REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT

JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 11/5810

In the matter between:

S, W K **PLAINTIFF**

AND

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

....

S, T(born V R) **DEFENDANT**

AND

SCHULTZE N.O., W K **FIRST THIRD PARTY**

J.., B T **SECOND THIRD PARTY**

SCHULTZE N.O., RONALD KIRKWOOD	**THIRD THIRD PARTY**
SCHULTZE N.O., TANA	**FOURTH THIRD PARTY**

JUDGMENT

BAQWA J

Headnote

Subsequent to a settlement agreement entered into between the parties in a divorce action in terms of which they settled the patrimonial consequences and parenting arrangements, the defendant sought to resile from the agreement. She alleged, **inter alia**, that the agreement was 'void for vagueness' and that 'it was not binding upon her.'

Held that a person who signs a contractual document thereby signifies his assent to contents of the document. He is bound by the ordinary meaning and effect of the words which appear above his signature.

Held one cannot have a resolutive condition operate on an agreement which is not binding because a resolutive condition necessarily implies a binding agreement which will be binding until the condition is fulfilled. Similarly it is legally not sustainable to speak of a repudiation of a non-binding agreement. For repudiation to occur it must of necessity relate to a binding agreement.

[1] This is an action in which the enforcement of a written settlement agreement is sought. The enforceability thereof has been separated for determination in terms of Rule 33(4). The third parties are the trustees of the WKS Trust and they are not involved in the determination of the separated issue.

[2] The plaintiff and the defendant are husband and wife who are currently involved in divorce proceedings. They were married in 1995 and two children were born out of the marriage. The accrual regime applies to their marriage and the starting values of their estates are nil.

Background

[3] The parties entered into a deed of settlement (Annexure B) which conferred on the defendant the right to receive from the marriage and the trust a combined value of thirty five million rand plus an estimated annual income of seven hundred and fifty thousand rands.

[4] Plaintiff seeks that the annexure ‘’B’’ be made an order of court whilst defendant denies that the agreement is binding. She has counterclaimed to set the trust aside but the counterclaim is not part of this hearing.

Pleadings

[5] On 17 May 2013 defendant withdrew some of the defences she had mounted against annexure B. In order to gain a full picture of her approach to this matter, I set out hereunder the defences prior to the said withdrawal:

5.1. The parties shared a common assumption that the Deed of Settlement would be concluded within a specific period of time. The common assumption was tacitly incorporated into the agreement but it failed.

5.2. Annexure B contained a resolutive condition that a further Divorce Settlement Agreement (DSA) had to be entered into within a specific time, failing which the deed of settlement would lapse.

5.3. Annexure B is to be rectified to record that it was agreed that it was not binding.

5.4. Plaintiff misrepresented to the defendant the reliability and trustworthiness of figures regarding the estimated value of certain shares held by the trust. This allegation was based on the fact that estimates of future income did not match the actual future income of the company in which the trust held shares. Consequently, defendant has elected to rescind the deed of settlement.

5.5. Plaintiff repudiated the deed of settlement by failing to pay an amount due thereunder.

5.6. Both the plaintiff and the defendant abandoned the deed of settlement after they concluded it.

5.7. Plaintiff had further repudiated the agreement by rejecting an evaluation of the matrimonial home.

5.8. Annexure B is so vaguely worded that it is void for vagueness.

[6] Plaintiff's response was that the deed of settlement was properly drafted, recorded and signed by the defendant and that there was no need for rectification. He also stated that he had been advised that the deed of settlement was adequate for divorce purposes in terms of the Divorce Act 1979. He denied the existence of a resolutive condition or a tacit agreement.

[7] Plaintiff further pleaded that there could be no tacit term as that would be directly contradicted by an express term of the agreement, namely clause 6.5 which stated that the agreement was binding between the two parties.

[8] Plaintiff further contested the misrepresentation allegation stating that the agreed methodology had been adhered to, a fact which defendant later admitted in her evidence. More particularly plaintiff's response was that it erroneous to use figures realised by a company a year later to reach a conclusion that the figures used by the plaintiff were unreliable or untrustworthy as the figures were a mere forecast as opposed to actuals.

[9] Plaintiff denied that he had either abandoned or repudiated the agreement, further stating that he had in fact made some payments under the agreement, thereby demonstrating his firm intention to adhere to it.

