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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case No: A2026-075149

Court a quo Case No: M521/2023

In the matter between:

BALETSEMA (PTY) LTD

(Registration No. 2018/198087/07)

Appellant

and

PHEK ENGINEERING & SUPPLIES CC

(Registration No. 2004/055459/23)

First Respondent

MOTLHOPESI STEPHEN PHEKOLA

(Identity No. 6[...])

Second Respondent

MORWADI CONSTANCE PHEKOLA

(Identity No. 6[...])

Third Respondent

Coram:

Petersen J, Wessels AJ, Tsautse AJ

Heard on:

24 July 2026

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, uploaded to CaseLines and released to SAFLII. The date and time for the handing down of the judgment is deemed to be 12h00 on 16 September 2026.

Summary: Appeal against dismissal of an application for payment, alternatively transfer of immovable property, founded on a written acknowledgement of debt - The court a quo found the acknowledgement of debt to be an unlawful, unregistered credit agreement under the National Credit Act 34 of 2005 - The agreement falls outside the application of the Act in terms of s 4(1)(a) - The first respondent (the consumer) being a juristic person with an admitted asset value and turnover exceeding the prescribed threshold - The court a quo materially misdirected itself by not considering this exclusion - Appeal upheld on that ground - The remaining defences, including the common law *in duplum* rule, the disputed validity of the third respondent's suretyship, and whether transfer of the immovable property would unjustly enrich the appellant, referred to oral evidence.

JUDGMENT

PETERSEN J (WESSELS AJ and TSAUTSE AJ concurring):

Introduction

[1] This is an appeal, with leave of Masike AJ granted on 17 October 2025, against the whole of the judgment and order of Malane AJ delivered on 13 August 2025, dismissing, with costs, an application for specific performance instituted by the appellant against the respondents.

[2] The appellant, Baletsema (Pty) Ltd ("Baletsema"), is a private company duly incorporated in terms of the Companies Act 71 of 2008. The first respondent, Phek Engineering & Supplies CC ("Phek Engineering"), is a close corporation which renders light engineering and mining supply services. The second respondent, Motlhopesi Stephen Phekola, is the sole member of Phek Engineering. The third respondent, Morwadi Constance Phekola, is his spouse and is married to him in community of property. I refer to the second and third respondents together as "the sureties" for convenience only, without prejudging whether the third respondent is in fact bound as such, a matter to which I return below.

[3] The court a quo dismissed the application solely on the basis that a written acknowledgement of debt concluded between Baletsema and the respondents constituted a credit agreement within the meaning of s 8(4)(f) of the National Credit Act 34 of 2005 ("the NCA"), and that, Baletsema not being registered as a credit provider,

the agreement was unlawful and void under s 89(5)(a) of the NCA. Whether that finding can stand, once regard is had to the exclusion in s 4(1)(a) of the NCA, is the central question on appeal.

Factual background

[4] On 16 January 2023, Baletsema and Phek Engineering, represented by the second respondent, concluded a written loan agreement in terms of which Baletsema advanced R500 000 to Phek Engineering. The loan attracted an administration fee and interest of R200 000. R100 000 was payable on or before 17 February 2023, and the balance of R600 000 on or before 6 March 2023. The immovable property known as the Remaining Extent of Portion 1 of the Farm Witrand 457, Registration Division JP, North West Province (“the immovable property”), together with seven identified motor vehicles, served as security; the loan agreement contemplated that the immovable property would be sold, and the proceeds applied to the debt, in the event of default. The second respondent bound himself as surety and co-principal debtor for the debt.

[5] Phek Engineering defaulted. On 6 April 2023 the second respondent, on behalf of Phek Engineering and in his personal capacity, signed a written acknowledgement of debt (“the AOD”) in terms of which Phek Engineering acknowledged indebtedness to Baletsema in the sum of R1 209 600, payable on or before 31 May 2023, failing which the full amount became immediately due, together with interest of 20% per month on overdue amounts. Clause 2.4 of the AOD provided that a certificate signed by Baletsema certifying the amount due would constitute prima facie proof of indebtedness sufficient to found summary judgment or provisional sentence. Clause 3.1 purported to bind the second and third respondents jointly and severally, *in solidum*, as sureties and co-principal debtors. Materially, and in contrast to the loan agreement, clause 4.2 of the AOD provided that the immovable property would be transferred, rather than sold, to Baletsema if the debt was not repaid timeously, the parties recording in clause 4.1 that the value of the immovable property was not disproportionate to the debt.

