REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
18/10/2019
DATE SIGNATURE

CASE NO: 25544/2018

In the matter between:

THE MINISTER OF POLICE	Applicant
And	
AYANDA IRVIN KUNENE	First respondent
GUSTAV LEKABE	Second respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Third respondent
HASSAN EBRAHIM KAJEE	Fourth respondent
THE SHERIFF, PRETORIA CENTRAL	Fifth respondent

Summary

Rescission - State Attorney conceding merits and tendering quantum against Minister - without instructions - whether consequent orders – orders binding on Minister – ostensible authority of State Attorney – where conduct of State Attorney results in subversion of administration of justice – rule of law requires that orders be rescinded.

J U D G M E N T

KEIGHTLEY, J:

INTRODUCTION

1. The applicant in this matter is the Minister of Police (the Minister). The Minister seeks an order rescinding two orders made in favour of the first respondent, Mr Kunene (the Plaintiff):

   1.1. The first order was granted on 7 February 2017, by consent. It directed the Minister, who was the defendant in the Plaintiff's civil action, to compensate the Plaintiff for all the proved and/or agreed damages arising from an unlawful assault perpetrated upon the Plaintiff on 7 August 2013 by members of the South African Police Service (the SAPS). For convenience, I refer to this as "the merits order".

   1.2. The second order was granted on 2 March 2018, on the basis of a stated case. The stated case included a tender by the Minister of an amount of damages in the sum of R34 077 000,00 (thirty four million and seventy seven thousand rand), and a recordal that the tender of this amount was acceptable to the Plaintiff. The order was made, directing the Minister to pay this sum by way of damages. For convenience, I refer to this as "the quantum order".

2. The quantum of the order is noticeably high. This is because the alleged unlawful assault on the Plaintiff involved a police shooting that rendered him a paraplegic. The incident giving rise to the claim occurred in 2013, and summons was issued against the Minister in 2015.

3. The Minister was at all times represented by the State Attorney, Johannesburg in the conduct of the proceedings relating to the Plaintiff's claim. It is common cause

that a member of the office of the State Attorney assisted by counsel, consented to the merits order on behalf of the Minister, and that the State Attorney also made the tender contained in, and the content of, the agreed statement of facts that led to the quantum order. For reasons I will elaborate on shortly, the Minister disputes the validity of the State Attorney's actions in this regard and contends that the Minister is not lawfully bound by the concessions made by it which led to the two court orders.

4. Were it not for certain peculiarities, the rescission application would probably not have detained counsel for the parties or the court for long. There is established case law dealing with the binding nature of concessions and compromises made by attorneys in general, on behalf of their clients in the course of litigation, and by the State Attorney in particular. However, as will become clear, this matter is not one that involves a simple application of established legal principles to the facts.

5. One of the peculiarities is that, for very particular reasons, the Minister has cited the second and the fourth respondents in their personal capacities. The second respondent is Mr Lekabe who, until a short while ago, was the Head of the office of the State Attorney in Johannesburg. The fourth respondent, Mr Kajee, is an admitted Advocate and, until recently, a member of the Johannesburg Society of Advocates. Not only does the Minister cite them in their personal capacities, but he also seeks a punitive costs order against them.

6. It is common cause that Mr Kajee represented the Minister when the quantum order was made. It is also common cause that he appeared before the Honourable Tsoka ADJP on behalf of the Minister in chambers when the merits order was made an order of court. The basis for Mr Kajee's involvement in the latter order, and who he was instructed by, is open to dispute. Similarly, Mr Lekabe's involvement in the concession by the Minister that led to the merits order is also open to dispute.

7. Both Mr Lekabe and Mr Kajee assert that Mr Lekabe had nothing to do with the concession on the merits, and that it was a junior state attorney who conceded the merits on behalf of the Minister, and who asked Mr Kajee (as a favour) to appear before Tsoka ADJP to have the merits order confirmed by consent. This is disputed by all other parties who have been active in the proceedings, including the Plaintiff's instructing attorney, and his counsel at the time. The Minister contends that it was indeed Mr Lekabe, personally, who conceded the merits on behalf of the Minister, and that in doing so he did not act lawfully, rationally or *bona fide*.

