REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

DATE 12 December 2018 SIGNATURE

CASE NO: 8914/2017

In the matter between:

DARRYL FURMAN N.O.	**1st PLAINTIFF**
GREGORY PAUL WEINBREN N.O.	**2ND PLAINTIFF**
DEAN ADAM WEINBREN N.O.	**3RD PLAINTIFF**

ROWAN FURMAN N.O. **4TH PLAINTIFF**

And

CARL FRANK HATTINGH **DEFENDANT**

JUDGMENT

TSOKA J

[1] The duly appointed executors of the estate of the late Milton Lawrence Weinbren (Weinbren) sue the defendant, Carl Frank Hattingh (Hattingh) for payment of the sum of R15 829 833 together with interest and costs. The R15 829 833 is the proceeds of a policy issued by Old Mutual taken by Hattingh on the life of Weinbren pursuant to a Buy and Sell Agreement concluded between Hattingh and Weinbren.

[2] On 28 November 2008, Weinbren and Hattingh concluded three agreements namely –

2.1. a Memorandum of Agreement (the Acquisition Agreement) in terms of which Hattingh with effect from 1 March 2009 bought 25% member's interest in a close corporation known as Air and Allied Technologies CC (A&AT) owned by Weinbren;

2.2. a Member's Association Agreement (MAA) for the purposes of regulating the affairs of A&AT; and

2.3. a Buy and Sell Agreement (BSA), the purpose of which was to cater for a deemed acquisition of a member's interest in A&AT in the event of death or disability of Weinbren or Hattingh while the agreement remained extant.

[3] However, the parties on 29 August 2013 concluded an addendum to the agreement (the Addendum) which, on the face of it, purported to cancel the Acquisition Agreement with regard to Hattingh's acquisition of 25% member's interest in A&AT. As a result of the Addendum, Hattingh's member's interest thus reverted to Weinbren with effect from the date of the Addendum. In due course the necessary documentation was signed to record this fact in the offices of the Companies and Intellectual Property register.

[4] Prior to the execution of the Addendum, on 8 August 2013, Weinbren provided Hattingh with a memorandum entitled "Handover". The handover was of the close corporation to be managed and controlled by Hattingh as Weinbren intended to emigrate to Australia. In the memorandum Weinbren records *"from henceforth [Weinbren] will not be involved in any way with the daily running of the organization, but only as a 'consultant' on technical issues when needed."*

[5] With regard to imbalance of the parties' value of the life policies taken out pursuant to the BSA, the parties agreed that Hattingh would take out additional life cover to equal Weinbren's cover of R11, 25 million being 75% of the latter's member's interest in A&AT. In due course, Hattingh contacted his insurance broker to take out a Key-man policy to equalize the insurance policies between the two members of A&AT.

[6] The principal issue for determination at the trial was the effect and legal consequence of the Addendum and its effect on the BSA and in particular whether on the death of Weinbren, Hattingh was entitled to retain the proceeds of the BSA policy issued by Old Mutual instead of purchasing Weinbren's 75% member's interest in A&AT.

[7] It is the plaintiffs' contention that they are entitled to the proceeds of the Old Mutual Policy, while Hattingh, on the other hand, insists that as the Acquisition Agreement was cancelled, and by implication, the BSA, he is thus entitled to the proceeds of the policy. According to Hattingh, the plaintiffs' contention that the proceeds of the policy belong to them as the deemed sellers of 75% of the late Weinbren's interest in A&AT is therefore baseless and legally unsustainable.

[8] Initially Hattingh disputed the plaintiffs' locus standi to institute the present action but at the trial, once the plaintiffs produced letters of executorship in the estate of Weinbren, which conclusively proved that the plaintiffs have been duly appointed,

this challenge was no longer pursued. Similarly, although Hattingh did not disclose how he and the late Urma Balckburn (Blackburn), his former wife, were married, but once Mr Barend Jacobus Van Heerden (Van Heerden), the nominee of Veritas Board of Executors who were the duly appointed executors of the estate late Blackburn confirmed that Hattingh and the late Balckburn were married to each other in community of property, Hattingh had no choice but to concede and confirm that he and his former wife were indeed married in community of property.