[6] Whether the third respondent in fact signed the AOD, and thereby bound herself as surety and co-principal debtor, is disputed. Phek Engineering failed to pay the amount acknowledged. Letters of demand dated 21 June 2023 and 6 August 2023 went unanswered. A certificate of balance reflected R1 935 360 due as at 31 August 2023, inclusive of accrued interest. On 2 October 2023, Baletsema’s notice of motion was served. Prayer 1 sought payment of R1 209 600, being the capital sum acknowledged in the AOD, within seven days of the order; prayer 2 sought, failing such payment, transfer of the immovable property; and prayer 4 sought costs of the application on the attorney and client scale.

[7] The respondents opposed the application. In an answering affidavit deposed to by the second respondent on behalf of all three respondents, the respondents raised three points in limine. First, that the AOD constituted an unregistered, and therefore

unlawful, credit agreement under the NCA. Second, that the interest claimed offended the *in duplum* rule. Third, that Baletsema had adopted an incompetent procedure, in that a liquid document such as the AOD ought properly to have been enforced by provisional sentence or action rather than application. On the merits, the second respondent admitted signing the AOD and admitted Phek Engineering's default, but pleaded that he had not appreciated, when signing the AOD, that its terms (in particular, the transfer, rather than sale, of the immovable property) departed materially from the loan agreement, and disputed that the third respondent had ever consented to, or signed, any suretyship. He further contended that transfer of the immovable property, whose value he asserted exceeded the debt, would unjustly enrich Baletsema.

[8] The matter was heard on 18 October 2024. Malane AJ, in a judgment handed down on 13 August 2025, found that the AOD, providing for deferred payment with interest, met the definition of a credit transaction in s 8(4)(f) of the NCA.¹ Baletsema, having admitted that it was not registered as a credit provider, the learned Judge held the AOD to be unlawful and void under s 89(5)(a) of the NCA, and dismissed the application on that ground alone, with costs. The remaining points *in limine*, and the merits generally, were accordingly not determined.

[9] Baletsema sought leave to appeal, contending that the court a quo had erred in finding the AOD to be a credit agreement subject to the NCA, given that Phek Engineering, the consumer under the agreement, had an admitted asset value and turnover exceeding R1 million, bringing the agreement within the exclusion in s 4(1)(a) of the NCA. Leave to appeal to the full court was granted by Masike AJ on 17 October 2025.

The application to introduce further evidence

[10] Shortly before the hearing of the appeal, the respondents applied for leave to introduce, as further evidence on appeal, a valuation report reflecting a market value of R8 500 000 for the immovable property. The explanation tendered was that no valuation had been obtained by the time the answering affidavit was filed, there having been insufficient time to do so within the fifteen days allowed for that affidavit.

[11] The admission of further evidence on appeal is governed by well-established principles. An applicant must furnish a reasonably satisfactory explanation for the failure to have produced the evidence timeously, must show that the evidence is *prima facie* credible, and must establish that it is materially relevant to the outcome. Counsel for Baletsema submitted, correctly in my view, that the report is in any event of doubtful admissibility on this ground alone: it is not a sworn valuation by a suitably qualified valuer, but an unsworn estate agent's valuation.² The explanation proffered here does not withstand scrutiny. The answering affidavit was deposed to on 1 November 2023.

¹ National Credit Act 34 of 2005, s 8(4)(f).

² *Simon NO v Air Operations of Europe AB and Others* 1999 (1) SA 217 (SCA) at 228E-229A.

Judgment was only handed down on 13 August 2025, some twenty-one months later, and the matter was only argued on 18 October 2024, a full year after the answering affidavit. Nothing prevented the respondents from applying, at any time during that period, to supplement the record with a valuation. The absence of any explanation for that lengthy delay tells materially against the application.

[12] However, it is unnecessary to dismiss the application outright. For the reasons that follow, the value of the immovable property, and its bearing on the propriety of an order for transfer as opposed to payment, falls to be determined by oral evidence in any event. The application to introduce the valuation report is accordingly better dealt with, together with all other evidence relevant to that question, before the court hearing that oral evidence, and I make no final ruling on its admissibility.

