

**IN THE HIGH COURT OF SOUTH AFRICA**

**KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**CASE NUMBER 12601/16P**

**In the matter between:**

**CENTRAFIN (PTY) LTD**

**PLAINTIFF**

**and**

**KURT PETER RENCKEN**

**FIRST DEFENDANT**

**MARIA RENCKEN**

**SECOND DEFENDANT**

**MV RENCKEN (PTY) LTD**

**THIRD DEFENDANT**

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**JUDGMENT**

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**P C BEZUIDENHOUT J:**

[1] Plaintiff instituted an action against Kurt Peter Rencken as First Defendant and Maria Rencken as Second Defendant. They are cited as a partner in the partnership of Eilandspruit Farming and were sued in that capacity. Third Defendant is MV Rencken (Pty) Ltd, a company duly registered in terms of the Companies Laws of South Africa. Plaintiff seeks confirmation of the cancellation of the agreement together with payment of the amounts of R 439 378.95 and R 204 467.71 together with interest and costs on an attorney and client scale.

[2] Plaintiff is a company which trades as a credit provider in terms of section 40 of the National Credit Act. A master rental agreement was entered into between Plaintiff and First and Second Defendants (hereinafter referred to as Defendants) which is attached to the particulars of claim. Defendants in their plea raise various points *in limine* and various defences to the claim. I will not set out each of the points *in limine* and the defences raised at this stage as some were abandoned and they will become apparent as they are dealt with later on in the judgment.

[3] Defendants gave notice to amend its plea. It was opposed but leave to amend was granted. Plaintiff also amended its particulars of claim. Plaintiff duly filed an amended replication as a consequence thereof. Much of the issues between the parties became common cause as the facts were mainly common cause and it mostly involved legal argument in respect of the terms of the Master Rental Agreement and whether it could be cancelled or not.

[4] Defendants accepted that they had the duty to begin and also bore the onus of proof on the special pleas. It was submitted on behalf of Defendants that Plaintiff's agent failed to provide all the equipment which it should have. Installation of the system was defective and at no stage was it in a proper working condition which was required as it was a security system for a farm. Defendants continued to complain about the function of the system to DCSS the company (supplier) who installed the system and more especially Ms Glaeser the representative of DCSS but nothing was done. Thereafter they cancelled the contract with DCSS. Plaintiff (Hirer) also cancelled its contract with Defendants. There was a master rental agreement signed on behalf of the partnership. It was contended that Plaintiff sued First and Second Defendant and not the partnership and that the partnership was not before Court.

[5] All the terms of the Master Rental Agreement are admitted. The guarantee annexure "F" to the particulars of claim signed by Third Defendant was also not in

dispute. It was also not in dispute that the release notes were signed by First Defendant as appears from the pleadings bundle. The delivery of the goods were accepted by Defendants where after Plaintiff purchased the goods for rental to Defendants. The hirer, Plaintiff, depends on the user, Defendants, to check whether there are any defects in the product. It also had on completion of the installation to warrant that the goods installed were correct and that they were satisfied therewith. Only thereafter the hirer instructed the banker to make payment to the supplier. There were amendments to the particulars of claim in 2018 which were not objected to. A special plea regarding prescription was raised and Plaintiff filed a plea of estoppel thereto.

[6] First Defendant, Kurt Peter Rencken, testified that he acted on behalf of the partnership which consisted of himself and Second Defendant, his mother. One Anton Majosi who was responsible for farm security introduced a company DCSS to him to install cameras linked to a control room in Howick. If his family was under threat or there was anything suspicious then recognition could be done by the control room and armed response could be sent out. There were also many thefts on the farm at the time and he therefore agreed to have it installed. The documentation including the Master Rental Agreement, was signed, by him, prior to the installation of the system. The representative of DCSS one Coleen Glaeser brought all the documentation to him. He just signed it when it was pointed out to him where to sign. He signed it because he understood it to be a rental agreement and if he was not happy with it he could cancel it. He did not go through the terms and conditions of the master rental agreement or any of the other documents.

[7] The system consisted of 16 cameras, a monitoring screen linked to a television, pre-warning links and was linked to the control room in Howick. If there was any danger armed response would be called out. It was a wireless network. He was given a smart phone so as to pick up the cameras on the cellular telephone. The cameras, monitor

and computer were installed as well as a satellite dish and he had wireless Wi-Fi installed.