[10] Plaintiff denied that the agreement was void for vagueness stating that in regard to the trust assets the deed of settlement provided the necessary information to enable segregation, to identify the purpose for which the segregated assets were to be applied and providing for the joint management by the plaintiff and defendant into the future.

[11] Plaintiff was further of the view that with regard to other assets, all the necessary values had been agreed and that certain specific values were to be used as preliminary values. Further evaluation would be used to verify the preliminary values and make an adjustment payment where necessary.

The evidence

[12] The plaintiff gave evidence together with two other witnesses Brian Jackson and David Nagel. Defendant also testified but called no witnesses despite having given notice to call an expert witness, Mrs Anderson. Mr David Nagel's evidence who is a qualified chartered accountant corroborated the evidence of plaintiff particularly with regard to the misrepresentation allegation by defendant. He testified that the valuation that had been performed by the plaintiff was not a misrepresentation, but an evaluation which correlated to the circumstances at the time, based on appropriate documents. He affirmed that the conclusions reached were the correct conclusions.

[13] Mr Brian Jackson had been the Chief Executive Officer of the Eris Group and a friend of both the plaintiff and defendant. He possesses legal qualifications though he had never practiced law. He had recruited defendant who was an executive of Hyprop to join the Eris Group.

Jackson had taken early retirement due to health reasons but he had continued to socialise with the defendant and plaintiff as family friends despite his move to Kwazulu Natal after his retirement.

When he became aware of the breakdown in the relationship between the defendant and plaintiff and that they could not reconcile he offered to assist them to try and work out on an amicable settlement.

Jackson was quite intimately involved with the settlement discussions between the parties not only through telephonic and email exchanges but also through direct discussions. He testified about how he flew into Johannesburg to further the settlement discussions with the parties. This culminated in annexure 'B' which is the subject of this case. I found the plaintiff and his witnesses to be credible witnesses. Mr Jackson in particular gave a very favourable impression to the court. His evidence demonstrated his

independence and his wish not to prejudice or display bias to any of the parties. He was a person who had both their interests at heart.

I will comment about the evidence of the defendant later in this judgment when I deal with the defences which she withdrew after the evidence had been completed.

Onus

[14] The plaintiff bore the overall onus as defendant's admission of the signing of the agreement meant that she was prima facie bound and the onus which she bore was to produce evidence why she should not be bound.

[15] One of the main grounds for attacking the validity of the settlement agreement, annexure ''B'' is that it is ''void for vagueness.'' There are four categories under which contracts of this nature can be classified and these are discussed in the judgment of Quenet J in **Levenstein v Levenstein 1955(3) SA 65 (SR)**

15.1. Category 1: Where the contract is not enforceable because the promise is 'dependant on a condition which in fact reserves an unlimited option to the promissor'. In this category there is uncertainty whether the promissor will ever acknowledge the existence of an obligation.

15.2. Category 2: Where the vague and uncertain language justifies the implication that the parties were never **ad idem**. The uncertainty is fatal in this category due to the uncertainty as to what was acknowledged as the obligation.

15.3. Category 3: Where there is no concluded contract as in ''…. of continuing negotiations broken off in **medio**''. The uncertainty in this category

arises out of the uncertainty as to the subject matter which has still to be agreed.

15.4. Category 4: Where the unspecified details of the contract are questions of fact capable of determination by evidence, this category of contract is not void.

[16] As can be observed, we are not dealing with categories 1 and 3 and we are only left with categories 2 and 4. Category 4 does not raise the risk of 'void for vagueness'. We therefore have to consider category 2, namely, whether vagueness and uncertain language justifies the implication that the parties were never **ad idem**, creating the possibility that the parties were never certain as to what they acknowledged as their obligations.

[17] The clauses that have remained under attack by the defendant after he abandonment of certain defences are the ones pertaining to household assets; the matrimonial home; the Landrover and boat; the Vaal property and the segregated assets.

[18] The general approach to questions of vagueness by the courts is to seek to uphold the contract rather than to destroy it. This principle was enunciated in **Hoffman and Carvalho v Minister of Agriculture 1947(2)SA855(T)** where it was said that where the parties who have intended to conclude a contract and proceed to act as if the contract were binding and complete, the court should try to assist the parties to achieve what they both intended rather than obstruct them by legal subtleties and assist one of the parties to escape the consequences of all that he has intended.

