



- (1) Reportable: No
(2) Of interest to other Judges: Yes



Signature

18 September 2026

Date

**THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN**

Case no: C821/2017

In the matter between:

VICTORIA AND ALFRED WATERFRONT (PTY) LTD

First Applicant

V AND A WATERFRONT HOLDINGS (PTY) LTD

Second Applicant

and

SIBONGISENI THOTSEJANE

Respondent

Delivered: 18 September 2026

Summary: (Claim for delictual damages relating to a contract of employment – fraudulent misrepresentations inducing conclusion of contract – fraudulent misrepresentations made in the course of employment - punitive cost order warranted)

JUDGMENT

LAGRANGE, J

Introduction

Nature of the case

- [1] The first applicant ('V&A' or 'the applicant') alleges it was fraudulently induced to employ the respondent¹, Ms S Thotsejane ('Thotsejane') because of misrepresentations she made relating to her previous employment history. V&A had employed Thotsejane as its Chief Information Officer in the Finance & Central Services Department ('CIO') with effect from 12 October 2015. Her employment was summarily terminated for misconduct on 12 December 2016 following a disciplinary enquiry.
- [2] V&A further alleges she did not even perform her contractual duties, leading to it incurring damages equivalent to the value of the respondent's salary received during her employment, namely R 1 031,237.47 in damages, equivalent to the remuneration received by Thotsejane from V&A. In the alternative, V&A pleads that Thotsejane was unjustly enriched by an amount equivalent to the gross remuneration she received during her employment.
- [3] In addition, in the course of her employment, V&A alleges that the respondent fraudulently induced it to hire two IT consultants, Professor Tiko Iyamu ('Iyamu') and Ms Nokubela Mchunu ('Mchunu') through another entity, EOH MC Solutions ('EOH'). Apart from the actions of Thotsejane, Iyamu and Mchunu allegedly amounting to a conspiracy to defraud V&A, Thotsejane's inducement of Iyamu and Mchunu being engaged, was in breach of her express and implied contractual duties, including her duties to act in good faith, to avoid conflicts of interest, and, to adhere to V&A procurement policies. As a result of her fraudulent conduct, which was in breach of those duties, V&A paid EOH R1,402,005.00 and R464,000.00 for the remuneration of Iyamu and Mchunu, respectively.

¹ The citation of the parties as 'applicant' and 'respondent' has been retained as the action was instituted before the amendment of the Labour Court rules in terms of which they would be cited as 'applicant' and 'respondent'.

- [4] The applicant also claims interest on the amounts mentioned *a temporae morae* costs on a punitive scale. The applicant also filed an application to amend its pleadings to align the quantum claimed with the evidence led in the trial. The application was not opposed.
- [5] Although two applicant parties were cited, there was no evidence led to demonstrate that the second applicant, V&A Waterfront Holdings (Pty) Ltd, had any legal claim against the respondent, so the claim is confined to the claim of Thotsejane's former employer, Victoria and Alfred Waterfront (Pty) Ltd, the first applicant.

The course of the trial proceedings

- [6] The action was instituted on 17 January 2018 and a statement of defence was filed on 20 November 2020. At that stage, the respondent was represented by attorneys. On 31 May 2022 a pre-trial minute was concluded. On 21 September 2022, her attorneys filed a notice of withdrawal as her representatives. Since then, she has represented herself. Arising from her statement of defence, an *in limine* jurisdictional point had to be determined, as she had claimed that the court had no jurisdiction to hear the applicant's claims, which fell under the jurisdiction of the High Court.
- [7] The matter was enrolled for trial from 31 October to 4 November 2022. The trial did not proceed and argument was presented on 4 November by V&A opposing the jurisdictional point. Thotsejane neither filed heads of argument nor appeared to defend her *in limine* objection. However, an email from Phoosa Loots Inc attorneys of 1 November 2023 to V&A's attorneys of record, recording they had been approached by Thotsejane on the morning, the trial was to commence. They were unable to take instructions on such short notice but were aware that the court had decided that the *in limine* objection had to be dealt with. They asked to be kept informed of the outcome of the jurisdictional ruling, so they might bring a postponement application if the ruling was in Thotsejane's favour, so they might bring a postponement application if necessary. In any event, the trial did not proceed and argument on the *in limine* point was

only heard on 4 November, and judgment was reserved. On 16 March 2023, Judge Rabkin-Naicker, dismissed the *in limine* objection, leaving costs to be determined on a later date². The matter was then re-enrolled for trial on 26 February 2024, but on 21 December 2023 was removed from the roll and re-enrolled on 22 April 25 when trial proceedings began. Thotsejane collected the amended notice of set-down the same day it was issued.