[8] During the installation he was telephoned and asked whether it was installed and if he was happy. He was asked about a PABX system which he thought was part of the camera system and he replied that he was satisfied. He was struggling with the speed of the cameras since October 2014 and at the end of October 2014 DCCS asked whether they could use his Wi-Fi and he said that they would have to wait until it was uncapped. DCSS later took away the satellite and proceeded with his wireless network. After using his Wi-Fi 4 to 6 of the cameras still did not work and the control room could not pick up the cameras.

[9] During January 2015 there was a period that there were thefts and the monitoring did not work. On 20 January 2015 his attorney of record addressed a letter to DCSS referring to the purchase and installation of the equipment, that it was to be financed by Centrafin Finance Solutions, that he has been paying the instalment every month, that the satellite dish and other items were installed but later removed from the premises and that the monitoring which was promised did not occur. As a result of their misrepresentation they were induced to purchase the equipment and, finance it through Centrafin. As a result of the misrepresentation the agreement was cancelled with immediate effect and that all equipment must be removed from the premises. In bundle 2 page 1 there was a master rental agreement which he stated he signed. He saw it but that was all. He was phoned by Centrafin and he informed them that he had stopped the debit order, that he was not receiving statements and was not happy with the performance of the agreement. He cancelled the debit order during June 2015.

[10] The PABX system was never delivered and as already stated during October 2014 the satellite was removed. On 31 March 2015 a letter was sent to Plaintiff on his instructions setting out that the monitor size is incorrect, the PABX was not supplied, the

satellite dish was supplied but removed and the smart phone camera integrated with various programmes was all that was supplied. It therefore set out that they were entitled to cancel the agreement and that the balance of the equipment had been removed and that action should be directed at DCSS and not to him. It could not pick up the workshop and he could also not see it on the camera. Also the camera could not pick up theft from the pool area. The cameras could also not pick up the theft of diesel and one could not read the number plate on a vehicle 5 metres from the camera. The response of DCSS was that his cameras were clearer than theirs.

[11] During cross-examination he admitted that he had signed the master rental agreement, that he knew what it was about also when cancelling it but did not pay much attention to the headings. He was referred to the various clauses in the agreement and once again confirmed that he signed it on 16 September 2014. Also that he signed that he was satisfied with the installation and that he signed the release note as appears on annexure "C" to the particulars of claim. At that stage they were still busy installing and the date of the release note was 19 September 2014. He was referred to a typed version of a telephone conversation which took place between himself and an employee of Plaintiff and confirmed that that indeed transpired. He also conceded that he did not raise any concern at that stage. He further agreed that the representations with regard to the system was made to him by Ms Glaeser.

[12] He accepted that the letter of cancellation was with immediate effect as appeared from pages 113 of bundle 3 and that there had been no prior notice. He was asked whether he agreed that what he was unhappy with was not part of the agreement which was before Court and he agreed. He agreed that Centrafin made payment for the goods to DCSS. He further confirmed that the guarantee was signed by him on behalf of Third Respondent. He agreed that the turnover of the Eilandspruit partnership was over R2 million per annum during 2014 and that its asset value exceeded 2 million rand at the time. He conceded that he had never looked at the terms and conditions of the master rental agreement to which he had been referred during cross-examination. He

did not read the clauses and signed it after he had been guided by Ms Glaeser. He accepted that the transcript of the telephonic conversation was correct. Payments were made to Centrafin and the partnership accounted to Centrafin. He agreed that no payments were made to the supplier, DCSS. He accepted that he was the user, that Centrafin was the hirer but only became aware of the legal position that day. He was of the view that the claim was against Centrafin.

[13] Mr. Swelindowo Majozi testified that he did security work for Defendants on the farm and operated under the name Siyabonga Protection Services. He knew one Ricardo who introduced Coleen Glaeser to him during July/August 2014. As the Renckens had many thefts he went to speak to First Defendant about a security system. Coleen Glaeser and her husband then came to see First Defendant. He was present and it was explained how the camera system worked and First Defendant asked if he had to pay in full or whether it could be a rental agreement which Ms Glaeser confirmed. The papers that were brought later by her was a rental agreement of cameras supplied by DCSS. She pressurised First Defendant to sign as she wanted to start the job even though she was asked why they had to sign before it was installed. No work was yet done at that stage.

[14] The next day Ms Glaeser returned at approximately 14h00. First Defendant had bank statements which they required and they asked him to sign certain documents which he then signed. The cameras etc. that were installed never functioned properly but payments had to be made. During December 2014, January 2015 he met with John Glaeser about the complaints and was told that they were going to reconnect the old internet. They never got it right. He has no knowledge of the cancellation and was only told by First Defendant about that. During cross-examination he stated that the cameras were removed during March to May 2015 and it was all done by DCSS and that he knew what a rental agreement was. That was the case for Defendants.

