THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case No: 1410/2016

In the matter between:

ADHU INVESTMENTS CC	**FIRST APPELLANT**
HUGO HEINRICH KNOETZE	**SECOND APPELLANT**
LIVISPEX (PTY) LTD	**THIRD APPELLANT**

and

KUMARAN PADAYACHEE	**RESPONDENT**

Neutral citation: *Adhu Investments v Padayachee* (1410/2016) [2019] ZASCA 63 (24 May 2019)

Coram: Cachalia, Tshiqi, Schippers JJA, Gorven and Eksteen AJJA

Heard: 10 May 2019

Delivered: 24 May 2019

Summary: Contract – joint venture – damages based on breach of agreement - joinder on the basis of a *stipulatio alteri* – tacit term – whether *stipulatio alteri* established.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Opperman AJ sitting as court of first instance):

1 The first and second appellants' appeal is dismissed with costs.

2 The third appellant's appeal is upheld with costs and the order of the court a quo is set aside and substituted by the following:

'(a) The exit agreement dated 28 July 2010 is rectified by deletion, on page 1 in clause 1.2.2 and on page 14 thereof, of the words 'ADHU Investments 243 CC' and the substitution thereof by the words 'Adhu Investments CC'.

(b) Judgment is granted against the first and second defendants, jointly and severally, the one paying the other to be absolved, for:

(i) Payment of the sum of R2.5 million to the plaintiff;

(ii) Interest on the sum of R2.5 million at 15,5% per annum from 1 December 2010 to 1 August 2014 and thereafter at 9% per annum to the date of payment:

(iii) Costs of the action as between attorney and client;

(c) The plaintiff's claim against the third defendant is dismissed with costs.'

JUDGMENT

Eksteen AJA (Cachalia, Tshiqi, Schippers JJA and Gorven AJA concurring):

[1] A fallout between business partners lies at the heart of the appeal. The second appellant (Knoetze) and the first appellant (Adhu), a close corporation controlled by Knoetze, on the one hand, and the respondent (Padayachee), together with Spartan Finance Holdings (Pty) Ltd (SFH), a company controlled by Padayachee, on the other, embarked on a joint venture to obtain a significant share in Ace Fire Suppression Technologies (Pty) Ltd (AFST). Prior to achieving their goal, Knoetze and Padayachee fell out and the parties to the joint venture entered into a further agreement (the exit agreement) which regulated the terms of their separation. In terms of the exit agreement Padayachee was to receive R2.5 million as a 'consulting service fee'. He alleges that Knoetze and Adhu breached the terms of the exit agreement in order to benefit the third appellant (Livispex) thereby causing him to suffer damages. He accordingly issued summons and obtained judgment in his favour for payment of the R2.5 million against the appellants, jointly and severally, in the High Court, Johannesburg. The appeal, which proceeds with the leave of the court a quo, is against that judgment.

Background

[2] The parties had identified the acquisition of the shareholding in AFST as a lucrative business proposition and therefore acquired a shelf company, Teleosis (Pty) Ltd (Teleosis) as the vehicle which was intended to hold the shares, directly or indirectly, in AFST. SFH held 60% of the shares in Teleosis and the remainder vested in Adhu. Teleosis was a party to the exit agreement.

[3] It is necessary at this juncture to set out in full the salient clauses in the exit agreement. It recorded:

'2.7 SFH and Adhu together with Padayachee and Knoetze have invested time, effort and resources to arrange and facilitate that Teleosis purchase 51% (Fifty one percent) of the shares of the existing shareholders of AFST.

. . .

3.1 The parties acknowledge and agree that the successful conclusion of the AFST transaction is founded on Knoetze and Padayachee in their respective individual capacities, irrespective of the roles played by SFH, Adhu or Teleosis.

3.2 Padayachee and Knoetze agreed to work together in good faith, with complete trust and by exercising sound and honest commercial dealings with each other and third parties and by sharing common business goals and objectives.

3.3 The parties have progressed the AFST transaction to an advanced stage.

3.4 Padayachee has decided to exit the relationship contemplated in this agreement as a result of not sharing the same business philosophies. The parties have agreed to dissolve their relationship with immediate effect.

. . .

3.6 The parties have also reached agreement on the manner in which they will dissolve their relationship as hereinafter recorded in this agreement.

. . .