8. The most striking feature of this case is the broader context in which it arose. I will deal with this aspect in more detail later, as it is important. It is a feature that distinguishes this case from other cases that have previously been considered by the courts. For the present, it is necessary only to explain that both Mr Lekabe and Mr Kajee face various investigations by different authorities regarding allegations of unprofessional, fraudulent and corrupt conduct on their part. The investigations arose from the manner in which it is alleged they dealt with the Plaintiff's case, but the allegations extend to what is alleged to be similar conduct on their part in other matters involving, among others, the Minister.

9. Quite understandably, the Plaintiff opposes the rescission application. He contends that on the basis of the well-established principles, the concession and compromise that led to the merits order is valid and binding on the Minister. Further, as the quantum judgment was based on a stated case, and not a concession, there is no basis upon which it can be impugned and it, too, must stand. As far as the broader context of the case is concerned, the Plaintiff's view is that this is a matter between the Minister of Police and the Minister of Justice and Correctional Services, under whose auspices the State Attorney's office falls. It is not a matter that should affect

the Plaintiff's entitlement to ensure that the orders he obtained remain binding and enforceable.

BACKGROUND TO THE APPLICATION

10. The Plaintiff issued summons against the Minister in September 2015 for damages flowing from his alleged unlawful assault by members of the South African Police Service (the SAPS) who, it was alleged, shot at the car he was driving. It was alleged that as a result of being shot, the Plaintiff had become a paraplegic. The initial amount of the claim was some R30 million. This was later increased to some R39 million.

11. The summons was served on the office of the State Attorney in Johannesburg. Mr Mphephu was the State Attorney dealing with the matter at the time, and he wrote to the SAPS Legal Services Litigation Department advising of the summons and the fact that it was an important matter as it involved a claim for R30 million. Colonel Britz responded as follows:

> *"1. INSTRUCTIONS: TREASURY REGULATION 12.2.2*
>
> *1.1 The summons as received by your office (Mr Mphephu) as per your letter dated 2015-10-13.*
>
> *1.2 Provincial Commissioner, Legal Services, Gauteng is of the opinion that the notice of intention to institute legal proceedings does meet the requirements referred to in terms of the Institution of Legal Proceedings Against Certain Organs of State (Act 40/2002).*
>
> *1.3 A factual report and supporting documents have been requested and will be made available in due course to enable you to advise the South African Police Service whether or not the Plaintiffs claim should be settled.*
>
> *1.4 The South African Police Service accepts full liability for legal costs in this matter. However, should the defence entail the necessity to appoint a correspondent or to brief counsel, please liaise with this office about the nature and tariff of fees of the correspondent or counsel prior to appointing them in order to obtain the written requisite authorisation from this Department in terms of Treasury Regulation 12.2.1*

1.5 In the interim, proof of quantum, if outstanding, must be obtained from the Plaintiff and forwarded to this office for a decision regarding the fairness and reasonableness of the claim.

1.6 Please inform this office of dates of set down for consultation dates well in advance and provide us with copies of all pleadings.

2. Your urgent response is awaited."

12. A copy of the docket was sent by the SAPS Legal Services Department to the State Attorney's office. However, it is common cause that no consultations with witnesses were ever held, and that, apart from the events of 6 February 2017, which I will discuss more fully later, no counsel was appointed before the merits order was granted. This is despite the fact that on 24 January 2017, the SAPS Legal Services Department instructed Mr Mphephu to "appoint any counsel that is available". This was in light of the fact that the set down date for the trial was looming. As will become evident shortly, there is much dispute between Mr Lekabe and the Minister as to how it transpired that no consultations were held with witnesses and why no counsel was appointed.

13. It is common cause that the Plaintiff placed the Minister under a notice of bar because the plea was not filed timeously. In response, Mr Mphephu caused a plea to be filed. The plea was in the form of a bare denial of all the averments made in the summons. The SAPS Legal Services Department was not made aware of this, as there had been no consultations with witnesses, and the State Attorney did not ask for instructions before filing the plea.

