



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE: 25 NOVEMBER 2024

SIGNATURE: 

CASE NUMBER: A147/2024

In the matter between:

PETER THEMBEKILE MALGAS

First Appellant

ALFRED DISCO BIYELA

Second Appellant

BOSWELL JOHN MHLONGO

Third Appellant

and

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Respondent

Coram: Mazibuko AJ *et* Davis & Millar JJ concurring

Heard on: 10 October 2024

Delivered: 25 November 2024 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by

release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 25 November 2024.

Summary: *Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002- permits the creditor to apply for condonation where the debtor relies on non-compliance with section 3. When does a debt arise? - when the creditor acquires a complete cause of action for the recovery of the debt - Prescription commenced running after the appellants were released from custody following the Constitutional Court's vitiating of their conviction and sentences – not when appellants were first detained. Appeal upheld and order of the court a quo set aside and replaced. Cross-appeal of prescription dismissed.*

JUDGMENT

MAZIBUKO AJ (DAVIS et MILLAR JJ CONCURRING)

INTRODUCTION

[1] On 6 October 2016, the appellants instituted an action against the respondent (the Minister) for their wrongful detention and deprivation of liberty between 2004 and 2012; alternatively, 2006 and 2012, in consequence of the failure of the Minister to provide them with a complete record of the criminal trial proceedings. It was contended that the Minister's failure caused a delay in their pursuit of an appeal against their convictions and sentences and thus exposed them to an avoidable and unnecessarily prolonged incarceration and deprivation of liberty.

FACTUAL BACKGROUND

- [2] The appellants were arrested by the police for various serious crimes and arraigned in the Mahikeng High Court. In June 2004, they were convicted, and each was sentenced to life imprisonment together with other lesser periods of imprisonment, all of which were to be served concurrently with the life sentences.
- [3] Whilst in custody, they sought to appeal their convictions and sentences. Their pursuit of a complete record of the criminal trial proceedings between 2004 and 2012 was unsuccessful.
- [4] Upon receipt of the record of the trial proceedings in October 2012, they lodged their appeals. Their appeals were unsuccessful in the North-West High Court and subsequently in the Supreme Court of Appeal. However, the Constitutional Court subsequently upheld their appeals and set aside both their convictions and sentences.
- [5] The second and third appellants were released from custody on 15 March 2015, and the first appellant some months later on 25 June 2015. On 6 October 2016, they then issued summons against the Minister for damages. Their claim is predicated upon the State's constitutional duty to them to provide a complete record of proceedings for the purpose of exercising their right of appeal within a reasonable period of time.
- [6] The action was subsequently set down for trial on 12 February 2024.
- [7] On 26 January 2024, the Minister amended his plea, raising two special pleas. The first was one of prescription, and the second was one of non-compliance with the provisions of section 3¹ of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 (The Act).

¹ Section 3. (1) No legal proceedings for the recovery of a debt may be instituted against an organ of state unless- (a) the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question; or (b) the organ of state in question has consented in writing to the institution of that legal proceedings- (i) without such

- [8] In consequence of the special plea of non-compliance with the Act, the appellants filed a condonation application in terms of section 3(4).² On 13 February 2024, the Minister filed an answering affidavit and heads of argument, and at the same time filed a Rule 30 notice, alternatively Rule 30A notice read with Rule 6(12)(a), contending that the appellants' condonation application was irregular and to be set aside.
- [9] There were two issues: firstly, the special plea of prescription, and secondly, the non-compliance with terms of section 3 of the Act and condonation application, which came before the court *a quo* for determination.
- [10] On 15 February 2024, the court *a quo* issued an order in terms of Rule 33(4). In this order, the court separated the two special pleas and condonation application from liability and the quantum of damages. It ordered that the special plea of prescription would be heard first, followed by the special plea of non-compliance with section 3 and the condonation application as part and parcel of that issue. The liability issue was also separated with it to be sequentially the next issue to be heard and only thereafter the quantum of damages.
- [11] The Minister's special plea of prescription was heard first and dismissed on the 15th, followed by the appellants' condonation application in terms of section 3(4) of the Act, which was refused on 21 February 2024. On 23 February 2024, the Minister's special plea of non-compliance with section 3 of the Act was upheld, and consequently, the appellants' claims were dismissed.

notice; or (ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).

