



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: A159/2022

In the matter between:

KIDROGEN RF (PTY) LTD

Appellant

and

SHAAN NORDIEN

First Respondent

TAVIA NORDIEN

Second Respondent

ALL OTHER PERSONS OCCUPYING THE PROPERTY AT

62 Trinity Street, Parklands, Western Cape

Third

Respondent

CITY OF CAPE TOWN

Fourth Respondent

Coram: Acting Judge President P L Goliath, Justice J Cloete *et* Justice D Thulare

Heard: 18 January 2023

Delivered electronically: 30 January 2023

JUDGMENT

CLOETE J (GOLIATH AJP et THULARE J concurring):**Introduction**

[1] The central issue in this appeal, which is with special leave of the Supreme Court of Appeal, is whether the Court a quo (“trial Judge”) was correct in dismissing the appellant’s application for the eviction of the first to third respondents (save where otherwise indicated “the respondents”) on the ground that the appellant lacked the required *locus standi*.

[2] The grounds of appeal are essentially that the trial Judge erred in finding that:

2.1 The lease agreement concluded with the first respondent and relied upon by the appellant was one in which two individuals (Mr Essa Davids and Mr Andile Peter) in their personal capacities were lessors rather than the appellant;

2.2 The appellant’s application for rectification of the written version of the lease agreement to reflect it as lessor had to fail since: (a) the appellant was obliged to make out a case for rectification in its founding papers, but only applied for rectification shortly before the hearing by way of notice and after all affidavits had been filed; (b) the application for rectification was an impermissible attempt to substitute one contracting party with others without joining Messrs Davids and Peter;

and (c) if rectification were to be granted it would prejudice the respondents.

Relevant background facts

- [3] It is worthy of emphasis that this is one of those matters where close scrutiny of the affidavit evidence, together with the objective documentation, is required in order to determine whether the defences raised by the respondents on the issue of *locus standi* were such that they warranted dismissal of the application.¹
- [4] I say this because in raising the appellant's lack of *locus standi* as a defence, reliance was also placed by the first respondent on his various other dealings with the appellant. As I will seek to demonstrate however, this does not assist him. It should also be noted that the second and third respondents are in truth the "passengers" of the first respondent (being his former wife and their adult son) since they did not raise any independent defences of their own.
- [5] On the papers the following facts are common cause. The appellant is the registered owner of a residential immovable property situated at 62 Trinity Street, Parklands, Western Cape, also known as erf 6174 Parklands (*'the property'*). The respondents accept that as registered owner the appellant had *locus standi* to launch the proceedings for their eviction.

¹ *Buffalo Freight Systems (Pty) Ltd v Castleigh Trading (Pty) Ltd and Another* 2011 (1) SA 8 (SCA) at para [19].

- [6] An oral agreement of lease was concluded in respect of the property on 1 November 2017 for a period of 2 years. On the date before it expired, i.e. on 30 October 2019, the written lease in issue was signed. It records in clause 4 that *'[t]his lease will commence on the 1st November 2017 and will, subject to the provisions of paragraph 17 below, continue for 2 years from that date'*. Clause 17 deals with cancellation. Clause 17.2 makes provision for the lease to continue upon expiry of the lease period on a month-to-month basis. Clause 17.3 stipulates that *'[t]he lease will however, not continue automatically as aforesaid while the Lessee is in breach or default of any of the terms of this lease'*.
- [7] This document also reflects that Messrs Davids and Peter were the lessors and the first respondent the lessee. Messrs Davids and Peter have at all material times been two of the appellant's directors. Clause 23 provides under the heading *'Warranty of Authority'* that *'[t]he person signing this lease on behalf of the Lessor expressly warrants his authority to do so'*. Messrs Davids and Peter signed the lease, as did the first respondent.
- [8] Also on 30 October 2019 an addendum was concluded, which made provision for the annual increase in rental to decrease from 15% to 10% per annum effective from an earlier date, being 31 July 2019. In paragraph 20 of her judgment the trial Judge referred to the fact that this addendum was only signed by the first respondent. However the first respondent admitted the appellant's allegations that the addendum was in fact concluded, and

concluded on that date (despite the addendum reflecting, for a reason not explained, the date of 13 July 2019).