- [8] V&A served a revised bundle of documents on Thotsejane on 12 April 2024 by email. On Monday 22 April, Thotsejane did not appear in court and, in the absence of any communications received from her to explain her absence, the applicant proceeded to lead the evidence of Lotter. The trial then adjourned to the following day.
- [9] On Tuesday 23 April, at the start of proceedings, the court recorded that it had been advised that Thotsejane had arrived at court sometime during lunchtime the previous day and had been advised to attend court. However, she was not in attendance.
- [10] However, part way through the evidence in chief of Stewart Robinson, the court noticed a woman who had entered the court and was sitting in the back row of the public seating. The court enquired from her if she was Ms Tunzelana. The woman replied that she was not. At that stage of the proceedings, the respondent was cited as '*Sibongiseni Tunzelana*'. When the court persisted and asked, '*I am sorry you are not the respondent in this matter?*' her answer was '*I am not Ms Tunzelana*', a response she repeated twice more as she was not audible to the court. Counsel for V&A, Mr Steenkamp SC, then alerted the court to the fact that the respondent had officially changed her surname from '*Tunzelana*' to '*Thotsejane*', sometime after 2020. Following a further enquiry from the court if she had changed her name, the woman confirmed that she was indeed Ms Thotsejane. Thus, her identity as the respondent was established.
- [11] The Court explained that the trial had begun in her absence the previous day and asked whether she intended to actively participate by questioning

² *Victoria and Alfred Waterfront & Another v Sibongiseni Tunzelana* (C 821/17), 15 March 2023, Labour Court, unreported.

witnesses and presenting evidence, or if she merely wanted to observe the proceedings. The respondent expressed confusion, stating she did not know why she was there in the first place and noting that she did not have an attorney at the time. Expressing disbelief that she was unaware of the case, the Court reminded her that her former attorney had concluded a pre-trial minute based on her instructions and that she had formally pleaded to the applicant's case. The Court also detailed the procedural history, pointing out that she had been served a notice of set down which she had refused to sign, that a practice note had been sent previously, and that she had not made any formal application to postpone the proceedings. Highlighting her educational background, specifically her PhD in information systems, the Court stated she ought to have fully understood the implications of the pleadings exchanged under her instructions and again asked her to make a decision on her participation in the proceedings.

- [12] In response, the respondent raised jurisdictional objections, arguing that her previous legal team had advised her she did not belong in that court and emphasising that V&A Waterfront had fired her on December 12, 2016, permanently ending their relationship. She stressed that she did not live in Cape Town, viewed her inclusion in the case as unconstitutional and unethical, and claimed she had already provided her responses in 2020. The Court then reminded her that the jurisdictional issue had been definitively settled in May of the previous year when the Labour Court dismissed her jurisdictional objection. Because this judgment was never appealed, the Court explained that it remained binding and the trial had to proceed accordingly. The Court once again outlined her choices, explaining she was free to participate and question witnesses—including Lotter, who had testified for an hour the previous day, or she could simply observe. The respondent rejected these propositions, insisting she had never instructed any legal team to indicate she wanted to be in that court and had never applied to be there, which prompted the Court to ask the applicant's representative. She repeatedly stated she did not want to respond to the case or be in court, but she was forced to respond through her legal team at the time and claimed she could not understand why she

had to respond to the claim and that she did not have the capacity to deal with legal issues.

- [13] The court then explained that whether or not she wanted to be there, she had options. If she wished to participate in the trial proceedings but felt she lacked the competence to do so, she could apply to postpone the trial to arrange legal representation. Alternatively, she could conduct her own defence, or merely observe the proceedings.

The postponement application

- [14] Eventually, the respondent decided to apply for a postponement and was given leave to apply orally, advised on the issues she had to canvass in support of her application and was given time to prepare her application. When the court convened at the appointed time, an hour later, the respondent was not in court, and the examination-in-chief of Stewart-Robinson proceeded. A while later, the respondent did appear and was given the opportunity to move her oral application for postponement.
- [15] Thotsejane motivated for a postponement of the trial, raising several jurisdictional, procedural, and personal objections. She submitted that she was participating in the proceedings entirely against her will, as she laboured under the belief that the matter had been permanently finalised when her previous legal representatives filed a response in November 2020. Furthermore, she raised a jurisdictional challenge, contending that the Labour Court lacked both territorial and subject-matter jurisdiction to adjudicate the dispute. She asserted that no active employment relationship existed between herself and the applicant, characterising the matter as a civil claim that ought properly to be instituted in the High Court. Thotsejane further submitted that she lacked the requisite capacity to navigate complex litigation and sought a postponement to secure the services of an *'incorruptible'* legal practitioner. She also pleaded financial hardship, stating that she is currently unemployed and physically and mentally exhausted, which she contrasted with the applicant's purportedly unlimited resources. She also alleged that the proceedings were tainted by unfairness, characterizing the process as reflective of *'white supremacy'*

and '*white privilege*', apparently because the documents she collected from the court in December 2023 did not include the trial bundles relied upon by the applicant. Finally, she accused the applicant of '*forum seeking*', arguing that the National Prosecuting Authority had previously reviewed and dismissed the underlying fraud allegations against her.

- [16] In opposing the application, counsel for the applicant submitted that the respondent's request was made in bad faith and designed deliberately to frustrate the administration of justice. The applicant forcefully rebutted the respondent's assertion that she believed the matter had concluded in 2020 by outlining a timeline of her continued participation in proceedings. Counsel noted that her original attorneys remained on record until September 2022, after which she appointed new attorneys in November 2022. It was further submitted that the respondent had personally received the notice of set down and uplifted the entire court file on 21 December 2023, keeping it in her possession until 12 February 2024, thereby proving her awareness of the impending trial at least four months in advance. Counsel characterised the respondent's conduct as a documented pattern of evading proceedings, whereby she repeatedly appointed attorneys at the eleventh hour who would subsequently withdraw due to a lack of financial instructions. The applicant argued that granting a postponement would serve no practical purpose, as the respondent's claims of destitution meant she would remain unable to afford legal representation at a future date, while her asset profile likely disqualified her from Legal Aid. The applicant further disputed the respondent's claimed lack of legal capacity, citing her history of successfully initiating proceedings, representing herself, and coherently cross-examining witnesses in previous CCMA and National Bargaining Council arbitrations. Finally, counsel contended that the dispute was not legally complex but rather rooted in factual misrepresentations to which the respondent had already comprehensively pleaded with professional legal assistance in 2020. Counsel sharply disputed her claims of poverty, noting her residence in Century City, her past ownership of a luxury vehicle, and her active involvement in a university council and various business ventures.

