



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 069/2025

In the matter between:

AD ALL CC t/a MILLENNIUM BODYGUARDS

APPELLANT

and

KAPA BOKONI TRADING AND PROJECTS 10 CC

RESPONDENT

Neutral citation: *Ad All CC v Kapa Bokoni Trading and Projects 10 CC*
(69/2025) [2026] ZASCA 124 (25 September 2026)

Coram: GOOSEN, UNTERHALTER, NORMAN and VALLY JJA
and BLOEM AJA

Heard: 27 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 25 September 2026

Summary: Unjustified enrichment – illegal contract – statutory illegality – s 20(1)(a) of the Private Security Industry Regulation Act 56 of 2001 – *condictio indebiti* – *condictio ob turpem vel iniustam causam* – the application of the rule in *Wilken v Kohler* – the *par delictum* rule and its relaxation – general enrichment action.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Swanepoel J and Van Der Schyff J concurring, sitting as the court of appeal):

- 1 The appeal is upheld, with costs;
- 2 The order of the high court is set aside and replaced with the following:
 - ‘(a) The appeal succeeds in part and fails in part.
 - (b) Each party will bear its own costs of the appeal.
 - (c) The order of the Magistrate, Mr Nel, is set aside and replaced with the following order:
 - “(i) The plaintiff’s claim is dismissed with costs.
 - (ii) The defendant’s counterclaim cannot be determined by way of a stated case and is referred for the hearing of evidence on the resumption of the trial.
 - (iii) The costs of the hearing of the stated case on the defendant’s counterclaim are reserved for determination at the end of the trial.” ’

JUDGMENT

Unterhalter JA (Goosen, Norman and Vally JJA and Bloem AJA concurring)

Introduction

[1] The appellant, AD ALL CC t/a Millennium Bodyguards (Millennium), renders security services for reward. On 18 January 2019, Millennium concluded a written service level agreement (the agreement) with the respondent, Kapa Bokoni Trading and Projects 10 CC (Kapa), to provide security services to Kapa. The agreement was for a period of 12 months, renewed automatically for a further 12 months, unless Kapa informed Millennium, not less than 60 days before the end of this period, of its intention not to renew. Kapa did not do so, and the agreement was thus extended. Out of time, Kapa then sought to cancel the agreement. Millennium did not accept the cancellation, and continued to provide security services to Kapa in terms of the agreement. Kapa paid for the services rendered by Millennium for the months of January and February 2020.

[2] In May 2020, Kapa wrote to Millennium. It sought confirmation that Millennium was registered to render security services in terms of s 20(1)(a) of the Private Security Industry Regulation Act 56 of 2001 (the Act). Millennium declined to give such confirmation. Millennium rendered invoices to Kapa for the security services provided to Kapa for the months of March to August 2020. Kapa did not pay.

[3] On 27 August 2020, Millennium issued summons out of the Magistrates' Court for the District of Tshwane Central. It claimed R199 329,50 from Kapa in respect of the security services rendered by it in the period March – August 2020, and a further amount of R164 881,25, being the amount that would become due

and payable, until the agreement came to an end. Millennium undertook to continue to provide security services, and in fact did so. Kapa pleaded that Millennium was not registered in terms of the Act to render security services. In consequence, Kapa averred, Millennium's claim for payment is 'invalid, and thus, unenforceable'. Kapa also brought a counterclaim. It pleaded that Millennium is not registered in terms of the Act; the agreement between the parties is invalid by virtue of s 20 of the Act; and any claim for payment by Millennium is unenforceable. In the period February 2019 to February 2020 Kapa paid Millennium an amount of R411 173,26 in the bona fide and reasonable belief that the agreement with Millennium was valid, and that Millennium was entitled to payment. By reason of the invalidity of the agreement, it alleged, Millennium was not entitled to receive such payment. Kapa therefore claimed R411 173,26 from Millennium.

[4] The matter proceeded to trial on a stated case. The Regional Magistrate, Mr Nel, held as follows. First, Millennium was required to register in terms of the Act. It had failed to do, and this rendered the agreement invalid. Second, as a result, Millennium was not entitled to any payment in terms of an illegal contract. Third, Millennium was not entitled to retain the payments that were made to it by Kapa, and required their repayment. The Regional Magistrate dismissed Millennium's claim, with costs; and granted Kapa's counterclaim, with costs.