4.3 SFH will appoint Knoetze as a director of Teleosis. Knoetze will be appointed as a director with a view to concluding the AFST transaction. Knoetze acknowledges that his appointment as a director is of vital importance in order to conclude the AFST transaction.

. . .

4.5 Teleosis hereby appoints Padayachee as a consultant. Padayachee will render consulting services to Teleosis on the AFST transaction.

. . .

4.7 Teleosis undertakes to pay Padayachee R2.5 million for rendering consulting services to Teleosis on the basis that the AFST transaction is finally concluded and subject to Clause 4.8.

4.8 Teleosis shall pay Padayachee the R2.5 million as contemplated in clause 4.7, without deduction or set-off as follows:

> 4.8.1 The consulting service fee will be due and payable if the said service [fee] is capitalised as part of the funding arrangement from the financial institution. The funder will be approached on the specific basis to also fund the R2.5 million fee.

. . .

6.1. Knoetze and Adhu undertake to source and secure a replacement BEE shareholder.

6.2 Knoetze and Adhu shall do all that is required to progress the AFST transaction to its final end.

. . .

10 Implementation and Good Faith

10.1 The parties undertake to do all such things, perform all such acts and to take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary

or incidental to give or conducive to the giving of effect to the terms, conditions and import of this agreement.

10.2 The parties shall at all times during the continuance of this agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this agreement. This implies, without limiting the generality of the aforegoing, that they:

10.2.1 will at all times during the term of this agreement act reasonably, honestly, and in good faith;

10.2.2 will perform their obligations arising from this agreement diligently and with reasonable care;

10.2.3 make full disclosure to each other of any matter that may affect the execution of this agreement.'

[4] Notwithstanding the terms of the exit agreement and unbeknown to Padayachee, Knoetze had, prior to the signature of the exit agreement, surreptitiously set up a separate parallel structure, which included Livispex, and concluded numerous agreements aimed at acquiring the shares of AFST through Livispex, thereby excluding Teleosis and Padayachee from the deal. These agreements were never disclosed. Padayachee only became aware of these developments in preparation for trial during the discovery process and when Standard Bank of South Africa Ltd (SBSA) was subpoenaed to produce documentation relating to the funding provided.

[5] Padayachee, for his part, honoured his obligations under the exit agreement. In particular, he actively supported the application to SBSA to secure funding for the transaction and disclosed to SBSA that R2.5 million of the funding required was to be included in and capitalised as part of the funding arrangement in order to be paid to him as recorded in clause 4.8.1 of the exit agreement. This provision remained part of the loan structure motivation to SBSA throughout the later negotiations by Knoetze.

[6] The AFST transaction was indeed successfully pursued by Knoetze (although the shareholding in fact acquired was reduced from 51% to 49%) and the funding was secured from SBSA. At the instance of Knoetze, however, the funding was advanced to and the shares were acquired through Livispex, to the exclusion of Padayachee and

Teleosis. A comprehensive loan agreement (the loan agreement) was concluded between SBSA and Livispex. I revert to this agreement later. The fact of the completion of the transaction and the manner in which it occurred was, contrary to the 'good faith' provisions of the exit agreement, not disclosed to Padayachee and the R2.5 million was not paid to him. Hence the claim against Knoetze and Adhu for their alleged breach of the exit agreement.

[7] As alluded to earlier, it was only after the issue of summons that the full truth of the transaction was revealed. Appreciating the potential difficulty this posed, Padayachee amended his particulars of claim to allege that the loan agreement contained a *stipulatio alteri,* tacitly incorporated in the agreement. Its effect was that R2.5 million of the loan advanced by SBSA was payable to him upon his acceptance of the benefit. He accordingly purported in his amended particulars of claim to accept the benefit and claim the amount from Livispex in terms of the loan agreement. Padayachee contended that Livispex is liable, jointly and severally with Knoetze and Adhu, on this basis.

Issues in the appeal

[8] The court a quo limited the issues in the appeal to the following:

(a) Whether the finding of liability on the part of Livispex excluded a finding of liability on the part of Knoetze and Adhu, and whether the court a quo erred in granting an order for payment against all three defendants jointly and severally;

(b) Whether the *stipulatio alteri* relied upon by Padayachee was properly pleaded and proved, and whether the court erred in granting judgment against Livispex based on the pleaded *stipulatio alteri*;

(c) Whether the allegations made in paragraph 11 of the particulars of claim supported the conclusion pleaded in paragraph 12, and whether the court a quo erred in granting judgment against Knoetze and Adhu based on those allegations; and

(d) Whether it was proved that Padayachee accepted the benefit conferred upon him by the loan agreement before 19 November 2014, and whether the court therefore erred in granting interest at 15,5% per annum from 1 December 2010.