14. The SAPS Legal Services Office was made aware of the trial date, and one of the police officers involved in the incident giving rise to the claim, Sergeant Yende, was instructed to attend at court for the hearing. It is common cause that he did so. It is also common cause that the State Attorney did not consult with him at court.

15. A pre-trial conference was held between the parties on 31 January 2017, one week before the trial date. At that stage there had not yet been any separation between merits and quantum. The minutes of the pre-trial meeting record a number of questions in respect of which the State Attorney, on behalf of the Minister, was to revert. On 2 February, Mr Mphephu wrote to the Plaintiff's attorneys suggesting that as the matter was not ripe for trial, and in order to avoid wasting costs, the matter should be removed from the Roll. Plaintiff's attorney did not agree with this suggestion and the matter proceeded to roll call on the morning of 6 February 2017 before Tsoka ADJP.

16. The details of exactly what transpired at roll call is open to dispute. However, what is common cause is the following. The Plaintiff moved two interlocutory motions. The first followed a notice of motion filed on the morning of the trial seeking an order separating the merits issue from that of quantum, and directing that the trial proceed only on the merits. The second was an application to condone Plaintiff's non-compliance with section 3 of the Institution of Legal Proceedings against Certain Organs of State Act, 40 of 2002. The State Attorney opposed both applications on behalf of the Minister, but the orders were granted. The matter then stood down for allocation on the issue of liability/merits. It was allocated to a Judge for hearing. However, before the parties made their way to the Judge's chambers, either Mr Lekabe or Mr Mphephu (which one of the two is disputed) approached the Plaintiff's attorney and advised that the Minister was conceding the merits.

17. The Plaintiff's counsel then proceeded to draft the three orders on her laptop. It is common cause that Mr Lekabe's name appears on them as having represented the Minister. Either later that morning, or after the lunch adjournment, Mr Kajee arrived on the scene at court. It is common cause that he had not been briefed previously in the matter. He advised Plaintiff's attorney and counsel that he had been

requested as a favour by the State Attorney (once again it is disputed whether this was Mr Mphephu or Mr Lekabe) to appear to have the draft order on the merits made an order of court. It is common cause that Mr Kajee's name is inserted in manuscript on the merits order. The merits order was granted in Tsoka ADJP's chambers, with Mr Kajee appearing as counsel for the Minister.

18. The State Attorney does not contend that it took any instructions from the Minister before the concession on the merits was made. Nor did it advise the SAPS Legal Services Department of the outcome of the hearing on 6 February 2017. On the 22 February 2017, Lieutenant Colonel Jama, who had been assigned to manage the case within the SAPS Legal Services Department, wrote to Mr Mphephu requesting an update on what had transpired on 6 February. However, he did not receive a response. In a letter dated 16 February 2017 Mr Mphephu wrote to the SAPS Legal Services Department advising that he was no longer dealing with the matter, and that the SAPS would be advised of the person who would take over from him. The letter continued that in the meantime, the SAPS could continue to liaise with Mr Mphephu. On 23 February 2017 Mr Lekabe reassigned the matter to Mr Mafiri of the State Attorney's office, and instructed him to take steps to prepare the Minister's defence on the quantum issue.

19. It seems that the SAPS Legal Services Department was not expressly made aware of the concession on the merits following the events of 6 February 2017. What is clear is that the State Attorney continued to prepare the Minister's case on the issue of quantum by appointing expert witnesses, attending pre-trial conferences and certification court etc. Mr Kajee was instructed, together with a more junior counsel to represent the Minister at the quantum hearing. There is a dispute as to when Mr Kajee received this instruction. He and Mr Lekabe insist it was in December 2017, whereas the Minister submits evidence that he was only briefed on 14 February

2018. This was some two weeks before the set down date for the quantum trial, being 28 February 2018.

20. What is common cause is that Mr Kajee commenced invoicing the State Attorney from 18 December 2017 for work undertaken in the Minister's defence of the Plaintiff's case. I will have more to say on these invoices later. For the present, I note that the fees charged were substantial. The lowest invoice was for the sum of R117 500 for a 10-day period, and the highest was for the sum of R145 000 for a one-week period.

