquidators, concerning them being aware that the lease agreement was cancelled and that there were new tenants on the farms.

[18] The appellant also raised the issue that the Minister had overturned the administrative decisions relied upon by the Court *a quo* and that those later developments were not considered by the Presiding Judge, which according to the appellant, affected the eviction order and the entitlement claimed by the first respondent to seek the eviction order.

[19] The appellant reluctantly conceded that the Sebenza lease agreement was dependent on suspensive conditions which were not complied with, despite the appellant having occupied the farms, however, the appellant indicated that this current lease agreement was before the Registrar for consideration. The appellant

argued that the Court *a quo* erred in its findings, and that the appeal on the merits must succeed. The appellant relied on the fact that no statutory power existed to condone non-compliance with section 12(1)(c) and therefore the Court *a quo* erred in granting condonation especially as same was not sought by the respondents.

[20] The appellant sought various orders if successful, which are not being repeated as they concerned a counterclaim that was not prosecuted by the appellant. In essence, the appellant sought that the Order of the Court *a quo* be set aside, and the finding that the 2017 lease agreement was *void ab initio* and in the alternative that it was terminated by mutual agreement between the parties. Further that the respondents had no locus standi to have sought the eviction of the appellant considering the aforesaid circumstance. The appellant sought costs on Scale C including the costs of two Counsel.

[21] The respondents argued that the 2017 lease was valid as it was recognised by the relevant statutory authorities and was never lawfully terminated. They argued that the lease agreement had spanned eight years without there being any legal dispute raised, concerning its validity. The Moletele CPA never once approached the Court for a declarator concerning the validity of the 2017 lease agreement. Moreover, the respondents indicated that even if it was not valid, that would simply result in the contract being voidable but not *void ab initio*. The respondent argued that the 2017 lease contained a specific breach and notice cancellation mechanism, requiring a breach, notice to remedy and a cure period, none of which occurred nor was there an allegation of breach of the terms of the lease agreement during this period, raised by the Moletele CPA, in writing. The respondents further argued that currently the

respondents were still complying with the terms of the agreement and making payment which was being received by the Moletele CPA without any objection or return of said funds. This was a clear indication that there was a valid lease which would only expire in 2027.

- [22] The respondents contended that the Sebenza lease never became operative because several suspensive conditions were not fulfilled, including statutory approvals and cancellation of the NDF lease. Since those conditions were not fulfilled, Sebenza acquired no rights of occupation. Moreover, Mr Rossouw's involvement in both NDF and Sebenza created a conflict of interest and tainted the process whereby NDF purportedly accepted termination of its lease. The respondents relied on the resolutions of the Moletele CPA, the CPA Office and Ministerial processes recognising the continuing validity of the NDF lease, as support for the fact that the 2017 lease's validity was confirmed by the resolution of the Moletele CPA at the meeting and that same was effective till 2027.
- [23] The respondents indicated that if the lease agreement of 2017 was *void ab initio*, then why did the appellant rely on the alleged termination of the lease agreement. The respondents argued that there would be no need to terminate that which did not exist and maintained that it was inappropriate for the appellants to rely on both defences at the same time, to justify the relief sought on appeal.
- [24] The respondent highlighted that notwithstanding the confirmatory affidavit of Mr Malatjie in respect of the contents of Mr Rossouw's affidavit concerning himself, there was no indication that the Moletele CPA had sought a declarator from the Court, concerning the invalidity of the 2017 lease agreement or that the Committee in 2017

had no authority to commit the Moletele CPA to the agreement, amidst the opinions sought by the Moletele CPA, concerning this issue. According to the respondents, the appellant was not a party to the 2017 contract, therefore was not entitled to question the validity thereof.

- [25] In respect of the Sebenza agreement, the respondents noted that amidst Mr Malatjie confirming the intention of the appellants and the Moletele CPA to enter into and honour the Sebenza lease agreement, same had "Conditions Precedent" which were not fulfilled. In the result, the respondents sought that the appeal was without merit and a further stratagem in delaying the enforcement of the 2017 lease agreement and therefore sought the dismissal of the appeal including costs on scale C including the costs of two Counsel.
- [26] In respect of the appeal in terms of Section 18(4)(ii) of the Superior Courts Act 10 of 2013, the appellant relied on the following points;
- [26.1] That the Court *a quo* granted leave to appeal on the merits and thereafter granted the order in terms of Section 18(3) of the Superior Courts Act.
- [26.2] That the Court *a quo* failed to consider the appellant's prospect of success on the merits and had by granting the application in terms of Section 18(3) in essence sat as a Court of appeal confirming the dismissal of the appeal.
- [26.3] That the Court *a quo* failed to appreciate that Sebenza was in occupation of the farms since August 2025 and made no mention thereof.
- [26.4] That the Court *a quo* failed to consider the financial prejudice that the appellant would suffer by the granting of the order.

- [26.5] That the Court a *quo* failed to consider the enrichment lien over some R26 000 000,00 in capital improvements and GLOBALGAP infrastructure and financial investment, made by the appellant in the farms and the irreparable harm to be suffered by the appellant because of the order granted.
- [26.6] That the Court a *quo* failed to consider that the first respondent was in business rescue and that any damages claim sought against the first respondent would be that of the ordinary creditor.
- [26.7] That the Court a *quo* failed to consider the irreparable harm to the farm workforce which would be disrupted by the execution of the eviction order.
- [26.8] That the Court a *quo* failed to consider that the circumstances relied upon by the respondents, were not exceptional and that the granting of the order in terms of Section 18(3) of the Superior Courts Act 10 of 2013 must be set aside and replaced by the following;
- [26.8.1] The appeal is upheld with costs on scale C.
- [26.8.2] The Order of the Court a *quo* dated 9 June 2026 is set aside and replaced with the following Order:
- [26.8.2.1] The application in terms of Section 18(1) and (3) of the Superior Courts Act 10 of 2013 is dismissed.
- [26.8.2.2] The applicants are ordered to pay the costs of the application on scale C jointly and severally, the one paying the others to be absolved.
- [27] In argument before this Court, the appellant relied on the enrichment lien and the financial irreparable harm that would be suffered by the appellant if this order was not set aside.