The pleadings

[9] The particulars of claim relevant to the adjudication of the appeal are as follows:

'8 In pursuance of the exit agreement, the:-

8.1 plaintiff rendered further services in regard to the AFST transaction;

8.2 funding required for the transaction became available through SBSA.

9 The first and second defendants were at all material times able to conclude the AFST transaction upon the terms contemplated by it in consequence of which Teleosis (*or any other company acquired or created by the second defendant for purposes of concluding a loan agreement with SBSA for the purposes of giving effect to the AFST transaction*) would have either directly or indirectly held the assets and/or shares to be acquired in terms of the AFST transaction and in which provision would be made for the consulting fee of R2 500 000.00 (*Two Million and Five Hundred Thousand Rand*) as contemplated by clause 4.8 of the exit agreement.

10 In breach of their obligations, the first and second defendants failed to:-

10.1 take steps to progress the AFST transaction to its final end when they were able to do so; and/or

10.2 perform such acts and take such steps as may be necessary or incidental to give effect to the terms of the exit agreement.

11

11.1 Alternatively to paragraphs 10.1 and 10.2 above, the second defendant completed the AFST transaction by utilising another entity, namely the third defendant, but failed to procure that the obligations owed by Teleosis to the plaintiff in terms of clause 4.8 of the exit agreement were fulfilled by the third defendant, when the second defendant could and should have done so.

11.2 In doing so, the second defendant alternatively the first and second defendants acting jointly unlawfully prevented the third defendant from paying the plaintiff the sum of R2 500 000.00 (Two Million and Five Hundred Thousand Rand) contemplated by the exit agreement.

12 Such conduct by the first and/or second defendants constituted a breach by them of their obligations under clauses 6 and 10 of the exit agreement and renders them liable to the plaintiff for damages equivalent to the sum that would have been payable to him by Teleosis, had the first and second defendants not breached their obligations aforesaid.'

[10] The reference in paragraph 9 of the particulars of claim to 'any other company . . . created for purposes of concluding the loan agreement with SBSA' is elucidated by Knoetze's plea. Knoetze contended, and this is not in dispute, that the 'memorandum in relation to proposed transaction' which is annexed to the plea, formed part of the exit agreement. The material provisions of this document provide:

'2 **Rationale, background steps and agreed value for proposed transaction**

2.1 . . .

2.2 Teleosis will form a new company ("Newco") which shall prior to the implementation of the proposed transaction be 100% held by Teleosis.

. . .

3 **Proposed transaction steps**

3.1 In order to acquire its interest in the AFST business, Teleosis [or Newco, [still] to be confirmed] will receive funding from a financial institution . . .

. . .

6 **Final structure subsequent to implementation of proposed transaction**

6.1 . . .

6.2 The ordinary shareholding in Newco shall be 51% held by Teleosis. . .'

The 'other company' envisaged in the agreements was accordingly one that would be established and controlled by Teleosis.

[11] In respect of the claim against Livispex the material portion of the Padayachee's claim are:

'18 18.1 In and during October 2010 and at Johannesburg the second defendant on behalf of Newco (*ultimately the third defendant*) sought payment of total funding from SBSA in the total sum of R83 400 000.00 (Eighty Three Million and Four Hundred Thousand Rand), including the sum of R2.5000.00 (Two Million and Five Hundred Thousand Rand) which was payable to the plaintiff by Teleosis pursuant to the exit agreement.

18.2 In its written motivation to the credit department dated 29 October 2010 SBSA made provision for payment of transaction costs in the sum of R2 500 000.00 (Two Million and Five Hundred Thousand Rand) which is the sum payable by Teleosis to the plaintiff.

. . . .

19 19.1 On 29 October 2010 and at Johannesburg, the third defendant duly represented by the second defendant and SBSA, therein represented by Koulla Michael, concluded a medium term loan agreement (the "loan agreement").

. . .