- [17] The court ultimately granted the application for a postponement, albeit with profound reservations. In its reasons for the ruling, the court noted that the Labour Court's power to adjudicate the claim had already been established in the judgment of Rabkin-Naicker J in March 2023 judgment, which, having never been appealed, was binding. The court expressed profound scepticism about the respondent's *bona fides*, observing that she appeared to have had no actual intention of seeking a postponement until the court had raised it. The court did not accept the respondent's allegations that she had not received all the trial documentation before her arrival at court that day, and noted, in any event, that she was handed a complete hard copy of the same by the applicant at court. The court acknowledged the financial prejudice the applicant had suffered due to the continuous delays and expressed some doubt as to whether the respondent would secure legal counsel, given the reasons she had not already engaged any prior to the commencement of the trial. The court was confident, given her level of education and her proven history of representing herself in arbitration proceedings, that she could deal with the factual issues in dispute, which were set out in the pre-trial minute.
- [18] Despite the court's deep reservations, it agreed to postpone the continuation of the trial until 5 to 8 August 2024, because the matter involved a somewhat unusual damages claim with a significant quantum. Accordingly, the respondent was afforded a final opportunity to obtain legal representation. However, this indulgence was granted subject to the strict condition that upon the resumption of the trial, she had prepared to proceed and represent herself in person should she fail to secure legal representation or should her representatives prove unavailable.
- [19] The court also ruled that the evidence led in the proceedings to date would form part of the evidence in the trial, subject to the respondent's right to cross-examine Loots who had concluded his evidence in chief on the first day of proceedings. Thotsejane was also granted leave to listen to the recording of the evidence given prior to the postponement, by arrangement with the registrar.

Subsequent proceedings on 5 to 8 August 2024

- [20] On or about 19 July 2024, flash drives containing the audio record of the trial to date were couriered to Thotsejane's address in Bisho. The court was also advised by a court stenographer that the respondent had come to court on 1 August 2024 to collect the flash drives and was told they had been sent to her residential address in Bisho. In turn, the respondent apparently told the stenographer her house in Bisho had been broken into. She did not request a duplicate copy of the audio record.
- [21] In any event, Thotsejane did not attend court when the trial resumed on Monday, 5 August nor was she legally represented. The court file showed no attorney had come on record for her. The applicant then continued to lead evidence.
- [22] On 6 August, the court noted that the registrar had advised that Thotsejane had handed in a letter to the previous day. The letter dated 5 August demanded that the applicant's claim be dismissed for lack of jurisdiction. She also purported to notify the court she was '*off ill today and have been put on sick leave*'. The letter also alluded to her alleged efforts to obtain the audio record of proceedings. She did not dispute that the recordings had been sent to her Bisho address but claimed not to have received them and simultaneously alluded to '*numerous break-ins to our home since C 821/2017 began*', without specifically claiming that the recordings had been stolen. Despite claiming to have been '*booked off*' no doctor's certificate was attached to the letter. However, on 13 August 2024, a medical certificate apparently issued on 6 August 2024 and booking her off duty from 5 August to 8 August 2024, was received by the registrar.
- [23] Thus, even though the respondent came to the court on 5 August, she decided not to appear before the court and present the representations in her letter. The letter, which was apparently not served on the applicant, went into great length on the merits of her previous objection to this court's jurisdiction. It is quite apparent from the letter, despite the judgment of Rabkin-Naicker J, that the respondent did not accept the judgment as

binding and accordingly did not accept the court's jurisdiction. Her concluding statement on the issue was that:

'It is not a great use of the Cape Town Labour Court's time to entertain C82/2017 as it lack's jurisdiction. The repeated Cape Town Labour Court set down dates and continuously claiming that C821/2017 is on the court roll, while it is not, seems like badgering and forum shopping for an outrageous and ridiculous misplaced civil claim.'

The letter made no reference whatsoever to her failure to appoint legal representatives. Having reasserted her view that the court lacked jurisdiction, she asked the court to advise her on the *'next actionable steps required of me'*.

- [24] The applicant's counsel, *Mr Steenkamp SC*, also placed on record an email the respondent sent to her former attorneys at 4:00 PM on 5 August (after court had adjourned), asking who had previously worked on her case and that he and his attorney were advised by court staff that the respondent was seen standing outside of the door of the court listening to proceedings before the adjournment the previous day. After the conclusion of proceedings the applicant's attorneys filed a copy of the court security staff's entry control register indicating that Thotsejane had entered the court building sometime after 14h40 on 5 August 2024.
- [25] The applicant concluded its evidence on 6 August 2024, and the matter was adjourned *sine die* for argument pending the transcription of the evidence.
- [26] On 20 September 2024, the court issued a directive specifically providing for a final opportunity for the respondent to participate before the matter was enrolled for oral argument. The directive required her to file an affidavit by 30 September 2024 showing good cause for her failure to appear on 5 and 6 August 2024 and explaining why the court should reconvene to hear further evidence. She was also required to name any witnesses she wished to cross-examine or call to testify on her behalf.