- [28] In response, the respondents argued that the harm complained of was not irreparable as it flowed from the appellant's decision to enter into an inchoate lease agreement, and that any damage claim sought by the appellant to have been, was to be sought against the lessor, and not the respondents. The respondents sought that this appeal also be dismissed with costs on scale C.
- [29] The common cause facts were identified as the following;
- [29.1] That the Moletele CPA had the relevant authority over the various farms and was responsible for contracting with the parties before Court in respect of the lease agreements of the various farms.
- [29.2] That there was an agreement in 2017 concerning the lease of these farms for agricultural farming with NDF which flowed from a previous lease agreement.
- [29.3] That for a period of eight years this agreement operated and was complied with by the parties without any legal declarator being sought concerning the validity or enforceability of the said lease agreement.
- [29.4] That the Moletele CPA in 2025 resolved to terminate the lease agreement with NDF and gave notice to NDF cancelling the 2017 lease agreement which was accepted by NDF's Directors and NDF vacated the farms.
- [29.5] That the Moletele CPA contracted to lease the farms to Sebenza and in terms of this agreement it was recorded that on 10 July 2022 already, Moletele CPA had resolved to lease the farms to Sebenza with "Conditions Precedent" which were still not fulfilled in 2025, when Sebenza took occupation of the farms.
- [29.6] That Sebenza was in current occupation and involved in farming operations on the farms.

- [30] The facts in dispute were identified as the following;
- [30.1] Whether the 2017 lease was valid from inception.
 - [30.2] Whether the 2017 lease was lawfully cancelled.
 - [30.3] Whether NDF validly accepted the cancellation and whether mutual termination could replace the contractual cancellation clause as contained in the 2017 lease agreement.
 - [30.4] Whether Mr Rossouw's conflict rendered the acceptance invalid.
 - [30.5] Whether the Sebenza lease became enforceable.
 - [30.6] Whether statutory approvals could be condoned or overlooked by the Court *a quo*.
 - [30.7] Whether the Minister's letter affected the resolutions made in December 2025.
 - [30.8] Whether Sebenza enjoyed a valid enrichment lien.
 - [30.9] Whether the Court *a quo* erred in ordering a punitive Cost order against the appellant.
- [31] In considering the above, this Court is mindful that a Court of appeal is not at liberty to depart from the findings of fact and credibility made by the Court *a quo*, unless they are vitiated by irregularity, or unless on examination of the record it is revealed that those findings were patently wrong.⁵
- [32] The appellant sought that this Court consider the locus standi of the respondents to institute proceedings in circumstances where their standing was disputed. This was on account of the allegation that the 2017 NDF lease was invalid therefore the second

⁵ See *S v Francis* 1991 (1) SACR 198 (A) at 198 J – 199A and *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645 E-F

and third respondents were not entitled to act on behalf of the first respondent in respect of enforcement of the 2017 lease agreement and the other prayers granted by the Court a quo.

[33] *Locus Standi* is described in **LAWSA**⁶ as follows:

"He who has a right to sue in an action is said to have a locus standi in such action, and vice versa. "Everyone has a right to be heard in his own cause, and no one, save a qualified practitioner, has a right to be heard in the cause of another" (per SEARLE, JP in Rescue Committee, DRC v Martheze 1926 CPD 300). The test is, "has the person appearing a direct personal interest in the suit". In that case, it may be considered as 'his cause'" (ibid)."

[34] In **Amblers Precedents of Pleadings**⁷ LexisNexis LTC Harms et al 2018 on page 248 the following is said:

"The question of locus standi is in a sense procedural, but it is also a matter of substance. It concerns the sufficiency and directness of a person's interest in the litigation to be accepted as a litigating party. It is also related to the capacity of a person to conclude a jural act. Sufficiency of interest depends on the facts of each case and there are no fixed rules.

[35] In the case of **Gross v Pentz**⁸

"The general rule is that it is for the party instituting proceedings to allege and prove its locus standi, and the onus of establishing it, rests on that party. It must accordingly appear ex facie the founding papers that the parties have the necessary legal standing (locus standi in iudicio).

⁶ See (The Law of South Africa) LexisNexis JA Faris et al Durban 2022

⁷ See LexisNexis LTC Harms et al 2018 on page 248

⁸ See [1996] 4 All SA 63 (A), 1996 (4) SA 617 (A)

[36] The appellant sought this Court to revisit the Order of the Court *a quo* concerning the findings by the Court *a quo* of the validity of the 2017 NDF lease. The appellant's contention was that the lease agreement was *void ab initio* because the Executive Committee of the Moletele CPA lacked authority, when it concluded the lease. The appellant relied on the argument that the Committee's term had expired years earlier and therefore the Executive Committee had no authority to bind the Moletele CPA. The respondents countered with the argument that there was no evidence placed before the Court *a quo* to justify that contention particularly as the appellant was not in any way involved with the parties at the time of this agreement coming into operation. The respondents highlighted that if the lease agreement was *void ab initio*, then there was no need on the part of the Moletele CPA to seek cancellation. Moreover, the lease would not be void but rather voidable. Thus, providing for the respondent who was the party without being aware of this circumstance, to elect to continue with the contract as it was.

[37] The provisions of Section 12(3) and 12(4) of the Communal Property Association Act⁹ provides;

"12(3) Any disposal, mortgage, encumbrance, purchase or prescribed transaction in contravention of subsection (1) shall be voidable.

12(4) A member who alleges that an association has concluded a transaction contrary to the provisions of subsection (1) may request the Registrar to intervene in challenging the validity of such transaction."