[9] The issues that then remained for determination by the court was, first whether Hattingh ever withdrew from the Acquisition Agreement and therefore held no 25% member's interest in A&AT and second, whether the Addendum was a simulated event with its sole purpose being to defeat the late Blackburn's heirs to lay claim to half of Hattingh's 25% member's interest in A&AT. One should remember that by operation of the law, Blackburn being married to Hattingh in community of property and profit and loss, she was entitled to the undivided half-share of the said 25% member's interest in A&AT. The undivided half-share in A&AT, on her death, fell into her estate for the benefit of all her heirs.

[10] Hatting's stance has been that since the Addendum, and when the 25% member's interest reverted to Weinbren and the necessary documentation was signed in this regard, he ceased to be a member of A&AT. In support of this fact

he maintained that all the suretyships he signed on behalf of A&AT lodged with Standard Bank Limited were, as a result of the Addendum, cancelled.

[11] However, according to Mankedi William Mankge (Mankge), the Standard Bank Ltd's Accounts Manager, under whose control and management the accounts of A&AT fell, Hattingh never executed a suretyship on behalf of the close corporation. His undisputed evidence reveals, that there was nothing to be cancelled by Hattingh once the Addendum was effected and the 25% member's interest in A&AT reverted to Weinbren. Mankge further testified that the only person who had signed suretyship on behalf of A&AT, was Weinbren.

[12] Of crucial importance to the resolution as to whether Hattingh ever withdrew from being a member of A&AT, is the evidence of Mr Allen Narunsky (Narunsky), a chartered accountant in the employ of Vexillum Auditors (Vexillum), the accounting officer of A&AT since 2008 until Weinbrens' death on 31 October 2016 when the latter committed suicide.

[13] Narunsky testified that, consequent upon the death of Blackburn, both Weinbren and Hattingh were concerned about the latter's 25% member's interest in A&AT to which the heirs of the late Blackburn had an undivided half-share. In addition, the two, that is Weinbren and Hattingh, particularly the former was more concerned that the financials of A&AT would be exposed to outside parties who

he wanted to keep away from the financial health of the close corporation. It was as a result of this concern that a plan had to be devised to avert this eventuality.

[14] During February 2013, Weinbren, Hattingh and their attorney Darryl Furman, the first plaintiff, met with Narunsky. At this meeting, Darryl Furman came with a solution to which solution all the parties present agreed to. The solution was that Weinbren and Hattingh must conclude what purports to be a cancellation agreement of the Acquisition Agreement. This was termed an Addendum to the Acquisition Agreement. It purported to cancel the Acquisition Agreement and thus, to the outside world, and in particular to the heirs of Balckburn, Hattingh was not a member of A&AT and had no member's interest therein to which the heirs of the late Blackburn would be entitled to.

[15] According to Narunsky, Weinbren and Hattingh further agreed that, once the paper work had been done to effect this solution, Weinbren would hold Hattingh's member's interest in A&AT until Blackburn's estate had been wound-up. Once the winding-up was completed, it was up to Hattingh to call up the member's interest and to have it again registered in his name. Until the winding-up of Blackburn's estate, so testified Narunsky, Weinbren could not deal with or dispose of Hattingh's interest in A&AT.

[16] As to the issue of payment, Narunsky testified that by 2010 A&AT had an accumulated loss of about R5 million. At the meeting of February 2013, the

parties agreed that Hattingh would acquire the 25% member's interest in A&AT at a nominal value of R1.00. In fact in an email emanating from Hattingh, this fact is confirmed. To put his mind at rest, Hattingh required the recordal of the purchase price at a nominal value to be in writing, which, in due course, was done. According to Narunsky it was only during 2012 that A&AT started showing upward trajectory in making profit. In 2013 A&AT yielded a positive income in the sum of R2 479 881 resulting in a dividend of R170 000 being declared to which Hattingh received R42 500, being the 25% of R170 000 and Weinbren the remainder being 75% of the said R170 000.

[17] Although he, Narunsky, as the accounting officer of A&AT effected the transfer of Hattingh's 25% member's interest in the close corporation to Weinbren, nothing changed. Hattingh for all intents and purposes remained a member of A&AT holding 25% interest therein. He remained the general manager of the close corporation until December 2016. In that capacity he exercised the same authority as he did after the change in the close corporation's membership. His salary remained the same. His loan account in A&AT also remained the same although this was not accounted for in the books of account of the close corporation. To buttress his evidence that Hattingh remained a member in A&AT, Narunsky pertinently testified that Hattingh participated in the discussions surrounding the 2013 financial statements of the close corporation. The overall evidence of Narunsky, which was in the main, undisputed, is that Hattingh did not

withdraw from being a member of the close corporation. Neither did he ever resign as the general manager of A&AT.