[27] A subsequent court directive on 18 June 2025 noted that Thotsejane had failed to take any steps in response to the last-mentioned directive. As a result, the court ordered the matter to be enrolled for oral argument on the merits. Nevertheless, the court still made provision for the respondent to present oral argument, directing that the applicant must file its heads of argument 15 court days before the hearing, and the respondent must file her heads of argument no later than 5 court days before the hearing. The matter was eventually enrolled for argument on 18 August 2025. the respondent was furnished with the transcripts and had the opportunity to present argument notwithstanding her failure to attend the trial after her postponement application, but did not appear at the hearing of oral argument, nor did she file any heads of argument.

Background

Overview of the evidence

[28] Mr W Lotter ('Lotter'), former acting dean of the Business and Management Faculty at the Cape Peninsular University of Technology ('CPUT'), Ms Stewart-Roberts ('Stewart-Roberts'), Executive of Strategic Relations and Human Resources for the V&A, and Ms L Hendricks ('Hendricks'), who worked in human resources and recruitment administration, all gave evidence for the applicant. Apart from an appearance on the second day of the trial, Thotsejane was absent for the rest of the proceedings and neither gave evidence nor cross-examined V&A's witnesses, despite ample opportunities being afforded to her.

the respondent's employment by V&A

[29] Lotter testified that the Respondent commenced full-time employment at CPUT as a Co-ordinator on 1 August 2014, earning an annual remuneration package of R606,374.96. He stated that by September 2016, the Respondent's absenteeism at CPUT had become so severe that he instructed her to report to him daily in the dean's office to monitor her attendance, an instruction with which she failed to comply. CPUT's employment contract explicitly required staff to inform their managers if

they were off-campus during core hours and strictly prohibited engaging in private remunerative work without written consent. The Respondent neither disclosed nor applied for permission to perform any private work while at CPUT.

[30] Stewart-Roberts and Hendricks provided extensive testimony regarding the timeline of the Respondent's recruitment and subsequent misconduct. The V&A was in dire need of a highly skilled Chief Information Officer. On 8 May 2015, the Respondent completed and signed the V&A employment application, expressly acknowledging that she understood that providing false information would render her employment contract null and void.

[31] Between 19 May and 1 June 2015, the IT recruitment agency Recru-it compiled her *curriculum vitae*, noting her CPUT package at R630,000 per annum.

[32] During June and July 2015, the Respondent was interviewed three times by a V&A panel, including Hendricks and Stewart-Roberts, during which she affirmed and elaborated on the fraudulent misrepresentations made in her CV regarding her previous employment. Noteworthy amongst these were the following:

32.1 In relation to Engen, she falsely claimed she left her job due to 'political challenges' and a merger that was underway, when she had actually been dismissed for gross misconduct, as confirmed in an arbitration award.

32.2 She claimed on her application that she left Old Mutual because she was headhunted. On investigation it was found she was dismissed following a disciplinary inquiry for multiple misconduct charges, including insubordination, unlawful possession of property, unauthorised absence from work, and breaching various policies and procedures. This was supported by documentation provided to V&A by Old Mutual, which included a transcript of the disciplinary proceedings and the outcome thereof. As in the case of Engen, she had referred an unfair dismissal claim to the CCMA, but in this case

the claim was settled. In passing, I noted that the respondent's surname at that stage was recorded as '*Dakela*'.

32.3 She stated on her CV that she resigned Acceleration eMarketing: for 'career development'. However, she had been dismissed for incapacity after missing training sessions, staying out of work without a valid reason, missing deadlines, and delivering substandard work. This was confirmed in an arbitration award obtained by V&A.

32.4 In relation to CPUT She concealed her ongoing employment with CPUT and never resigned. She continued to receive her CPUT salary there while employed at the V&A at least until February 2017.

[33] Prior to this, on 29 July 2014, Engen had obtained a High Court judgment against the Respondent for motor vehicle finance under case number 9345/2014 for an amount of R503,786. When ITC checks done by V&A revealed this judgment, the Respondent claimed during the interview that the debts had been incurred in her name by her ex-husband and she was busy resolving it with her attorney. Further, on 6 and 7 July 2015, Ms Hendricks and the Respondent exchanged emails regarding the High Court judgment, during which the Respondent falsely reiterated that the judgments against her name were due to her divorce. V&A, in good faith, accepted her explanation at the time. Thad pleaded in her answering statement that she had told the interviewing panel the truth, namely that the judgment was for a motor vehicle financed by the Engen SA Car Scheme. However, Hendricks denied that the respondent ever disclosed this during the interview

[34] On 27 July 2015, the V&A offered the Respondent the position at R700,000 per year. On 30 July 2015, the Respondent submitted a fraudulent counter-offer demanding R1,100,000, based on the false claim that she had been offered a Head of Department position at CPUT. Mr Lotter confirmed that a letter dated 31 July 2015 that the Respondent sent to the V&A, claiming that CPUT had offered her a Head of Department position with a R65,000 salary, a housing allowance, vehicle and fuel allowances, worldwide travel, and internet connectivity. was a complete fabrication. CPUT had neither made such an offer nor provided such

lavish benefits at that employment level. This misrepresentation successfully induced the V&A to increase its offer to R850,000 per annum. The V&A ultimately concluded her employment contract on 15 October 2015. However, from approximately 15 to 31 October 2015, the Respondent failed to attend work for her first two weeks of employment without permission, claiming she had suffered a nervous breakdown and was admitted to a mental health clinic.