⁹ See 28 of 1996

- [38] There was no indication in terms of Section 12(4) of any declarator being sought by the members of the Moletele CPA concerning the validity of the said lease agreement with NDF. It would also not necessarily be in their interest to raise an issue with the business entity of which it holds 51% shareholding and to whom they were contracting for the benefit of the Moletele CPA. From the record, it was apparent that this agreement since its inception was operational for a period of eight years. In as much as there were discussions and opinions sought concerning the validity of the said NDF lease agreement, the Moletele CPA did not pursue same and was performing in terms of the agreement by submitting accounts and receiving payment in respect of same. It was also noteworthy that the Moletele CPA already in 2022, had resolved to lease the farms to Sebenza, as endorsed on the Sebenza lease agreement, which was only signed by all the parties in 2025. This resolution by the Moletele CPA already in 2022 puts into question the *bona fides* of the Moletele CPA and Sebenza in respect of circumstances pertaining to the 2017 lease agreement.
- [39] The respondents maintain that the Executive Committee of the Moletele CPA had authority to contract with NDF in 2017 concerning the lease of the farms. The contract specifically endorsed that the parties to the contract were duly authorised and capable of contracting in respect of the lease agreement. Moreover, the respondents highlighted that if the authority was in dispute, at the time of contracting, the first respondent contracted in good faith, accepting the ostensible authority of the then Executive Committee of the Moletele CPA and performed in terms of the said contract. It was not disputed that the Moletele CPA accepted said performance throughout this period. The respondents also placed reliance on the *Turquand* rule in justifying the validity of the lease agreement.

- [40] Regard was had to ***Nieuwoudt NO and Another v Vrystaat Mielies (Edms) Bpk***¹⁰. at paragraph 8 where reference was made to the Turquand Rule, where the Court noted the following;

*“A modern formulation of the rule, which was approved by Lord Simonds in *Morris v Kanssen* [1946] AC 459 at 474, is taken from Halsbury’s Laws of England, 2 ed, vol 5, para 698 (see now 4 ed, reissue vol 7(1), para 980) and is in the following terms:*

‘Persons contracting with a company and dealing in good faith may assume that acts within its constitution and powers have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular.’

This reliance by the respondents was confirmed by the conduct of the Moletale CPA in respect of their business dealings with the respondent and showed joint commitment to the terms of the 2017 lease agreement. The respondent motivated that if the authority was found not to have existed and not valid, which was disputed, then the lease agreement would in terms of Section 12(3) be voidable and not *void ab initio* as sought by the appellant. The respondent argued that the voidable lease remained operative until and unless it was set aside. No fault could be found by this Court, in respect of that submission.

- [41] The appellant relied on the material dispute of fact allegation in support of why the Court *a quo* had erred concerning the legality of the 2017 lease agreement. On the appellant’s version from the onset there was no valid lease agreement in place. The appellant amidst challenging the lease agreement of 2017 as being void, failed to ventilate why it then sought to rely on the cancellation of the same “void” agreement.

¹⁰ See (325/2002) [2003] ZASCA 128; [2004] 1 All SA 396 (SCA); 2004 (3) SA 486 (SCA) (28 November 2003)

The agreement was either void and not in existence in toto, or valid and was validly cancelled, whichever argument the appellant sought to base their defence on, the appellant was not justified in relying on both versions at the same time to justify success on appeal.

- [42] Regard was had to the case of ***Faulkner V Freeman***¹¹ where the following was said in this context:

'It is trite law that, where a party to a contract alleges material non-disclosure, he may not approbate and reprobate but must elect which course he intends to follow - he must exercise an election whether to abide by or cancel the contract and he is bound by his election. The fact that the contract has been incorporated in a Court order cannot improve his position as far as this principle is concerned.'

- [43] This Court aligns itself to the assertion by the respondent concerning this inconsistency and the fact that the appellant appeared to be uncertain, concerning which set of circumstances it sought to rely upon on appeal. Moreover, it was apparent from the conduct of the Moletele CPA that on 4 December 2025 it resolved that the 2017 NDF agreement was valid and must be honoured till the termination of same in 2027. This resolution was conveyed by the Minister to the relevant parties on 9 December 2025 and *ex facie* the document, the Minister clearly highlighted all the parties present at the meeting and the resolution taken by the parties involved. This Court accepts the contents of the Ministerial letter strengthening the respondent's submission concerning this aspect. Accordingly, this Court finds that the 2017 Lease agreement between NDF and the Moletele CPA is valid and binding

¹¹ See 1985 (3) SA 555 CPD

upon the parties and was, in any event, ratified by the Moletete CPA on 4 December 2025.

[44] For completeness of this aspect regard was had to the communication by the Minister dated 4 March 2026 concerning the suspension of the decision by the Acting Registrar dated 16 February 2026, in respect of the dissolution of the Executive Committee. It was recorded that all decisions and agreements remained in place, which would include the resolution taken on 4 December 2025. Thereafter, the Minister on 17 April 2026 set aside the Acting Registrar's decision of suspension of the Executive Committee and elected not to comment on the ongoing dispute between the parties. Therefore, the supplementary affidavit by the appellant did not strengthen the appellant's position concerning the resolution taken on 4 December 2025. The Court *a quo* had regard to same and could not be faulted for its finding that the resolution of 4 December 2025 supported the respondent's position of the 2017 lease agreement being binding on the parties.

[45] The appellant contended that statutory approval requirements were not met and that the Court *a quo* lacked the relevant authority to "condone" non-compliance with Section 12(1)(c) of the CPA Act especially as same could not be condoned. This Court had regard to the record of proceedings and respective heads of argument and noted that the Court *a quo* was not empowered, nor were the respondents invited to seek such relief from the Court *a quo*, to grant condonation and erred by ordering condonation in circumstances where it was not sought nor provided for in terms of the Communal Property Association Act. As highlighted above the order by the Court *a quo* concerning condonation did not detract from the finding of the Court *a quo*,

correctly so, that the 2017 lease agreement was valid and binding on the parties. This was strengthened by the resolution of 4 December 2025. The appellant's ground of appeal on this point therefore must fail.