Submissions on appeal

The appellant's submissions

[13] Baletsema submitted, first, that the enquiry into the application of the NCA must begin with the loan agreement of 16 January 2023, since the character of an antecedent credit arrangement determines the classification of a subsequent acknowledgement of debt concluded to settle it. Given the admission, at paragraph 22 of the answering affidavit, that Phek Engineering's asset value or turnover exceeded R1 million, the loan agreement itself fell outside the Act under s 4(1)(a)(i), alternatively constituted an excluded large agreement under s 4(1)(b) read with s 9(4).

[14] Relying on *Ratlou v MAN Financial Services SA (Pty) Ltd*³, counsel submitted that where the underlying agreement is not itself regulated by the NCA, a subsequent settlement or acknowledgement of debt concluded to compromise it does not become subject to the Act merely because it defers payment and attracts interest. A contrary, literal reading of s 8(4)(f) would have a chilling effect on parties' willingness to conclude settlements.

[15] This was tested directly in argument. It was put to counsel that *Ratlou* might be read as laying down a general rule that the character of any antecedent agreement, once established, is carried over into a later acknowledgement of debt, or whether the decision is narrower and tied to the chilling effect that subjecting settlements generally to the NCA would have on parties' willingness to compromise disputes. Counsel confirmed that the latter, narrower reading is correct because the initial loan agreement fell outside the NCA, it was never within the parties' contemplation, in concluding the AOD, that they were thereby creating a fresh NCA-regulated transaction attracting obligations such as registration as a credit provider.

³ *Ratlou v MAN Financial Services SA (Pty) Ltd* 2019 (5) SA 117 (SCA) para 21.

[16] In the further alternative, Baletsema submitted that the AOD did not in any event satisfy s 8(4)(f), since the interest of 20% per month it imposed was payable only on amounts remaining unpaid after 31 May 2023, and not on the R1 209 600 itself deferred to that date. Relying on *Allied Steelroad (Pty) Ltd v Dreyer and Another*⁴, counsel submitted that mora or penalty interest levied on default, as distinct from a charge for the deferral itself, falls outside the reach of s 8(4)(f). On this footing, Baletsema contended that the court a quo erred, first, in treating the AOD in isolation from the NCA-exempt status of the antecedent loan agreement, and, second, in failing to consider whether the exclusion in s 4(1)(a) removed the AOD, even assuming it to be a credit transaction, from the application of the Act altogether.

[17] It was further put to counsel that the R200 000 administration fee charged under the loan agreement, if regarded as a charge levied in respect of the deferred amount, might itself have brought the loan agreement within s 8(4)(f), independently of the argument concerning the AOD's interest provision. Counsel accepted this for purposes of argument, but submitted, correctly in my view, that the enquiry does not advance beyond s 4. That section concerns the identity and classification of the consumer and is logically anterior to the characterisation enquiry under s 8. On this footing, counsel submitted that once the admitted threshold under s 4(1)(a) is accepted, it becomes unnecessary to resolve whether *Ratlou* correctly excludes the AOD from s 8(4)(f) at all, that question being rendered academic. For the reasons that follow, I agree that the s 4(1)(a) point is dispositive, and it is accordingly unnecessary to determine the *Ratlou* point further.

The respondents' submissions

[18] The respondents supported the reasoning of the court a quo. They submitted that both the loan agreement, which deferred repayment of R700 000, being the R500 000 advanced together with the administration fee, over two instalments, and the AOD itself, were credit agreements as defined in s 8(4)(f), the AOD having deferred the then outstanding indebtedness and attracted both an administration fee and interest.

[19] The respondents further submitted that Baletsema was, in any event, obliged to register as a credit provider under s 40(1)(b), since the threshold prescribed under s 42(1) for that requirement has, since 11 May 2016, stood at nil, with the result that the obligation to register arises irrespective of the size of the transaction or the identity of the consumer. Relying on *Vesagie NO and Others v Erwee NO and Another*⁵, counsel submitted that an agreement concluded by an unregistered credit provider is unlawful and falls to be declared void *ab initio*.

[20] Finally, and for the first time on appeal, the respondents contended that Phek Engineering is not in fact a juristic person with an asset value or turnover of R1 million

⁴ *Allied Steelrode (Pty) Ltd v Dreyer and Another* [2023] ZASCA 181 para 31.

