THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 766/2024

In the matter between:

AFRICAN BANKING CORPORATION OF ZAMBIA LIMITED	**FIRST APPELLANT**
AFRICAN BANKING CORPORATION OF BOTSWANA LIMITED	**SECOND APPELLANT**
STANDARD CHARTERED BANK LIMITED (JOHANNESBURG BRANCH)	**THIRD APPELLANT**
STANDARD CHARTERED BANK BOTSWANA LIMITED	**FOURTH APPELLANT**

and

MAPULA SOLUTIONS (PTY) LTD	**RESPONDENT**

Neutral citation: *African Banking Corporation of Zambia Limited and Others v Mapula Solutions (Pty) Ltd* (766/2024) [2025] ZASCA 38 (26 March 2026)

Coram: MOCUMIE, SCHIPPERS, COPPIN JJA, NUKU AND NORMAN AJJA

Heard: 18 November 2025

Delivered: 26 March 2026

Summary: Law of Contract – claim for damages – whether appellants conspired to commit breaches of a Debt Rescheduling Agreement – whether their conduct caused the respondent to suffer damages – whether there was any legal basis for holding the appellants jointly and severally liable.

ORDER

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

1 The appeal is upheld with costs, including the costs of two counsel.

2 The order of the high court is set aside and substituted with the following:

'The plaintiff's action is dismissed with costs, including the costs of two counsel. These costs shall include the qualifying fees of the defendants' expert, Mr Brian Ellis Abrahams.'

JUDGMENT

Nuku AJA (Mocumie, Schippers and Coppin JJA and Norman AJA concurring)

Introduction

[1] This appeal is against the judgment and order of the Gauteng Division of the High Court, Johannesburg (the high court), which held the appellants jointly and severally liable to the respondent, Mapula Solutions (Pty) Ltd (Mapula), for payment of R704 968 234 together with interest on that amount from 28 September 2016 and costs. The appeal is with the leave of this Court.

[2] The main dispute in this appeal arises from a failed attempt by the Mayibuye Group (Pty) Ltd (Mayibuye) to recapitalize Blue Financial Services Ltd (Blue) following Blue's financial collapse in 2010. Blue was a reputable company, formerly listed on the Johannesburg Stock Exchange (JSE). It has various subsidiaries involved in micro-lending across some 12 African countries. I refer to Blue and these subsidiaries collectively as the Blue Group. Blue's financial downfall was caused, among other reasons, by mismanagement and fraud committed by its former CEO. This conduct rendered the Blue Group unable to pay its debts when they were due.

[3] The Blue Group believed in the profitability of its business model, despite its financial collapse. It was optimistic that its fortunes could be reversed with proper interventions. As a result, it issued a tender for companies to assist with its recapitalization. Mayibuye's bid was successful. Overall, Mayibuye's plan involved acquiring a majority stake in Blue, negotiating with Blue's existing creditors to grant a three-year payment holiday on its capital debts, and Mayibuye providing an additional loan to fund new business.

[4] The appellants, African Banking Corporation of Zambia Limited (ABC Zambia), African Banking Corporation of Botswana Limited (ABC Botswana), Standard Chartered Bank Limited – Johannesburg Branch (SCB Johannesburg), and Standard Chartered Bank of Botswana (SCB Botswana), collectively referred to as 'the banks', were among Blue's creditors. These creditors agreed to a rescheduling of Blue's loan repayment obligations, which were contained in two agreements. The first was a Debt Rescheduling Agreement (DRA), signed by Mayibuye, Blue, and some of Blue's creditors, including the banks, which deferred Blue's capital repayments to the banks for three years, and allowed them to convert the debt to equity or write-off the debt at the end of the 'rescheduling period', ie the end date.

Interest remained payable on the original loans during the rescheduling period. The second agreement was the Subscription Agreement which involved Mayibuye investing R163 million, to become Blue's controlling shareholder.

[5] When Mayibuye's efforts to recapitalize Blue failed, it blamed the banks, accusing them of breaching the terms of the DRA. Mayibuye claimed that had the banks not breached the DRA, it would have succeeded in recapitalizing Blue, thereby preserving the value of its investment. Consequently, Mayibuye claimed that it suffered a loss of R704 968 234 representing the value of its investment in Blue as of 1 November 2013, or R163 million being the amount it paid for Blue's shares. Mayibuye ceded this claim to Mapula, who successfully sued the banks in the high court, as described in paragraph 1 above.

[6] The banks appeal the judgment and order of the high court on the grounds that the high court erred in concluding that: (a) they breached the terms of the DRA, (b) their conduct caused Mayibuye to suffer a loss, (c) they acted in common purpose, and (d) they should be held jointly and severally liable to Mapula. The banks also argue that the amount claimed is speculative and unproven and that, in any case, it is an impermissible reflective loss claim. The issues for determination in this appeal are, therefore, whether the high court erred in any of the respects claimed by the banks and, if so, whether such errors undermine the soundness of the high court's judgment.

Factual Background

[7] Blue was listed on the JSE in October 2006 with an initial share capital of approximately R432 039 838. Over the next two years, it experienced rapid growth, reaching an estimated share capital of around R3 710 196 950 by its peak in

September 2008. This growth, however, was short-lived and was followed by a sharp decline over the next two years, reducing Blue's share capital to roughly R56 193 275 in 2010.

[8] As previously mentioned, Blue's downfall resulted from mismanagement, including fraud by its former CEO. However, there was still hope that Blue's fortunes could be turned around with proper intervention. Consequently, bids were solicited from companies capable of providing these interventions, leading to Mayibuye's introduction to Blue. Mayibuye is a venture capital firm that invests in financially distressed companies with the goal of restoring their profitability. According to Mayibuye, Blue was therefore an ideal fit for Mayibuye's business model of investing in financially distressed companies.