[46] The next issue for determination was whether as relied upon by the appellant this agreement was validly terminated by the parties in August 2025. From the record of proceedings, it was apparent that the Moletele CPA had resolved contracting with Sebenza as far back as 10 July 2022 as per the written contract with Sebenza¹². The circumstances surrounding the termination of the lease were shrouded in mischief orchestrated between Mr Malatjie representing the Moletele CPA and Mr Rossouw who was one of the Directors of NDF as well as being, the sole Director of Sebenza.

[47] The appellant sought this Court to accept that the parties mutually agreed to the 2017 Lease agreement being terminated as confirmed by Mr Rossouw. This argument was opportunistic, especially as the 2017 lease agreement had specific provisions concerning breach of the contract, to warrant cancellation. These breach provisions were never raised by the Moletele CPA as grounds relied upon to cancel the lease agreement. The resolution taken by the Moletele CPA did not record the reason for the termination of the said lease, which would have only expired in 2027, nor was it recorded why it was terminating this lease agreement with NDF, where it held 51% shareholding.

In addition, regard was had to the 2017 lease agreement with specific reference to paragraph 21.3 which reads as follows:

¹² See paragraph 2.3 of the Sebenza lease agreement

“21.3 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.”

Ex facie the 2017 lease agreement the mutual termination by both parties was required to be in writing. This Court noted that there was no record before the Court *a quo* or before this Court verifying compliance with this provision.

[48] This Court took cognisance of the fact that the plans between the appellant and the Moletele CPA prejudiced the first respondent and the acceptance of the termination of the lease agreement was questionable, especially considering the short notice and the decision by the then Directors to place NDF under voluntary liquidation immediately thereafter. These acts lend credence to the findings by the Court *a quo* that there was no real acceptance by the respondent to terminate the 2017 lease agreement. This is further supplemented by the respondent's application to enforce the lease agreement, and the Court Ordered removal of Mr Rossouw from the Directors of NDF. These circumstances were common cause, and this Court aligns itself with the finding that the first respondent had not accepted the cancellation of the 2017 Lease Agreement and same was not capable of being cancelled by mutual agreement by the parties as the 2017 Lease Agreement made no provision for cancellation in this way. The letter from the liquidators was confirmation of the information received and not a finding by the liquidators of this subject.

[49] Regard was had to the lease agreement between the Moletele CPA and Sebenza which was conceded to by the appellant as having “Conditions Precedent” which were recorded in paragraph 4 of the lease agreement as follows;

"(4.1) Cancellation of the lease agreement between the Lessor and New Dawn Farming Enterprise (Pty) Ltd over the Properties.

(4.2) Approval of this Deed of Lease in terms of Section 12(1)(c) by the Registrar of Communal Property Associations as contemplated in section 2 C(1) of the Communal Property Associations Act 28 of 1996.

(4.3) Approval of this Deed of Lease by the Minister of Agriculture in terms of the Subdivision of Agriculture Land Act.

(4.4) Registration of this notarial Deed of Lease against the Properties."

[50] All of these conditions had to be complied with before the appellant's lease became valid, and of full force and effect. Both the Moletele CPA and Sebenza relied on the argument that the parties had agreed to the occupation and continued farming on the various farms as per the contract, condoning the non-compliance of the statutory regulations with the arrangement that the suspensive conditions would be fulfilled in the future. The appellant indicated that the said agreement was being considered by the Registrar currently however, there was still no change in the legal status of the lease agreement as it stood.

[51] In ***Mia v Verimark Holdings (Pty) Ltd***,¹³ the Supreme Court of Appeal stated:

"The conclusion of a contract subject to a suspensive condition creates 'a very real and definite contractual relationship' between the parties. Pending fulfilment of the suspensive condition the exigible content of the contract is suspended. On fulfilment of the condition the contract becomes of full force and effect and enforceable by the parties in accordance with its terms. No action lies to compel a party to fulfil a suspensive condition. If it is not fulfilled the contract falls away and no claim for

¹³ See [2010] 1 All SA 280 (SCA) at para-1.

damages flows from its failure. In the absence of a stipulation to the contrary in the contract itself, the only exception to that is where the one party has designedly prevented the fulfilment of the condition."

[52] This principle was confirmed in **Vantage Goldfields SA (Pty) Ltd v Siyakhula Sonke Empowerment Corporation (Pty) Ltd and Another**¹⁴, where the Supreme Court of Appeal held that an agreement subject to unfulfilled conditions precedent lapsed automatically, and subsequent addenda could not revive a lapsed contract, where the parties failed to extend the deadline for the condition before its expiry.

[53] The consequence of the unfulfilled suspensive conditions was that the rights and obligations under the lease remained suspended. Neither party would be able to enforce the lease until the conditions were complied with. If these conditions were never fulfilled, the lease would fall away by operation of law.

[54] Regard was had to **Gravitek CC v Cartmel Investments CC and Others**¹⁵ where the Court noted;

"Suspensive conditions suspend the rights and obligations of contracting parties until an uncertain future event occurs. Upon the occurrence of the event, the contract is brought into existence and the rights and obligations of the parties become enforceable. The effect of the non-fulfilment of a suspensive condition is that the suspended rights and obligations of the contracting parties never come into existence..."

¹⁴ (853/2023) [2025] ZASCA 01 (SCA, 9 January 2025)

¹⁵ See [2019] ZAKZDHC 11 at para 16 – 17.