[18] The third plaintiff, Mr Dean Adam Weinbren (Dean) testified that he is the son of the late Weinbren. On 1 November 2016, pursuant to his late father's death, he received a letter from the first plaintiff enclosing the Last Will and Testament of his father. Clause 5.2 of the Will records the fact that although Hattingh may not be reflected as a member of A&AT, his 25% member's interest in the close corporation had been paid for.

[19] In substantiation that Hattingh was indeed a 25% member in A&AT, he testified to what his father communicated to him during his life-time. Although this appeared to be hearsay, Hattingh did not object thereto. In any event the communication was in terms of section 3 of the Law of Evidence Amendment Act 45 of 1988 and, as it was in the interest of justice same was admitted into record as evidence. Furthermore, the admission of the evidence was not prejudicial to Hattingh.

[20] According to Dean, his father was concerned about Hattingh's member's interest being exposed to the heirs of Blackburn. In 2013 while seated at a table in Australia, his father received a call on his cellphone. During the cellphone call his father became so agitated that he excused himself from the family table. However, once the cellphone call was terminated, he became relaxed and

returned to the table. His calmness, so his father disclosed to him later, was that a solution to Hattingh's 25% member's interest in A&AT being exposed to Blackburn's heirs had been found. On being asked by the court who the person he spoke to on the cellphone was, Dean stated that his father informed him that he spoke to the first plaintiff who told him about the solution to his father's concern: the Addendum to ward-off Balckburn's heirs from the affairs of A&AT.

[21] The last witness who testified for the plaintiffs was the fourth plaintiff, Mr Rowan Jared Furman (Rowan). He is an admitted practicing attorney. He is the person who wrote the letter to Hattingh confirming the latter's request in writing that the 25% member's interest in A&AT was paid for at a nominal fee of R1.00 during 2010. His evidence was not challenged. From his testimony, it is clear that despite Hattingh's protestation that at the death of Weinbren he had not purchased his member's interest in the close corporation, this was done as long ago as 2010, before the said Weinbren's demise in 2016.

[22] In rebutting plaintiffs' version, Hattingh and one Mr Arthur Boshoff (Boshoff), an insurance broker, who assisted the former in obtaining insurance policies including the BSA as well as the Key-man policy required by Weinbren in 2013, testified.

[23] According to Boshoff, the Key-man policy was required by Weinbren to strike equality between Weinbren and Hattingh in their life policies as the BSA was no

longer applicable. In cross-examination, he conceded that the Key-man Policy was in fact required to bring equality between the two members solely to ensure that Hattingh, as the Key member of the close corporation who had to take over the complete control of its affairs should Weinbren emigrate to Australia, their life policies were equal. Regarding his further evidence as to the crucial issues to be determined by this court, his testimony added nothing of value.

[24] Hattingh testified in his own defence. Although he testified to the meeting held between Weinbren, the first plaintiff, Narunsky and himself regarding the estate of his late wife, he underplayed the fact that his member's interest in A&AT would have raised the interest of his wife's heirs and that Weinbren was worried about outsiders becoming privy to the financial affairs of the close corporation.

[25] Hattingh states that the reason for the cancellation of the Acquisition Agreement was because he was unable to pay for his member's interest in A&AT as the latter had not declared dividends from which he would be able to pay for his 25% member's interest in the close corporation. This version is not only at odds with the testimony of Narunsky but is at variance with the concern he and Weinbren had regarding the late Balckburn's heir's interest in the undivided half-share in his member's interest in the close corporation. The non-payment of his member's interest, which according to him was the purpose of the meeting, was neither put to Narunsky to react thereto. That his explanation and the purpose of the meeting

is to avoid the real reason for the cancellation of the Acquisition Agreement, is obvious.