² Section 3(4) (a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2)(a), the creditor may apply to a court having jurisdiction for condonation of such failure. (b) The court may grant an application referred to in paragraph (a) if it is satisfied that-(i) the debt has not been extinguished by prescription; (ii) good cause exists for the failure by the creditor; and (iii) the organ of state was not unreasonably prejudiced by the failure. (c) If an application is granted in terms of paragraph (b), the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to the organ of state as the court may deem appropriate.

[12] The appellants applied for leave to appeal the court *a quo*'s judgment and order. The Minister applied for leave to cross-appeal against the court's judgment, dismissing the special plea of prescription. Leave to appeal, and cross-appeal was granted by the court *a quo*.

[13] On 7 October 2024, the Minister brought an application in terms of Rule 30 of the Uniform Rules, seeking an order that the heads of argument, practice note, the notice requesting a hearing date and notice of application for an appeal date, all of which were dated June 2024 be declared irregular, alternatively an improper step and that this court should set them aside.

[14] In response to the Minister's Rule 30 notice, the appellants filed a Rule 30(2)(b) notice contending that the Minister's Rule 30 notice itself was irregular and that it is what should be set aside.

RULE 30/30A APPLICATIONS

[15] The Minister argued that since the appellants' appeal was brought in terms of Rule 49(2), read with Rule 49(6)(a) and 7(a). In consequence, paragraphs 33.17.1 to 33.17.2 and 33.18.1 to 33.18.2 of the Gauteng Court's Consolidated Practice Directive 1 of 2024 (The Directive) find application.

[16] On behalf of the Minister, Mr Shakoane SC argued that the appellants had not complied with the provisions of the Directive in that:

[16.1] The indexed and paginated complete record (the record) was not served upon the Minister's attorneys and uploaded into the electronic court file.

[16.2] The registrar had not issued an acknowledgement of receipt of the record.

[16.3] The registrar's acknowledgement of receipt of the record, appellants' heads of argument and practice note had not been served upon the Minister's attorneys and

[16.4] The appellants had not stated that the Minister's heads of argument and practice note must be uploaded into the electronic court file 30 court days from the date of service of the record, appellants' heads of argument and practice note.

[17] He had recorded prejudice in that he was not in a position to deal with the appeal in accordance with the Rules and Directives and protect his rights to a fair hearing in the appeal. It was contended that the appeal had lapsed and was to be struck off the roll.

[18] The appellants opposed the application. Mr De Klerk SC argued that the Minister's Rule 30A was irregular and litigation by ambush. He argued that if a rule were to find application in these circumstances, the correct rule was Rule 30, not Rule 30A.

[19] Furthermore, it was argued that since the Rule 30 was out of time and that the Minister had already taken further steps in the proceedings by filing his heads of argument and practice note, subsequent events had cured any irregularity, if there was one. It was argued that the application was not made *bona fide* and that the Minister had suffered no prejudice.

[20] In terms of the Uniform Rules, a party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside, specifying particulars of the irregularity or impropriety alleged, only if:

[20.1] the applicant has not himself taken a further step in the cause with knowledge of the irregularity;

[20.2] the applicant has, within 10 days of becoming aware of the step, by written notice, afforded his opponent an opportunity of removing the cause of complaint within 10 days;

[20.3] If the applicant has made out a case for irregularity or impropriety, the court hearing the application may set the proceeding, irregularity

or impropriety aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

[20.4] Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause save to apply for an extension of time within which to comply with such order.³

[21] Rule 49(2) guides how the appeal must be set down after leave has been granted. It provides:

"If leave to appeal to the full court is granted, the notice of appeal shall be delivered to all the parties within 20 days after the date upon which leave was granted or within such longer period as may upon good cause shown be permitted."