[9] According to the plaintiff's particulars of claim, Mayibuye viewed the invitation to provide the necessary interventions to restore Blue to profitability as an investment opportunity. This is clear from what is described as the commercial objective of the Mayibuye investment, which was to enable the Blue Group to regain its previous market value of over R3 billion so that Mayibuye could benefit financially. According to the particulars of claim, this commercial objective was designed as follows:

(a) the separation of Blue's insolvent and underperforming historical business (the Bad Bank) from what was planned to become the newly restructured and recapitalised business (the Good Bank), so that the former would be immunised from the latter. Limitations would be placed on the rights of creditors of the Bad Bank, who were to participate in recapitalisation agreements, to receive

payments in terms thereof, as their claims for payment would be contingent upon assets remaining in the Bad Bank;

(b) winding down the Bad Bank over a rescheduling period, which was anticipated to be a three-year period;

(c) capitalising the Blue Group on the basis that the Bad Bank would, after the end date, have zero impact on its shareholder funds, and the Good Bank would have access to sufficient initial capital for the rescheduling period; and

(d) Mayibuye needed control of the Blue Group to ensure that it could take all commercially reasonable steps to manage the lending businesses operated by the Blue Group and complete the Blue Group's restructuring before the end date. That would allow Mayibuye to recapitalize the Blue Group on a sustainable basis after the end date.

[10] The particulars of claim further allege that:

'16. The Mayibuye investment entailed the structuring and conclusion of five agreements that were designed to implement the creation of the Good Bank, and the separation of the Bad Bank therefrom, together with the required initial capitalisations, with the relevant agreements being:

16.1 The Subscription Agreement, which was concluded between Mayibuye and Blue, and which provided, inter alia, for Mayibuye to subscribe and receive certain shares in the share capital of Blue at specified prices.

16.2 The DRA, which was concluded between Mayibuye, Blue, some of Blue's subsidiaries, and some of Blue's creditors, which provided, inter alia, for:-

16.2.1 the debts of some of Blue's subsidiaries to their creditors to be rescheduled by restricting payment of the creditors' claims to what are defined in the DRA as "Included Claims"; and

16.2.2 creating a recapitalisation methodology that was designed to ensure that the Bad Bank would not affect the Blue Group's shareholder funds.

16.3 The Blue Claims Purchase Agreement (BCPA), which was to be, and which was concluded between Leonox Investments (Pty) Ltd (Leonox), Blue, CreditEdge (Pty) Ltd, Old Mutual Life Assurance Company (South Africa) Limited (OMLACSA) and some of Blue's subsidiaries which provided for a process whereby certain claims, as defined in clause 2.1.21 of the BCPA, owed by debtors to some of Blue's subsidiaries could be sold to Leonox.

16.4 The Renaissance Africa Master Fund Agreement, which was to be, and which was concluded between Blue and Renaissance Africa Master Fund Limited (RenAsset), which provided for RenAsset to make a US Dollar Convertible loan facility available to Blue; and

16.5 The First and Second PineBridge agreements which were to be, and which were concluded between Mayibuye and PineBridge Global Emerging Markets Partners II LP, a Cayman Islands limited partnership (PineBridge), which provided for the sale by PineBridge of any indebtedness or obligations of the Blue subsidiaries to Mayibuye.'

[11] The banks, in their response to the plaintiff's particulars of claim, denied that the agreements mentioned in the previous paragraph, which I collectively refer to as 'the Recapitalisation Agreements', were made to create a Good Bank and a Bad Bank. In any case, Mr Johan Meiring (Mr Meiring), who testified on behalf of Mapula, stated that the Recapitalisation Agreements do not mention the concepts of the Good Bank and Bad Bank. According to Mr Meiring, these concepts were first used by the South African Reserve Bank around 2014, which was well after the Recapitalisation Agreements were signed. The only purpose of using these concepts was to indicate that those Blue creditors who were parties to the DRA would not have recourse to Blue's assets resulting from the recapitalization.

[12] The banks also denied that the Blue Claims Purchase Agreement (BCPA) was originally considered one of the agreements to be concluded. This was put to Mr

Meiring during cross-examination, who conceded that the Subscription Agreement contemplated that Mayibuye would provide a R300 million loan to Blue to grow the business. He also acknowledged that the proceeds of the BCPA were used to service Blue's existing obligations and were never used to fund new business growth.

[13] Since this claim stems from the alleged breach of the DRA, it is necessary to identify the relevant participants. As stated, Blue and some of its subsidiaries are parties to the DRA. These subsidiaries operate in Zambia and Botswana, specifically Blue Financial Services, Zambia (BFS Zambia) and Blue Employee Benefits (Pty) Ltd, Botswana (BEB Botswana). At the time the DRA was signed: (a) BFS Zambia owed ABC Zambia R43 241 247; (b) BEB Botswana owed ABC Botswana R33 914 477 and SCB Botswana, R4 839 770; and (c) Blue owed SCB Johannesburg, R81 812 549 on a term loan and R52 552 525 on an overdraft.

[14] Being parties to the DRA, the banks agreed to receive payment only in respect of the interest for a period of three years, or for such longer or shorter period as agreed. The intention was that Blue would continue collecting on its loans and would make payment in respect of the capital debts. At the end of the latter period, Blue was required to submit a distribution plan detailing the amounts collected and how they were to be divided among the participating creditors. If the amounts collected were insufficient to pay all the outstanding debts, the creditors would have two options. The first would be to convert their debt into equity by applying for ordinary shares in Blue. The second would be to grant Blue an additional 24-month period for the relevant Blue subsidiary to collect on the loans owed to it. At the end of this additional 24-month period, Blue was required to make the prorated payment of the collected amounts in full and final settlement of these creditors. If the amount

collected was still insufficient to settle all the outstanding indebtedness, the creditors would be obliged to write off that debt.

[15] The three years outlined in the DRA were intended to end on 31 December 2013. However, Blue defaulted on interest payments, which resulted in the period being shortened and the end date being brought forward from 31 December 2013 to 6 September 2013. Under clause 7.13 of the DRA, Blue was then required to submit a distribution plan within ten business days of 6 September 2013. It failed to do so. It submitted the distribution plan on 13 December 2013. The creditors, through the Lender Committee,[1] objected to this distribution plan because it did not comply with the terms of the DRA.

[16] Meanwhile, on 1 November 2013, ABC Zambia sent a letter to BFS Zambia demanding payment of UDD 3 979 414.32 by no later than 8 November 2013. Mr Meiring responded on behalf of Blue, seeking an explanation why ABC Zambia was demanding payment, which, in his view, was not consistent with the signed agreements. Mr Paul Westraadt responded on behalf of ABC Zambia, stating that the executive committee was 'of the view that the DRA is no longer valid given the fraud as well as the non-payment of interest and the absence of an acceptable distribution plan following the acceleration of the DRA […].' This was followed by a letter from ABC Zambia's attorneys, dated 22 November 2013, demanding payment of the same amount, along with a 10% collection commission, by 6 December 2013. Summons was issued in February 2014 against BFS Zambia, Blue, and BEB Botswana. Judgment was granted in favour of ABC Zambia on 21 March 2015, and attempts to appeal the judgment were unsuccessful.