[5] Millennium appealed the matter to the high court. The high court framed five questions for determination that formed part of the stated case:

'[8.1] Was the appellant required to register in terms of the Act, notwithstanding that it was controlled by a registered security service provider, and notwithstanding that its sole member was registered as such?

[8.2] If the answer to 8.1 above was answered in the affirmative, did that render the entire agreement invalid?

[8.3] If the answers to both the above questions were in the affirmative, did that then 'eliminate' the appellant's performance of security services?

[8.4] Was the appellant entitled to payment of R364 210.75 notwithstanding the fact that the agreement was invalid?

[8.5] Was the appellant entitled to retain the payments received from the respondent for the period 18 January 2019 to 25 February 2020?’

[6] It answered these questions as follows. First, Millennium was required to register in terms of the Act. Second, the agreement was invalid in virtue of the fact that Millennium rendered security services and was not registered. Third, the agreement is not only invalid, but illegal. As a result, Millennium was not entitled to claim performance in terms of an illegal contract; and Millennium was not entitled to retain the payment it received pursuant to an illegal contract. The high court dismissed the appeal, with costs.

[7] This Court granted special leave to appeal, but limited that appeal to the issues raised in the questions framed as 8.2, 8.3 and 8.5 in the passage of the high court’s judgment quoted above.

Is the agreement illegal?

[8] The issue before us on appeal is whether Kapa could claim the payments it had made to Millennium under the agreement. Kapa’s counterclaim is pleaded on the basis that the agreement is invalid; Millennium was thus not entitled to any remuneration; what was paid by Kapa was not owing to Millennium; Millennium has been unjustly enriched by the payments Kapa has made to Millennium; and thus Kapa claims R411 173,26. What is not made plain, either on the pleaded case or in the stated case is whether Kapa’s counterclaim rests upon the contention that the agreement is illegal or simply unenforceable. The high court found that the agreement was not only invalid, but illegal.

[9] There is an important distinction between a contract that is unenforceable and one that is illegal. A contract may be unenforceable but not illegal, while an illegal contract is always unenforceable. An unenforceable contract that is not an illegal contract permits of the equitable outcome reflected in the obiter dictum of Innes CJ in *Wilken v Kohler*¹ that ‘It by no means follows that because a court cannot enforce a contract which the law says shall have no force, it would therefore be bound to upset the result of such a contract’. Now formulated in our law as the rule in *Wilken v Kohler*, it has won the full endorsement of this Court in *Legator McKenna Inc and Another v Shea and Others (Legator)*.² A want of compliance with statutory formalities may render a contract unenforceable, but not illegal. An illegal contract, however, is *void ab initio*, and permits of no application of the equitable considerations of the rule in *Wilken v Kohler*.³ The cases often refer to invalidity without clearly distinguishing an unenforceable contract that is not illegal from an illegal contract. The distinction, however, matters.

[10] Is the agreement an illegal contract? Since we are here concerned with statutory illegality, that is a question of interpreting the relevant provisions of the Act. The relevant part the Act reads as follows:

‘Definitions

Section 1 “**security service provider**” means a person who renders a security service to another for a remuneration, reward, fee or benefit and includes such a person who is not registered as required in terms of this Act;

Section 20(1)(a) No person, except a Security Service contemplated in section 199 of the Constitution (Act 108 of 1996), may in any manner render a security service for remuneration, reward, a fee or benefit, unless such a person is registered as a security service provider in terms of this Act.

¹ *Wilken v Kohler* 1913 AD 135 at 144.

² *Legator McKenna Inc and Another v Shea and Others* 2010 (1) SA 35 (SCA) para 28.

³ *Ibid* para 29 following the holding in *Afrisure CC v Watson No* 2009 (2) SA 127 (SCA) para 50.

Section 20(3) Any contract, whether concluded before or after the commencement of this Act, which is inconsistent with a provision contained in subsections (1), (2) or section 44(6), is invalid to the extent to which it is so inconsistent.

Section 38(3) Any person who –

(a) contravenes or fails to comply with section 20(1) or section 26(3);

...

is guilty of an offence and –

(i) On a first conviction of a contravention referred to in paragraph (a), is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.’