20 The material and relevant terms of the loan agreement were as follows:-

20.1 SBSA granted to the third defendant (defined in the loan agreement as the "Borrower") a loan facility subject to the remaining terms of the loan agreement (clause 3);

20.2 The initial amount made available to the third defendant in terms of the loan agreement was R63 400 000.00 (Sixty Three Million and Four Hundred Thousand Rand) (hereinafter referred to as the "loan amount") as referred to in clause 5.1;

20.3 The loan facility was to be used to facilitate the AFST transaction (clause 6.2);

. . .

20.7 The loan agreement was subject to conditions precedent set out in clause 12 thereof.

21 The loan agreement is to be properly construed and interpreted by having regard to the terms of the written motivation . . .

. . .

22 22.1 Pursuant to the loan agreement the sum of R2 500 000.00 (Two Million and Five Hundred Thousand Rand), which formed a portion of the loan amount, was earmarked for payment to the plaintiff.

22.2 At the time the SBSA and the third defendant concluded the loan agreement it was their intention to contract, inter alia, for the benefit of the plaintiff, where the third defendant would make payment of the sum of R2 500 000.00 (Two Million and Five Hundred Thousand Rand) on implementation of the loan agreement.

22.3 It was accordingly a tacit term of the loan agreement that on implementation thereof and subsequent to SBSA advancing the first tranche of the loan amount to the third defendant, it would be obliged to pay the plaintiff the sum of R2 500 000.00 (Two Million and Five Hundred Thousand Rand).

23 The plaintiff has accepted the benefit conferred on him by the loan agreement alternatively the plaintiff hereby notifies the third defendant of his acceptance of such benefit.'

The *Stipulatio alteri*

[12] It is expedient to consider the second issue on which leave to appeal was granted first. In doing so, and because of the conclusion to which I have come, it is not necessary to consider the form of the pleadings in any greater detail than as set out above. The question to be determined is whether the court erred in granting judgment against Livispex based on the pleaded *stipulatio alteri*.

[13] The pleaded *stipulatio alteri* is founded on a tacit term incorporated in the loan agreement, which is a comprehensive document comprising 45 pages. It defines the parties to the agreement as being SBSA and Livispex. It also contains extensive 'conditions precedent' and 'post drawdown conditions'. There is no reference to any undertaking on behalf of either party to pay the sum of R2.5 million to Padayachee or to his right to the payment of this amount.

[14] In *Alfred McAlpine*[1] this court considered a tacit term to be '. . . an unexpressed provision of the contract which derives from the common intention of the parties, as inferred by the Court from the express terms of the contract and the surrounding circumstances.' Whether a contract contains such a term is a question of interpretation. Generally a court would be very slow to import a tacit term in a contract particularly where, as in the instant case, the parties have concluded a comprehensive written agreement that deals in great detail with the subject matter of the contract, [2] and it is not necessary to give the contract business efficacy.[3]

[15] The first step in the enquiry as to the existence of such a term is whether, regard being had to the express terms of the agreement, there is any room for importing the alleged tacit term.[4] In this respect Clause 20.10 of the agreement is material to the case advanced on behalf of the appellant. It provides:

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[1] *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1974 (3) SA 506 (A) 531 - 532.
[2] *See Union Government (Minister of Railways) v Faux Ltd* 1916 AD 105; *and Wilkins NO v Voges* 1994 (3) SA 130 (A) at 143 H.
[3] See *Mullin (Pty) Ltd* v *Benade Ltd* 1952 (1) SA 211 (A) at 214 - 215; *Van der Merwe v Viljoen* 1953 (1) SA 60 (A) at 65 *and Raap & Maister v Aronowsky* 1943 WDL 68 at 74.
[4] See *Pan American World Airways Inc v South African Fire and Accident Insurance Co Ltd* 1965 (3) SA 150 (A) 175 C. This case dealt with the problem of an implied term. But the test is equally applicable to the importation of a tacit term. (See Christie's The law of contract in South Africa (6ed), at 174).

‘20.10 **Whole agreement, Variation of Terms**

20.10.1 The agreement created upon signature of this agreement by the borrower and the bank shall constitute the whole agreement between the bank and the borrower relating to the subject matter hereof.

20.10.2 No addition to, variation, or amendment, or consensual cancellation of any of the terms contained in this agreement, shall be of any force or effect unless it is recorded in writing and is signed on behalf of the bank by one of its authorised officials and accepted by the borrower’.

[16] These provisions must be read in conjunction with clause 20.13.2 of the agreement which provides:

‘The bank shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the conclusion of any agreement created by acceptance of this Loan Facility and/or whether it was negligent or not.’