⁵ *Vesagie NO and Others v Erwee NO and Another* [2014] ZASCA 121 para 1.

or more. They point to the absence of independent proof of that fact; to the circumstance that only one of the assets pledged as security, a motor vehicle first licensed in 2009 and, on the respondents' submission, substantially depreciated, was registered in Phek Engineering's own name, with the immovable property and remaining vehicles held personally by the second and third respondents; and to the submission that, had Phek Engineering in truth possessed assets or turnover of the order admitted, it would not have needed the loan in the first place, nor defaulted three years later on an amount as comparatively modest as R500 000. On that footing, the respondents submitted that the exclusion in s 4(1)(a) could not avail the appellant, and prayed for the dismissal of the appeal.

Is the acknowledgement of debt a credit agreement?

[21] Section 8(4)(f) of the NCA provides, in substance, that an agreement constitutes a credit transaction if payment of an amount owed by one person to another is deferred and any charge, fee or interest is payable in respect of the agreement or the deferred amount. The AOD deferred payment of R1 209 600 to 31 May 2023, and imposed interest of 20% per month on amounts not paid by then. The court a quo correctly held that this brought the AOD within the definition of a credit transaction, and no ground of appeal seriously contends otherwise. The difficulty with the judgment lies not in this finding but in what followed from it.

The section 4(1)(a) exclusion

[22] Section 4(1)(a) of the NCA excludes from the application of the Act a credit agreement in terms of which the consumer is a juristic person whose asset value or annual turnover, together with that of any related juristic persons, equals or exceeds the threshold determined by the Minister under s 7(1). That threshold has, since 1 June 2006, been fixed at R1 million for s 4(1)(a). It is distinct from, and ought not to be confused with, the nil threshold now applicable to the separate registration requirement in s 40(1), a distinction of some importance given the different consequences that flow from each provision.⁶

[23] Paragraph 8.3 of Baletsema's own founding affidavit alleged that Phek Engineering "renders light engineering and mining supply services and has an asset value and/or annual turnover in excess of R1-million". In the answering affidavit, the second respondent, dealing expressly with paragraphs 8 to 10 of the founding affidavit, recorded that "the contents of these paragraphs are admitted". Accordingly, there is no dispute on the papers before the court a quo that Phek Engineering's asset value or turnover exceeded the threshold prescribed under s 7(1) at the relevant time. The respondents' submission on appeal, that Phek Engineering does not in truth meet this threshold, cannot be reconciled with that unqualified admission. A fact formally admitted

⁶ *De Bruyn NO and Others v Karsten* 2019 (1) SA 403 (SCA) paras 24-27; GN 713 GG 28893 of 1 June 2006 (threshold for s 4(1)(a)); GN 513 GG 39981 of 11 May 2016 (nil threshold for s 40(1) registration).

in an affidavit is binding on the party who made the admission unless and until it is properly withdrawn by application, which was neither sought nor obtained in this matter. This was put squarely to counsel for the respondents in argument, and she candidly, and correctly, conceded that no application to withdraw the admission had been brought, either before the court a quo or on appeal.

[24] The respondents' further submission, that the assets pledged as security are registered in the personal names of the second and third respondents rather than in the name of Phek Engineering, does not assist them. The enquiry under s 4(1)(a) is concerned with the consumer's own asset value or turnover, not with the ownership of whatever specific property happens to have been furnished as security for the debt; the one has no logical bearing on the other.

[25] It follows that the AOD, although a credit transaction as defined, fell outside the application of the NCA altogether by virtue of s 4(1)(a). Consequently, the registration requirement in s 40, and the consequences of non-registration in ss 89(2)(d) and 89(5)(a), on which the court a quo's entire judgment rested, never came into play. This is not a novel proposition. In *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd*⁷, the Constitutional Court proceeded on the accepted footing that a credit provider lending exclusively to a large juristic person falling within the s 4(1)(a) threshold need not be registered under the NCA, and that the accessory liability of natural-person sureties for such a debt is unaffected by the Act's registration provisions.

[26] Baletsema raised this point before the court a quo. The judgment records, at paragraph 18, the submission that the respondent did not need to comply with the impugned provisions of the NCA because it was a juristic person with turnover and assets exceeding R1 million. Regrettably, the judgment does not thereafter engage with that submission. It proceeds directly from the finding that the AOD is a credit transaction to a discussion of registration and enforcement under ss 40, 89, 129 and 130, without first asking whether the Act applied to the agreement at all. That omission constitutes a material misdirection of law. The exclusions in s 4 of the NCA are logically anterior to, and dispositive of, any subsequent enquiry into registration or compliance, and ought to have been considered first.