- [55] By all accounts, even with the most generous consideration to the appellant this was not an enforceable valid agreement based on all the conditions needing fulfilment. The four suspensive conditions were not fulfilled as things stood, and approval from various bodies was required for same to materialize. On this basis alone the appellant's reliance on this lease as entitlement and right to be on the farms is without merit and the appeal based on the Sebenza lease must therefore also fail.
- [56] In as much as the appellant contended that the respondent had failed to identify the movable assets on the property for the Court a quo to order for the preservation of those assets as per the requirements of *Setlogelo v Setlogelo*,¹⁶ this Court took cognisance of the fact that, for the Court a quo to have granted the Order, it was based on evidence that required identifying all the movable assets on the Farms, which the second and third respondents, as the new Business Rescue Practitioners were obliged in terms of their mandate to do, however they were being hampered in accessing the properties and being able to correctly identify all the movable assets, belonging to the first respondent, on account of the conduct of the appellant. This was confirmed by the Court Orders granted to the respondents in respect of same.
- [57] The appellant on the other hand did not rebut the allegation of ownership of movable assets by NDF on the farms but questioned why the wording of the Court Order was so wide lacking specifics relevant to identify these assets. The appellant did not dispute that use was being made of the orchards, packhouses, equipment and storage facilities which did not belong to the appellant. This Court appreciated that NDF was operating the farms until August 2025 for 8 years, requiring the acquisition

¹⁶ See 1914 AD 221

of movable assets to perform in terms of the lease agreement, and as much as the Order of the Court a *quo* may be labelled as vague for lack of particularity, given the circumstances that the respondents were placed in by the conduct of the appellant, this Order was appropriate in light of the allegations that access onto the Farms was being hampered by the appellant, and on that basis this Court is satisfied that the Court a *quo* had not erred in making this Order and therefore the appeal on this ground is without merit.

[58] In respect of the Section 18(4) Appeal;

Section 18 of the Superior Courts Act provides in the relevant part as follows:

"Suspension of decision pending appeal: -

- (1) *Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.*
- (2) *... ..*
- (3) *A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.*
- (4) *If a court orders otherwise, as contemplated in subsection (1) –*
 - (i) *the court must immediately record its reasons for doing so;*
 - (ii) *the aggrieved party has an automatic right of appeal to the next highest court;*

- (iii) *the court hearing such an appeal must deal with it as a matter of extreme urgency; and*
- (iv) *such order will be automatically suspended, pending the outcome of such appeal*"

[59] This Court was mindful of the various case law dealing with Section 18(3) applications and the consequent factual finding requirements that needed to be considered when granting the said application. In ***Incubeta Holdings and Another v Ellis and Another***,¹⁷ at paragraph 16 Sutherland J noted the following;

"[16] *It seems to me that there is indeed a new dimension introduced to the test by the provisions of Section 18. The test is twofold; the requirements are:*

16.1 First, whether or not 'exceptional circumstances' exist, and

16.2 Second, proof on a balance of probabilities by the applicant of-

16.2.1 The presence of irreparable harm to the applicant/victor, who wants to put into operation and execute the order, and,

16.2.2 The absence of irreparable harm to the respondent/loser, who seeks leave to appeal."

[60] In ***MV Ais Mamas: Seatrans Maritime v Owners, MV Ais Mamas, and Another***¹⁸ where the Court recognised that it was not possible to attempt to lay down precise rules as to what circumstances were to be regarded as exceptional and that each case had to be decided on its own facts. However, at page 156H – 157C, the Court noted the following:

¹⁷ See 2014 (3) SA 189 (GSJ)

¹⁸ See 2002 (6) SA 150 (C)

'What does emerge from an examination of the authorities, however, seems to me to be the following:

- 1. What is ordinarily contemplated by the words exceptional circumstances is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different; besonder, seldsaam, uitsonderlik, or in hoë mate ongewoon.*
- 2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.*
- 3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.*
- 4. Depending on the context in which it is used, the word exceptional has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.*
- 5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.'*

[61] The appellant relied on the following submissions highlighting that the Court *a quo* failed to properly consider whether Sebenza would suffer irreparable harm if the section 18(3) order was granted. According to the appellant, the Court *a quo* addressed NDF's alleged prejudice extensively, but reduced Sebenza's prejudice to

a single finding that it had no valid lease and therefore no legitimate basis to remain on the farms. The appellant argued that this approach failed to engage with the substantial evidence placed before the Court concerning the prejudice that would result from immediate implementation of the Judgment.

- [62] The appellant relied on its alleged enrichment lien arising from approximately R26 million spent on capital improvements, farming infrastructure and GLOBALGAP compliance measures. It contended that eviction before the appeal was determined, would effectively deprive the appellant of the benefit of those investments and undermine any security it held over the property. The appellant argued that loss of GLOBALGAP certification would result in immediate and irreversible commercial prejudice since export accreditation, once disrupted during a production season, could not readily be restored.
- [63] The appellant also emphasized the consequences of the immediate eviction for employees whose rights are safeguarded by section 197 of the Labour Relations Act. It argued that disruption of the farming operations would have prejudiced those employees and created uncertainty that could not simply have been remedied by a successful appeal at a later stage.
- [64] A further aspect of prejudice identified by the appellant was NDF's business rescue status. The appellant maintained that NDF's business rescue status materially increased the prejudice it faced. It argued that if it were evicted and subsequently succeeded on appeal, any damages claim would rank merely as a concurrent creditor claim against a financially distressed entity. On that basis, the appellant submitted

that it faced a real risk that any future monetary recovery would not be practically recoverable.