- [9] The addendum carries the letterhead of the appellant and records that it *'is hereby a part for all purposes of the Lease Agreement between... Andile Peter on behalf of Kidrogen (Pty) Ltd as Landlord and Shaan Nordien (i.e. the first respondent) as tenant'*. At the foot of the addendum Mr Peter is reflected as the appellant's chief executive officer.
- [10] From 1 November 2019 the lease continued on the same terms and conditions on a month-to-month basis, terminable on one month's notice. Despite the first respondent's allegation that the appellant was not a party to the lease, he admitted the appellant's allegations that it: (a) duly performed in accordance with the terms of the lease agreement, and (b) placed the first respondent in occupation of the property on 1 November 2017.
- [11] The first respondent also admitted that the appellant provided him with 3 months rental relief for the period March to May 2020 as a result of the Covid-19 pandemic, and that an acknowledgment of debt was concluded between the appellant and himself in this regard. On 7 October 2020 the appellant by way of email requested payment of the arrears due under the "relief arrangement" and the first respondent informed it that he was awaiting funds from his offshore account and would make such payment before the end of October 2020. This did not occur and the first respondent has since made no further payments on account of rental.

[12] Although the first respondent maintained that the appellant was obliged to deduct the “relief arrangement” rental from a service fee due to him in terms of an unrelated agreement, he pertinently did not dispute liability to the appellant. Moreover, not once before the filing of his answering affidavit did the first respondent take issue with the rental invoices being generated in the name of the appellant or suggest directly, or indirectly, that the oral lease agreement concluded in 2017 and confirmed in 2019 in writing, as well as the addendum referred to above, were not concluded between himself and the appellant.

[13] On 5 February 2020 the appellant and first respondent concluded an agreement of sale in respect of the property. This was seemingly superseded by a second agreement of sale concluded on 8 March 2020. I say “superseded” because the first respondent admitted that the February 2020 agreement of sale was validly cancelled by the appellant, albeit much later on 16 February 2021. The first respondent sought to advance another defence based on the March 2020 agreement of sale.

[14] This defence was premised on clause 4 thereof which provides that neither party would be liable for payment of occupational rental, and that *‘[t]he lease agreement contemplated under paragraph 2.1 above shall endure until the date of registration of transfer. Should the sale be cancelled for any reason whatsoever, the lease agreement shall remain in full force and effect’*. In turn clause 2.1 records that *‘[t]he the Purchaser is in occupation of the Property in*

terms of an existing lease agreement'. The first respondent contended that, given clause 4, the lease could not be validly cancelled.

[15] As previously mentioned the first respondent set out (in some detail) what he alleged to be the history of his business/employment relationship with the appellant, including his appointment on 15 January 2018 as the managing director and 10% shareholder of one of its subsidiaries, as well as the disputes which subsequently arose between himself and the appellant in relation thereto. To my mind nothing much turns on this, primarily for three reasons.

[16] First, the Memorandum of Understanding which it is common cause set out the terms of the envisaged relationship was only concluded on 14 December 2017, more than a month after conclusion of the lease on 1 November 2017. Second, it is undisputed that the later written version of that lease incorporated all of the terms of the previously concluded oral lease (as amended slightly by the addendum thereto) save, of course, for the disputed issue of the identity of the lessor. Third, on the first respondent's version, he was initially '*promised*' by the appellant that the property would form part of his salary package. It was also recorded in clause 6.1 of the Memorandum of Understanding that the appellant was the registered owner of the property and that it was occupied by the first respondent in terms of '*a lease agreement*'.

Discussion on locus standi

[17] It was contended by *Mr Wilkin*, who appeared for the appellant, that against this background the trial Judge should have rejected the respondents' version as far-fetched and untenable on the basis of the *Plascon-Evans* rule² and *Wightman*,³ and that in these circumstances, it was not really necessary for the appellant to have applied for rectification in the alternative. Given the view that I take on the issue, I do not believe it necessary to deal with *Mr Wilkin's* primary contention.

[18] The main application was enrolled for hearing before the trial Judge on 15 September 2021. In its notice in terms of uniform rule 28, served on 30 August 2021, the appellant sought to amend the written lease by the insertion of '*Kidrogen RF (Pty) Ltd (Lessor) herein represented by*' Messrs Davids and Peter, and followed with '*both persons duly authorised for and on behalf of the Lessor*'.