[27] The appeal should accordingly be upheld on this ground. The point *in limine* that the AOD is unlawful and void for want of registration under the NCA cannot be sustained and falls to be dismissed.

The remaining defences

[28] The disposal of the NCA point *in limine* does not, however, dispose of the application. Three further matters raised by the respondents, and not determined by the

⁷ *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd* 2015 (3) SA 479 (CC) paras 2, 11 and 100-103.

court a quo, remain live. It is trite that a court, in giving judgment, must engage with the issues genuinely raised by the parties and provide reasons that demonstrate this engagement.⁸ While a court need not traverse every subordinate argument, it may not leave a properly raised and potentially dispositive issue undetermined. Moreover, our courts have consistently discouraged the piecemeal disposal of disputes.⁹

[29] In argument, counsel for the appellant submitted that this court should finally determine these three issues on the existing papers. The parties had exchanged founding, answering and replying affidavits, and, in counsel's submission, neither the *in duplum* defence nor what counsel termed the "ambiguous ancillary defences" was capable of altering the outcome of a successful appeal. I do not accept that submission, at least in relation to the third respondent's suretyship. Where a respondent's affidavit raises a specific and particularised denial that she executed the very document said to found her personal liability, that is not a dispute this court can resolve simply by preferring one affidavit to the other; it is precisely the kind of dispute, going to the authorship of a signature and incapable of resolution on paper alone, for which referral to oral evidence, rather than final adjudication on the papers, is the appropriate course.¹⁰ Similar considerations, explained below, apply to the quantum properly owing once the *in duplum* rule is applied, and to the propriety of transfer rather than payment.

The suretyship of the third respondent

[30] The founding affidavit alleges that the third respondent signed the AOD personally and thereby bound herself as surety and co-principal debtor. The answering affidavit denies this unequivocally. The second respondent states that the third respondent "*has not signed any agreement with the Applicant or on behalf of the First Respondent*" and "*has never consented to being a surety and a co-principal debtor*". This is not a bare denial devoid of particularity. It is a specific, factual dispute as to whether the third respondent executed the document on which her personal liability is said to rest. Such a dispute cannot be resolved on the papers, and Baletsema, as the party seeking final relief against the third respondent, bears the consequences of having proceeded by application in the face of a real and foreseeable dispute of this kind.¹¹

The *in duplum* rule

[31] With the NCA point *in limine* disposed of, the statutory *in duplum* provision in s 103(5) of the NCA does not apply, as the Act does not apply to this agreement. The common law *in duplum* rule nevertheless applies with full force, and operates independently of any contrary contractual term. Once unpaid interest equals the

⁸ *Mphahlele v First National Bank of SA Ltd* 1999 (2) SA 667 (CC) para 12; *Strategic Liquor Services v Mvumbi NO and Others* 2010 (2) SA 92 (CC) para 15.

⁹ *Cyril and Another v CSARS* [2024] ZASCA 32 para 10.

¹⁰ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 13.

¹¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

outstanding capital, interest ceases to run, both before and during litigation.¹² On the figures reflected in the certificate of balance, interest of R725 760 had accrued against a capital sum of R1 209 600 as at 31 August 2023 and had not yet reached parity with the capital. It is common cause, however, that further interest continued to be claimed after that date, up to and beyond the hearing before the court a quo on 18 October 2024, some eighteen months after the AOD was signed. Whether, and at what point, the accrued interest reached the capital amount, and what amount is accordingly now recoverable, requires a proper accounting which the papers before this court do not permit. This question, too, must be determined on further evidence.

Transfer of the immovable property and unjust enrichment

[32] The respondents' answering affidavit raises, with reasonable particularity, a defence that transfer of the immovable property, as opposed to a money judgment, would unjustly enrich Baletsema, given the disparity alleged between the property's value and the debt. Although clause 4.1 of the AOD records the parties' agreement that the property's value was not disproportionate to the debt, the second respondent's affidavit disputes this, asserting that no valuation was obtained before he signed the AOD, and that he did not appreciate that clause 4.2 departed from the sale-and-recovery mechanism of the original loan agreement. Coupled with the unresolved application to introduce a valuation report reflecting a materially higher value than the debt, this raises a genuine and material dispute of fact as to whether specific performance in the form of transfer, rather than payment, is relief this court, sitting in application proceedings, ought to grant.

