

# THE HIGH COURT OF SOUTH AFRICA FREE STATE PROVINCIAL DIVISION

Reportable: yes/no

Circulate to other Judges: yes/no Circulate to Magistrates: yes/no

Case Number: 5899/2017

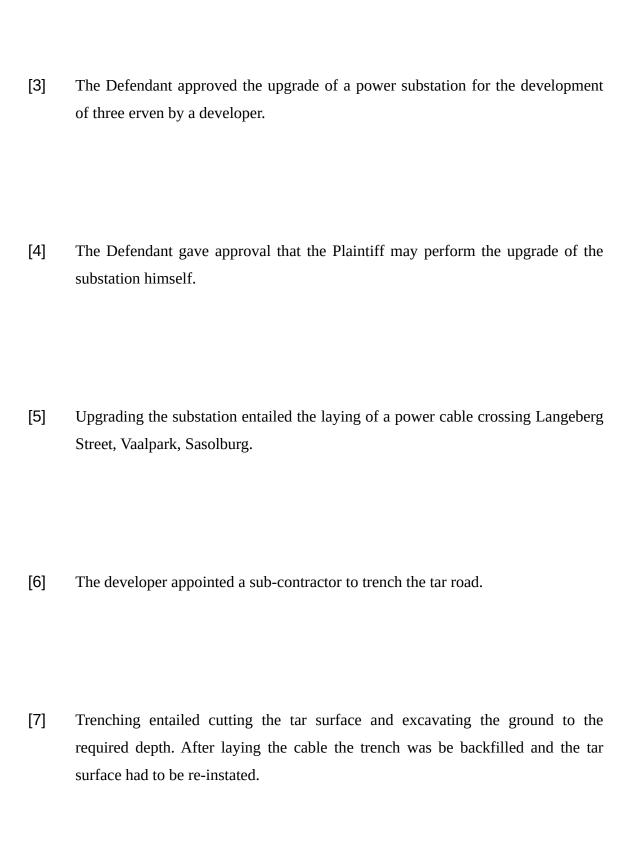
In the matter between:

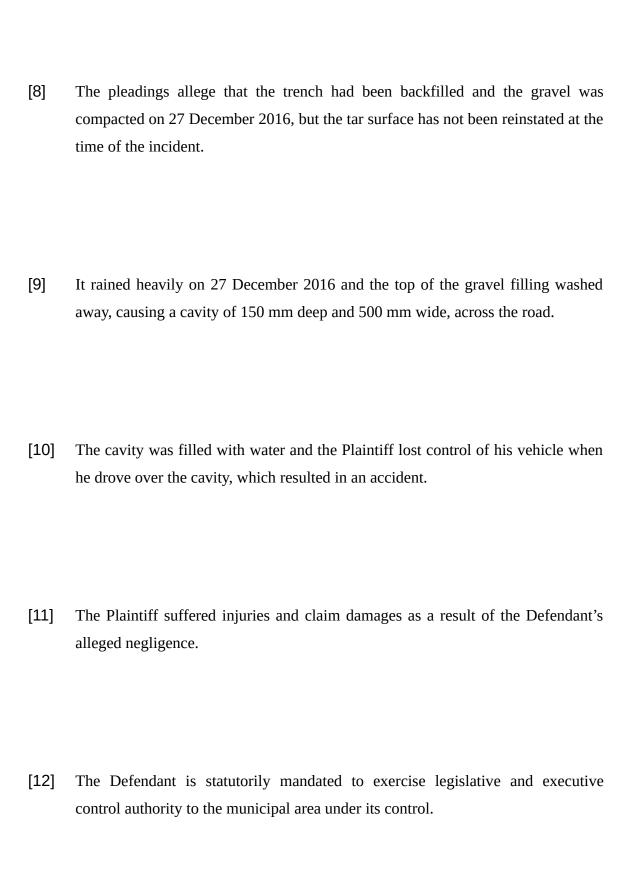
ALBERTUS JOHANNES PETRUS DREYER		Plaintiff
and		
METSIMAHOLO LOCAL MUMNICIPALITY		Defendant
HEARD ON:	15 MARCH 2023	
CORAM:	BERRY AJ	
DELIVERED ON:	07 FEBRUARY 2024	

### **INTRODUCTION**

[1] The Plaintiff claims damages from the Defendant after he drove over a trench that was excavated across a public road on 27 December 2016.

[2] The Defendant raised two special pleas of non-joinder and misjoinder.





[13]	The merits of the claim do not serve before court and only the two special pleas
	raised by the Defendant is dealt with.

### **SPECIAL PLEAS**

[14] The Defendant raised two special pleas in that there is a non-joinder as the Plaintiff should have joined the developer of the project and the independent contractor who trenched the road.