The Respondent's Tenure and the Employer's Investigations

- [35] Stewart-Roberts testified that tenure of the respondent's employment with V&A, was characterised by late arrivals, missed meetings, high absenteeism, and the submission of copious doctor's certificates.
- [36] Around 28 October 2016, V&A's leasing agents, Fair Cape Leasing, conducted internal vetting for a Breakwater Lodge apartment rental which the respondent wanted to enter into. In the course of the vetting Thotsejane's credit rating, the Engen High Court judgment against her came to light. The leasing agent referred the judgment to Ms Stewart-Roberts, whose suspicions about the Respondent's claims regarding the debt being one incurred by Thotsejane's former spouse, were aroused.
- [37] An enquiry to Mr P Du Plooy ('Du Plooy'), the Head of IT at Engen, confirmed the vehicle debt was owed by Thotsejane and told Stewart-Roberts of her history of misconduct at the firm. Du Plooy warned Stewart-Roberts that during her employment at Engen, the Respondent would leave laptops and handbags in her office to create an impression she was at work, when in fact she was not. Stewart-Roberts testified that an identical pattern of this behaviour was repeated at V&A by the respondent. When Thotsejane was suspended, it was discovered that she had four laptops and multiple handbags in the boot of her car.
- [38] The ensuing investigation revealed that the Respondent had lied on her CV regarding her entire employment history. Arbitration awards demonstrated that she had been dismissed by Acceleration in March 2007 for poor work performance, dismissed by Old Mutual in January 2012 for insubordination and unlawful possession of property, and dismissed by

Engen in January 2014 for gross misconduct and conflict of interest involving her private business, FlavaLite Innovations.

- [39] Concurrently, Hendricks discovered the Respondent's simultaneous employment by CPUT while performing a reconciliation of Discovery Health medical aid schedules. Hendricks noticed the Respondent was not reflecting on the V&A's billing schedule. Upon inquiry, Discovery Health confirmed that Thotsejane's transfer from her 'previous' employer had never taken place because she remained active on CPUT's medical aid scheme. Following up on this medical aid discrepancy, on 28 October 2016, Hendricks conducted a web search and printed a page from the CPUT website, which showed Thotsejane was ostensibly actively employed and listed as an Information Technology Coordinator for the university.
- [40] Later, in November 2016, when Thotsejane was confronted about her concurrent employment by CPUT, she produced a letter claiming she had resigned from CPUT on 1 September 2015. This was sent to Lotter for confirmation. He testified that this resignation was false and Thotsejane continued to receive her full monthly salary from CPUT until her actual resignation in February 2017.

Forensic audit of the respondent's laptop and private business interests

- [41] Forensic audits of the Respondent's V&A laptop conducted by Deloitte revealed a comprehensive timeline of extensive, undisclosed private business activities by the respondent conducted during V&A working hours, often coinciding with periods of leave. Examples of this are:

41.1 On 25 and 26 November 2015, FlavaLite invoiced Elixir R40,000 for seminar days.

41.2 After taking four days of annual leave from 28 to 31 December 2015, the Respondent created a 'to-do' list on 8 January 2016 on her V&A issued laptop, which detailed extensive tasks for her private ventures and academic pursuits, while demonstrating a lack of execution on her V&A-specific duties which detailed the following tasks:

- 41.2.1 FlavaLite Innovations Priorities: Her list included proposing meeting dates, applying for enterprise development program funding, applying for UCT office space, getting a Neotel landline, setting up email addresses, and preparing for a 'Standard Bank digital transformation project'.
- 41.2.2 Lovealution Priorities: She listed tasks for her DJ business, including applying for rural development funding and sponsorships, planning 2016 events, and completing a mixtape.
- 41.2.3 CPUT and Academic Priorities: The list included completing a teaching portfolio, submitting cyber security assignments, attending DBA classes in NMNU, and making corrections to a 'contingency theory paper'.
- 41.2.4 V&A Waterfront Priorities: Her V&A tasks included setting up meetings with the CEO and other executives, writing a memo on 'fibre project risks,' and completing the 'IT strategy together with tactical plans'. However, Stewart-Roberts confirmed that none of these V&A tasks were ever done, completed, or submitted in any form of finality.

Further, none of the tasks listed in paragraphs 15.2.1 to 15.2.3 above had anything to do with V&A business.