[15] On behalf of Plaintiff Mr. Jeffery Knowles who headed, their legal and risk department since June 2014 testified. He referred to the master rental agreement where Plaintiff was the hirer and, the equipment set out in the annexures thereto. The application for finance was done through DCSS on behalf of their client. Either the client paid his supplier in cash or the supplier sourced finance. All documents, bank statements etc. were provided by the supplier and they then searched for finance. Centrafin for example would then examine the documents for the rental of the equipment and if they are satisfied credit would be approved. The statements and financial documents of Eilandspruit Partnership were sent to the credit section and when approved they completed the documentation, the master rental agreement and schedules of the equipment. It was then sent back to the supplier (DCSS) to take to the client. As appear on page 20 the hirer signed on 17 September 2014 and once the agreement was signed the client also had to sign a release form which appears at page 25 of bundle 1.

[16] Once this was signed the supplier would be paid. Plaintiff would then contact the client to find out if it had been installed, a release note was signed and delivered to Centrafin. If it is not signed then it would not pay the supplier. After payment had been made to DCSS the rental agreement would commence. Defendants paid a few rentals and then defaulted. Plaintiff then elected to terminate the agreement. First Defendant was unhappy that the goods were not functioning correctly, that everything was not delivered, and it was not installed correctly and were not maintained.

[17] During cross-examination it was stated that the partnership was one party to the rental agreement. There was no connection between DCSS and Plaintiff but it was the supplier and the partnership. The invoice was from DCSS. The dealer agreement was signed between DCSS and Centrafin to protect Centrafin when they supplied the goods to the client. It was a dealer agreement with DCSS. The dealer agreement was not before Court. It is not an agency agreement.

[18] Mr Knowles was referred to various paragraphs of the master rental agreement and was referred to the document at page 111 of the papers which was a letter from Defendants attorneys to DCSS wherein it cancelled the agreement and he stated that he had not seen it before. He had no knowledge of it being received. He stated that they had to be settled in full before there could be a cancellation. He was referred to clause 2.8 which stipulates that the user (the partnership) could not cancel the agreement. He could not comment when it was put to him that the contract was in favour of Plaintiff as he was not sure who had drafted it. During cross-examination he stated that the obligation was on the user, Defendants in this case, to inspect the goods once they are delivered and to state whether they were correct or not. That was the case for the Plaintiff.

[19] It is accordingly common cause that Defendants, through the intervention of Mr Majosi, who was in charge of security on the farm, contracted with DCSS to install the camera system and completed all the necessary forms, provided bank statements etc. for finance to be obtained in respect of the installation of the equipment. Such finance was arranged through Plaintiff by DCSS and the necessary documentation was brought to the farm by Ms Glaeser from DCSS. It is also common cause that the Master Rental Agreement was signed by First Defendant on behalf of the partnership on 5 September 2014 and on the same day he also signed the equipment schedule and an acceptance certificate. The transaction schedule to the Master Rental Agreement was also signed by him on 5 September 2014. He conceded that when he signed the said documents he did not read them. On 16 September 2014 he signed a release note to Plaintiff that the goods had been delivered and installed and that the supplier can be paid. He was also telephoned by a representative of Plaintiff and confirmed that everything was in order. Thereafter payment was made by Centrafin to DCSS.



[20] It is contended by Defendants that Plaintiff failed to provide equipment which was fit for the purpose for which it was rented.

[21] Defendants submit that the clauses in the agreement which is relied upon by Plaintiff is unconscionable and offend public policy, unfair and unreasonable. Plaintiff in the agreement is referred to as the “hirer” and Defendants as the “user”. The clauses are clause 2.8 and 3.2 which reads as follows:

“2.8 User shall not be entitled to resile from this agreement or withhold payment of any amount hereunder by reason of a late delivery or non-delivery of the goods or any defect therein or part thereof nor shall user have any claim against hirer for any loss or consequential damages suffered by it as a result thereof.”

Clause 3.2:

“The user shall not be entitled to hold payment of any rentals for any reason whatsoever or be entitled to claim any remission of rentals in any circumstances.”

[22] It is submitted by Defendants that Plaintiff is not merely the financier of the goods as clause 2.4 states:

“Hirer (i.e. the plaintiff) shall at all times be and remain the owner of the goods and neither user nor any other person on his behalf at any stage before or after the expiry of this agreement or after the termination thereof acquire ownership of the goods.”