[19] On 9 September 2021 the respondents delivered their notice of objection, resulting in the appellant making application on notice for leave to amend, which was delivered on 14 September 2021, which application was argued together with the main application the following day. In these circumstances there could not have been any serious suggestion that the respondents would be prejudiced.

[20] The respondents' grounds of objection, encapsulated in its notice, were that:

(a) an applicant has no *locus standi* to seek rectification of an agreement to

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

³ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para [13].

which it is not a party; (b) misjoinder, on the basis that the relief sought was not competent when Messrs Davids and Peter had not been joined; and (c) no grounds for rectification had been advanced in the founding papers. It is noted that the respondents appear to have raised an additional ground before the trial Judge (since she referred to it at paragraph 10.4 of her judgment), namely that rectification is not ordinarily competent in application proceedings. However given the clear prescripts of rule 28(3), I do not intend dealing with that additional ground.⁴

[21] In *Spiller*⁵ the Court pointed out that:

'...In the one sense a contract is the documentary record of an agreement. In the other it is the underlying agreement itself. This may already have been concluded orally or tacitly; or its conclusion may not have preceded the moment when, sharing a common contractual intention, the parties executed the document which was supposed to express it. In either case the one sort of contract is merely the other's outward and visible sign...

It is not the agreement between the parties which, on the other hand, is rectified. The Court has no power to alter it. To do so would be to amend their common intention and in effect to devise a fresh pact for them. That is their exclusive prerogative. All that the Court ever touches is the document...

To do this is necessary because, when the document does not faithfully record the agreement but mistakenly reflects something else that was not

⁴ Rule 28(3) provides: 'An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.' In *Squid Packers (Pty) Ltd v Robberg Trawlers (Pty) Ltd* 1999 (1) SA 1153 (SECLD) at 1157D-F it was stated that: 'Prior to the amendment of Rule 28 during 1987 it was not a requirement that a notice of objection should set out the grounds upon which the objection was based. However, this is now a requirement, and it is my view that the amendment to the Rule was introduced in order to enable a party who wishes to amend a pleading to know the basis upon which objection to such proposed amendment is made, and to avoid the situation which previously frequently arose, namely that the party seeking to amend did not know what the basis of the objection was and therefore, when applying for an amendment, had to endeavour to deal with every conceivable complaint that the other might have...'

⁵ *Spiller and Others v Lawrence* 1976 (1) SA 307 (NPD) at 310A and E and 311A-D.

meant, it is unreliable and misleading as evidence... The evidence, instead of being rejected as unreliable, must consequently be corrected so that it matches the true facts and thus becomes reliable. When all is said and done, this is the theoretical justification for rectification...'

[22] That the first ground of objection is misplaced is demonstrated in *Lazarus*⁶ where it was held that:

'...In principle I can see no reason why the doctrine of rectification should not be applied where a document wrongly records the identity of a party so as to give effect to the intent of the true parties in terms of a prior oral agreement or understanding between them. Such a result is quite consistent with the decision of the Appeal Court in Magwaza's case,⁷ since there is a formally valid suretyship contract which is capable of rectification. It must also be borne in mind that the underlying transaction must not be confused with the document which embodies it. It is the latter which is rectified to conform to the true intention, not the former [referring to Spiller]...'

[23] It is convenient to deal with the third ground of objection before the second. It is so that in the present matter no grounds for rectification were made out in the founding papers. However as I see it this is not the end of the matter. At the time when the main application was launched the first respondent had never even hinted (quite the contrary, when regard is had to the admitted objective evidence) that the lease was not one between the parties. The historical facts demonstrate that at all material times up to the delivery of his answering affidavit the first respondent clearly considered the appellant to be the lessor, despite the obvious mistaken reference in the written version of the lease to Messrs Davids and Peter in their personal capacities as lessors.

⁶ *Lazarus v Gorfinkel* 1988 (4) SA 123 (CPD) at 131A-C.

⁷ Referring to *Magwaza v Heenan* 1979 (2) SA 1019 (A).

[24] Put differently, until delivery of the answering affidavit the first respondent neither seriously nor unambiguously took issue with the written recordal of the lease by contending that it did not in fact reflect the parties' true intention. Nor did he even positively assert in the answering affidavit that he had in fact concluded a lease with Messrs Davids and Peter in their personal capacities.