- 41.3 Thotsejane took five days of annual leave from 11 to 15 January 2016, culminating in a FlavaLite team workshop with Innovator Trust on 15 January 2016. She then took six additional days of annual leave from 22 to 29 January 2016. She facilitated FlavaLite meetings with the Standard Bank Digital Analytics Team on 4-5 February and 17 February 2016. After taking sick leave from 29 February to 3 March 2016 and one day of annual leave on 14 March 2016, she met with CustomApp representatives on 4 April 2016 to discuss an IT strategy to be delivered by FlavaLite.
- 41.4 Notably, on 13 and 14 April 2016, while ostensibly on sick leave from the V&A, she attended a Digital Marketing conference in

Johannesburg as a panellist and co-founder of FlavaLite. On 14 April 2016 at 12:22 PM, she emailed the V&A claiming she was booked off sick and sitting at home in bed doing V&A work, which meant she missed a scheduled V&A customer service update meeting.

41.5 On 20 April 2016, FlavaLite submitted a proposal to Old Mutual. She took annual leave on 28 and 29 April 2016.

41.6 On 16 May 2016, she signed a letter confirming she was the business owner of FlavaLite, and on 6 June 2016, FlavaLite held another meeting with Old Mutual.

41.7 She gave interviews as FlavaLite's co-founder on 14 and 18 July 2016, and from 18 to 22 July 2016, she gave a presentation at a CPUT workshop alongside Prof Iyamu.

41.8 Thotsejane coordinated a Silicon Cape showcase event via email on 10 and 11 August 2016, and subsequently gave a presentation at the event on 31 August 2016 between 06:30 and 08:00 PM.

41.9 From 26 to 28 September 2016, she attended the Gartner Symposium for FlavaLite. On 28 September 2016, she requested leave for this symposium, falsely claiming it ran from 27 to 30 September; however, Ms Taliep declined the request on 3 October 2016 citing Thotsejane's severe performance challenges.

41.10 Nonetheless, Thotsejane took five days of annual leave from 3 to 7 October 2016.

41.11 On 25 October 2016, she signed a FlavaLite recommendation letter for Ms Ndamase, attached to which was an annexure stating that t1 served serving on a UCT board for students was part of a steering curriculum technology IT coordinator at CPUT.

41.12 Further, on 1 November 2016, the Respondent signed a Non-Disclosure Agreement for FlavaLite with ABSA Bank, and a FlavaLite commercialisation project plan listed 1 December 2016 as its official kick-off date.

The respondent's non-performance of her duties

- [42] In stark contrast to the respondent's active pursuit of private business interests, Stewart-Roberts testified that she *'never delivered a single piece of work according to the scope that was given to her in terms of her role and responsibility'*. Every piece of work she handed in was described as *'incomplete,' 'broad and nebulous,'* and an *'utterly irrelevant' 'academic copy and paste from a textbook'*. Her work showed *'no application or understanding'* of the V&A's specific requirements. When her work was reviewed by the CEO (David Green) and Stewart-Roberts, it was *'blatantly apparent'* that she did not understand the requirements and could not translate technical academic knowledge into practical applications relevant to the V&A Waterfront's IT. Despite being given *'very specific guidance'* by the CEO on what was expected, she failed to demonstrate understanding at every review point. The respondent failed to meet any deadlines. Stewart-Roberts testified that the V&A literally did not have *'a single piece of work'* to show what the respondent spent her time on. The respondent failed to attend crucial IT Steercom (steering committee) meetings, where decision-making took place and for which she was responsible, often citing ill health or other excuses without prior notification. She failed to deliver on any of the tasks listed on a to-do list found on her computer dated January 8, 2016, which included items like writing a memo on fiber project risks and completing the IT strategy.
- [43] In a most diplomatically worded email dated October 3, 2016, Narriman Taliep, the finance and central services executive and Thotsejane's direct superior, noted the respondent's *'performance challenges'* and mentioned that she had neither declined nor accepted meetings arranged to discuss the IT reforecast and capital expenditure, which were among her *'top nine priorities'*. His email was responding to a late request from Thotsejane to attend an IT symposium. In the email, Taliep reiterated that Thotsejane's last minute requests were neither professional nor appreciated. He also noted *'with your performance challenges it is more important that you have presence in the business'* and recorded she had not responded to meetings scheduled to discuss the way forward on *'the IT reforecast and*

capital spent with both your IT colleague (sic) and FD'. The email stressed the importance of knowing Thotsejane's arrangements in advance and re-emphasised the importance of her being 'present in the business'.

Procurement Irregularities and Termination

- [44] In relation to the allegedly fraudulent hiring of external associates and the misappropriation of company funds, Ms Stewart-Roberts testified that between 1 and 15 November 2015, the Respondent manipulated the V&A's outsourced IT provider, EOH MC Solutions ('EOH') to engage Thotsejane's business associates. EOH was contracted to manage the applicant's daily IT operations, which included maintaining servers, setting up staff connectivity, and resolving general IT problems. EOH acted as the formal hiring and billing intermediary for third-party consultants. Thotsejane's role was to work in direct partnership with EOH to oversee the company's broader IT infrastructure and requirements.
- [45] Although the CEO of EOH, Mr C Lazari ('Lazari') did not testify, Stewart-Roberts's evidence about the initiating role Thotsejane played in getting Iyamu and Mchunu employed is supported by the email correspondence between Lazari and Thotsejane in November 2015. It shows that, within a week of a job description of the Senior Enterprise Architect being drawn up, she was specifically promoting the engagement of Iyama for appointment to the position and asking Lazari to appoint him to start work on 16 November. It is also apparent from the documentation referred to that both Iyamu and Mchunu had been engaged by Thotsejane's company, Flavalite, on other work. At no stage did she disclose the business connection between herself and them to V&A, nor was there any evidence she hinted at the connection when corresponding with Lazari over the appointments.
- [46] By the end of May 2016, the V&A had paid R1,402,005 for Prof Iyamu's services (billed at R1,500 per hour) and R464,000 for Ms Mchunu (both amounts excluding VAT), with Ms Mchunu billed via monthly invoices from 15 July 2016 to December 2016.