It was therefore submitted on behalf of Defendants that Plaintiff, as owner, was entitled to release the goods, to sell the goods and. Due to the camera system not working Defendants finally cancelled the agreement of the security system by way of correspondence sent by their attorney to Plaintiff.

[23] I was referred to the decision of *Sasfin v Beukes* 1989 (1) SA 1(AD) on behalf of Defendants that a contract which was contrary to public policy cannot be sustained. I was further referred to *Barkhuizen v Napier* 2007 (5) SA 323 (CC) that the clauses which had been referred to were unfair and unreasonable and accordingly contrary to public policy and not enforceable. It was submitted that the *maxim pacta sunt servanda*, applies where agreements which are inimical to the interests of the community, whether contrary to law or morality or run counter to social or economic expedience will accordingly on the grounds of public policy not be enforced. It was also submitted on behalf of Defendant that the *exceptio non adimpleti contractus* was applicable because there was an obligation to perform by both parties.

[24] Referring to the points *in limine* that were raised in the pleadings it was submitted on behalf of Defendants that the first and second points *in limine* have been abandoned. The third point *in limine* relating to the Consumer Protection Act and the fifth point *in limine* that a new cause of action was introduced by the amendment which has prescribed will only arise if Defendants are unsuccessful relating to the question of whether the impugned clauses offend against public policy and are invalid. The fourth point *in limine*. It was further contended that the partnership was not before Court. Plaintiff sought to sue the individual partners and has not joined the partnership. It was therefore submitted that the cancellation of the contract was valid. The clauses in the policy were offensive and unenforceable and that the claim should therefore be dismissed with costs and in the alternative if the clauses are valid the partnership is not before the Court and judgment may only be entered against First and Second Defendant and the claims against them should be dismissed with costs.

[25] It was submitted on behalf of Plaintiff that Defendants had to prove the breach of the agreement by Plaintiff and that at no stage in the evidence and in the particulars of claim has reference been made to any breach of the agreement by Plaintiff. The contract does not contain a cancellation clause and Defendants had to prove that the breach went to the root of the contract and as has already been stated this has not been

done. The Master Rental Agreement contains certain warranties which were accepted by Defendants.

[26] The goods were supplied to Defendants by the supplier. Was delivered and installed by the supplier and Defendants accepted the delivery of the equipment on behalf of Plaintiff who after payment became the owner thereof. The provisions of clauses 2.8 and 3.2 of the Master Rental Agreement exclude the defence of the *exceptio non adimpleti contractus* and the clauses are not unconscionable, contrary to public policy and can be enforced. It was submitted that Defendants pleaded cancellation is therefore at odds with a possible defence based on the *exceptio*. Clause 2.8 and 3.2 are not contrary to public policy and the rationale underlying them is simple and is recorded in clause 2.7 that it is agreed that the agreement between Plaintiff and Defendants applies only to the rental amounts that are payable. It is submitted that clause 3.2 interpreted in context excludes the principle of reciprocity. The maxim of the *exceptio non adimpleti contractus* only finds application in agreements where the agreement imposes reciprocal obligation on the parties. It was submitted that there was no infringement of Defendants rights and Defendants failed to prove that in the circumstances it would be against public policy to enforce the said clauses. It was further submitted that First Defendant illustrated that it would not be unreasonable in that he testified that he simply did not bother to read the contract when signing it and that he can therefore not now complain about it operating against him unfairly.

[27] It was further submitted that the CPA does not apply in that it was admitted by First Defendant that the turnover of the partnership at the time was over R2 million per year. It is a juristic person as it is a partnership which is defined as a juristic person in terms of the CPA.

[28] The amendments to the particulars of claim during November 2018 only specifically referred to them as partners in the partnership agreement which already in

the original particulars of claim stated that First and Second Defendant traded under the name of Eilandspruit Farming and accordingly was not a new cause of action or party but merely set out in more detail the position of each Defendant. It was submitted that Rule 14 which is referred to by Defendants allows for the partnership to be cited but it does not exclude the common law right to sue the specific partners who make up the partnership. Accordingly there was no issue of prescription.