- [65] The appellant ultimately submitted that NDF failed to discharge the burden imposed by section 18(3) of proving that the appellant would not suffer irreparable harm if execution proceeded. It argued that this failure, on its own, warranted the setting aside of the execution order. The appellant sought that the appeal on the merits and in terms of Section 18(4) be granted as per the notice of appeal and heads of argument.
- [66] The respondents submitted that the exceptional circumstances relied upon were cumulative in nature and were not ordinary incidents of commercial litigation. They argued that the Court a quo had correctly considered the combined effect of several factors which, when viewed together, justified execution notwithstanding the pending appeal. The respondents submitted that NDF's sole income-producing asset consisted of a citrus farming operation and that the harvest was seasonal in nature. They argued that once a harvest season was lost, it could not be recreated or repeated during the lifespan of the appeal process.
- [67] The respondents indicated that NDF was in business rescue and that the income generated by the farming operations was essential to preserving the interests of creditors and cession holders. The harvest proceeds were therefore of critical importance to the business rescue process. The respondents submitted that the balance of irreparable harm favoured execution and weighed against the prejudice identified by the appellant which was fundamentally financial and therefore *prima*

facie recoverable by a claim for damages. By contrast, the respondents contended that the losses they faced were incapable of later recovery.

[68] The respondents argued that the appellant failed to demonstrate, on a factual basis, that such losses would be irrecoverable. The respondents submitted that the appellant's alleged harm arose from the loss of a benefit which the Court had already found was never lawfully entitled to be enjoyed by the appellant. The respondents argued that this was not the type of irreparable harm contemplated by Section 18(3). The respondents maintained that the enquiry under Section 18(3) was not whether a party would suffer absolutely no harm. Instead, the Court was required to determine whether the harm identified was truly irreparable. The respondents indicated that adopting an absolute approach would render Section 18(3) ineffective in practice. The respondents maintained that the appellant remained in occupation under a lease which had been declared invalid by the Court, which had not been recognised by the relevant statutory authorities and on which, the appellant's Counsel had reluctantly conceded, had never become legally operative.

[69] The respondents indicated that their own loss consisted of an entire citrus harvesting season, which once lost could never be restored through a later Court Order or damages award. Further, the loss of a harvest season would therefore have resulted in a permanent loss that could not be remedied through a subsequent damages award. The respondents reasoned that the revenue generated from the harvest was necessary for the business rescue process and for the protection of creditors and cession holders, whose interests depended on the successful completion of the season. According to the respondents, these losses were irreversible and therefore

constituted true irreparable harm. The respondents maintained that the appellant had advanced nothing on appeal that undermined those findings and that both the Main Appeal and the Section 18(4) appeal ought therefore to fail.

[70] In considering the arguments canvassed by the parties and the applicable legal principles it was apparent that the appellant relied on the enrichment lien of approximately R26 000 000,00 allegedly spent on improvements and in the farming operations. The Court *a quo* recorded and considered the lien but concluded that it did not confer upon the appellant any right to remain in occupation of the farms.

This Court considered whether the appellant was a bona fide possessor in respect of its right to remain on the farms relying on this lien. The appellant highlighted in the Court *a quo* that there was an enrichment lien but failed to mention what the enrichment lien entailed. It was only when the appellant opposed the Section 18 (3) application that the appellant disclosed the value of the alleged lien being R26 000 000,00 without detailing in *toto* how that amount was utilized to improve the farms for the benefit of the Moletete CPA. This was the first instance where the appellant sought the Court to consider why the execution of the eviction would be prejudicial if granted. This aspect was never appropriately ventilated during the hearing of the main application prior to the eviction being made an Order of Court.

[71] In considering the issues canvassed by the parties in respect of this enrichment lien, this court had regard to the case of *Passano v Erasmus*¹⁹ at paragraph 21 and 22 where the court noted:

¹⁹ (A163/2023) [2025] ZAGPPHC 249 (12 March 2025)

[21] The court a quo, in respect of an enrichment lien, referred to the following extracts from **Lakka v Beukes and Another (CA & R 60/2018) [2020] ZANHC 11 (23 March 2020):**

"It is trite that a bona fide possessor who has preserved or made improvements to another's property at his or her expense has a right of retention against the property to secure compensation for his or her necessary and useful expenses. This is a real right and an absolute defence against eviction by the owner or any future owners of the property. The exceptions being where ownership is acquired through a sale in execution where the purchaser was unaware of the right of retention and the retentor, with full knowledge of the sale fails to inform the purchaser of this right and sales in insolvency.

*Where it is the previous owner of property who has been enriched (as in this case the Visagies) at the expense of the lien holder, it is to him that the lien holder should seek redress for purposes of a possible enrichment claim, but the right to retention can be held against the new owner (even though he or she has not been enriched) until the lien holder has been duly compensated. In Pheiffer v Van Wyk and Others **2015 (5) SA 464 (SCA) at 467.** the SCA held:*

[12] *A real lien (an enrichment lien) is afforded a person who has expended money or labour on another's property without any prior contractual relationship between the parties. The lien holder is entitled to retain possession until his enrichment claim has been met. It is an established principle of our law that the owner of the property subject to the right of retention may defeat the lien by furnishing adequate security for the payment of the debt."*

[22] As to the issue of whether the respondent qualified to be regarded as a bona fide occupier, the court a quo relied on the following extract from **Boshoga & Another v Mmakolo and Others** (82446/2016) [2018] ZAGPPHC 656 (7 March 2018):

"[32] In Wille's Principles of South African Law 9th Edition at 1075 reference is made to de Vos Verrykingsaanspreeklikheid 245-7 who defines (for the purposes of the law of enrichment) a bona fide possessor as someone who possesses (either directly or indirectly) property of which he believes he is the owner; a mala fide possessor, on the other hand, acts as if he were the owner, while knowing that he is not. An occupier is someone who does not have the animus domini but nevertheless occupies the property because it is in his interest to do so. Occupiers are divided into lawful occupiers (i.e. those who have the right to occupy the property), bona fide occupiers (i.e. those who believe themselves to be lawful occupiers, but are not) and mala fide occupiers (i.e. those who occupy property as if they are lawful occupiers, but know that they are not)".

[72] In **Hing v Mkhabela**²⁰, the Court considered issues relating to acquisitive prescription and enrichment claims at paragraph 83.