21. There is no evidence that the State Attorney kept the SAPS Legal Services Department aware of the developments in the matter or sought instructions from it, save for forwarding to the SAPS a copy of the Notice of Set Down advising that the matter would be heard on 28 February 2018.

22. At some point between the granting of the merits order and the trial date on quantum the Plaintiff sought to amend his particulars of claim by adding a claim for general damages for unlawful arrest and detention (in addition to the claim for unlawful assault). This was a rather surprising step, given that the claim on the merits had already been conceded in respect of the original claim based only on unlawful assault. Nonetheless, the pre-trial minutes dated 15 February 2018 record that the Minister conceded that the Plaintiff's arrest and detention was unlawful and that he was entitled to an award for general damages and *contumelia* in this regard (in addition to the damages in respect of the assault). Mr Kajee, his junior counsel, and Mr Mafiri are recorded as having been at the pre-trial conference. No instructions were sought or obtained from the Minister to make this concession.

23. On 27 February 2018, the day before the set down date for the trial, Mr Kajee and his junior counsel prepared a memorandum for the Minister proposing a settlement

of the matter in the sum of R34 077 000 (thirty four million seventy seven thousand Rand) (the settlement memorandum). I will have more to say about this memorandum later. It is common cause that it was transmitted to Brigadier Beukes at 14h04 on the day of the trial. This followed a telephone call to her by Mr Lekabe advising her that the matter was standing down. Mr Lekabe insists that he attempted to telephone Brigadier Beukes numerous times following his transmission of the settlement memorandum in an attempt to obtain instructions, but that he did not succeed. He says that in desperation he was forced to proceed with the matter without instructions. Brigadier Beukes denies this, although it is common cause that while no positive instructions emanated from her to settle the matter, she did not give express instructions to refuse to settle the matter and to proceed to trial.

24. The matter was allocated to the Honourable Motojane J for trial. The parties advised him that the State Attorney had not been able to obtain instructions to settle the matter, and he directed them to prepare a stated case, which they proceeded to do. The stated case included a tender by the Minister of an amount of R34 077 000 which, it was recorded, was acceptable to the Plaintiff. The stated case was handed to Motojane J in chambers, and he ultimately made the quantum order on 2 March 2018.

25. On 19 March 2018 Brigadier Beukes wrote to Mr Lekabe as follows:

> *"With reference to the attached memo.*
>
> *Can you please urgently advise who authorised Adv Kajee to concede merits on behalf of the Minister in a claim with a quantum of more than R30 million. I cannot find any authorisation in the file that merits must be conceded and the instructions in the file are that the claim must be defended. I can also not find any previous opinion in the file that we should consider conceding merits. The legal official Lt Colonel Jama was surprised to learn that Adv Kajee had conceded merits on 7 February 2017.*
>
> *In terms of the SAPS delegation of authority only the National Commissioner has the power to authorise settlement on such a high quantum and it therefore*

stands to reason that only the National Commissioner has the power to concede merits on this matter.

The Plaintiff was involved in a shooting with police. The Plaintiff was not an innocent bystander. The police officials spotted a vehicle which tested positively as a hijacked vehicle. There was a white Toyota Corolla standing nearby. The driver got out of the Toyota Corolla and the Plaintiff moved into the driver's seat of the Toyota Corolla. The passenger then went to the hijacked vehicle and unlocked the door and got into the vehicle. As the police approached the driver of the hijacked vehicle the Plaintiff driving the Toyota Corolla tried to run over the police officials and a shots were fired at the SAPS members.

The plaintiff was detained in the SAPS registers but due to the nature of his injuries he could not appear in court. The criminal trial continued without him. During the court proceedings there are numerous entries in the SAPS 5 that the Plaintiff needs to be charged but due to his injuries he could not be added. His accomplice was found guilty and sentenced to six years in prison.