[29] A consideration of the Master Rental Agreement, upon which the claim is based, sets out that the client is Kurt Peter Rencken and Maria Rencken t/a Eilandspruit Farming. Also the resolution at the bottom thereof referring to “capacity” in which Defendants signed was marked as “partners”. It was therefore clear from the start that the partnership which consists of both First and Second Defendants is the party which contracted with Plaintiff. The amendment of the particulars of claim was not objected to and they were therefore amended accordingly. In paragraphs 3 and 4 thereof First and Second defendant are referred to as partners of the partnership Eilandspruit Farming. Rule 14 of the Uniform Rules of court does not make it obligatory that a partnership must be sued in its name. The rule specifically states that the partnership, the name in which it, trades “may” be sued. There is accordingly no prohibition to suing First and Second Defendant as Plaintiff did. There is no contention that there are any other partners or that the partnership does not trade under the name Eilandspruit Farming.

[30] First Defendant was accepted by Plaintiff as an honest witness. This can also be said of the other witnesses. He originally consulted Mrs Glaeser about the installation of the CCTV camera system etc. which would be monitored from Howick. The assurances were given by her and her husband as to how this system would work and when the system did not meet these expectations she was consulted and asked to rectify it. However she failed to do so and the equipment was later returned to her. Also in the Master Rental Agreement it is clear when it refers to authorised signatures that it is both that of First and Second Defendant and their designation given as partners.

[31] The Master Rental Agreement was signed on 5 September 2014. The commencement date was to be 17 September 2014 and a monthly rental was payable in a total amount of R 5 751.27. It was undisputed by the parties that on the same day 5 September 2014 that the Master Rental Agreement was signed First Defendant signed an acceptance certificate which is attached thereto that the goods had been delivered and installed in accordance with all conditions of the agreement, that he had inspected the goods, that they were in good condition in every respect. Further that the serial numbers corresponded and there was an annexure to the Master Rental Agreement which was also signed by him on the said day. On that day also which forms part of the Master Rental Agreement was a resolution signed by both First and Second Defendant to enter into the said agreement. On 16 September 2014 First Defendant signed a "release note" wherein in paragraph (e) it states "You understand that any connecting and/or services and/or maintenance agreement has no bearing on the rental of the goods" and authorises payments of the goods.

[32] All negotiations that took place took place between Mrs Glaeser and First Defendant and that finance for the installation of the system on a rental agreement was then entered into with Plaintiff. The only function that Plaintiff performed was that it paid the supplier for the said goods having entered into an agreement with Defendants for the repayment of the said amount which it had paid to the supplier. First Defendant conceded that he did not read any of the forms and merely signed them. The terms of the form may perhaps not have been explained to him by Mrs Glaeser who had obtained the finance through Plaintiff. This however does not relieve him of his duty to read the documents he was signing.

[33] The agreement between Plaintiff and Defendants was indeed that Defendants would be responsible for the repayment of the goods by way of monthly instalments. Also from the evidence it is apparent that when the equipment was functioning

incorrectly or not functioning at all that the complaint was addressed to Mrs Glaeser of DCSS and not to Plaintiff. It is indeed so that Plaintiff in terms of the Master Rental Agreement becomes the owner of the property. That is so to ensure that it has security for the payment of the amounts which are due to it.

[34] It was further the evidence of Plaintiff's witness that no cancellation letter was received by him. Although there is a letter which was discovered by Defendants which was later addressed to Plaintiff cancelling the agreement that according to Knowles never reached Plaintiff and this was also not disputed.

[35] Clause 2.1 of the Master Rental Agreement states:

"2.1 User acknowledges and warrants that:

2.1.1 the goods have been and will be purchased by the hirer at the request of the user and solely for the purpose of renting the good to the user.

2.1.2 the good have been selected by the user

2.1.3 Hirer give no warranties in connection with the goods and the goods are rented voetstoots by the user.

2.1.4 All warranties implied by common law are expressly excluded.

2.1.5 No representation of any nature whatsoever in connection with the goods are made by or on behalf of the hirer.

2.1.6 User has inspected the goods prior to signature of this agreement and user is in all respect satisfied therewith."

[36] The agreement between Plaintiff and Defendants thus only relate to the repayment of the amount Plaintiff paid for the goods selected by Defendant. Plaintiff is entitled to ensure it is paid the sum which it paid to the supplier on behalf of Defendants

[37] I am in agreement with Plaintiff that the *exceptio non adimpleti contractus* does not apply. There is no reciprocal duty in this case. Plaintiff had already paid for the goods after being instructed by Defendant to do so. Plaintiff therefore performed its part of the deal. First Defendant must allege and proof non-performance by Plaintiff and must provide sufficient detail to Plaintiff to enforce the allegation. First Defendant has not alleged any non-performance by Plaintiff of its duty. The allegations of the system not working properly or at all is against the supplier DCSS. The only function of Plaintiff was to pay the supplier which it did. The fact that ownership passed to it does not make it liable for defects in the equipment.