[19] The ''golden rule'' of interpretation is that where the language of the contract is clear and unambiguous effect must be given to its ordinary grammatical

meaning except where this meaning leads to an absurdity or to something which the parties obviously never envisaged. If the meaning of the words used is clear and unambiguous, evidence is not admissible to contradict, add or modify their meaning. According to Lewis JA in **Ekurhuleni Metropolitan Municipality v Germiston Municipal Retirement Fund 2010(2) All SA 195 (SCA)** [paragraph 13] a contractual provision must be given a ‘’commercially sensible meaning.’’

[20] If a court is still in doubt as to the intention of the parties after considering all the admissible evidence, it may resort to one or more canons of construction to arrive at the meaning intended by the parties. I set out some of the important canons hereunder:

20.1. Where the language of a contract is ambiguous and one interpretation renders the contract valid whilst another invalidates it, the court will place the construction upon it which upholds the contract rather than one which makes it illegal or void. A benign interpretation which gives the contract or agreement effect is to be preferred.

See: Kotze v Frankel and Co 1929 AD 418

Cilliers v Prinsloo 1964 All SA 533(T)

Inventive Labour Structuring (Pty) Ltd v Corfe 2006(3) SA 107 SCA paragraph 11

20.2. Here a contract is ambiguous, the principle that all contracts are governed by good faith applies and the intention of the parties is determined on the basis that they negotiated with one another in good faith.

20.3. If a word or clause is ambiguous the meaning which best fits the nature of the agreement is accepted.

20.4. If the contract is capable of two constructions, the court will adopt the more equitable of the constructions, and will not interpret the contract so as to give one of the parties an unfair or unreasonable advantage over the other.

[21] In **Namibian Minerals Corporation Ltd v Benguella Concessions Ltd 1997(2) SA 548(A) 557-563** the position is set out thus: ‘’One must distinguish between vagueness and ambiguity. If a contract can be interpreted to have two or more reasonable meanings, this would by itself render the contract void for vagueness. The use of intrinsic evidence or the process of legal interpretation can determine the correct meaning. It is only where the contract is not capable of any effective meaning in the circumstances that if it would be too vague to be enforced.’’

[22] Nugent AJA (as he then was) held that the factual and policy considerations summarised in Namibian Minerals to be taken into account when deciding whether an agreement is too vague to be enforced would include: The parties’ initial desire to have entered into a binding legal relationship; that many contracts (such as sale, lease or partnership) are governed by legally implied terms and do not require much by way of agreement to be binding; many agreements contain tacit terms (such as those relating to reasonableness); language is inherently flexible and should be approached sensibly and fairly; that contracts are not concluded on the supposition that there will be litigation; and that the court should strive to uphold-and not destroy- bargains. **Namibian Minerals (supra) 516G-J.**

[23] In the present case, the parties are married and their contract is underpinned by laws relating to marriage. In the matrimonial context therefore the following policy considerations come into play: the best interests of the children; the avoidance of the destructiveness of litigation on family life; the need for finality in litigation and the benefits of a clean break between the divorcing parties.

[24] Upon weighing the policy considerations and the views expressed above the only conclusion one can come to is that invalidity will only be reached as a last resort.

See **Haviland Estates (Pty) Ltd and Another v Mcmaster 1969(2) SA 312(A) at 337 H.**

Lewis v Oneanate(Pty) Ltd and Another 1992(4) SA 811(A) at 819 E-J.

[25] It is necessary to briefly analyse some of the clauses under attack to establish the validity of the attack. Generally it has to be borne in mind that all the clauses in annexure ‘’B’’ had been crafted with defendant’s active participation and contribution. This was demonstrated by her contribution to the drafts of the DSA which was in furtherance of the terms of the settlement agreement prior to 13 July 2010. She made no significant changes to the joint management clauses of the segregated assets in this period.

[26] As was stated in the testimony of plaintiff and Mr Jackson, all that was necessary was to segregate and manage the ten million rands for the children as per the deed of settlement in which the segregated assets were specified as those in Wartan Investments (Pty) Ltd, a company wholly owned by the Trust.