[33] In anticipation of an equity-based answer to the claim for transfer, counsel for the appellant submitted, first, that any such answer is foreclosed by the principle of *pacta sunt servanda*, which gives effect to the constitutional values of freedom and dignity and continues to inform the judicial control of contracts through the instrument of public policy.¹³ Counsel submitted, in the further alternative, that the line of authority permitting a court to intervene where a *pactum commissorium* would otherwise entitle a creditor to retain pledged property on a debtor's default has no application here, since that authority concerns pledges of movable property.¹⁴ In contrast, the immovable property in issue cannot be pledged, and Baletsema, in any event, approaches this court for an order under judicial supervision rather than by way of self-help. These are substantial submissions, but it is unnecessary to resolve them at this stage. Whether transfer or payment is the appropriate remedy turns, for the reasons already given, on disputed

¹² *Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (In Liquidation)* 1998 (1) SA 811 (SCA) at 828.

¹³ *Beadica 231 CC and Others v Trustees for the Time Being of the Oregon Trust and Others* 2020 (5) SA 247 (CC); [2020] ZACC 13 para 83.

¹⁴ *Bock and Others v Duburoro Investments (Pty) Ltd* 2004 (2) SA 242 (SCA) para 8; *Graf v Buechel* 2003 (4) SA 378 (SCA) paras 9-11.

facts concerning the property's value relative to the debt, which fall to be determined on oral evidence together with the other matters identified above.

[34] Baletsema elected motion proceedings notwithstanding that its own notice of motion sought, in the alternative to payment, an order compelling transfer of immovable property said in the same papers to have a value not disproportionate to a debt of just over R1,2 million. A dispute of this kind, concerning equitable relief over land, was reasonably foreseeable at the outset.¹⁵

Disposition

[35] Given the disputes identified in paragraphs 31 to 35 above, it would not be appropriate for this court to grant final relief, whether in the form sought by Baletsema in its notice of appeal or otherwise, without those disputes first being resolved. The proper course, where the court a quo disposed of the matter entirely on a point in limine that cannot be sustained, is to uphold the appeal, set aside the order of the court a quo, dismiss the point in limine relied upon, and refer the remaining disputes of fact to oral evidence.

[36] I emphasise, since the respondents did not contest liability for the underlying debt as such (the second respondent having admitted signing both the loan agreement and the AOD, and having admitted Phek Engineering's default), that this order should not be read as suggesting the appellant's claim lacks substance. It is only the quantum recoverable, the extent of security available in the form of the third respondent's suretyship, and the appropriateness of transfer, as opposed to payment, as the ultimate remedy, that remain to be determined.