[25] In this regard what was stated in *Propfokus*⁸ by the Supreme Court of Appeal is instructive:

'Propfokus's case throughout the proceedings was that the true agreement between the parties is correctly reflected in the written agreement, as amended. Wenhandel never disputed this stance during the course of the correspondence exchanged between the parties' respective attorneys... Moreover after Propfokus's attorney had purported to cancel the agreement on its behalf, Wenhandel's attorney threatened Propfokus, on 5 May 2005, with "n aansoek vir 'n verklarende bevel dat gemelde koopkontrak geldig en afdwingbaar is en vir 'n bevel wat oordrag gelas'. There is nothing in the correspondence preceding the launch of the proceedings by Wenhandel to indicate that it was of the view that the written agreement as amended did not reflect the common intention of the parties and, accordingly, fell to be rectified.

As was contended by counsel for Propfokus, notwithstanding the fact that Propfokus's attitude towards clause 2 of the written agreement as amended was conveyed several times to Wenhandel, the latter did not challenge this attitude at any time prior to the launch of the application. On the contrary, the issue of rectification was raised by Wenhandel for the very first time in the notice of motion. That being so, Wenhandel could hardly have established that its intention, independently of Propfokus, was different to that reflected in the written agreement as amended. Much less could Wenhandel have

⁸ *Propfokus 49 (Pty) Ltd v Wenhandel 4 (Pty) Ltd* [2007] 3 All SA 18 (SCA) at 22c-h.

established that both parties had an intention which differed to that appearing from the (amended) written agreement.'

[26] Of course the reverse factual matrix applies in the present instance, but to my mind, the principle is the same. In the particular circumstances of this case, the appellant cannot fairly be criticised for failing to specifically advance a case for rectification in the founding papers.

[27] However, should I be wrong, it is my view that assistance for the appellant may also be found in *Shoprite Checkers*⁹ and *Van der Merwe NO*.¹⁰ In *Shoprite Checkers* the Court stated:

'...the crisp question turns on the nature of that which was agreed between the parties. An examination of the content of the consensus prompts a consideration of the concept of bona fides which underpins contractual relationships. The concept of bona fides has proved to be somewhat elusive with regard to its definition and scope... Whatever the uncertainty, the principle of good faith must require that the parties act honestly in their commercial dealings. Where one party promotes its own interests at the expense of another in so unreasonable a manner as to destroy the very basis of consensus between the two parties, the principle of good faith can be employed to trump the public interest inherent in the principle of the enforcement of a contract.

*This concept of good faith is congruent with the underlying vision of our Constitution... To rely on the strict written words of a contract and to ignore an underlying oral agreement which not only shaped the written agreement but which forms part of the essential consensus would be to enforce the very antithesis of integrity and good faith in contractual arrangements...'*¹¹

⁹ *Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC and Others* 2002 (6) SA 202 (C).

¹⁰ *Van der Merwe NO and Others v Hydraberg Hydraulics CC and Others; Van der Merwe NO and Others v Bosman and Others* 2010 (5) SA 555 (WCC).

¹¹ At 215G-216B.

[28] In *Van der Merwe NO* it was stated:

'[9] As far as is known, no trust by the name of the Clarke Bosman Trust existed. In context it is obvious that Clarke and Bosman were intending to represent the Hydraberg Property Trust. After all, it was only in that capacity that they must have expected to take transfer of the fixed property from the registered owners and thus be placed in a position to fulfil the obligation under the contract to give transfer of the property to the option grantee/purchaser. There is no other sensible explanation for their action in playing the role they did in the execution of the deed of contract...

[10] In the applicants' replying affidavit it was averred in response that rectification was not required, but that "a notice of intention to amend the notice of motion [would] nevertheless, insofar and if this [might] be necessary, be filed in due course to provide for the rectification of the name of the seller trust". A notice of intention to amend was not filed. Instead, application was made from the bar at the commencement of the hearing to amend the notice of motion by introducing a prayer for the appropriate rectification of the deed.

[11] The respondents' counsel was somewhat equivocal in his attitude to the application to amend the notice of motion. He certainly did not consent to it. In my view there was no cogent basis to oppose the amendment sought. It was foreshadowed in the papers and, as mentioned, the mistake regarding the description of the Trust is essentially conceded in the respondents' answering papers. The application for the amendment of the notice of motion will accordingly be granted.'