[17] A sole testimonial clause or non-variation clause does not necessarily, of itself, exclude the existence of a tacit term.[5] These clauses, however, contained as they are in a comprehensive contract dealing in the greatest detail with the subject matter, militate against the inclusion of the tacit term contended for. In my view, clause 20.10.1 and 20.13.2 give a strong indication that in the present matter the parties intended the written document to reflect the full agreement between them leaving little room, if any, for the incorporation of such a tacit term.

[18] The surrounding circumstances relied upon in the pleadings do not, in my view, disturb this conclusion. The reference in the proposal documentation to the R2.5 million payable to Padayachee as motivation for the loan serves only to justify the amount of the loan. It does not lead to the inevitable conclusion that the parties intended to incorporate the tacit term contended for. The written contract, in its existing form, in my opinion, constitutes an efficacious and complete agreement and no addition in the form of a tacit term is required.

[5] See *Alfred McAlpine* fn 1 above at 532 and *Wilkens NO* fn 2 above at 144.

[19] Counsel on behalf of the appellants was constrained, somewhat tentatively, to acknowledge this difficulty. He argued, however, that such a conclusion overlooks the fact that evidence establishes an express oral agreement in terms of which SBSA would make available an additional sum of R2.5 million to Livispex to enable the latter to pay Padayachee the agreed exit fee. There are three difficulties with this argument. First, it has never been the respondent's case, either in the pleadings or at the trial, that an express oral agreement came into existence outside of the written loan agreement. Second, clauses 20.10 and 20.13 of the loan agreement exclude any reliance on an oral agreement. Third, whether or not a tacit term is incorporated in the contract is a matter of interpretation.

[20] This brings me to the evidence. Much of it presented at the trial, and which the respondent relied upon for this submission, was directed at establishing the actual intention of the parties. Such evidence is inadmissible. The comments of Harms JA in *KPMG*[6] relating to such evidence are apt in the present case. He set out the legal position as follows:

'[39] First, the integration (or parol evidence) rule remains part of our law. However, it is frequently ignored by practitioners and seldom enforced by trial courts. If a document was intended to provide a complete memorial of a jural act, extrinsic evidence may not contradict, add to or modify its meaning (*Johnson v Leal* 1980 (3) SA 927 (A) at 943 B). Second, interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the court and not for witnesses (or, as said in common-law jurisprudence, it is not a jury question: Hodge M Malek (ed) *Phipson on evidence* (16 ed 2005) paras 33 – 64). Third, the rules about admissibility of evidence in this regard do not depend on the nature of the document, whether statute, contract or patent (*Johnson & Johnson (Pty) Ltd v Kimberly – Clark Corporation and Kimberly – Clark of South Africa (Pty) Ltd* 1985 BP 126 (A) ([1985] ZASCA 132 (www.saflii.org.za)). Fourth, to the extent that evidence may be admissible to contextualise the document (since "context is everything") to establish its factual matrix or purpose or for purposes of identification, "one must use it as conservatively as possible" (*Delmas Milling Co Ltd v Du Plessis* 1955 (3) SA 447 (A) at 445 B – C).'

[6] *KPMG Chartered Accountants (SA) v Securefin Limited & another* [2009] ZASCA 7; 2009 (4) SA 399 (SCA).

[21] In the circumstances, I do not think that a tacit term as contended for has been established. It follows that the second issue in respect of which leave to appeal was granted must be decided in favour of Livispex. The first and fourth issues in respect of which leave to appeal was granted do therefore not arise.

Do the allegations pleaded in paragraph 11 of the particulars of claim support the conclusion in paragraph 12

[22] I turn to consider the third issue in respect of which leave to appeal was granted. In this regard, the appellants' assertions that the allegations made in paragraph 11 of the particulars of claim do not support the conclusion pleaded in paragraph 12 thereof may be accepted. This, however, does not affect the outcome of the appeal for the reasons which are set out below.

[23] The material portion of the pleading is set out earlier. Paragraph 11 of the particulars of claim is pleaded in the alternative to paragraph 10. The court a quo observed in its judgment that Padayachee did not persist with the allegation that Knoetze and Adhu had failed to take steps to progress the AFST transaction to its final end when able to do so (paragraph 10.1). The appellants contend that the respondent had thus abandoned all reliance on paragraph 10 of the particulars of claim. This contention is wrong and is not supported by the judgment of the court a quo. What was abandoned was reliance on paragraph 10.1, not the entire paragraph.