[11] Millennium submitted that the Act, properly interpreted, does not invalidate the agreement for three principal reasons. First, s 20(3) visits invalidity only to the extent of inconsistency. Section 20(3), absent registration, invalidates the consideration paid or payable for rendering a security service, but not the entire agreement to provide such a service. Second, that Parliament made it a punishable offence to contravene s 20(1) indicates the punitive consequence of a failure to register. Parliament did not intend to go further to make a contract for the rendering of security services by an unregistered security service provider an illegal contract. Third, the definition of a security service provider includes a person who is not registered. And so, it is contended, the Act contemplates that such a person may enter into a contract without rendering the contract illegal.

[12] The clear language of s 20(3) allows that some part of a contract may survive the consequence of invalidity that comes about by reason of inconsistency. What part of a contract may survive invalidity must be understood in light of the scope of the prohibition in s 20(1)(a). Absent registration, the prohibition extends: (i) to the rendering of a security service (which is given a wide definition in s1); (ii) in any manner; (iii) for remuneration, reward, fee or benefit. The prohibition thus

applies to the essential provisions of most contracts for the rendering of security services for a consideration.

[13] What work then does s 20(3) do? It allows that the invalidity of certain provisions of a contract does not always render the entire agreement invalid. And certain kinds of agreement escape invalidity. Section 20(1)(a) does not prohibit the gratuitous rendering of a security service. A contract may provide for the rendering of certain security services for reward and others for free. A contract may provide for the rendering of security services as part of a larger service offering. A contract may also include an arbitration clause that extends to the very issue of illegality. The statutory invalidity that is visited upon those portions of the contract that are prohibited by s 20(3), does not preclude the possibility that what remains of the contract may be enforceable. That is all that s 20(3) allows. It does not determine, however, whether the surviving provisions of the contract are severable. That is determined by the test for severability in the law of contract, the effect of the illegal provisions, and their materiality upon the contract as a whole.⁴

[14] That a contravention of s 20(1)(a) is an offence does not exhaust the adverse consequences that Parliament imposes upon those who render security services for reward, absent registration. Contractual invalidity is the further consequence. That invalidity, as we have seen, extends to the wide prohibition contained in s 20(1)(a). The prohibition is not limited to the consideration for which the security service is rendered, unlike the legislative scheme considered in *Cool Ideas 1186 CC v Hubbard and Another (Cool Ideas)*.⁵ Nor is the scope of this prohibition diluted by the inclusion of an unregistered person in the definition of a security service provider. That inclusion simply permits the Private Security Industry Regulatory

⁴ *Sasfin (Pty) Ltd v Beukes* 1989 (1) SA 1 (A) 17 D-E.

⁵ *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC).

Authority to carry out its functions, even in cases of security service providers who have not registered when they are obliged to do so.

[15] The high court found that Millennium ought to have registered in terms of the Act to render security services to Kapa and was not registered. That finding is not on appeal before us. The essential terms of the agreement concern the rendering of specified security services by Millennium to Kapa for a price. Those terms are invalid. There was no suggestion that any remaining terms of the agreement survive by way of severance. Accordingly, the agreement, in terms of ss 20(1)(a) read with 20(3), is invalid.

[16] The next issue to be decided is this: what does the Act mean when it provides in s 20(3) that a contract is invalid? This too is a matter of statutory interpretation. I have observed that invalidity may mean unenforceable, or it may mean illegal. The Act does not provide in terms that a contract that is inconsistent with s 20(1) is illegal and hence void. However, the invalidity of the contract arises from the prohibition in s 20(1)(a), that is: it is prohibited to render security services for reward, absent registration. This indicates that Parliament intended to prohibit contracts that are inconsistent with s 20(1)(a). And such prohibition ordinarily means that the contract is illegal. This is reinforced by the Act's provision of a criminal sanction for the contravention of s 20(1)(a), in addition to a civil sanction. It would be an oddity for Parliament to mark the gravity of contravention with the risk of significant punishment, but to treat the civil law consequences of invalidity with greater leniency.