Costs

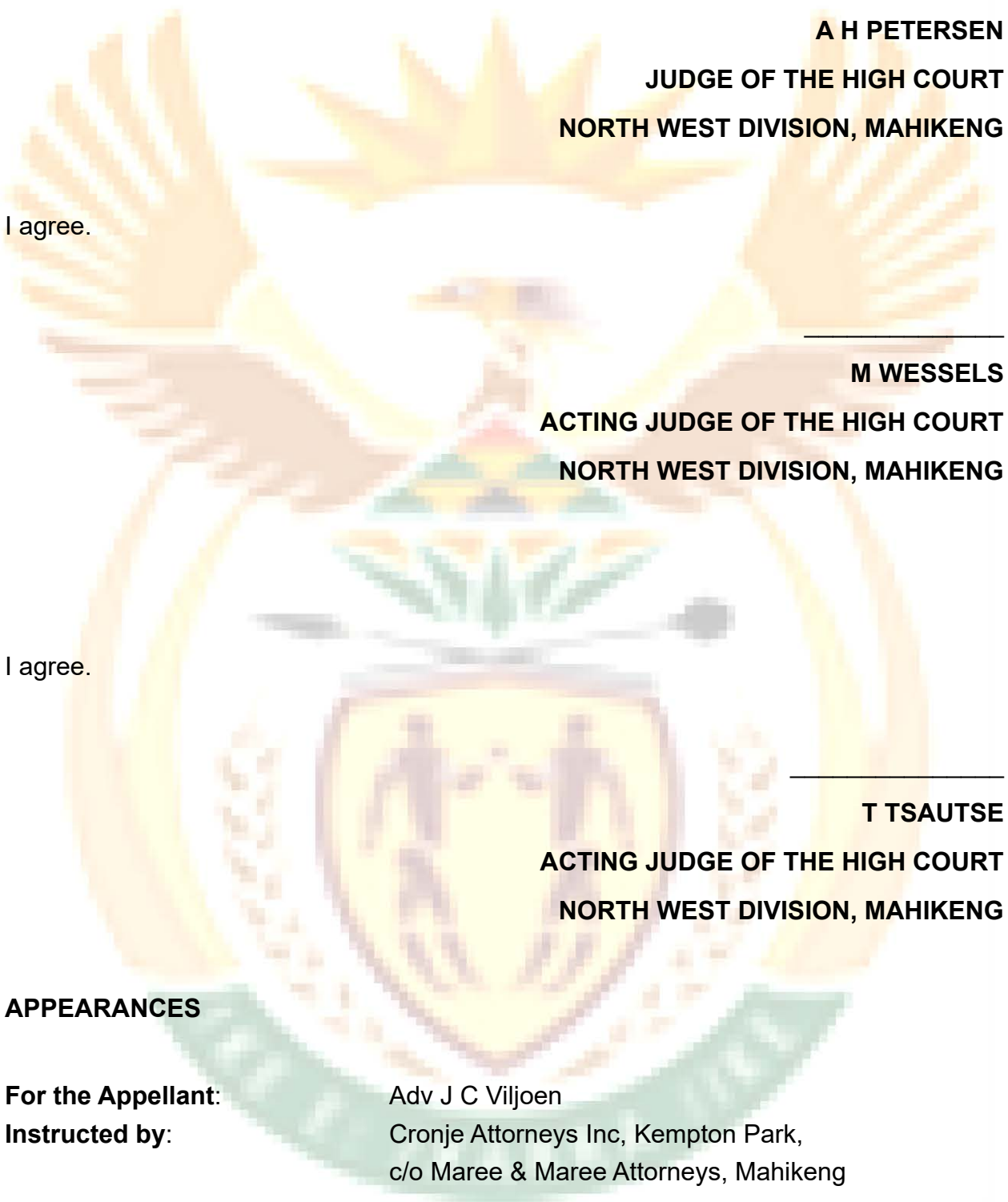
[37] The appeal succeeds on the central ground advanced by the appellant, notwithstanding that final relief is not granted at this stage. Costs should follow the result. Baletsema's notice of appeal seeks costs of the appeal, and costs of the application in the court a quo, on the attorney and client scale. The costs of the application a quo are, for the reasons already given, reserved for determination by the court hearing the oral evidence, once the merits are finally known, and it is neither necessary nor appropriate to fix the scale of those costs now. As to the costs of the appeal, an attorney and client costs order is a punitive measure, reserved for cases where a litigant has been guilty of dishonesty, vexatious conduct, or other conduct deserving of the court's censure. The respondents' opposition to this appeal, though ultimately unsuccessful on the central point, raised an argument that was reasonably arguable on the papers. Nothing in the record justifies departing from the ordinary rule. The costs of the appeal should accordingly be awarded on the ordinary party and party scale.

¹⁵ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1162-1163.

Order

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

1. The appeal is upheld.
2. The order of the court a quo is set aside and substituted with the following order:
 - 2.1 The point *in limine* that the acknowledgement of debt dated 6 April 2023 constitutes an unlawful and void credit agreement for want of registration under the National Credit Act 34 of 2005 is dismissed.
 - 2.2 The following issues are referred to the hearing of oral evidence in terms of Uniform Rule of Court 6(5)(g):
 - 2.2.1 whether the third respondent executed the acknowledgement of debt dated 6 April 2023 and thereby bound herself as surety and co-principal debtor;
 - 2.2.2 the amount, if any, presently owing by the first and second respondents to the appellant, after due application of the common law *in duplum* rule;
 - 2.2.3 whether an order directing transfer of the immovable property described in the acknowledgement of debt, as opposed to an order for payment, is appropriate relief, having regard to the value of the property relative to the amount found to be owing.
 - 2.3 The respondents' application to introduce further evidence on appeal is to be determined, together with any further evidence on the value of the immovable property, by the court hearing the oral evidence directed in paragraph 2.2 above.
 - 2.4 The costs of the application in the court a quo are reserved for determination by the court hearing the oral evidence directed in paragraph 2.2 above.
3. The first, second and third respondents shall pay the costs of the appeal, on the party and party scale, Scale B, jointly and severally, the one paying the other to be absolved.



A H PETERSEN
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

I agree.

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

I agree.

T TSAUTSE
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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