[26] With regard to the payment of his member's interest at R1.00 as far back as 2010, he testified that the nominal fee was paid solely for the purposes of taxation, as otherwise, had he just handed his member's interest in A&AT to Weinbren without any payment, there would be donation tax implications. This version was also not put to Narunsky or the other plaintiffs to react thereto. In cross-examination, reluctantly, he had to concede that his member's interest in A&AT was paid for R1.00 in 2010 as the close corporation, for the years leading up to 2010, had accumulated an income deficit of over R5.5 million.

[27] Hatting agrees that on 18 February 2013 he met Veritas' representative, Van Heerden, regarding his member's interest in A&AT which was going through financial difficult times. Because of A&AT's perilous financial position, he thought there was no obligation on him to disclose his member's interest to the heirs of his deceased wife. His understanding is, however incorrect. The disclosure did not depend on him or on Van Heerden. By operation of the law, as the person married to Blackburn in community of property and who was entitled to the undivided half-share therein, it was expected of him to disclose his interest in the close corporation. In any event, the explanation that he thought there was no obligation on him to disclose his 25% member's interest in the close corporation is contrary to the version put to the plaintiffs' witnesses.

[28] In cross-examination, Hattingh, again reluctantly, conceded that as far back as 2010, he and Weinbren had agreed that he had acquired the member's interest in A&AT for R1.00. That he and Weinbren were ad idem that the two members of the close corporation were him and Weinbren holding 25% and 75% member's interest in A&AT respectively, is beyond doubt. Weinbren's last Will and Testament, attesting to his member's interest having been for R1.00 in 2010 is therefore a true recordal of payment of his 25% member's interest in the close corporation.

[29] The version of the plaintiffs as to whether Hattingh ever withdrew from A&AT is clear and, in the main, uncontroverted. Hattingh remained a 25% member in A&AT. In fact Hattingh's testimony, rather than disputing this version, confirms that at no stage did he ever, in reality, withdraw as a member of the close corporation. Hattingh's involvement in the affairs of the close corporation and his taking out the Key-man policy with regard to the affairs of A&AT, reveal nothing other than that, despite the Addendum and the reverting of his 25% member's interest in A&AT to Weinbren, he remained an active and key personnel of the close corporation. He was the driving force behind the close corporation as Weinbren was no longer active in the affairs of A&AT until December 2016.

[30] It is common cause that prior to Weinbren's demise, Weinbren intended to emigrate to Australia. Both Weinbren and Hattingh agreed that the key person to

manage, control and supervise the business activities of A&AT, was Hattingh. It is therefore unsurprising that Hattingh, without demur, accepted his responsibilities hence the taking out of the Key-man Policy.

[31] The undisputed correspondence emanating from both the first plaintiff, the parties' attorney at the time, as well as Weinbren's letter to Hattingh stating that the latter only withdrew on paper, while in fact and truth, he remained a member of A&AT corroborates the fact that at no stage did Hattingh withdraw as a member of the close corporation despite the documentary proof that his member's interest in A&AT reverted to Weinbren.

[32] The conclusion reached is therefore that Hattingh never withdrew as a member of the close corporation. Although on paper he was no longer a member, in fact and truth, he was still a member. The survival of the close corporation, had Weinbren's wishes to emigrate to Australia been fulfilled but for his death, would depend solely on his active role played in the affairs of A&AT.

Was the addendum to the Acquisition Agreement real or simulated act to thwart Blackburn's heirs to lay claim on Hattingh's member's interest in A&AT?

[33] Ex facie the Addendum, it appears that Hattingh and Weinbren cancelled the Acquisition Agreement. The reality is that the Addendum is not what it purports to

be. It is a simulated act. Although the necessary documents were executed by the parties to perfect the terms of the Addendum, that is to say, cancelling the Acquisition Agreement, the intention of both Weinbren and Hattingh was to the contrary. To the outside world, the Acquisition Agreement was cancelled though in reality, between the two members of A&AT, the two remain the only two members of the close corporation.

[34] As pointed out above, the undisputed evidence of Narunsky is that, in spite of the Addendum, Weinbren was not at liberty to dispose of Hattingh's member's interest in A&AT. Weinbren was to hold Hattingh's member's interest in A&AT until the latter's late wife's estate had been wound-up. As long as that eventuality had not occurred, to the outside world, and in particular, the heirs of Blackburn, Hattingh had no interest in A&AT to which Blackburn's heirs were entitled to.