[22] Rule 49(6) provides that:

"(a) Within 60 days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal, and if the appellant fails to do so a respondent may within 10 days after the expiry of the said period of 60 days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no such application is made by either party, the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs.

(b) The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed."

³ Rule 30 (1) to (4) of the Uniform Rules of Court.

[23] Rule 49(7) provides:

- “(a) At the same time as the application for a date for the hearing of an appeal in terms of subrule (6)(a) of this rule, the appellant shall file with the registrar three copies of the record on appeal and shall furnish two copies to the respondent. The registrar shall further be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents, Provided that such omissions shall be referred to in the said index. If the necessary copies of the record are not ready at that stage, the registrar may accept an application for a date of hearing without the necessary copies if—*
- (i) the application is accompanied by a written agreement between the parties that the copies of the record may be handed in late; or*
 - (ii) failing such agreement, the appellant delivers an application together with an affidavit in which the reasons for his omission to hand in the copies of the record in time are set out and in which it is indicated that an application for condonation of the omission will be made at the hearing of the appeal.*
- (b) The two copies of the record to be served on the respondent shall be served at the same time as the filing of the aforementioned three copies with the registrar.*
- (c) After delivery of the copies of the record, the registrar of the court that is to hear the appeal or cross-appeal shall assign a date for the hearing of the appeal or for the application for condonation and appeal, as the case may be, and shall set the appeal down for hearing on the said date and shall give the parties at least 20 days' notice in writing of the date so assigned.*
- (d) If the party who applied for a date for the hearing of the appeal neglects or fails to file or deliver the said copies of the record within 40 days after the acceptance by the registrar of the application for a*

date of hearing in terms of subrule (7)(a) the other party may approach the court for an order that the application has lapsed.”

- [24] It is common cause that the heads of argument, practice note and the notice requesting a hearing date were served in June 2024, with the notice of application for an appeal date on 24 June 2024. Upon becoming aware of these steps, the Minister had until 8 July 2024 to bring the Rule 30 application.
- [25] The application was only served on 7 October 2024, two days before the appeal hearing. Notwithstanding his knowledge of the complaint, the Minister elected not to raise his complaint in a timely fashion, which would have enabled the appellants to address it at a time other than at the 11th hour on the eve of the appeal hearing. Rule 30 must serve as a progressive step towards bringing a matter to finality. It is not to be used to frustrate or derail the hearing of a matter that is ripe for hearing by the *ex post facto* raising of academic complaints. The notice was delivered out of time, the Minister had already taken further steps towards ensuring that the appeal was ripe for hearing, and any complaint that there may have been was overtaken and rendered nugatory in consequence thereof.
- [26] To the extent that the Minister had filed his heads of argument and practice note on appeal on 4 October 2024, he had taken a further step in the proceedings, and Rule 30 was simply no longer available for the specific complaint in respect of which it was raised.
- [27] Furthermore, it is common cause between the parties that the complete record was subsequently served upon the Minister's attorneys and uploaded into the electronic court file on 23 July 2024. To this end, the appellants are correct that the filing of the record was well within, in July 2024, the 40 days in terms of Rule 49(7). Such renders the Minister's filing of the Rule 30 notice on this aspect also academic.
- [28] In terms of Rule 49(6)(a), the appeal record had to be filed within 60 days of delivering the notice of appeal. The appellants delivered same on 23 July

2024 instead of 17 July 2024. The appellants' filing was delayed by four days. The Minister was unable to demonstrate any prejudice suffered due to this late filing. None of the three bases upon which Rule 30 was brought are meritorious, and for that reason, the application in terms of Rule 30 must fail.

- [29] Regarding the lapsing of the appeal, the Minister presented no persuasive evidence against its reinstatement. Subsequent events cured any non-compliance or irregularities in the matter. Given the circumstances set out above and the nature of the dispute between the parties, it is my view that in the interests of justice, the appeal should be reinstated. All the parties were before the Court and ready to proceed to argue the appeal and subsequently did so.