[38] Defendants admit the terms of the contract. It however contends that clauses 2.8 and 3.2 which have been referred to above are unconscionable and defend against public policy in that they are manifestly unfair and unreasonable. It was contended that Plaintiff was not merely the financier of the transactions because it refers in the Master Rental Agreement that it will remain the owner of the goods. It must be considered that at no stage Plaintiff acted as the agent of the supplier nor did they act as the agents of Plaintiff. The function of the Plaintiff was to provide the necessary finance. Accordingly if the goods were not of the required standard, which they indeed appeared not to have been and which was not disputed then that had to be dealt with by the suppliers of the goods and not by Plaintiff.

[39] Although Plaintiff became the owner of the goods it relied upon Defendants to confirm that the goods were in good working order which indeed First Defendant did before payment was made. The Master Rental Agreement was signed without checking, as admitted by First Defendant. There was no obligation on Plaintiff to ensure that the goods were in correct working order. Defendants must continue to pay the instalments because the goods were paid for in full by Plaintiff. Defendants should have pursued the suppliers for the incorrect equipment which was not up to standard and

caused severe difficulties to Defendants. It was submitted by Defendants that the difficulties related to the defects in the equipment itself. This, from the evidence, was not the duty nor the obligation of Plaintiff to ensure. That was an issue that had to be dealt with with the suppliers. This was never done and also there was no correspondence to Plaintiffs regarding the malfunction of the said equipment.

[40] It is submitted by Defendants that a consideration of the principles set out in *Barkhuizen v Napier* 2007 (5) SA 323 (CC) indicate that the terms in clauses 2.8 and 3.2 of the Master Rental Agreement were unconscionable and incompatible with the public interest. In my view this is not what was found in the said judgment and also that the terms in the present matter looked at in context does not justify such a conclusion. Defendants had certified that the goods were in good working order before Plaintiff authorised the payment. First Defendant admits he did not read the agreement and the other documents and therefore has to take the consequences thereof. Further Plaintiff is not responsible for the defective goods as it was only the financier of the said goods and it has to ensure that the money that it laid out was paid back to it. Accordingly in my view there is nothing unconscionable or incompatible with public interest in the said clauses. There is nothing *contra bonus bores* in the said clauses. This is further supported by the fact that Defendants at no stage could show any actions by Plaintiff which caused the equipment not to function correctly or that they at any stage caused any breach of said agreement. Defendants were also not denied legal remedies as they should have proceeded against DCSS. I can find no basis that the said clauses were against public policy. Defendants knew Plaintiff paid for the goods to DCSS and had to be repaid.

[41] As already set out above in my view the *exceptio non adimpleti contractus* was not an issue as there was not a reciprocal duty to perform and accordingly that that issue does not need to be dealt with any further.



[42] The actions by Plaintiffs in pleading that First and Second Defendants were partners is not incorrect and make up the partnership. Although Rule 14 states that a partnership may be sued in its own name it is also accepted that the partners make up the partnership, it is not a separate legal entity and accordingly there is nothing incorrect in citing the partners in their capacity as partners of the partnership. It is not impermissible to cite the individuals in their capacity as partners. As already stated the Consumer Protection Act, on the evidence of First Defendant, was not applicable for the reasons set out above and accordingly those issues also fall away.

[43] I am accordingly satisfied that on the evidence presented together with the legal principles which have been referred to that Plaintiffs have proven on a balance of probabilities that the whole amount which is claimed is due and owing to it by the partnership and Third Defendant which is a company and which stood surety for the amount owing.

[44] Clause 8.2 of the Master Rental Agreement sets out that costs would be on an attorney and client scale.

[45] The following order is therefore made:

Judgment is granted against First and Second Defendant in their capacity as partners of Elandspruit Farming and Third Defendant jointly and severally the one paying the other to be absolved for:

1. Confirmation of the cancellation of the Master Rental Agreement read with the two transaction schedules.
2. Payment of R 439378.95 in respect of the first schedule.
3. Payment of R 204467.71 in respect of the second schedule.
4. Interest *a tempora morae* from date of demand to date of final payment.

5. Costs of suit on an attorney and client scale.

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**P C BEZUIDENHOUT J.**

**JUDGMENT RESERVED: 22 FEBRUARY 2023 (when last head were  
filed with judge)**

**JUDGMENT HANDED DOWN: 25 APRIL 2023**

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