[27] The requirements for joint management of the segregated assets were set out in the deed of settlement. The purpose (education), the source and the method of payment was also set out in the deed of settlement. The conclusion is that there was no uncertainty or ambiguity regarding the issue of segregated assets.

[28] Regarding the valuation clauses, the parties took the precaution of recording the preliminary values of their assets as default values so that if no further evaluation took place they could use these as the firm valuations.

Annexure ‘’A’’ to the agreement serves as a record of each preliminary value. The record is precise and detailed down to the lowest valued item. Where no further valuation took place it could therefore not be said that the parties were not ad idem but on the contrary, they had agreed the preliminary values. Counsel for the plaintiff submits and I accept that any allegation of vagueness in regard to these assets cannot but be considered illusory and any assets not so valued would fall to be considered in terms of the **de minimis** principle.

[29] The purpose of the deed of settlement was to regulate the divorce between the parties in all its facets. The means whereby the household goods and other assets were to be valued cannot be said to be an essential term of the contract because under section 7 of the Matrimonial Property Act each party has to provide full particulars of the value of their estate to the other and the absence of agreement thereon cannot be an obstacle to the granting of a divorce. In any event in the present case there was no disagreement as the parties had agreed on the preliminary values.

[30] With regard to the household assets clause 3.3.1 reads as follows:

‘’*The value and apportionment of the household contents has not been agreed. The parties agree to list the household contents and use their best endeavours to agree the values and apportionment thereof, and where values and apportionment cannot be agreed, to dispose of the applicable items with proceeds to be split equally between the parties.”*

This clause makes it clear that if agreement cannot be reached the parties assets must be sold and the proceeds split equally. In his evidence, plaintiff testified that there was a fifty-fifty split in the estate's value of assets. Once divided, the greater value estate had to pay the other an adjustment value to achieve parity. Even on this issue the manner of dealing with the household assets was clear, ascertainable and not ambiguous.

[31] Clause 3.3.3 reads:

''*The value of 3 Audocia Place Hurlingham Manor shall be determined by the requesting valuations from two independent estate agents and taking the mean of these valuations.''*

At the time of the institution of these proceedings the terms of this clause had not been fully achieved but the value of Audocia had been agreed in terms of the annexure to the agreement as a preliminary value. That saved the clause from vagueness. The preliminary value was agreed at R4.5 million rands. As no later valuations resulted in a binding value in terms of the agreement, the parties are bound by the agreed preliminary value of R4.5 million.

[32] Similarly, the contention by the defendant that there is no method prescribed for making the valuation of the Landrover and the boat can be discounted on the basis of the preliminary values given in annexure ''A''. Plaintiff's 50 percent share in the Landrover, which he shares with a partner who owns the other 50 percent is valued at R30,000 whilst the boat is valued R27,500 each per party. Even in this regard there is no vagueness.

[33] Regarding the Vaal property, clause 3.6 reads:

''Should either of the parties wish to dispose of their share of the property, the parties shall agree a value at which the property will be marketed after which

the property shall be placed on the market, if a value cannot be agreed the party that wishes to dispose of their share shall be entitled to market the property at the price at which a recognised estate agent recommends for this purpose. If an offer is received at the price at which the property is offered, the other party shall have a pre-emptive right to acquire the selling party's share at the offer price, which shall be exercised within 2 days of receipt of the offer."

[34] Defendant contends that the agreement did not establish an external standard for determination of the identity of the recognised estate agent and that a further agreement was needed in this regard.

[35] It does not seem to me that this clause presents a problem. It is common cause that the plaintiff and the defendant are company executives who are chartered accountants familiar with property deals. All this clause specifies is the identification of a recognised estate agent. That agent does not fix the value at which the property is sold, he simply sets the commencement price at which the property is to be marketed. This is therefore a workable clause which is duly enforceable.

[36] Another challenge by defendant to the settlement agreement is that it was subject to a resolutive condition that the deed of settlement would lapse in the non conclusion of a DSA on a specified date or within reasonable time.

Clause 6.5 of the deed of settlement provides that it is only the DSA which will supersede the deed of settlement. Thus failure to sign the DSA means the deed of settlement continues in force. This is the document which they created under their own hands to enable them to produce it as their agreement in order to get a divorce.