[1] Lenders' Committee was set up in terms of clause 5 of the DRA as a committee through which Blue's creditors participating in the DRA would liase with the Blue Group.

[17] Mapula claims that the actions taken by ABC Zambia, as mentioned above, constitute a material breach of the DRA because ABC Zambia did not acknowledge that its claim is limited to included claims, which must be determined according to the distribution plan. The term 'Included Claims' is defined in the DRA as 'the outstanding Existing Claims and the outstanding Capital Account Claims.' 'Existing Claims' are, in turn, defined as 'Claims owed to all the Borrowers by all the applicable Debtors on the Effective Date.' 'Capital Account Claims' are claims that 'any Borrower originates or purchases after the effective date from funds held in any of its Capital Accounts.' In short, Mapula claims that ABC Zambia was obliged under the DRA to either convert its debt into equity or write it off, as no funds were available for distribution. Therefore, the breach, so it was alleged, consisted of the demand for payment instead of converting the debt into equity or writing it off.

[18] In November 2013, ABC Botswana sent a letter to BEB Botswana demanding payment. This is common ground. Following the letter of demand, legal proceedings were initiated in March 2014, in which ABC Botswana's main claims were: (a) for the production of a ratio certificate by BEB Botswana, as required by the DRA with reference to the last measuring date, which was 31 December 2013, showing the value and calculation of the Botswana book as specified in clause 12.5.1 of the DRA (the Botswana book); (b) payment of the difference between the value of the Botswana book and the sum of P60 779 932.54; and (c) interest. Alternatively, ABC Botswana claimed: (a) payment of P42 888 931.33, representing the total capital and interest owed on the facility; (b) interest; and (c) costs. For simplicity, I refer to these legal proceedings as 'the Botswana legal proceedings.'

[19] Mapula claims that ABC Botswana's demand for payment, as well as the institution of the Botswana legal proceedings, constituted a material breach of the

DRA. Specifically, the breach involves the failure to recognise that ABC Botswana's claim is limited to the included claims, which must be determined in accordance with the distribution plan. Additionally, Mapula claims that ABC Botswana failed to: (a) adhere to either the First or Second Distribution Plans and the related processes outlined in the DRA; (b) follow the dispute resolution procedures specified in the DRA; and (c) accept the decision of the Lender Committee, after the acceleration of the end date, to act on behalf of the lenders in the distribution and conversion process and, subsequently, in the dispute resolution process mandated by the DRA.

[20] By agreement between the parties, the Botswana legal proceedings were held in abeyance pending the final decision in similar legal proceedings initiated by SCB Johannesburg in the Gauteng Division of the High Court, Johannesburg (the Johannesburg legal proceedings).

[21] The Johannesburg legal proceedings were preceded by a letter dated 29 November 2013, demanding payment from Blue. Legal action was initiated in June 2014 against Blue and Blue Financial Services (South Africa) (Pty) Ltd (BFS South Africa), and judgment was granted in favour of SCB Johannesburg on 31 August 2018. Attempts to appeal that judgment were unsuccessful. As a result of the agreement by the parties to the Botswana legal proceedings mentioned above, the outcome of the Johannesburg legal proceedings was that the Botswana legal proceedings were decided in favour of ABC Botswana.

[22] Mapula claims that the steps taken by SCB Johannesburg, as stated above, constituted a material breach of the DRA for the same reasons advanced in respect of ABC Botswana.

[23] SCB Botswana sent a letter dated 8 January 2014 to BEB Botswana demanding payment. When no payment was received, SCB Botswana withdrew certain funds from BEB Botswana's bank account as partial settlement of its debt. Mapula claims these steps constituted a material breach of the DRA provisions for the same reasons advanced in respect of ABC Botswana and SCB Johannesburg.

[24] After Blue submitted the distribution plan on 13 December 2023, and it was rejected, Blue did not submit another plan until October 2015, when it presented a hybrid distribution and conversion plan. Once again, the Lending Committee rejected this hybrid plan for failing to meet the DRA's terms. Blue did not acknowledge the Lending Committee’s rejection of the revised plan. Instead, Blue told them that it considered the matter closed. According to Blue, this was because none of the creditors who participated in the DRA applied to convert their debt into equity. That being so, the only option available to the creditors, including the banks, was to write off any amounts owed to them, in accordance with clause 7.4 of the DRA.

[25] In September 2016, Mapula instituted these proceedings, alleging that Mayibuye lost its investment in Blue due to the banks' conduct as described above. Mapula sued as a cessionary after acquiring the claim from Mayibuye against the banks.

[26] The banks denied that their conduct constituted a breach of the DRA. ABC Zambia further denied that: (a) there was a distribution plan which was implemented, and which was of any force and effect; and (b) the judgment of the Zambian High Court confirmed that it had breached the DRA. Regarding the latter, it referred to paragraph 6 of the judgment of the Zambian High Court, which reads:

'Should execution of this judgment become necessary, such execution shall not be levied in respect of the assets which are said to be ring-fenced, that is to say, the assets which were acquired by the Defendants following the injection of capital by the Mayibuye Group.'

[27] ABC Botswana denied that it ought to have recognised that its claim was limited to the included claims. In amplification of its denial that the steps it took to recover the amount owing by BEB Botswana were impermissible, it referred to the outcome of the Johannesburg legal proceedings, which had the effect that the Botswana legal proceedings were determined in its favour. It further denied that there was a binding 'first' or 'second' distribution plan and/or associated processes in force and effect.

[28] SCB Johannesburg also denied that there was a distribution plan. It further referred to the outcome of the Johannesburg legal proceedings in amplification of its denial that it had breached the DRA.

[29] SCB Botswana denied that the withdrawals of funds from BEB Botswana's bank account constituted a breach of the DRA. It also stated that the distribution plan mentioned in the plaintiff's particulars of claim was not a distribution plan as defined in the DRA, nor was it valid, binding, or having any force or effect.