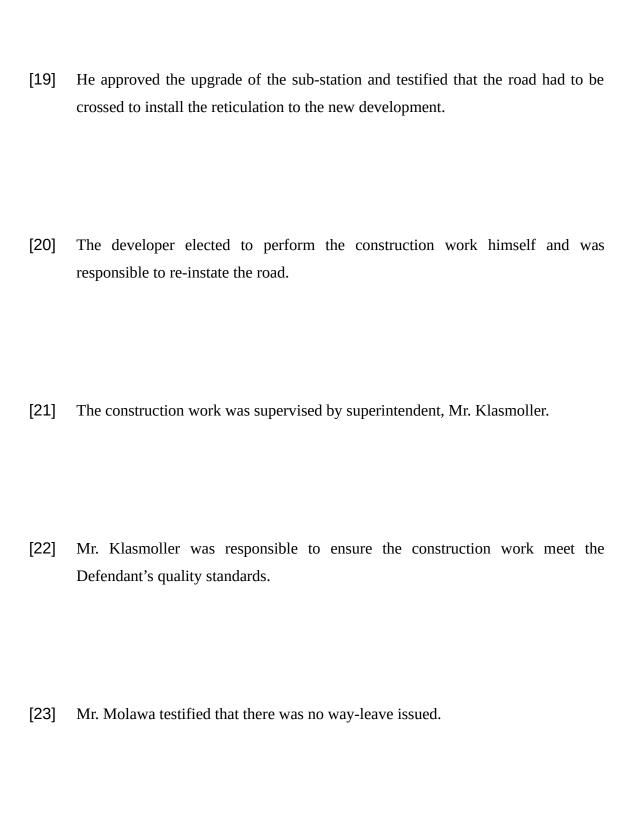
[15] The second special plea of misjoinder is that the Defendant should not pursue its claim against Defendant, but against the developer and the sub-contractor.

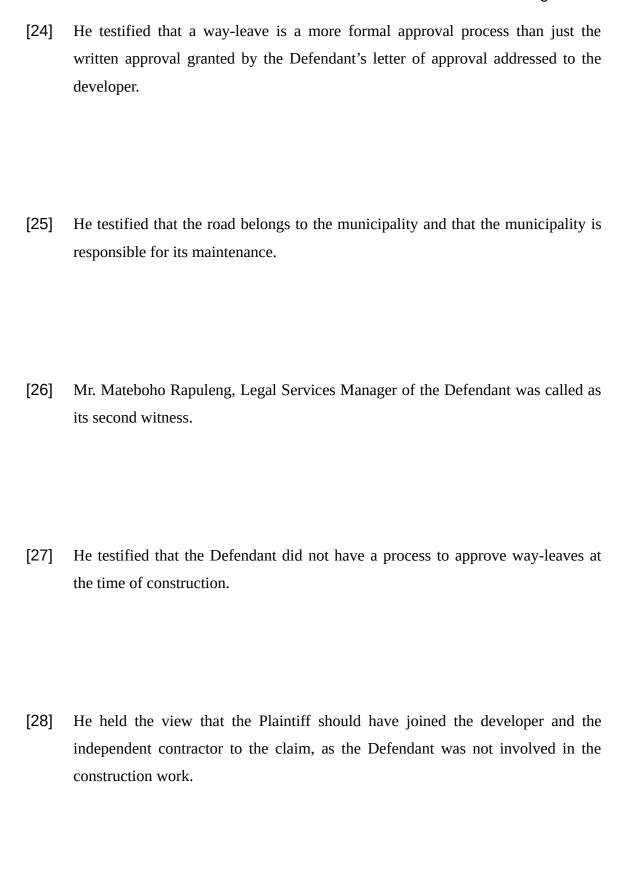
[16] Both special pleas boil down to an argument that the Plaintiff is pursuing its claim against a wrong Defendant.

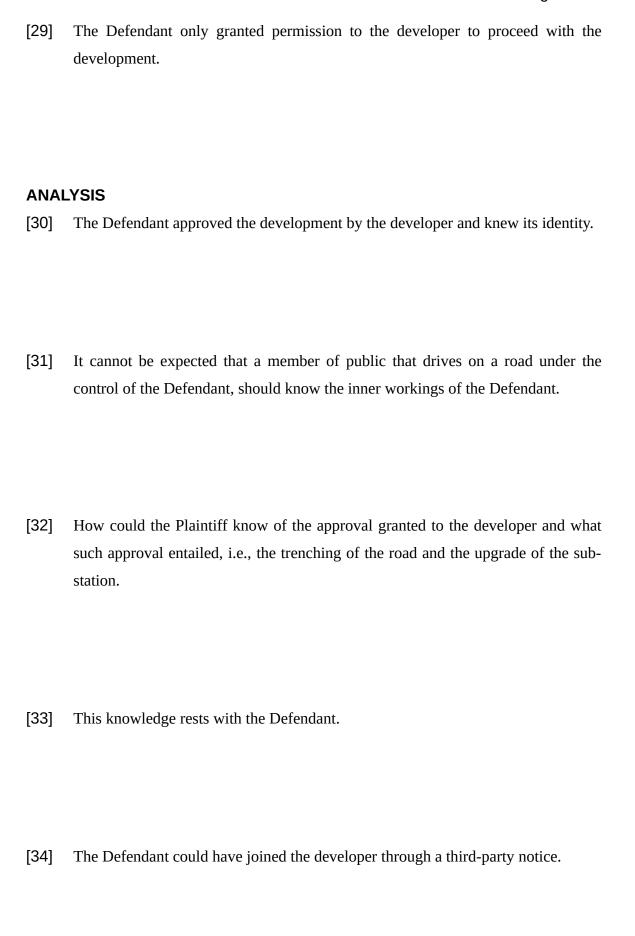
### **EVIDENCE OF THE DEFENDANT**

[17] The Defendant called two witnesses.

[18] Mr. ME Molawa is a Senior Engineering Assistant in the Electricity Department.







[35] But it elected not to follow this process.

## [35] **ORDER**

The following order is made:

- 1. The special pleas are dismissed.
- 2. Cost to be costs in the cause.

AP BERRY, AJ

For the Plaintiff Mr P Uys

Instructed by Mills & Groenewald Attorneys

For the Defendant: Adv PS Mphuloane

Ponoane Attorneys