APPELLANTS' CONDONATION APPLICATION IN TERMS OF SECTION 3(4) OF THE ACT AND THE MINISTER'S SPECIAL PLEA IN TERMS OF SECTION 3 OF THE ACT

- [30] The facts surrounding the circumstances in which the application for condonation was made are set above.

- [31] It was argued by Adv Thaldar, on behalf of the appellants, that they had complied with section 3 of the Act. Further, the application for condonation had only been brought *ex abundante cautela*. At issue was a delay of approximately 2 months and 25 days for the second and third appellants in the delivery of their section 3 notice, provided the section was not construed purposively.

- [32] It was argued that the court *a quo* misdirected itself when it dismissed the appellants' condonation application as:

[32.1] the debt had not been extinguished by prescription,

[32.2] there were good prospects of success in the main action and

[32.3] the Minister was not unreasonably prejudiced by the late section 3 notice.

[33] For the Minister, it was argued that the condonation application was correctly declared irregular as there was a valid court order in terms of Rule 33(4) regarding how the trial would be conducted.

[34] The court *a quo* dismissed the appellants' condonation application for the late delivery of the Section 3 notice, declaring it irregular and setting it aside on the basis that:

[34.1] The parties did not envisage the condonation application when they met with the DJP to set the trial date in May 2023.

[34.2] The condonation application was not envisaged when the court *a quo* made an order in terms of Rule 33(4).

[34.3] It would be improper and irregular for the same court to hear both the condonation application and the trial on the merits.

[35] Notably, when the matter was case managed in May 2023 and set down for trial, the special pleas had not yet been delivered. Furthermore, the condonation application, which was made as a direct consequence of the special pleas, could similarly also not have been anticipated.

[36] In the circumstances, it is somewhat illogical to argue, as the Minister did, that because the DJP had not been aware that there would be a condonation application, it was somehow irregular and should not be heard. The Minister's conduct in raising the special pleas when he did caused the appellants to bring that application.

[37] That it was before the court is in consequence of the conduct of the Minister, and it does not lie in the mouth of the Minister to complain that the

condonation application ought not to have been entertained for the reasons advanced.

[38] It is a simple matter of equity that a party who takes a considered step which provokes a response from the other party ought not to be able to rely on the step to non-suit the other party. It would be manifestly unjust were a court to decline to hear the condonation application in the circumstances that prevailed in this matter. For this reason, the court *a quo* misdirected itself in declaring the condonation application irregular and setting it aside.

[39] Regarding the Rule 33(4) order, the evidence is that the Rule 33(4) order was granted on 15 February whilst the condonation application had been filed on 13 February. Therefore, the court *a quo* was not correct in finding that the condonation application was not envisaged when the court *a quo* made an order in terms of Rule 33(4).

[40] In its judgment in respect of Rule 30, alternatively, 30A read with Rule 6(12)(a) of 21 February 2024, the court *a quo* held:

'[10] In addition it is my view that it will be improper and irregular for this court to make a ruling on the application condonation as well as hearing the trial on the merits.' (sic).

[41] The Act in section 3(4)(a) provides:

"(a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2)(a), the creditor may apply to a court having jurisdiction for condonation of such failure.

(b) The court may grant an application referred to in paragraph (a) if it is satisfied that-

(i) the debt has not been extinguished by prescription.

(ii) good cause exists for the failure by the creditor; and

(iii) *the organ of state was not unreasonably prejudiced by the failure.*

(c) *If an application is granted in terms of paragraph (b), the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to the organ of state as the court may deem appropriate.”*

[42] Since the court *a quo* was hearing issues relating to the trial, it had jurisdiction. It was competent and obligated to hear the appellants' condonation application and determine the issue of liability. There is no legal impediment against a trial court hearing an application for condonation in circumstances such as the present. Furthermore, in regard to the argument that different courts should hear the condonation application and determine the liability, there is no obstacle to both being heard by the same court. It is a matter of convenience and efficiency and subject to the rights of all being respected. A court must conduct itself in the determination of disputes in an efficient manner.⁴ In this regard, the court *a quo* misdirected itself.