[35] As Hattingh had acquired the 25% member's interest in A&AT in 2010 for R1.00, there was nothing to cancel, as the agreement had been perfected. The Addendum concluded in August 2013 was nothing but a simulated transaction. Nothing having been cancelled, the Acquisition Agreement and the BSA remained extant. In fact the very foundation of the Addendum, being the failure by Hattingh to pay the purchase price in terms of clause 4 of the Acquisition Agreement is an untruth. At the time the Addendum was concluded, A&AT's fortunes had turned around. It was making profit. In fact dividends in the amount

of R170 000 had been declared. The terms and provisions of the Acquisition Agreement and the BSA must thus be honoured and be acted upon.

[36] That Hattingh contravened the provisions of section 9 of the Administration of Estates Act 66 of 1965 in not disclosing to the Master in the Estate Late Blackburn that his late wife had an undivided half-share in the 25% member's interest in A&AT, is obvious. Had the said undivided half-share been disclosed to both the Master and the Executor in the Estate Late Blackburn, such share would have been accounted for and increased the remuneration due and payable to the Executor in that Estate. The non-disclosure not only constituted a criminal act in terms of the Administration of Estates Act on the part of Hattingh but also robbed both the Executor and the heirs of his deceased wife's estate of what was due to them.

[37] *In Hippo Quaries (TVL) (Pty) Ltd v Eardley*[1] the court, dealing with a simulated transaction such as the one in issue in the present matter, stated that –

> *'Motive and purpose differ from intention. If the purpose of the parties is unlawful, immoral or against public policy, the transaction will be ineffectual even if the intention to cede is genuine. That is a principle of law. Conversely, if the intention to cede is not genuine because the real purpose of the parties is something other than cession, their ostensible transaction will likewise be ineffectual. That is because the law disregards simulation. But where, as here the purpose is legitimate and the intention*

[1] Hippo Quaries (TVL) (Pty) Ltd v Eardley 1992 (1) SA 867 (A) at 877 C – E

is genuine, such intention, all other things being equal, will be implemented.'

[38] In *CSARS v NWK*[2] the court in determining whether an act is simulated, stated that –

'[55] In my view the test to determine simulation 'cannot simply be whether there is an intention to give effect to a contract in accordance with its terms. Invariably where parties structure a transaction to achieve an objective other than the one ostensibly achieved they will intend to give effect to the transaction on the terms agreed. The test should go further, and require an examination of the commercial sense of the transaction: of its real substance and purpose. If the purpose of the transaction is only to achieve an object that allows the evasion of tax, or of a peremptory law, then it will be regarded as simulated. And the mere fact that the parties do perform in terms of the contract does not show that it is not simulated: the charade of performance is generally meant to give credence to their simulation.'

[39] In the instant matter, where public policy is determined in terms of the Constitution, the supreme law of the land, the foundational principle of the rule of law, must be scrupulously complied with. Simulated transactions, such as the one in the present matter, must be frowned upon particularly where it is clear that

[2] CSARS v NWK 2011 (2) SA 67 (SCA) para 55

the purpose and intention of Weinbren and Hattingh was to deprive the heirs to the Estate Late Blackburn of their entitlement to the undivided half-share in Hattingh's member's interest in A&AT, contrary to the provisions of section 25(1) of the Constitution, in terms of which no one may be deprived of property except in terms of the law of general application. In addition, the Addendum was concluded to defeat the provisions of the Administration of Estates Act in particular the provisions of section 9[3].

[40] The real substance and purpose of the Addendum was to thwart the Late Blackburn's heirs to their undivided half-share of the 25% held by Hattingh in A&AT. The Addendum, other than to achieve its purpose, makes no commercial sense whatsoever. The basis of the Addendum, according to Hattingh, was Hattingh's failure to pay the purchase price from the dividends declared by A&AT as none were declared. This is an untruth as the latter was making profit and dividends had in fact been declared and shared proportionally according to the member's interest in A&AT. The charade of performance by both Hattingh and

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[3] "(1) If any person dies within the Republic ..., the surviving spouse of such person ..., shall within 14 days after the death or within such further period as the Master may allow –

(a) make an inventory in the prescribed form, in the presence of such persons having an interest in the estate as heirs as may attend, of all property known by him to have belonged, at the time of the death –
  (i) to the deceased or;
  (ii) in the case of the death of one of two or more spouses married in community of property, to the joint estate of the deceased and such surviving spouse; or
  (iii) ...;
(b) subscribe such inventory in his own hand and endorse thereon the names and addresses of the persons in whose presence it was made and;
(c) deliver or transmit such inventory to the Master."