They laboured under the impression that they needed another similar document crafted by an attorney for the same purpose. It does not seem to me that their misconception is of any consequence as their original agreement stays in force.

[37] Christie, 6th edition page 201 observes regarding resolutive conditions that the parole evidence rule does not prevent the leading of evidence to prove that a written contract was subject to a condition precedent not expressed in the document provided the condition is not inconsistent with the terms of the document. **In casu**, the resolutive condition is directly contradicted by the provisions of clause 6.5.

[38] Another consideration is that there are a number of acts required to be performed in terms of the deed of settlement irrespective of the date of conclusion of the DSA.

These include the obligation to value the assets, pay maintenance, make payment in respect of the Vaal property, cease cohabitation and commerce arrangements in respect of the children. The inference to draw is therefore that the conclusion of the DSA was a mere formality to draw them closer to the mutually desired goal, a divorce. With this understanding, it does not seem that the defendant has gone past the hurdle of proving that the deed of settlement was subject to a resolutive condition.

Caveat subscriptor

[39] It is trite that a person who signs a contractual document thereby signifies his assent to contents of the document. He is bound by the ordinary meaning and effect of the words which appear above his signature.

See Burger v Central South African Railways 1903 TS 571

Probabilities

[40] From a reading of the deed of settlement, the evidence presented and the language of the deed of settlement the probabilities seem to be weighed against the defendant.

Each of the main clauses contain the words: ‘’The parties hereby agree…’’ Clause 6.5 records that ‘’the parties agree that this agreement contains the principal terms and conditions of the agreement between the parties and the agreement will prevail until superseded by the divorce settlement agreement.’’

[41] Plaintiff’s testimony which is corroborated by the evidence of Mr Jackson is that the parties intended the agreement to be binding.

[42] The context, the surrounding circumstances, the extensive negotiations which preceded the signing of the agreement, the exchange of detailed e-mails, the untenable nature of the parties home relationship and the content of the parties e-mails prior to the week-end of negotiations showed a strong intent to bring finality to their dispute. All these factors are inconsistent with an intention to compile a set of non-binding principles.

[43] Over and above these factors, plaintiff had performed in a number of ways over a three year period in terms of the agreement. He had paid maintenance for the children, paid maintenance for the Vaal house, paid medical and educational expenses and the defendant accepted benefits which accrued to her without demur.

[44] In assessing the probabilities and considering all the events as they unfolded the inescapable conclusion is that of the two versions before me as to what the parties agreed to, plaintiff's is the more probable one.

[45] At this point it is necessary to consider the withdrawal of certain defences by the defendant on 17 May 2013. These were:

45.1. The repudiation based on plaintiff's non payment of amounts due under the deed of settlement;

45.2. Rectification;

45.3. Misrepresentation in respect of the senior debt component of the evaluation of the trust's shares in Eris;

45.4. Void for vagueness insofar as the indicative budget on the Vaal property is concerned;

45.5. Void for vagueness insofar as the liquid assets are concerned.

The withdrawal occurred after both parties had closed their cases. These withdrawals could only have been made because the evidence tendered by the defendant did not support the facts pleaded during the pleading stage.

[46] Inevitably this has had an effect on the credibility of the defendant and the defendant's case. Defendant had initially pleaded for a rectification of the

contract and a considerable portion of the pleadings and evidence was devoted to addressing this issue. Defendant ought to have known from the very onset that she could not sustain the pleaded case when it came to giving her testimony. This speaks to the honesty of the defendant both as a witness and a litigant. Her actions can only be described as disingenuous and this late withdrawal cannot but weaken her case considerably.

[47] Plaintiff has deplored these actions by the defendant which have led to wasted costs both in terms of time and money. The withdrawal has a bearing not only on the case as whole but also on the question of costs which plaintiff's counsel is arguing must be awarded on a punitive scale.

Conclusion

[48] The deed of settlement is a very detailed agreement which deals with how the parties' estate is to be divided, how the two minor children will be cared for and how the trust assets are to be segregated.

Clause 6.5 records how the parties agree that the principal terms and conditions of the agreement will prevail until superseded by the divorce settlement (DSA).

[49] The defendant's case has been that the parties and Mr Jackson had taken all the trouble of negotiating the terms of a long and detailed document dealing with all the important aspects of their private lives culminating in the signatures not only of the parties but also of a long time friend, colleague and confidante, Mr Brian Jackson- all this done simply to record an agreement that would be non-binding on the parties.