[30] The banks further denied that their conduct caused a restriction in the completion of Blue's final recapitalisation. They also pleaded that the final recapitalisation was incapable of being implemented for the following reasons:

(a) The insolvency of Blue, the 'earlier' breach, the Leonox fraud[2], the inability of Mayibuye to turn the operations of Blue around, and its failure to meet its

[2] This refers to fraud committed by Mr Deon Bekker (Mr Bekker), who was the financial manager of Leonox Investments (Pty) Ltd (Leonox). Because Leonox had entered into an agreement to buy and sell claims from Blue and

obligations towards the banks arising from judgments obtained by the banks against Blue; and

(b) The financial demise of Blue, its failure to pay its debts on demand or at all, the inability of Mayibuye to recapitalise Blue by the investment of R163 million, the failure to obtain additional investments, the inability to produce accurate consolidated group financial statements, the failure to implement the loan agreement in terms of which an amount of R300 million was to be loaned to Blue, the suspension of shares on the JSE, and the collapse of the micro-lending industry.

[31] Mapula's case can thus be summarized as follows: The DRA required the banks to limit their claims to amounts recovered from business generated before Mayibuye's investment in Blue, and, in the event of a shortfall, to either write it off or take shares in Blue instead of payment. The banks breached the DRA by demanding payment, and that breach destroyed Blue's value, resulting in the loss of Mayibuye's investment.

[32] The banks' case, in summary, is this: the demand for payment was not a breach of the DRA but resulted from Blue's failure to submit a valid Distribution Plan as required by the DRA. The loss of Mayibuye's investment was caused by events unrelated to the banks' conduct.

Before the high court

[33] The high court was alive to the fact that the alleged breach by the banks was a contested issue. It recorded this in paragraph 83 of its judgment:

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its subsidiaries, Mr Bekker's fraud suggested that Blue might have been involved in the fraud, thereby creating uncertainty about the reliability of Blue's consolidated financial statements.

'The defendants contend that there was no breach and that they were entitled to act in the way they did. The defendants raised a number of issues and contend that there could not have been a breach because the DRA became inoperable.'

In paragraph 86 of the judgment, the high court went further to note that:

'In argument, the plaintiff referred to the fact that the letter of demand by the first defendant was on the 1st of November 2013, claiming payment, and this constituted breach. It is common cause that such a letter was sent, and whether that amounted to a breach is to be determined in terms of a proper interpretation of the DRA and the facts on which the plaintiff relies.'

[34] The high court stated:

'I have referred to the breaches extensively as alleged by the plaintiff in respect of the first defendant and clearly I find that the first defendant acted outside of the DRA and its amendment. The same relates to the breaches by the second and third defendant, as well as the fourth defendant for the reasons that the plaintiff has pleaded. The subsequent court cases embarked upon by the defendants all point to the intention to act outside of the DRA and its December 2010 amendment.'

[35] Having made the finding referred to above, the high court proceeded to consider whether there were other factors which caused Mayibuye's loss of investment as contended for by the banks. It concluded that Mr Meiring was a credible witness and that '[i]t was clear to me that he was telling the truth, that his knowledge of the industry was very detailed and that he had tried his best to save Blue for the benefit, not only of Mayibuye, but also for the benefit of the defendants who would have benefited from the repayment of the entire indebtedness owed by Blue to them, if they had stuck with the DRA agreement.' (Emphasis added).

[36] Having found that the banks' breach caused the loss of Mayibuye's investment, the high court went on to consider the quantum of the loss. It accepted the computation of the loss based on Mapula's expert witness, Mr Lange, whose evidence was that the loss as at 1 November 2013 was R704 958 234.

The date of 1 November 2013 appears to be based on the court's finding that '[i]t is clear that Mayibuye's investment was destroyed and was valueless, certainly at the time of the breach by the 1st November 2013.'

[37] To justify holding all the banks liable for the purported loss of Mayibuye's investment, the high court stated that '[i]t is also clear that there was an orchestrated disregard by the defendants of the non-contagion principle, and this led to the investment becoming valueless.'

[38] Lastly, the high court dealt with the issue of costs, including whether the liability of the banks for costs should be joint and several. In this regard, it stated:

'Central to this determination is the fact that I have found the defendants acted in unison. I cannot attribute the conduct of [any one] of the defendants as being more blameworthy than the other. In other words, their breaches are really such that it was an orchestrated breach.'

The high court recognised that Mapula had not claimed that costs should be paid by the banks jointly and severally, but to overcome this, it stated that the banks' *'liability clearly is in solidum, therefore an order that the costs be paid jointly and severally is justified in the circumstances.'* (Emphasis added).

[39] Ultimately, Mapula's claim succeeded, and the banks were held jointly and severally liable, not only for the costs, but also for the damages awarded to Mapula in the sum of R704 968 234.

Before this Court

The banks' submissions

[40] Counsel for the banks submitted that the high court's finding that the banks breached the DRA overlooked the judgments issued in favour of ABC Zambia and SCB Johannesburg and failed to consider Blue's non-compliance with the DRA, including its failure to submit a compliant distribution plan and conversion plan.

[41] Counsel submitted further that the test to determine whether conduct constitutes a repudiation is determined objectively.[3] A contractant who correctly refuses performance, so it is submitted, in accordance with a term of the contract does not repudiate the contract but enforces it, which enforcement cannot amount to a breach. The gist of this argument was that the banks' obligation to either convert their debt to equity or write it off, was dependent on Blue presenting a distribution plan and a conversion plan that complied with the DRA. Blue's failure to do so meant that the banks' obligations did not arise.

[42] Counsel contended that Blue's breach of the DRA entitled the banks to act as they did, specifically, to seek payment of the monies owed to them. In doing so, they were enforcing their contractual rights. The fact that their claims were upheld by the courts in previous proceedings confirmed that their course of action was correct. The argument, at its core, is that the high court failed to consider the judgments in favour of ABC Zambia and SCB Johannesburg, even though Mapula relied on the same conduct to justify a breach of the DRA. Had the high court done so, it would have found that the banks' conduct does not constitute a breach of the DRA.

[43] Concerning the breach by ABC Zambia, it was submitted that there is no evidence that the letter addressed by ABC Zambia dated 1 November 2013 sought execution against 'Excluded Claims' and that, in any event, a demand for payment would not constitute a breach of the DRA. It was submitted further that the judgment of the Zambian High Court protected Mayibuye's investment and that ABC Zambia never sought an order that it could execute its judgment against the so-called 'Excluded Claims', which included the investment by Mayibuye.