[29] As far as the third objection (based on misjoinder) is concerned there is similarly no merit in this ground. In *Movie Camera*¹² it was stated:

'[25] In the light of these facts Mr Van Blerk, who together with Mr Slon appeared for the plaintiff, sought to avoid the conclusion that rectification ought to be ordered by submitting that since the plaintiff was not a party to the

¹² *Movie Camera Company (Pty) Ltd v Van Wyk and Another* [2003] 2 All SA 291 (C).

conclusion of the contract rectification should not be granted as it would adversely affect the rights of an innocent party, the plaintiff. While Van Tonder was the chairman of the old MCC, i.e. the party with whom the restraint was concluded, he was of course at the time of the signing of the agreement in fact the chairman of the plaintiff. In this regard I agree with Mr Rose-Innes's submission that in the reference to innocent third parties the word "innocent" means "innocent of knowledge". Were this not so, a party having knowledge of a particular state of affairs would be able to snatch at a bargain by ignoring such knowledge. Humphrys v Lazer Transport Holdings and Ano (supra) at 396D; Industrial Finance and Trust Company v Heitner 1961 (1) 516 at 522E-F. Furthermore the test is that rectification will be granted where the requirements therefor have been met "if innocent third parties will not be unfairly affected thereby". Meyer v Merchants Trust Ltd 1942 AD 244 at 254.'

Termination of the lease

[30] It is undisputed that the first respondent materially breached the lease by failing to pay rental despite being put to terms in accordance with clause 16.1 thereof, and that the appellant cancelled the lease by written notice on 24 November 2020, calling upon the respondents to vacate by 31 December 2020, which was followed with a further letter to similar effect on 19 February 2021.

[31] The first respondent however relied on clause 4 of the March 2020 agreement of sale which, as previously stated, provided for the lease to remain of full force and effect notwithstanding any cancellation of that sale. During argument *Mr Quixley*, who together with *Ms Gabriel* appeared for the respondents, had no answer to how, on the first respondent's version, a lease purportedly concluded with Messrs Davids and Peter (unrelated parties) could not be cancelled in terms of an agreement of sale entered into between the

appellant and first respondent. He attempted to advance an argument in the alternative based on this Court finding that the true parties to the lease were indeed the appellant and first respondent. This was never the first respondent's case and accordingly nothing more needs to be said about it.

[32] The first respondent also relied on the lockdown regulations prevailing at the time of termination of the lease, contending that if found that the lease was validly cancelled, such cancellation would nonetheless amount to an unfair practice as contemplated in s 4B(9) of the Rental Housing Act¹³ since his inability to pay rental was allegedly directly connected to the implementation of those regulations. There is no merit in this for the following reasons. First, on his own version, he had ample offshore funds to pay what was owing to the appellant at the time. Second, the National State of Disaster was lifted on 5 April 2022 and accordingly this is no longer a live issue for purposes of this appeal.

Justice and equity

[33] Given my finding that the respondents are unlawful occupiers, the provisions of sections 4(7) and (8) of PIE¹⁴ come into play. In the answering affidavit deposed to on 25 March 2021 the first respondent placed the following information before the trial Judge.

¹³ No. 50 of 1999.

¹⁴ Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.

[34] He and his ex-wife and son were aged 65, 57 and 23 years old respectively. He had not earned an income since March 2020 since the National State of Disaster was declared, although he remained employed by the appellant. His ex-wife was unemployed. His son was a fulltime law student and dependent upon him for financial support. He maintained that given his employment with the appellant, the fact that it owns the property and that *'it was at all times contemplated that I would ultimately become the owner of the property'* it would not be just and equitable to evict the respondents.

[35] In *Luanga*¹⁵ it was held that:

'[48] There is therefore a duty on legal representatives in eviction proceedings, as officers of the court, not only to advise their clients of the obligation to make full disclosure of all relevant personal circumstances, but to actively seek and assist their clients to present the necessary information. Legal Practitioners representing respondents in eviction applications cannot hide behind the onus to justify bald, unsubstantiated averments regarding unemployment, impecuniosity and the risk of homelessness. Nor can an officer of the court deliberately withhold relevant information in order to benefit his or her client by causing the eviction proceedings to be delayed because the court does not have sufficient information before it. Even less so can he or she studiously avoid acquiring relevant information in order to avoid the obligation to disclose it to the court. Where the affidavits are silent on matters which the respondent should be able to address with relative ease, a satisfactory explanation should be provided for the omission. In the absence thereof, a court may well be justified in drawing the inference that a bald assertion of impecuniosity or homelessness is not genuine and credible.'