- [47] Additionally, the Respondent hired two Johannesburg-based companies, Peppermint Source and Enlightened Poppy Network (EPN), ostensibly to produce corporate IT literacy videos for the V&A. On 9 September 2016, she received a disguised invoice from EPN featuring a 20% commission (R20,000) for producing personal YouTube DJ videos under her alias 'DJ Sibs'. Ms Isabella Hawk, the owner of EPN, confirmed to the V&A that the Respondent had demanded this kickback.
- [48] Ms Stewart-Roberts testified that, ultimately, the Respondent never completed a single piece of work for the V&A. During progress reviews with V&A CEO Mr David Green and EOH CEO Mr Chris Lezari, the Respondent's submissions were found to be incomplete, broad, and copied directly from academic textbooks with no practical application to the V&A's infrastructure. V&A formally placed the Respondent on suspension on 24 November 2016. On 1 December 2016, she was served with a disciplinary notice and charge sheet. In a final act of deceit, on 5 December 2016, she emailed a fraudulent resignation letter to CPUT, backdated to 1 September 2015. Following a disciplinary enquiry held on 8 December 2016, the Respondent was formally dismissed on 12 December 2016 on nine charges of misconduct and fraud. By the end of December 2016, the V&A had paid her a total of R1,031,237.47 (cost to company), equating to a nett amount of R597,114.40.

Evaluation

Damages for contract induced by a fraudulent misrepresentation.

- [49] In essence the first claim of the applicant is for damages flowing from a contract concluded on the basis of fraudulent misrepresentations, which entitled it to cancel the contract and to restore it to the position it was before the contract was concluded (*restitutio in integrum*).
- [50] From the evidence, the ineluctable conclusion must be drawn that the respondent was employed on the basis of her qualifications and prior employment history. Had the applicant known the true version of her prior employment history, it would never have employed her. The version of that

history represented by the respondent was that she had been employed *inter alia* by some large, well-known companies and a university and her employment with those businesses had not ended on account of any fault or incapacity on her part. However, this was a blatant misrepresentation, as detailed in paragraph 31 above. In two cases she had been dismissed for misconduct and once for incapacity (for reasons which resonate with her work history with V&A). In both cases where an arbitration award was handed down, the fairness of her dismissal was upheld and in once instance a settlement was reached. In relation to CPUT she failed to disclose that she was still employed by it. The inescapable conclusion from the evidence is that, but for these important misrepresentations she would not have been employed by V&A. Accordingly, it was induced to offer her employment base on fraudulent misrepresentations. Moreover, it was also induced to employ her on a higher salary than it had intended to, because she falsely represented that she had been made a better salary offer by CPUT. she had blatantly misrepresented what had transpired, that she misrepresented her prior employment.

[51] The contract was concluded because of gross duplicity on the respondent's part and V&A was entitled to cancel it and to be placed in the same position it would have been if it had not entered into the contract. In the absence of any value being obtained from services rendered by the respondent, the applicant is entitled to claim damages equivalent to the value of the remuneration she received.

[52] It should be mentioned that V&A was also entitled to cancel the contract solely on account of Thotsejane's concurrent employment by CPUT. Not only was that contrary to the express provisions of clause 12.1 of her contract prohibiting any other private employment without the express written consent of the employer but was also a fundamental breach of an employee's implied duty to act in good faith towards an employer and not work against the employer's interest³.

³ *Ganes And Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 617C-E and *Sappi Novoboard (Pty) Ltd v Bolleurs* (1998) 19 ILJ 784 (LAC) at paragraph 7.

Damages for fraud connected with the contract of employment.

[53] In her *in limine* ruling in this matter⁴, Rabkin-Naicker J cited the Labour Appeal Court decision in *Rand Water v Stoop & another* ⁵, in which the court held:

'[35] The respondents also averred that the appellants' claim is a delictual one and therefore cannot be entertained in terms of s 77(3) of the BCEA. Once again the respondents are wrong. There is no doubt that fraud is a delict but the fraud alleged in the pleadings is connected to the contract of employment between the appellant and the respondents. This was not a fraud committed against the appellant by persons unconnected to it. The allegation is that the respondents abused their positions as servants of the appellant. They committed fraud against their employer by abusing the positions they held as employees.'

(emphasis added)

[54] The principle is equally applicable here. In the course of her employment in her role as CIO she procured the employment of her private business associates to render information technology services to V&A. The evidence showed that Iyamu and Mchunu were business associates of Thotsejane, having usually being engaged with Flavalite, Thotsejane's private business. Thotsejane actively solicited the appointment of additional IT expertise by EOH in the service of V&A's supposed IT needs, and expressly sought the rapid appointment of Iyamu and thereafter the filling of the business analyst post, which Mchunu ended up obtaining. Whether it was established that she misled EOH to engage them on the basis that V&A had expressly authorised their appointment, the fact remains is that, but for the respondent's conduct in getting EOH to employ them both, EOH would not have been receiving reimbursement of their fees or remuneration V&A, and V&A would not have been charged for those services.