[43] Before I proceed further, it is imperative to look at when the debt arose. The Minister argued that the debt arose in October 2012 when the appellants were provided with the complete record of trial proceedings. Therefore, the summons issued in October 2016 was issued after a three-year lapse.

[44] This is incorrect. The request for the furnishing of the record was only one of the steps taken towards the prosecution of the appeal. Until such time as the Constitutional Court vitiated the convictions and sentences of the appellants, they were convicted persons serving sentences of imprisonment. Their custody and deprivation of freedom were lawful.

⁴ *Makhwelo v Minister of Safety and Security* 2017(1)SA 274(GJ).

- [45] It only became unlawful when the Constitutional Court found that they ought never to have been convicted and sentenced and ought never to have been incarcerated.
- [46] Had the Constitutional Court not found as it did, then the negligent delay in the furnishing of the record by the Minister would have been of no moment. It would have been negligence in the air without concomitant damages having been suffered.
- [47] The negligence only became actionable upon the Constitutional Court's judgment and the appellants' subsequent release from custody.
- [48] On this aspect, the court *a quo* correctly found the appellants' claim had not prescribed when summons was served on the Minister.
- [49] By the time it dealt with the condonation application, the court *a quo* had already dismissed the special plea of prescription. What was left to be determined was whether there existed good cause for the second and third appellants' failure to deliver their section 3 notice timeously and whether or not the Minister had been unreasonably prejudiced thereby.
- [50] Regarding the good cause for the second and third appellants' failure, it was argued that they acted in good faith and had made out a *prima facie* case. The delay was caused by the novelty and complexity of the claim.
- [51] The Minister neither alleged nor demonstrated any prejudice as a result of the delay. I agree with the views expressed by Mr Thaldar that the Minister suffered no prejudice. The section 3 notice was sent on 21 December 2015, and the action was only instituted in October 2016. The Minister had 10

months, which is more than sufficient opportunity to investigate and consider the appellants' intended claims.

[52] The condonation application was brought because the Minister had raised a special plea relying on the appellants' failure to serve notice within 6 months. The non-compliance with section 3 was only raised on 26 January 2024.

[53] It had been held in *Minister of Safety and Security v De Witt*⁵ that:

"If the organ of state makes no objection to the absence of a notice, or a valid notice, then no condonation is required. In fact, the objection of the organ of state is a jurisdictional fact for an application for condonation, absent which the application would not be competent."

[54] Following the De Witt case, the default position has been that the creditor is compliant until the debtor raises non-compliance. Only then can the creditor competently seek condonation in terms of section 3(4). In *casu* the Minister raised the appellants' non-compliance on 26 January 2024. Subsequently, on 13 February 2024, the appellants applied for condonation.

[55] Though the Minister took the view that all three appellants were non-compliant, with section 3, such a position was erroneous as this only applied to the second and third appellants and not to the first appellant. Conversely, the appellants insisted that they complied with section 3 when read purposively. This is undoubtedly correct in respect of the first appellant who, in fact, did deliver his section 3 notice within 6 months. He was released in June 2015 and served the section 3 notice in December 2015. Therefore, he complied with section 3(2)(a) of the Act. It is simply not correct, as argued by the Minister, that the first appellant's section 3 notice was not served within 6 months of the cause of action arising being the date of his release.

⁵ 2009(1) SA 457 (SCA), para 10.

- [56] However, for the second and third appellants, I do not agree with the views expressed by Mr Thaldar that they had complied with section 3 construed purposively. The evidence is that the second and third appellants were released in March 2015 and only served the section 3 notice in December 2015. Thereby failing to serve the notice within 6 months as section 3 of the Act requires. Their section 3 notice to the Minister remained compliant as long as the Minister had not raised the special plea of their non-compliance with section 3 of the Act.
- [57] The Minister triggered the second and third appellants' non-compliance a few weeks before the trial when he filed the special plea. To the extent that they were now alerted to the fact that the Minister did not intend to condone their delay, their application for condonation of their failure was competent.
- [58] While the second and third appellants may well have taken the view that the bringing of the condonation application was *ex abundante cautela*, it is salutary that they did so. They did not pin their colours to a single mast but sought to protect their rights fully. Having regard to the particular circumstances of the matter being unjust conviction, sentence and incarceration over many years, had they done otherwise, this would have been reckless in the extreme.
- [59] It is trite that condonation is an indulgence granted at the discretion of the court. The discretion is to be exercised judicially. However, the *court a quo* did not exercise its discretion by evaluating what was before it. It decided to ignore the substance of the application and to dismiss it. It was required to evaluate the application and to decide it on its merits.
- [60] Had the *court a quo* considered the application, it would not have ignored the fact that the first appellant's notice, which contained all the relevant information necessary for the investigation of the matter, was delivered to it