"[83] In Roman Law the mala fide possessor lost all title to any form of improvements made to the immovable property of another.

Justinian wrote:

" ... in this case [where one builds upon the immovable property of another] the owner of the materials loses his property, because he is presumed to have voluntarily parted with them, that is, if he knew he

²⁰ (2013/37921) [2017] ZAGPJHC 107 (22 March 2017)

was building upon another's land ... Of course, if the person who builds is in possession of the soil, and the owner of the soil claims the building, but refuses to pay the price of the materials and the wages of the workmen, the owner may be repelled by an exception of do/us ma/us, provided the builder was in possession bona fide. For if he knew that he was not the owner of the soil, he is barred by his own negligence, because he recklessly built on ground which he knew to be the property of another. The Institutes of Justinian (Lib. II, Tit. 1, §30), translation by T. C. Sanders"

- [73] The abovementioned matters were considered by this Court in respect of the relevant principles applicable to the issue of bona fide or mala fide possessors. The circumstances before this Court differed materially in respect of the factual matrix in relation to those cases and the outcomes of those cases. The Court *a quo* did not ventilate the issue between a bona fide and a mala fide possessor, however, this Court took cognisance of the fact that the rights the appellant sought to enforce flowed from the Sebenza lease which by all accounts was invalid from the onset. The appellant could not rely on acting in good faith, in that it was innocent or lacked knowledge of the circumstance surrounding the manner in which it acquired possession over the farms. This placed in dispute its right to retain farms based on the enrichment lien. Moreover, this lien was in respect of the relationship between the appellant and Moletele CPA where by agreement these two entities contracted on an inchoate agreement, therefore the respondents should not be prejudiced by this lease agreement which was not contracted in good faith. Therefore, reliance on the lien by the appellant was unmeritorious.

[74] Moreover, it was accepted that a lien merely conferred a right of retention and did not entitle a party to continue using, occupying or commercially farming under the guise of the said lien. As indicated by the Court a quo the Sebenza Lease never came into existence as a source of a valid lease agreement and that the NDF Lease had never been validly terminated. These findings were based on the contractual instruments, the appellant's admissions and the statutory determinations made by the relevant authorities. These findings by the Court a quo could not be faulted, and this Court aligns itself with those findings.

[75] Further, it was not disputed that the enrichment lien as relied upon by the appellant was in respect of rural property, this Court had regard to the case of ***Business Aviation Corporation (Pty) Ltd and Another v Rand Airport Holdings (Pty) Ltd***²¹ where the Court highlighted the following:

"[7] *Malpractices amongst lessees led, however, to legislation by the Estates of Holland on two occasions, which severely restricted their right to compensation for improvements. The first enactment was promulgated on 26 September 1658. It is to be found in the Groot Placaet-Boeck part 2 cols 2515-2520 under the rubric 'Placaet vande Staten van Hollandt, tegens de Pachters ende Bruyckers vande Landen'. The provisions of this placaet were re-enacted in almost identical terms on 24 February 1696 in a 'Renovatie-placaet' (see GPB part 4 cols 465-7). Because the provisions of the two placaeten were so similar, reference is often made to 'the placaet', singular, meaning the earlier one of 1658 (see eg De Beers supra at 368; Rubin v Botha 1911 AD 568 at 579; Spies v Lombard 1950 (3) SA 469 (A) at 473A and 476D-E).*

²¹ (179/05) [2006] ZASCA 68; [2007] 1 All SA 421 (SCA); 2006 (6) SA 605 (SCA) (30 May 2006) at paragraphs 7 to 9;

[8] *Four articles of the placaelen dealt with claims for improvements, namely, articles 10 to 13. Of these the most important for present purposes was art 10, which is translated as follows by W E Cooper Landlord and Tenant 2 ed p 329 note 3:*

'Provided, nevertheless, that whenever the owner of any lands, takes them for himself, or lets them to others, he is bound to pay the old lessee, or his heirs, compensation for the structures, which the lessee had erected with the consent of the owner, as well as for ploughing, tilling, sowing and seed corn, to be taxed by the court of the locality, without, however, the lessees being allowed to continue occupying and using the lands, after the expiration of the term of the lease, under the pretext of (a claim for) material or improvements, but may only institute their action for compensation after vacating (the lands).'

(For the original Dutch, see eg Cooper loc cit; Syfrets Participation Bond Managers supra at 110I-111A). For other, very similar, translations, see Lee Commentary 92 and George Wille Landlord and Tenant in South Africa, 5th ed at p 270.)

[9] *The import of art 10 is clear. Though lessees retained their right to claim compensation for improvements, the claim was limited to improvements effected with the landlord's consent. Moreover, they lost their right of retention in the form of a lien. At the end of the lease period, they first had to vacate the property before they could institute their claim for compensation. Articles 11, 12 and 13 limited the lessees' right to compensation even further. Under art 11 compensation payable for 'structures' was restricted to bare materials, not including sand and lime, and excluding the costs of labour. Article 12 dealt with structures erected without the landlord's consent. In respect of these, lessees had no claim for compensation at all, though they were allowed to break down the structures and remove the material before termination of the lease. In terms of art 13, the lessee's right to claim compensation for plantings*

and trees was virtually abolished, in that it was limited to those planted on the instructions of the owner and then only for the original cost of the plants (see eg Cooper op cit p 329-330).

[76] The *Placaeten* would ostensibly be applicable in respect of these farms and the enrichment lien held by the appellant would first require the appellant to vacate the farms for there to be any enforcement of same. This was canvassed with the parties before this Court as an ancillary issue which could feature once the appellant sought to enforce this lien and needs no further mention.

[77] The Court *a quo* noted the financial consequence which the respondent would suffer if the Order in terms of Section 18(3) were not put into operation, namely;

[77.1] The fact that the first respondent had contracted with the Moletele CPA already in 2017 and that this lease was expiring in 2027.