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[3] *Erasmus v Pienaar* 1984 (4) SA 9 (T) at 20C-H; *Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd* [2000] ZASCA 81; 2001 (2) SA 284 (SCA); [2001] 1 All SA 581 (A) para 16.

[44] Four issues were raised regarding ABC Botswana. First, it could not be held responsible for a loss allegedly caused by the letter dated 1 November 2013, addressed to Blue by ABC Zambia, because it was not involved in that matter. Second, there is no evidence that ABC Botswana had sent a letter to Blue in which it demanded repayment of a loan, referred to in paragraph 44 of the high court judgment. Third, ABC Botswana's claim included a claim for interest, which Mapula conceded was not a breach of the DRA. Fourth, ABC Botswana's demand for the outstanding capital was an alternative claim.

[45] Turning to SCB Johannesburg's conduct, it was argued that when it addressed the letters dated 29 November and 10 December 2013 to Blue, it acted in accordance with the DRA. Even if the letters constituted a breach of the DRA, such breach could not have contributed to the alleged destruction of Blue's value, which, according to Mr Meiring's evidence, occurred on 1 November 2013. It was further submitted that it is inconceivable how a successful claim brought by SCB Johannesburg under the DRA, could simultaneously constitute a breach of the DRA, a contradiction that the high court failed to resolve. Furthermore, a demand for a Ratio Certificate, which all lenders, including SCB Johannesburg, were entitled to under the DRA, and which Blue was obliged to provide, could not constitute a breach of that agreement.

[46] It was submitted on behalf of SCB Botswana that its conduct was of no consequence, and there is no evidence that the monies it withdrew were part of the ring-fenced assets of Mayibuye. Additionally, its conduct occurred well after the alleged date of the destruction of Blue's value.

[47] In addition to denying any breach, the banks argued that Blue failed to submit a compliant DP or CP as required under the DRA. They contended that this failure prevented the banks from submitting a conversion application in accordance with clause 7.22 of the DRA.

[48] Regarding causation, the banks' case is that they did not commit the alleged breaches and, in any event, that their conduct did not cause Mayibuye any damage or loss. Relying on *Lee v Minister of Correctional Services*,[4] counsel for the banks argued that it cannot be found that there is a causal connection between the banks' conduct and the alleged loss of the benefit of the Mayibuye investment in Blue. This is because the fundamental question to be asked to establish legal causation, is whether there is a close enough relationship between the wrongdoer's conduct and its consequences for such consequences to be imputed to the wrongdoer, taking into account policy considerations based on reasonableness, fairness, and justice.[5] This, however, presupposes that the wrongdoer's conduct had a consequence. The banks, however, argue that their conduct did not have the result complained of and did not, in fact, cause the alleged loss.

[49] The banks also argued that, to establish causation, it must be shown that the breach was the *sine qua non* of the loss, which is sometimes referred to as the 'but

[4] *Lee v Minister of Correctional Services* [2012] ZACC 30; 2013 (2) BCLR 129 (CC); 2013 (2) SA 144 (CC) paras 38-49, the Constitutional Court set out the principles of causation and, in particular, the application of causal negligence, which gives rise to legal liability. It stated at paragraph [38]: '*The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry whether the negligent act or omission caused the harm giving rise to the claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arises. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. This is termed legal causation*.' (footnotes omitted.)

[5] *International Shipping Co (Pty) Ltd v Bentley* [1989] ZASCA 138; [1990] 1 All SA 498 (A); 1990 (1) SA 680 (A) at 700-701. Also see *Standard Chartered Bank of Canada v Nedperm Bank Ltd* [1994] ZASCA 146; 1994 (4) SA 747 (AD); [1994] 2 All SA 524 (A) at 764H-765B.

for' test.[6] Mapula's claim is that the breaches of the DRA occurred not only when the demand letter was received on 1 November 2013, or at the beginning of litigation, but also after the banks failed to follow the terms of the conversion plan in October 2015. However, considering Mr Meiring's statement that the loss occurred on 1 November 2013, these alleged breaches, at least by ABC Botswana, SCB Johannesburg and SCB Botswana, could not have caused Mayibuye or Blue to suffer any loss. Therefore, there is no causal link between the total loss of Blue's market value on 1 November 2013 and the alleged breaches by these three banks after that date. And if it cannot be proven that the breaches by the three banks caused the loss, Mapula's claim for damages fails, and the second part of the inquiry does not arise.[7]

[50] It was further argued that, considering Blue's own limitations, including those arising from the Leonox fraud and damage caused by parties such as Mayibuye (for example, Mayibuye calling up its security), these circumstances beyond the banks' control, caused the loss. It was further submitted that the Court must conclude that the recapitalization could never be completed, regardless of whether the alleged breaches or repudiations occurred, because Blue could not, and did not, produce audited group financial statements. This is clearly stated in the judgment of former Justice of this Court Justice Harms, sitting as the Chairman of the Financial Services Tribunal.

[51] If Mapula passes the 'but for' test, the second stage of the inquiry arises. That is, whether the breach is sufficiently close or directly linked to the loss for legal liability to arise, or whether the loss is too remote. There must be a reasonable

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[6] In *Louw v Patel* [2023] ZASCA 22; (2023 JDR 0682 (SCA) at para 46 it was stated that: 'In *Oppelt v Head: Health, Department of Health, Provincial Administration: Western Cape*,[16] it was stated that factual causation is determined through the *conditio sine qua non* test, commonly known as the 'but-for' test.

[7] *Vision Projects (Pty) Ltd v Cooper Conroy Bell & Richards Inc* [1998] ZASCA 63; 1998 (4) SA 1182 (SCA); [1998] 4 All SA 281 (A) at 1191H-J.

connection between the harm threatened and the damage caused. It was submitted that for the same reasons stated above, the second part of the inquiry does not arise because Mapula has not proved factual nor legal causation. The application of the 'but for' test clearly shows that there is no causal connection between the alleged breach and the failure to list the Good Bank.