[17] Sections 20(1)(a) and 20(3) provide for a peremptory prohibition and do so in absolute terms, save only for statutory severance, which does not dilute the essential force of the prohibition. Further, the duty to register is an incident of the public interest that is served in regulating the private security industry. It is an

industry of considerable size and importance. And as the Preamble of the Act states: it is necessary to achieve and maintain a trustworthy and legitimate private security industry to ensure the greater safety and security of the country. In *Private Security Industry Regulatory Authority v Anglo Platinum Management Services (Pty) Ltd*,⁶ this Court observed, ‘. . . there is a legitimate and compelling public interest in the control of the large and enormously powerful private security industry’. The importance of the duty to register is plain. It is required properly to regulate this industry so as to secure the purposes of the Act. This too supports the interpretation that what Parliament meant by invalidity is illegality.

[18] For these reasons, I find that the correct interpretation of the Act is that it prohibits contracts that are inconsistent with s 20(1)(a), and invalidity means illegality. It follows that the agreement is illegal, and hence void *ab initio*. And the high court was correct in its finding on this score.

What is Kapa’s cause of action

[19] A party may not sue to enforce an illegal contract.⁷ That is why Millennium’s claim was correctly dismissed by the Magistrate.⁸ Kapa’s counterclaim contains the following averments. Kapa paid Millennium for security services in the bona fide and reasonable belief that the agreement was valid, when it was not. Millennium has been enriched at the expense of Kapa to the extent of the payments made, and Kapa has thereby been impoverished. By reason of the invalidity of the agreement, Millennium is not entitled to any remuneration, reward, fee or benefit related to the rendering of security services. On this basis, Kapa claims that Millennium is indebted to it in the amount of R411 173,26. That indebtedness is made up of the payments that Kapa made to Millennium.

⁶ *Private Security Industry Regulatory Authority v Anglo Platinum Management Services (Pty) Ltd* 2007 1 All SA 154 (SCA) para 24.

⁷ *Extel Industrial (Pty) Ltd and Another v Crown Mills (Pty) Ltd* 1999 (2) SA 719 (SCA).

⁸ Upheld by the high court, and an issue not on appeal before this Court.

[20] Kapa's counterclaim requires characterisation. It has averments that appear to rely upon the *condictio indebiti*. This cause of action is predicated upon the claim that the payments were made in the mistaken belief that they were owing, when they were not.⁹ However, the pleading also contains averments that rest upon the claim that Kapa performed, that is made payments, in terms of an invalid contract. When performance is reclaimed by reason of the illegality of a contract, the claim for unjustified enrichment, in such a case, is the *condictio ob turpem vel iniustam causam*.¹⁰ The claim is predicated upon the contract being illegal in the sense that it is prohibited. And, fairly read, Kapa's pleaded defence to Millennium's claim against it was predicated upon the agreement being illegal because it was prohibited in terms of s 20(1)(a) of the Act. This is what the Magistrate and the high court found, with which I find myself in agreement. Unsurprisingly, Kapa's counterclaim also contains averments that also rely upon the agreement being invalid (and hence illegal) by reason of the same prohibition.

[21] In *First National Bank of Southern Africa Ltd v Perry NO and Others (Perry)*, this Court emphasised that the basis of the *condictio ob turpem vel iniustam causam* chosen by a litigant must be sought in the underlying illegality of the transfer that was made.¹¹ The *condictio indebiti* and the *condictio sine causa specialis* are based on the absence of a cause for the transfer. The *condictio indebiti* requires of the claimant that it made the transfer (here payment) in the mistaken belief it was due when it was not. The *condictio sine causa specialis* simply requires that the transfer was made when there was no valid cause for it. However, as *Perry* makes clear, where, as here, there is a cause for the payments made, that is the agreement, but the agreement is illegal, the enrichment action that lies is the

⁹ *ABSA Bank Ltd v Leech and Others NNO* 2001 (4) SA 132 (SCA) para 8.

¹⁰ *First National Bank of Southern Africa Ltd v Perry NO and Others* 2001 (3) SA 960 (SCA) para 22.

¹¹ *Ibid* para 22.

condictio ob turpem vel iniustam causam, because the law does not recognise an illegal contract as a valid means of conferring title.¹²

[22] It may appear that this engagement as to the cause of action upon which Kapa may rely is an exercise of arcane formalism. With perspicacity, Schutz JA said this in *Perry*. ‘This difference of approach as to the appropriate *condictio ob turpem vel iniustam causam* again underlines the point . . . that we spend too much of our time identifying the correct *condictio ob turpem vel iniustam causam* or *action*. Counsel frequently err. The academics say that the Courts, including this Court, frequently err, and to judge by the difference of opinion as to the *condictio sine causa* . . . some of the academics sometimes err too . . . the adoption of a general action might help remedy the situation . . .’¹³ There is much to be said for the recognition of a general enrichment action, whether as a residual action that meets deserving cases that the *condictiones* do not, or more ambitiously, as an overarching action that seeks to unify this branch of the law.