[77.2] That amidst this lease agreement being in force, the Moletele CPA contracted with Sebenza to lease the said farms on 25 August 2025 for a period of 25 years. This lease agreement was subject to “conditions precedent” which still needed to be fulfilled.

[77.3] That notice of termination of the 2017 lease was given to the first respondent by the Moletele CPA, which was accepted on the resolution of the directors of the first respondent, which included Mr Rossouw (Sebenza’s director) and Mr Malatjie the Chairman of the Moletele CPA.

[77.4] That the first respondent vacated the farms and the appellant took occupation and control over the farms.

- [77.5] That the first respondent, under the leadership of Mr Rossouw (Sebenza's director) and Mr Malatjie the Chairman of the Moletete CPA, was placed into voluntary liquidation which ultimately was placed under business rescue by the Court's intervention.
- [77.6] Since the occupation, the respondents have been litigating to reclaim control over the farms and their produce relying on the real harm done to the first respondent by the abovementioned parties.
- [77.7] The respondents' declarator of the validity of the 2017 lease, the eviction order of the appellant and the preservation orders considered holistically favoured the granting of the Section 18 (3) Court Order.
- [77.8] The interest of the respondents in the revenue generated from the harvest was necessary for the business rescue process and for the protection of creditors and cession holders, whose interests depended on the successful completion of the season and therefore constituted true irreparable harm.
- [78] The Court *a quo* noted the irreparable harm as raised by the appellant to be the following:
- [78.1] The appellant had entered into an inchoate lease agreement with the Moletete CPA on 25 August 2025, accepting the terms of that agreement.
- [78.2] The appellant was involved in replacing the first respondent on all the farms and from August 2025 to date was involved in the operations of the farms.
- [78.3] That the appellant invested approximately R26 000 000,00 financially on improvements and in the farming operations.
- [78.4] That the appellant sought to enforce the enrichment lien it held over the properties in respect of this financial investment.

[78.5] That the first respondent's business rescue status materially increased the prejudice the appellant faced especially if it were evicted and subsequently succeeded on appeal, any damages claim would rank merely as a concurrent creditor claim against a financially distressed entity.

[78.6] The appellant further relied upon the prejudice that an immediate eviction would occasion to employees whose rights are protected under section 197 of the Labour Relations Act.

[78.7] That disruption of the farming operations would have prejudiced those employees and created uncertainty that was not capable of being remedied by a successful appeal, at a later stage.

[79] It was clear that the Court *a quo* considered these facts in considering that exceptional circumstances existed in granting the Order as the irreparable harm that the respondents would suffer outweighed that of the appellant.

The irreparable harm relied upon by the appellant flowed from contracting with the Moletele CPA, whilst knowing there was already another lease agreement in place and accepting to contract with strict suspensive conditions needing to be complied with, prior to the contract coming into existence, in questionable circumstances where the appellant through its director was actively involved.

[80] The appellant cannot raise the prejudice to be suffered by the employees of the appellant, as the workforce of the first respondent was also subjected to a change of employer because of this new lease, so that again is a neutral point. The issue of the business rescue status of the first respondent was as a direct consequence of the

cancellation of the lease agreement. The enrichment lien was without basis and as a consequence of the void lease agreement and therefore was a neutral aspect.

[81] The real irreparable harm would be suffered by the first respondent if the season's crop and the funds flowing therefrom were not to materialize, on account of circumstances that were orchestrated to cause the demise of the first respondent. The further real prejudice that would possibly be a factor tipping the scales in favour of the exceptional circumstances was that the respondent only had until 2027 to utilise and operate the farms and if this order was not granted the 2017 lease would lapse due to the effluxion of time.

[82] Having regard to all the issues canvassed in respect of the appeal in terms of Section 18(4) it was clear that the Court *a quo* had considered and weighed up all the aspects relevant in the assessment of exceptional circumstances that favoured granting the Order in terms of Section 18(3) of the Superior Courts Act 10 of 2013. This Court was satisfied that the Order was justified in the circumstances and therefore the appeal must fail.

RULING

[83] In light of the aforesaid, this Court is satisfied that the appellant has failed to make out a case on appeal, and therefore the appeal in respect of both the Judgment and Order dated 5 May 2026 and the appeal in terms of Section 18(4) of the Superior Courts Act 10 of 2013 against the Order of 9 June 2026 are dismissed.

COSTS

- [84] Costs are in the discretion of the Court and as a general rule, follow the result. Both parties sought Costs on attorney and client or alternatively on scale C, including the costs of two Counsel where so employed. The matters were complex and intricate, however, not requiring a punitive Cost Order. The appellant is ordered to pay the costs of both appeals on scale C, including the costs of two Counsel where so employed.

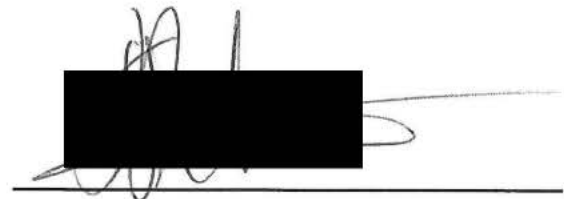
ORDER

- [85] This Court makes the following order:

[85.1] The appeal in respect of the Judgment and Order dated 5 May 2026 is dismissed.

[85.2] The appeal in terms of Section 18(4) of the Superior Courts Act 10 of 2013 against the Section 18(3) Order of 9 June 2026 is dismissed.

[85.3] The appellant is ordered to pay the Costs of both appeals on scale C, including the costs of two Counsel where so employed.



K.L. PILLAY J

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

I CONCUR,



G.C. MULLER J
 JUDGE OF THE HIGH COURT,
 LIMPOPO DIVISION, POLOKWANE

I CONCUR,



L.A. NKOANA AJ
 ACTING JUDGE OF THE HIGH COURT,
 LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

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