[52] In addressing the high court's conclusion that the banks shared a common purpose to undermine the DRA, it was argued that this conclusion lacked factual support and was contradicted by the banks' different approaches in seeking relief before various courts and in their strategies before the lender committee[8]. The high court's findings depend solely on speculation on the part of Mr Meiring. Beyond assumptions, Mapula could not provide any evidence of collusion among the banks. The only commonality among the banks is their participation in the DRA. Therefore, the claim of collusion remains unsubstantiated, and the decision to hold the banks jointly and severally liable is unjustified. Additionally, the banks argued that ABC Botswana, SCB Johannesburg, and SCB Botswana cannot be held responsible for breaches allegedly committed by ABC Zambia on 1 November 2013, since there is no evidence that the former banks committed any breaches on that date, which the high court identified as the date when the Mayibuye investment was destroyed and rendered worthless.

Mapula's submissions

[8] The different approaches taken by the banks can be summarized as follows: on 1 November 2023, ABC Zambia requested payment of the entire remaining balance on the loan from Blue; this was followed by successful legal proceedings filed in the Zambian High Court. On 7 November 2013, Mr. Rex Madamombe, representing SCB Johannesburg and SCB Botswana, enquired at a meeting of the Lenders Committee about how the non-payment of DRA Lender interest would be addressed in the Distribution Plan; this was followed by successful legal actions in South Africa and Botswana. ABC Botswana neither raised the issue of outstanding payments nor initiated legal proceedings. Instead, it simply acted on its securities by withdrawing funds from the bank account of Blue Employee Benefits (Pty) Ltd, which had been pledged as security for payment.

[53] Mapula contends that the banks, by agreeing to be parties to the DRA, waived their rights under previous agreements with the Blue Group in favour of payments specified in clause 7 of the DRA. As a result, any demand for payment that disregards the limitations set by clause 7 of the DRA, along with the undertakings outlined in clauses 3.5.13 and 3.5.14[9] of the DRA, would constitute a breach of the DRA. The argument is that since there was no distributable cash as described in clause 7.12.7[10] of the DRA, the banks became shortfall lenders, as defined in the DRA, and could only be paid by way of shares in Blue as payment for the shortfall, or by writing off the outstanding amounts, as contemplated in clauses 7.12.22 and 7.12.23[11] of the DRA.

[54] Mapula further argues that it is common cause that the banks pursued claims beyond the included claims, contrary to clause 7 of the DRA, leaving Mayibuye unable to invest the final capital needed to keep Blue solvent. The banks' actions meant that Mayibuye's investment had no remaining value on 1 November 2013.

[55] Mapula's response to the judgments granted in favour of ABC Zambia and SCB Johannesburg against the Blue Group is that these judgments did not determine

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[9] Clauses 3.5.13 and 3.5.14 read: '3.5.13 each Shortfall Lender will, subject to clause 3.5.14, become obliged to capitalise the shortfall attributed to it by converting that shortfall into ordinary share in Blue; and 3.15.14 if any Shortfall Lenders fail to convert their shortfalls into ordinary shares they shall between them be limited to claiming, on account of the shortfalls attributed to them, against the amounts which the Borrowers collect on account of the non-performing included claims.'

[10] Clause 7.12.7 provides: 'on the end date and after the total available cash has been translated into Rand in accordance with clause 7.12.6, an amount equal to 10% (ten per centum) of the total available cash shall be determined (such amount the "Reserve Amount"), the Reserve Amount shall be deducted from the total available cash and the remainder shall be the distribution cash.'

[11] Clauses 7.12.22 and 7.12.23 read: '7.12.22 each shortfall lender shall convert its shortfall amount into shortfall shares in accordance with the provisions of clause 7.22;

7.12.23 if any shortfall lender (a Non-Capitalising Lender) fails to comply with the formalities prescribed in 7.22 for the conversion of tis shortfall amount into shortfall shares (1) the Borrowers shall use all commercially reasonable endeavours to collect the amounts owing to it under any Included Claims which are Non-Performing Claims on the End Date, and (2) subject to any Included Claims deductions envisaged in clause 7.24, the Non-Capitalising Lenders shall, pro-rata to their Shortfall Amounts, be paid over the period (the "Non-Performing Period") of 24 (twenty four) months after the End Date, in full and final settlement of their Shortfall Amounts.'

that the banks had not breached the DRA, nor are they in conflict with the high court's decision. This is because the high court was not required to decide whether the banks were entitled to enforce a monetary judgment against the Blue Group, as the Blue Group is not a party to the case.

[56] Mapula claims that the Leonox fraud did not affect Blue's failed recapitalization, nor Blue's inability to produce group audited financial statements. This is because Blue had received in-principle approval for the separate listing, which was compromised by the banks' conduct.

[57] Mapula supports the high court's order that the banks should be held jointly and severally liable. However, its support is not based on the court's reasoning but on a decision made by the Lenders Committee, which Mapula claims was controlled by the banks. In this regard, there is a reference to the minutes of the Lenders Committee dated 7 August 2013, regarding the appointment of joint legal representatives to advise Blue's creditors that were party to the DRA. The argument is that the joint decision-making process and combined responsibility sustain the high court's conclusion that no distinction is to be drawn between the damages caused by any of the banks.

[58] Mapula's further argument is that the evidence showed overlapping damage caused by the breaches to Mayibuye, and that this is enough to hold the banks jointly and severally liable, even if they acted independently of each other. In support of this proposition, Mapula referred this Court to a passage in *Christie's The Law of Contract in South Africa*,[12] where the authors state that '[a] plaintiff whose loss has

[12] R H Christie and G B Bradfield *Christie's The Law of Contract in South Africa* 8 ed (2022) at 679. See further *Thoroughbred Breeders' Association of SA v Price Waterhouse* [2001] ZASCA 82; [2001] 4 All SA 161 (A); 2001 (4) SA 551 (SCA) para 66; *Rofdo (Pty) Ltd t/a Castle Crane Hire v B & E Quaries (Pty) Ltd* 2002 (1) SA 632 (E) at 642H-I and *Van Immerzeel & Pohl and Another v Samancor Ltd* [2000] ZASCA 79; 2001 (2) SA 90 (SCA); [2001] 2 All SA 235 (A) at 100-1.

been caused by two different breaches by two defendants has proved factual causation against both but cannot obtain damages twice over. It is sufficient for the plaintiff to prove that the defendant's breach was a cause of the loss, even if there was another contributing cause.'