In terms of s102 of the Act, any person who contravenes the provisions of the Act, in particular the provisions of s9 is committing an offence and on being found guilty of such offence is liable to a fine or imprisonment.

Weinbren in accordance with the Addendum is nothing but to give credence to their simulation.

[41] The conclusion reached is therefore that the simulated transaction of both Weinbren and Hattingh is found to be ineffectual. The purpose for concluding the Addendum is not only immoral but against public policy too. Their intention too, was not genuine. Resultantly, the Addendum is regarded as *pro non-scripto*. The fact that Narunsky, Weinbren and Hattingh acted on the Addendum, is of no moment. Their actions remain simulated.

[42] That the Addendum is a simulated act is buttress by both Weinbren and Hattingh conducting themselves contrary thereto. Even the BSA was never cancelled despite the fact that its very existence depended on the Acquisition Agreement. The Will of Weinbren in 2016, in spite of the Addendum, still records that the 25% member's interest in A&AT was paid for by Hattingh. If the parties' actions were not simulated, one would have expected that the Will that was executed 3 years after the Addendum, would not record this fact.

[43] Hattingh's contention and his written submissions that the BSA was terminated in terms of clause 13.1.3 of the said agreement and in consequence of the Addendum, is incorrect.

[44] Clause 13.1.3 of the BSA provides that the agreement would be cancelled if "one of the Parties withdrawing from the Business." In terms of the BSA, "Business" means "Air and Allied Technologies CC..."

[45] As pointed out above, at no stage did Hattingh ever withdraw from the business of A&AT. Instead, he remained the key-person conducting the affairs of the close corporation. When Weinbren handed over the affairs of A&AT to him, he gladly accepted such responsibilities until December 2016 when he withdrew from A&AT. On termination of the BSA, that is to say, withdrawing from the business of A&AT, either Hattingh or Weinbren, in terms of clause 13.2, would have an option excisable in writing within 90 (ninety) days from termination "to claim outright cession of such policy from the owner of the policy..."

[46] In the present matter, in spite of Hattingh persisting with the assertion that he withdrew from A&AT, he never utilized the option available to him in terms of clause 13.2 of the BSA. No outright cession of Weinbren's policy was ever claimed from the latter. That in terms of the BSA, Hattingh was obliged to buy Weinbren's interest in A&AT from the proceeds of the life policy taken over Weinbren's life, admits no doubt.

[47] Hattingh's further contention that the BSA was cancelled "in consequence of the conclusion of the Addendum to the Memorandum of Agreement", is far from the truth. The Addendum pertinently states that it relates to the cancellation of the

agreement in terms of which Hattingh failed to pay the purchase price of his member's interest in A&AT. In terms of the BSA, Hattingh was not buying anything from either Weinbren or A&AT. He merely took out a life policy with Old Mutual over the life of Weinbren while Hattingh took out a life policy with Liberty Life to cater for either the death or disability of the latter. Furthermore, the BSA has its own mechanisms for termination. Such mechanisms were not utilized to cancel it. It remained extant. In the absence of any written cancellation of the BSA, there cannot be any talk of implied cancellation having regard to the non-variation clause of the said agreement. There being no variation or alteration of the BSA reduced to writing and signed by both Hattingh and Weinbren, the BSA remained current until Weinbren's death in August 2016.

[48] The plaintiffs having elected not to claim 75% of the value of the purchase price of Weinbren's member's interest in A&AT but the proceeds of the BSA, the following order is therefore made –

48.1 The defendant is ordered to pay the plaintiffs the amount of R15 829 833 with interest at the rate of 10.5% per annum calculated from 1 December 2016 to date of payment.

48.2 Costs of suit including costs of senior counsel.

M TSOKA

JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiffs:	Adv Sawma SC
Instructed by:	Edelstein Farber Grobler
For the defendant:	Adv Vetten
Instructed by:	Kasimov & Associates
Date of hearing:	31 October 2018
Date of Judgment:	12 December 2018