This version, now abandoned was clearly not in keeping with a logical understanding of all that had occurred over a protracted period between the parties.

[50] In **Barkhuizen v Napier 2007(5) SA 323 (CC)** paragraph 87, the Constitutional Court *observed ''pacta sunt servanda is a profoundly moral principle, on which the coherence of any society relies. It is also a universally recognised legal principle…"*

One cannot have a resolutive condition operate on an agreement wich is not binding because a resolutive condition necessarily implies a binding agreement which will be binding until the condition is fulfilled. Similarly it is legally not sustainable to speak of a repudiation of a non-binding agreement. For repudiation to occur it must of necessity relate to a binding agreement. This was the issue in defendant's case that has diminished the credibility of defendant's case.

[51] The law relating to interpretation of documents is summarised by Harms DP in **KPMG v Securefin Ltd 2009(4) SA 399 (SCA)** at page 409 paragraph 39 as follows:

*''First, the integration (or parole evidence) rule remains part of our law. However, it is frequently ignored by practitioners and seldom enforced by trial courts. If a document was intended to provide a complete memorial of a jural act, extrinsic evidence may not contradict, add to or modify its meaning (**Johnson v Leal 1980(3) SA 927(A) at 943B**). Second interpretation is a matter of law and not fact and, accordingly, interpretation is a matter for the court and not for the witnesses (or as said in common law jurisprudence, it is not a jury question: **Hodge M Malek (ed) Phipson on Evidence (16 edition 2005)** paragraphs 33-64). Third, the rules about admissibility of evidence in*

*this regard do not depend on the nature of the document, whether statute, contract or patent (**Johnson and Johnson (Pty) Ltd v Kimberly-Clark Corp (Pty) Ltd 1985 BP 126 (A) (1985) ZASCA 132**, (at www.saflii.org.za). Fourthly, to the extent that evidence may be admissible to contextualise the document (since 'context is everything') to establish its factual matrix or purpose or for purposes of identification, 'one must use it as conservatively as possible' (**Delmas Milling Co Ltd v du Plessis 1955(3) SA 447 (A) at 455B-C)**. The time has arrived for us to accept that there is no merit in trying to distinguish between 'background circumstances' and 'surrounding circumstances'. The distinction is artificial and in addition, both terms are vague and confusing…''*

[52] Even though I have to determine the validity or otherwise of the settlement agreement, I have had to constantly keep in mind the fact that this is a divorce action not the unbundling of Anglo American Corporation. To that end, the deed of settlement sets out clearly enough what the intention of the parties is for divorce purposes.

[53] The words of Wallis JA in **Natal Joint Municipal Pension Fund v Endumeni Municipality 2012(4) SA 593 (SCA)** at page 603 [paragraph 18] find resonance in this case where he states:

''Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision occurs; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document…''

[54] At the end of the day for a document to be accepted to serve as a settlement agreement it must:

52.1. Set out quite clearly enough what the intention of the parties is regarding the patrimonial consequences of their estate and it must be in compliance with the provisions of section 7 of the Divorce Act.

52.2. The agreement must also contain a parenting plan regarding the minor children of the marriage which must be in compliance with the law.

[55] Having taken into account all the facts of this case and the law, I have come to the conclusion that the plaintiff has succeeded in making out a proper case and that the defendant has failed to discharge the onus regarding those aspects on which the onus was upon her.

[55] In the result, I make the following order:

55.1. The deed of settlement entitled ‘’Heads of Agreement’’ dated 13 and 14 June 2010, annexure ‘’B’’ to the particulars of claim is a binding agreement, valid and enforceable.

55.2. The defendant is ordered to pay the costs of the action to date, including the costs of two counsel.

55.3. By reason of the late withdrawal of the rectification and other defences abandoned by defendant on or about 17 May 2013 the defendant is ordered to pay half the costs of the matter to date on the attorney and client scale, such costs to include the costs of two counsel.

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S.A.M BAQWA

(JUDGE OF THE HIGH COURT)

Counsel for the plaintiff:	Adv L.J Morrison SC
	Adv A Pheto
Instructed by:	Greensteins Attorneys
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