Discussion

[59] There are several difficulties with the high court's findings. First, although it acknowledged that whether the banks' conduct was a breach should be assessed based on the provisions of the DRA, it did not do so. Second, it assumed the banks' conduct caused the loss of Mayibuye's investment. Third, despite finding that the destruction of the Mayibuye investment occurred on 1 November 2013, and that only ABC Zambia had demanded payment by that date, it concluded that the demands for payment by the banks were orchestrated. Finally, the court held the banks jointly and severally liable when no such claim was pleaded, nor was there any evidence to support that finding. In what follows, I deal with each of these issues, starting with the last two.

Did the banks act with a common objective, and was the finding of joint and several liability justified?

[60] Mapula, in its particulars of claim, did not allege that the banks acted with a common objective or that they should be held jointly and severally liable. While ABC Zambia and ABC Botswana are part of the same group of companies, as are SCB Johannesburg and SCB Botswana, each of these banks took separate steps to recover its debts from the Blue Group.

[61] Mapula's attempt to support the high court's finding on the joint and several liability of the banks has no foundation in the pleadings nor the evidence. Its attempt to support that finding is purely opportunistic. This is because Mapula never claimed

that the banks breached the DRA during August 2013 when the lender committee discussed the possibility of engaging one set of legal representatives to advise each of the participating creditors. In any event, there is no evidence that the banks acted in concert: they independently engaged different legal representatives when seeking to recover the debts of the Blue Group.

[62] Moreover, the only letter sent on 1 November 2013 to Blue Financial Services Limited, Lusaka, requiring payment of its original loan, was not sent by any legal representative, but by an employee of ABC Zambia. Since this is the only letter that existed at the time when the Mayibuye investment is said to have been destroyed, it is difficult to see how the high court could attribute the loss of the Mayibuye investment to breaches allegedly committed by ABC Botswana, SCB Johannesburg, and SCB Botswana after 1 November 2013.

[63] It is also noteworthy that the high court analysed the banks' joint and several liability solely in the context of liability for costs, but then applied that finding to liability for the loss. In my view, such an approach was mistaken. The high court needed to examine each alleged breach, including its consequences, to assign liability to the responsible party. Only through that process could the high court determine whether it is practicable to apportion liability between the banks.

[64] The authorities on which Mapula relies, referred to in footnote 12 above, are distinguishable because they address conduct involving multiple parties that results in loss, and the principle derived from them is that the wronged party can recover its loss from any of the wrongdoers. However, in this case, there was only one alleged breach when the alleged loss occurred. Again, if the loss had already happened by the time ABC Botswana, SCB Johannesburg, and SCB Botswana were alleged to have breached the DRA, the high court was required to examine whether such

breaches, if proven, had any adverse consequences for the Mayibuye investment, which is said to have been destroyed on 1 November 2013. Its failure to do so is an error that undermines the soundness of its judgment, but that is not the end of the matter. I will now consider the question of the alleged breaches of the DRA.

Were any breaches established?

[65] As already stated, Mapula argues that under the DRA, the banks could only receive payment in one of two ways if the amount collected before the 'end date'[13] was insufficient to cover all Blue's debt to them. The first method of payment was to take shares in Blue, and it is undisputed that none of the banks chose this option. Having failed to apply for shares in Blue, Mapula contends that the banks became what the DRA calls 'non-capitalising lenders', who must be paid according to clause 7.24 of the DRA, the relevant part of which reads:

'7.24 Blue, the Borrowers and the Non-Capitalizing Lenders –

7.24.1 agree that the Non-Capitalizing Lenders shall be entitled to be paid, on account of their effective date outstandings and in the ratios of their Non-Capitalising Percentages, an amount (the "Net Collected Amount") equal to the Non-Performing Collections after deduction of (1) the Attributable Operating Costs incurred by the Group in respect of the applicable Included Claims, and (2) the provision for Income Taxes as envisaged in clause 7.24.4;

7.24.2 agree that (1) the Non-Capitalizing Lenders shall not be entitled to be paid an amount in excess of the Net Collected Amount, and (2) on the last day of the Non-Performing Period, each Non-Capitalizing Lender shall write off the amount which has not been paid to it on account of its Shortfall Amount.'

[13] The 'end date' is defined in clause 2.1.46 to mean 'the day before the third anniversary of the Effective Date or (1) if an Acceleration Event occurs, such an earlier date as the lender committee determines in accordance with the provisions of clause 7.8, or (2) such earlier date as the lender committee determines in accordance with the provisions of clause 7.9, or (3) such an earlier date as Blue determines in accordance with the provisions of clause 12.12 (if any secured lender exercises its rights to require the borrowers to make payment to it).'

[66] Mapula argued that, since no amount was collected that could be paid to the banks, they were required under clause 7.24.2 of the DRA to write off the amounts owed to them; their failure to do so and instead to demand payment, was in breach of the DRA. The argument is misconceived. A loss as claimed could not have been sustained if debts could not be repaid, since there were no monies collected.

[67] Mapula's argument, however, oversimplifies the issue and fails to address the provisions of the DRA. As a starting point, clause 7.13 of the DRA states what was required of Blue at the end of the debt rescheduling period: to deliver a distribution plan to the Lender Committee within ten days. The distribution plan had to reflect the total available cash, the distributable cash, and the reserve amount, as determined in accordance with the distribution principles outlined in clause 7.12 of the DRA. Thus, the delivery by Blue of a valid distribution plan was one of the steps that would trigger an obligation for the banks to elect, either to apply for shares in Blue, or to be non-capitalizing lenders, who were entitled to be paid in accordance with clause 7.24 of the DRA.

[68] It was established in evidence that Blue did not submit a valid distribution plan, but Mapula avoids addressing this by simply stating that there was no money available for distribution. As a result, so it is contended, the banks became shortfall lenders; their failure to apply for shares in Blue meant they had to write off their investments. However, the contention is unsound. Mapula, as a party whose claim is based on the DRA, is required to prove compliance with the DRA's provisions for its claim to succeed. This is especially true in this case, where the banks specifically raised Blue's failure to deliver a proper distribution plan as one of their defences.

[69] The failure of Blue to deliver a compliant distribution plan is fatal to Mapula's case because, without such a plan, the banks are not obliged to elect to convert their

debt into equity or to become non-capitalizing lenders. That, however, is not the only consequence that flows from Blue's failure, because in terms of clause 7.28.1 of the DRA 'If the Borrowers fail to comply with their obligations under this clause 7 – the Lenders shall be entitled to enforce such compliance and, if applicable, to realise the security which they enjoy under the Existing Security Interests and the Lender Security Plan.'