timeously. The Minister was a party to the litigation before the Constitutional Court, knew the facts and circumstances as they unfolded in the lead-up to the hearing before that court, and was conversant with the entirety of that record before that court. It could never have been argued, and it was not, that the Minister was prejudiced in any way. The special plea was raised at the 11th hour to derail the proceedings, much in the same way as the rule 30 notice was raised before this court.

- [61] For the reasons set out above, there was no prejudice to the Minister in consequence of the delivery of the section 3 notice by the second and third appellants 2 months and 25 days out of time. For that reason, the application for condonation ought to have been granted.

CROSS-APPEAL

- [62] The Minister filed a cross-appeal against the judgment and order of the court a quo regarding its special plea of prescription. The issue of prescription has been alluded to in the body of this judgment. However, lest there be any doubt about this court's view on this aspect, I intend to deal with it specifically hereunder.

- [63] *"Prescription cannot begin to run against a creditor before his cause of action is fully accrued, which is before he is able to pursue his claim."*⁶

- [64] The Supreme Court of Appeal has held in *Truter v Deyse*⁷ that a debt is 'due':

"When the creditor acquires a complete cause of action for the recovery of the debt, that is, when the entire set of facts which the creditor must prove in order to succeed with his or her claim against the debtor is in place or, in

⁶ *Deloitte Haskins & Sells Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991(1) SA 525(A), para 532F-J.

⁷ 2006 (4) SA 168 (SCA).

other words, when everything has happened which would entitle the creditor to institute action and to pursue his or her claim."

[65] It was alleged the appellants' prolonged incarceration was caused by the failure to provide them with a complete record of the trial proceedings after their sentence in 2004. There was an obligation to provide that record then or after payment for the record was made. On either score, there was an inordinate delay. However, they had no cause of action until such time as the Constitutional Court vitiated their convictions and sentences and ordered their release. Prescription could only begin to run upon their release reckoned from March 2015 and June 2015, respectively; the summons was served within 3 years as provided for in the Prescription Act.⁸ Accordingly, the court *a quo* was correct in dismissing the special plea of prescription.

COSTS

[66] The costs in this matter will follow the result. The matter is clearly one of great importance to the parties, and both chose to engage the services of two counsel. Accordingly, such costs will include the costs consequent upon the engagement of two counsel, one of which is a senior counsel.

THE ORDER

[67] In the circumstances, I propose the following order:

[67.1] The respondent's rule 30 application is refused.

[67.2] The appeal is reinstated.

[67.3] The appeal is upheld, and the cross-appeal is dismissed.

⁸ 68 of 1969.

[67.4] The order of the court *a quo* dated 21 February 2024 is hereby set aside and replaced as follows:

[67.4.1] The plaintiff's application for condonation is granted with costs, which costs are to include the costs consequent upon the engagement of two counsel.

[67.5] The respondent is ordered to pay the appellants' costs of the rule 30 application, the appeal and the cross-appeal on a scale as between party and party, which costs are to include the costs consequent upon the engagement of two counsel. Counsel's costs are awarded on scale C.



NGM MAZIBUKO
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE, AND IT IS SO ORDERED,



N DAVIS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE,



A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

10 OCTOBER 2024

JUDGEMENT DELIVERED ON:

25 NOVEMBER 2024

COUNSEL FOR THE APPELLANTS:

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MR. G ERASMUS

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