¹⁵ *Luanga v Perthpark* 2019 (3) SA 214 (WCC).

[36] The respondents have not made any substantive allegations that they would be rendered homeless by the relief sought and give no information as to what will happen in the event that they are evicted. None of the respondents explain the steps they have taken to source alternative accommodation or even investigate this. They disclose nothing about other accommodation that might be available to them and are silent as to friends or family who might be able to assist them even if on a temporary or emergency basis.¹⁶

[37] What is clear however is that the first respondent has access to other financial resources. He referred to offshore funds available to him when undertaking to pay what was owed to the appellant in terms of the acknowledgement of debt. Moreover, on his own version, he was granted bond approval by Standard Bank of R2 402 037.50 on 13 March 2020 to purchase the property. It can thus fairly be inferred that he is far from impecunious irrespective of his current state of employment. There is also no suggestion that any of the respondents are in ill health or that the first respondent will not continue to accommodate the second and third respondents in future alternative accommodation.

[38] On the other hand, the appellant has been deprived of rental income of at least R19 000 per month for almost 3 years. Although some of the arrear rental was claimed separately in the main application, that was only in respect of the period up to February 2021, almost two years ago. The appellant further placed before the court evidence of alternative accommodation in the

¹⁶ *Ives v Rajah* 2012 (2) SA 167 (WCC) at para [34]; *Patel NO and Others v Mayekiso and Others*, unreported judgment WCC 3680/16, delivered on 23 September 2016 at para [33].

area in which the property is situated to which the respondents could move. These were three-bedroom townhouses as well as a freestanding house with rentals ranging between R12 500 and R17 000 per month.

[39] In all the circumstances, it is just and equitable to grant an eviction order. During argument *Mr Wilkin* proposed a date for eviction of 14 days from this Court's order, failing which the sheriff will be authorised to evict the respondents upon expiry of a further period of 5 days thereafter. *Mr Quixley* proposed one month in the event of the Court finding that such an order should be granted. It seems to me that the appropriate date to fix would be that proposed by *Mr Quixley*.

Arrear rental claimed

[40] As mentioned, the appellant also sought an order that the first respondent pay arrear rentals accumulated up to and including February 2021. This is a total sum of R250 800 and the quantum is not disputed by the first respondent. The appellant also claimed payment of R41 707.30 in respect of municipal charges but *Mr Wilkin* informed us that the latter claim is not persisted with given that there was no obligation on the part of the first respondent to effect payment thereof in terms of the lease.

Costs

[41] The appellant seeks costs on the punitive scale of attorney and client. To my mind this would not be an appropriate order to make given that the appellant's

own papers were not a model of clarity, despite my view that the respondents capitalised on this in order to raise defences unsustainable in both fact and law.

[42] **In the result I would propose the following order:**

- 1. The appeal succeeds with costs.**

- 2. The order of the court a quo is set aside and substituted with the following:**

‘1. The application for rectification of the written lease agreement is granted;

2. The first to third respondents are ordered to vacate the immovable property situated at 62 Trinity Street, Parklands, Western Cape Province, also known as erf 6174, Parklands (Cape Town) (“the property”) on or before TUESDAY 28 FEBRUARY 2023 failing which the Sheriff is authorised and directed to evict them therefrom on MONDAY 6 MARCH 2023 or as soon as possible thereafter;

3. The first respondent shall pay the applicant the sum of R250 800 (two hundred and fifty thousand eight hundred rand); and

4. The first respondent shall pay the costs of this application.'

CLOETE J

I agree and it is so ordered.

GOLIATH AJP

I agree.

THULARE J

For appellant: Adv L S Wilkin

Instructed by: C K Attorneys (Ms M Engela)

For first to third respondents: Adv G Quixley together with Adv P Gabriel

Instructed by: Hayes Inc. (Mr R Meintjies)

For fourth respondent: no appearance