[70] The DRA defines 'Existing Security Interest' as 'any security interest that a borrower has created in favour of a lender as security for the borrower's obligations under any Existing Facility.' Blue is one of the borrowers under the DRA, and, as I understand clause 7.28.1, Blue's failure to comply with its obligations under clause 7 of the DRA would entitle the banks to have recourse to the securities they hold under their existing facilities. All the banks held securities in respect of the indebtedness of BFS Zambia, BEB Botswana, and Blue, and the legal proceedings they initiated were their means of enforcing those securities. As the banks have argued, the steps taken to obtain payment constituted implementation of the DRA, which could never constitute a breach of that agreement.

[71] It is also significant that all the banks' legal proceedings were successful. This affirms their rights under the DRA. The banks rightly submit that the enforcement of their rights against the principal debtors in terms of the DRA, cannot simultaneously constitute a breach of its provisions. The high court erred in failing to properly consider the terms of the DRA.

[72] Another relevant issue regarding ABC Zambia is its response to Mr Meiring on 6 November 2013, where it stated that 'the DRA is no longer valid given the fraud as well as the non-payment of interest and the absence of an acceptable distribution plan following the acceleration of the DRA.' The demand for payment by ABC

Zambia was based on its acceptance that Blue had breached the terms of the DRA, and that the breach entitled it to proceed against BFS Zambia, BEB Botswana, and Blue. This was accepted by Blue. After the receipt of ABC Zambia's response, there is no evidence that Blue tried to convince ABC Zambia that its understanding was incorrect.

[73] Furthermore, when Mapula initiated these proceedings, it must have been aware of the Zambian High Court's judgment. Specifically, paragraph 6 of that judgment protected the Mayibuye investment from attachment to satisfy ABC Zambia's judgment. However, Mapula presents its claim as if Mayibuye's decision not to proceed with Blue's recapitalisation was driven by a fear that the investment would be at risk. This cannot be correct, given the clear protection provided by paragraph 6 of the Zambian High Court's judgment which reads:

'Should execution of this judgment become necessary, such execution shall not be levied in respect of the assets which are said to be ring-fenced, that is to say, the assets which were acquired by the Defendants following the injection of capital by the Mayibuye Group.'

I should also note that this paragraph appears to have been included by agreement between the parties involved in that litigation, including ABC Zambia. Considering all of the above, I am of the view that the high court's finding that the banks breached the terms of the DRA is unsustainable. For completeness, I also consider whether the banks' conduct caused the loss of the Mayibuye investment.

Was causation established?

[74] Mapula alleges that the conduct of the banks devalued the Blue shares as of 1 November 2013. As previously noted, only ABC Zambia requested payment on that day, and Mapula did not claim that the Mayibuye investment was destroyed until 2016, when it instituted these proceedings.

[75] Despite receiving a letter from ABC Zambia demanding payment, Blue and Mayibuye continued attempts to recapitalise Blue. These include engagements with the JSE to reinstate the listing of Blue,[14] the DP presented by Blue in October 2015, which reflected the share price of Blue as 13 cents, as well as Blue's attempted rights issue between 2015 and 2018. Importantly, all these attempts were made after the alleged date of the destruction of the value of Blue. This begs the question: when did Mayibuye realise that its investment was destroyed if it continued its efforts to recapitalise Blue all the way until about 2018, which is even after the institution of these proceedings?

[76] Fundamentally, it is difficult to see how a letter demanding payment could destroy a company's value. The evidence shows that the letter was not disclosed to the market and its contents were known only by Blue and ABC Zambia. Blue encountered major financial difficulties, including the Leonox fraud, which led to the voluntary suspension of its share trading on the JSE and, eventually, its delisting because it failed to produce group audited financial statements and to meet other JSE listing requirements. Because of the Leonox fraud, Mr Meiring, who was Blue's CEO at the time, even advised the World Bank not to approve a loan it was considering for Blue. An inability of a listed company to produce group audited financial statements significantly affects its ability to raise capital and attract investors. Blue also made several attempts to challenge its delisting, but all were unsuccessful.

[77] When all the factors listed in the preceding paragraphs are considered, it becomes clear that at some point, Mayibuye realised that the efforts to rescue Blue were futile and that it had to accept its losses. This is why called up its security. As

[14] As evidenced by a letter dated 13 July 2015 addressed by Blue to the JSE.

the facts demonstrate, the banks had nothing to do with either Blue's initial failure or its failed recapitalisation. The high court overlooked these factors and attributed Blue's demise to a letter of demand. However, its demise was due to various unsuccessful attempts to recapitalise Blue.

[78] As the banks correctly argued, Mapula did not prove factual causation. The evidence shows that Blue and Mayibuye continued their efforts at recapitalisation after the letter of demand of 1 November 2013, as if it had not been received. None of those efforts failed because of the letter of demand. On Mapula's own version, its attempts at recapitalisation failed due to insufficient support from certain lenders. The letter of demand had no effect on Mayibuye's efforts to reinstate Blue's listing, nor Blue's failure to produce audited group financial statements. The conclusion that the banks' conduct destroyed Blue's share price is unsustainable, and for the above reasons, the high court should have dismissed the action.

Conclusion

[79] The high court erred in concluding that: (a) Mapula proved that the banks breached the DRA; (b) the breaches caused Blue's share price to drop, leading to Mayibuye's loss; (c) the banks acted in concert when committing the breaches; and (d) they should be held jointly and severally liable for the damages. None of these findings is supportable on the evidence, especially in the light of the agreement on which the claim is based. The result is that the appeal should succeed.

[80] The banks have been successful, and they are entitled to their costs. Both parties employed more than one counsel, which was justified as the matter is complex, requiring the attention of two counsel.

Order

[81] In the result, the following order is made:

1 The appeal is upheld with costs, including the costs of two counsel.

2 The order of the high court is set aside and substituted with the following:

'The plaintiff's action is dismissed with costs, including the costs of two counsel. These costs shall include the qualifying fees of the defendants' expert, Mr Brian Ellis Abrahams.'

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L G NUKU

ACTING JUDGE OF APPEAL

Appearances

For appellants:	J P Daniels SC (with K Premhid & I Macingwane)
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For respondent:	A Subel SC (with A R G Mundell SC)
Instructed by:	Meiring And Partners Inc., Sandton
	Van Der Merwe & Sorour, Bloemfontein.