[23] This however is not the case in which we can do so. No general enrichment action was pleaded or relied upon. Nor did counsel submit that we should find that any uncertainty as to Kapa’s cause of action might be resolved by recourse to a general enrichment action. And so, as the law stands, the proper characterisation of Kapa’s cause of action matters because the equitable considerations that arise for determination differ if Kapa’s counterclaim rests upon the *condictio indebiti* or the *condictio ob turpem vel iniustam causam*.

[24] The *condictio indebiti*, as we have already observed, permits of the application of the rule in *Wilken v Kohler*, but the *condictio ob turpem vel iniustam*

¹² *Perry* para 22, affirmed in *Afrisure CC v Watson CC* 2009 (2) SA 127 (SCA) para 51.

¹³ *Perry* para 23 and the remarks of Schutz JA in *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 (3) SA 482 (SCA) paras 8-10.

causam does not. As this Court explained in *Legator*,¹⁴ if both parties have performed and the purpose of the transaction has been achieved, notwithstanding the claimant's mistaken belief as to the existence or validity of the underlying agreement, the rule in *Wilken v Kohler* is available as an exception (or defence) to the *condictio indebiti*. The rule in *Wilken v Kohler* is not available where the purpose of the transaction is prohibited by law. That is the defining feature of an illegal contract. And so, a defence based on the rule cannot be invoked against a claim brought under the *condictio ob turpem vel iniustam causam*.

[25] If Kapa's cause of action rests upon the *condictio ob turpem vel iniustam causam*, then different equitable considerations are relevant to determine whether the action can succeed. The rules of application have a number of permutations. A plaintiff cannot claim if it is a party to the illegality. Where the plaintiff and defendant are both in the wrong, the position of the possessor prevails: *in pari delicto potior est conditio possidentis*. However this position may be relaxed to secure justice and on public policy grounds.¹⁵ If neither party is tainted by turpitude at the time of the transfer, but the transferee later learns of the illegality, yet different considerations apply.¹⁶

[26] The high court held that because the agreement was illegal, following *Legator*, the rule in *Wilken v Kohler* cannot apply, and hence there are no considerations of equity that permit of the relaxation of the *par delictum* rule to permit Millennium to retain what it received pursuant to the illegal contract. Before us, Millennium submitted that the high court was in error on two grounds. First, Kapa's cause of action is the *condictio indebiti*, and *Legator* allows that the rule in *Wilken v Kohler* would constitute an exception to the *condictio indebiti* where the

¹⁴ *Perry* paras 28 and 29.

¹⁵ *Jajbhay v Cassim* 1939 AD 537; *Visser en 'n Ander v Rousseau en Andere* NNO 1990 (1) SA 139 (A) at 152; *National Credit Regulator v Opperman and Others (Opperman)* 2013 (2) SA 1 (CC) para 17.

¹⁶ *Perry* paras 24-28.

purpose of the transaction has been achieved.¹⁷ Second, it was submitted that Millennium did not rely upon the rule in *Wilken v Kohler*, but upon the relaxation of the *par delictum* rule, premised upon the dictum of the Constitutional Court in *Opperman*.¹⁸

[27] As I have explained, the counterclaim is pleaded in a manner that is ambiguous. It makes averments that fit with the *condictio indebiti*, but it also relies upon the invalidity of the agreement by reason of its contravention of the prohibition of s 20(1)(a) of the Act. Ultimately, the question as to how properly to understand the cause of action upon which the counterclaim relies must be resolved in favour of the *condictio ob turpem vel iniustam causam*. This is so because the basis of the defence that Kapa raised to Millennium's claim rests upon the illegality of the agreement. That defence found favour with the Magistrate. This decision was upheld on appeal by the high court, and this issue is not before us. The case of Kapa would lack coherence if its defence of illegality were not also the foundation of its counterclaim.