⁴ Footnote 1 at paragraph 8.

⁵ (2013) 34 ILJ 576 (LAC)

- [55] Clause 15.1 of the respondent's contract of employment expressly stated that she was subject to V&A's policies and procedures. Clause 3 of the V&A's procurement policy expressly stressed that procurement standards were comprised, amongst other things, of the qualities of *'honesty, truth, integrity and professionalism'*. Moreover, it was required that all transactions between the company and employer were to be conducted at *'arm's length', i.e., there will be no conflict of interest between an employee involved in a purchase and the supplier involved;..'*
- [56] Thotsejane was obviously conflicted in promoting the appointment of individuals who regularly worked with her in her own business, which was completely incompatible with her duty to allow the recruitment process to be conducted independently and objectively in the best interest of V&A. What exacerbated the situation was that she did not disclose her connection to persons she was encouraging EOH to engage, thereby concealing from the employer that she was not a disinterested party in the appointment process.
- [57] Accordingly, it is most probable that the respondent's conduct in promoting the appointment of her business associates, while simultaneously concealing her own business association with Iyamu and Mchunu, led to their appointment, which would not have occurred if she had acted in accordance with her duties to act honestly, in good faith and in accordance with V&A's procurement standards. As mentioned, the evidence was also that the two consultants failed to even render the services they had been engaged to perform.
- [58] Accordingly, V&A suffered financial damages in the amount of the costs incurred owing to the fraudulently induced engagement of the two consultants.

Costs

- [59] The applicant seeks a punitive costs order against the respondent on the attorney and client scale, advancing several distinct grounds for this relief. Firstly, the applicant relies on an explicit contractual provision, namely

clause 17.1 of the respondent's employment contract, which expressly provides for the recovery of attorney and client costs in the event that a damages claim is instituted against the respondent. Secondly, the applicant argues that the respondent's underlying behaviour warrants severe judicial censure. The applicant contends that the respondent deliberately set out to deceive and defraud the company on multiple occasions, describing her actions as truly reprehensible and corrupt. In this regard, the applicant aligns the matter with the precedent established in the *Umgeni Water v Naidoo and another*⁶ case, arguing that such egregious behaviour inherently justifies a punitive costs order. Thirdly, it argues the court should, as a mark displeasure not only with the initial fraudulent conduct that culminated in the respondent's dismissal, but also with her ongoing deceitful conduct throughout the entire course of the present legal proceedings. It points out that even at the stage when final argument was pending, the respondent fabricated an SMS message designed to create the false impression that she had not been properly served with the notice of set down for the court proceedings on 14 July 2025.

[60] The first point that needs to be made is that, despite a provision in a contract providing for indemnification of a party for any legal costs incurred on a punitive scale, it remains within the discretion of the court whether or not to give effect to such a provision, when it makes a cost order⁷. In this case, the magnitude of the deceitful conduct of the respondent in defrauding the applicant was serious. In any event, even if the contract did not contain such a provision, a punitive cost award is warranted for the additional reasons below.

[61] It is not uncommon where the underlying conduct of the judgment debtor involves fraud or dishonesty for a court to ensure that the party defrauded

⁶ [2023] 1 All SA 857 (KZP)

⁷ *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at paragraphs 25 to 27.

is not out of pocket as a result of having to obtain a judgment in order to obtain redress⁸.

[62] While the facts of this case are not entirely on all fours with those in *Umgeni Water* in which the respondent persisted in insisting he had a valid qualification in the face of overwhelming evidence to the contrary, the respondent's conduct during the trial is deserving of severe censure. She failed to disclose her attendance in court until she could not avoid admitting that she was the respondent, without making any attempt to apologise for her deception. Having secured a postponement owing to the court granting her one despite its reservations, the respondent did not have the courtesy to appear in person when the trial resumed, to explain why she was not in attendance or why she did not have legal representation, even though she was present in person at the court premises.

Order

1. The Applicant's application to amend its statement of claim filed on 30 September 2024 is granted.
2. The amendment of the citation of the Respondent's surname from '*Tunzelana*' to '*Thotsejane*' is confirmed.
3. The Respondent must pay the Applicant damages in the amount of R 1,031,237.46 in respect of her fraudulent misrepresentations which caused the Applicant to employ her.
4. The Respondent must pay the Applicant damages in the amounts of R 1,402,005.00 and R 464,000.00 for the damages suffered by it arising from the engagement of Professor Tiko Iyamu and Ms Nokubela Mchunu, respectively.

⁸ See *Nel v Waterberg Landbouwers Ko-Operatiewe Vereeniging* 1946 AD 597 at pages 609-610 and *Namasthethu Electrical (Pty) Ltd v City of Cape Town and Another* (201/19) [2020] ZASCA 74 (29 June 2020) at paragraph 40.

5. The Respondent must pay the Applicant interest on the amounts in paragraphs 3 and 4 of this order at the prescribed rate of interest, *a tempore morae*.
6. The Respondent must pay the costs of the Applicant, including the costs of counsel, on an attorney own client scale.



R Lagrange

Judge of the Labour Court of South Africa.

Appearances:**For the Applicant:
Instructed by:**Adv M Steenkamp SC
Mcaciso Stansfield Inc.**For the Respondent:**

No Appearance