[24] Leaving aside the alternative cause of action pleaded in paragraph 11 of the particulars of claim, it is Padayachee's case, as set out in paragraph 10.2, that both Knoetze and Adhu failed to perform the obligations imposed upon them in clause 10 of the exit agreement. In paragraph 12 it is alleged that in doing so Knoetze and/or Adhu were in breach of the exit agreement and that such breach rendered them liable to him in damages equivalent to the sum that would have been payable to him by Teleosis had Knoetze and Adhu not been in breach of their obligations.

[25] It is not in dispute that even prior to the conclusion of the exit agreement Knoetze had set up the alternative structure including Livispex in order to pursue the AFST transaction to the exclusion of Padayachee and Teleosis. Livispex was not a 'Newco' as envisaged in the 'memorandum in relation to the proposed transaction', which is set out earlier, and it was established to exclude Teleosis. The loan finance was obtained in the name of Livispex and the shares purchased for its benefit. This was concealed from Padayachee. There can therefore be no doubt that Knoetze's conduct in this regard constituted a breach of clause 10.1, 10.2.1 and 10.2.3 of the exit agreement and that this breach gave rise to the exclusion of Teleosis which, in turn, deprived Padayachee of his claim in the amount of R2,5 million from Teleosis. Counsel on behalf of the appellants was constrained during argument to concede as much.

[26] It was argued, however, on behalf of Adhu that Knoetze's conduct constitutes, at best, a breach of the exit agreement on his part only and that no breach in respect of Adhu had been proved. There is no merit in this argument. Adhu was the vehicle utilised by Knoetze to house his interests in the joint venture. At all times he acted on behalf of Adhu. He was a member of Adhu and owned a 50% interest in it. He represented Adhu in the conclusion of the exit agreement and warranted his authority to do so. He bound it to the obligations set out in paragraphs 6 and 10 of the exit agreement. At the time of the conclusion of the exit agreement Knoetze knew, and so did Adhu, that the parallel structures had been set up and agreements concluded in order to exclude Padayachee and Teleosis from the AFST transaction. Knoetze acting on behalf of Adhu, failed to disclose the existence of these agreements and the negotiations giving rise to them. This failure, on behalf of Adhu, was deliberately in breach of the provisions of clause 10 of the exit agreement.

[27] The facts lead to the ineluctable conclusion that Knoetze controlled Adhu. Knoetze's conduct subsequent to his signature of the exit agreement is also attributed to Adhu by virtue of Knoetze's membership of the close corporation. Adhu failed to disclose these developments as required by clause 10.2.3 of the exit agreement. In my view, this constituted a further breach of the provision of clause 10.1 of the exit agreement in terms

of which Adhu had undertaken to do all things necessary or incidental to give effect to the terms, conditions and import of the exit agreement.

[28] In all the circumstances a distinction cannot be drawn between Knoetze and Adhu and the appeal of both the first and second appellant must therefore fail.

[29] In the result:

1 The first and second appellants' appeal is dismissed with costs.

2 The third appellant's appeal is upheld with costs and the order of the court a quo is set aside and substituted by the following:

'(a) The exit agreement dated 28 July 2010 is rectified by deletion, on page 1 in clause 1.2.2 and on page 14 thereof, of the words 'ADHU Investments 243 CC' and the substitution thereof by the words 'Adhu Investments CC'.

(b) Judgment is granted against the first and second defendants, jointly and severally, the one paying the other to be absolved, for:

(i) Payment of the sum of R2.5 million to the plaintiff;

(ii) Interest on the sum of R2.5 million at 15,5% per annum from 1 December 2010 to 1 August 2014 and thereafter at 9% per annum to the date of payment:

(ii) Costs of the action as between attorney and client;

(c) The plaintiff's claim against the third defendant is dismissed with costs'.

_____

JW Eksteen

Acting Judge of Appeal

Appearances:

For the Appellants:	EC Labuschagne SC
Instructed by:	Nixon & Collins Attorneys, Pretoria
	Hill McHardy & Herbst Inc, Bloemfontein
For the Respondent:	PRV Strathern SC
Instructed by:	Brain Kahn Inc, Johannesburg
	Claude Reid Inc, Bloemfontein