[28] Once this is so, the high court was correct in its holding that the rule in *Wilken v Kohler* was not of application. The high court however was incorrect to then assume that this entailed that the counterclaim of Kapa must prevail. On the pleadings, a number of issues arise that must be resolved before Kapa's claim based on the *condictio ob turpem vel iniustam causam* can be determined.

[29] In its replication, Millenium avers, in the alternative, that should the agreement be unenforceable by reason of the contravention of s 20 of the Act, then: at the time of entering the agreement, Millennium was unaware of the illegality of the contract; the contravention is technical in nature; and 'the retention' of

¹⁷ *Legator* para 28.

¹⁸ *Opperman* para 17.

Millennium's performance without recompense, would be contrary to public policy and a grave injustice. Millennium does not aver that Kapa knew of the illegality at the time that the contract was concluded. These averments are to be found in Millennium's replication, and not in its plea in replication to Kapa's counterclaim. This notwithstanding, Millennium has plainly invoked the relaxation of the *par delictum* rule. Kapa's plea recounts that it made enquiries of Millennium concerning its registration well after the agreement had been concluded and indeed after it was renewed.

[30] The pleadings thus raise a variant of the issue that was considered in *Perry*. That is, if both Millennium and Kapa were untainted by turpitude at the time that they entered into the agreement, what consequences does this have for the claim that Kapa makes in terms of the *condictio ob turpem vel iniustam causam*? And what of the parties' conduct once the question of illegality was raised? Are Millennium and Kapa of equal blamelessness? Kapa, in its counterclaim, does not tender to return what it has received, and nor does it positively aver that it is free of the taint of illegality, though this may be inferred from the enquiry it directed to Millennium concerning its registration. Do these averments suffice to absolve Kapa from the requirement to tender to return what it received pursuant to the illegal agreement – something, plainly, it cannot do?¹⁹

[31] These are important questions to answer. But they require findings of fact that can only be made after a trial, and the consideration by the trial court of all the relevant evidence. They cannot be answered on the pleadings. The parties proceeded before the Magistrate on a stated case. The stated case contains meagre agreed facts. On the issue of the illegality of the agreement and its consequences for the action brought by Kapa against Millennium in the counterclaim, the stated

¹⁹ *Minister van Justisie v Van Heerden* 1961 (3) SA 25 (O).

case simply summarises the pleadings, and then poses various questions of law. That simply cannot suffice to provide the factual basis to determine the counterclaim, as a claim based upon the *condictio ob turpem vel iniustam causam*, and the equitable considerations to which it gives rise.

[32] It follows that the high court was in error when it dismissed Millennium's appeal. The high court found that Millennium was not entitled to retain the payments that it had received from Kapa pursuant to an illegal contract, and hence the Magistrate was correct to grant Kapa's counterclaim. Whether the *par delictum* rule was of application, whether there is a basis for its relaxation, and what further equitable considerations might be relevant, raise questions that were not considered by either the Magistrate or the high court. The determination of these questions, as I have indicated, requires factual findings based upon evidence. These facts are entirely lacking. As a result, the Magistrate was not in a position to decide the counterclaim on a stated case. The high court should have upheld the appeal on this basis. Its failure to do so means that we must now correct these decisions.

[33] Although I have decided that the high court was correct to find that the agreement was illegal, that was but a step in determining the issue before us on appeal: was the high court correct to dismiss the appeal of Millennium, thereby affirming the Magistrate's order granting Kapa's counterclaim? The high court was incorrect to do so and should not have made this order. Kapa's counterclaim, and in particular the questions of equity arising from the counterclaim were neither considered by the Magistrate, nor capable of determination by way of a stated case. Consequently, Millennium's appeal before this Court succeeds, with costs. We however, for the reasons given, cannot determine Kapa's counterclaim.

[34] In the result, we make the following order:

- 1 The appeal is upheld, with costs;
- 2 The order of the high court is set aside and replaced with the following:
 - ‘(a) The appeal succeeds in part and fails in part.
 - (b) Each party will bear its own costs of the appeal.
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D N UNTERHALTER
JUDGE OF APPEAL

Appearances

For appellant: M J Kleyn

Instructed by: Rianie Strijdom Attorney, Motana Park
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For respondent: N S Nxumalo

Instructed by: Tshabalala Attorneys, Johannesburg
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