Your urgent response is awaited." (emphasis in the original)

26. Thereafter the SAPS Legal Services Department received a letter from Mr Mafiri, which was dated 15 March 2018, and which advised as follows:

"*We confirm that this matter was on trial on the 28th FEBRUARY 2018.*

The matter proceeded to court and was finalised by way of a stated case as instructed by the head of our office.

Kindly find attached herein the following:

- *Stated Case*
- *Draft order*

We trust you find the above in order."

27. The quantum order provided for payment to be made by the Minister to the Plaintiff's attorney within 30 days. When this period had lapsed, the Plaintiff's attorney sent a letter of demand to the SAPS Litigation Service Department for payment. The SAPS advised that they were seeking an opinion from counsel on the matter. When a second letter of demand did not have any effect, the Plaintiff caused a writ of execution to be served on the Minister's offices. This led to the Minister launching an application in two parts. Part A was an urgent application suspending the writ pending the determination of Part B, being the present application for rescission.

28. Part A was heard by the Honourable Mudau J on 24 July 2018. He delivered judgment on 15 August 2018, granting the relief sought. In the course of his judgment, Mudau J noted the serious allegations made by the Minister against Mr Lekabe and Mr Kajee, who were both officers of the court.

29. As a result of the judgment, the Johannesburg Society of Advocates (the JSA) approached the High Court for urgent relief in the form of an order suspending Mr Kajee from practising as an advocate pending the final outcome of an enquiry into: (a) his professional conduct in the Plaintiff's case; (b) the fees raised by him in respect of work performed by him for the State Attorney's office between 1 April 2017 to 21 September 2018; and (c) his relationship between him and the State Attorney, Johannesburg. The suspension was also sought pending the finalisation of an application to have Mr Kajee's name struck from the roll of advocates.

30. The JSA's application was instituted on 21 September 2018. On 26 September Mr Kajee tendered his resignation as a member of the JSA with immediate effect. On 28 September the JSA amended its notice of motion to include an order to compel Mr Kajee to deliver his original fee book, invoices to the State Attorney and bank statements. The High Court (the Honourable Mokoatlheng J and the Honourable Modiba J) granted the JSA's application on 24 October 2018, and delivered a written judgment in support of the order (the JSA judgment). The court directed Mr Kajee to furnish the JSA with the documents referred to earlier. The court further directed the Registrar to furnish a copy of the judgment on the Commissioner of the South African Revenue Service; the Commissioner of the South African Police Service; and the Law Society of the Northern Provinces. Mr Kajee had earlier agreed to an order suspending him from practice.

31. As far as Mr Lekabe is concerned, the Director-General in the Department of Justice and Correctional Services placed him on precautionary suspension on 19 September 2018. In the letter of suspension, Mr Lekabe was informed that the purpose of the suspension was to: "*to create an environment conducive to the internal investigation of the following allegations of misconduct: your conduct as the Stale Attorney, Johannesburg, in the Kunene matter wherein it is alleged that you conceded the merits of the allegations against the South African Police Service, and consented to the quantum of damages in the sum R34 million without receiving instruction from the South African Police Service, and without their consent.*" The letter of suspension further referred to allegations that Mr Lekabe had hampered the investigation and intimidated an attorney in connection with the Kunene matter. I must point out that the letter of suspension makes it clear that these were no more than allegations at that stage.

32. It is common cause that disciplinary proceedings were subsequently instituted against Mr Lekabe in relation to the allegations against him. As of 29 March 2019 the Department had not been able to commence the disciplinary hearing, as Mr Lekabe had secured a number of postponements for various reasons. Mr Lekabe resigned from his employment with effect from 1 June 2019, putting an end to the pending disciplinary hearing.

33. Mr Lekabe states in his answering affidavit that he is being investigated by the Special Investigation Unit and the Hawks as a result of the allegations against him. Mr Kajee also made mention to the court at the hearing of this matter that he was being investigated by, at least, the Special Investigations Unit.

34. It is against this background that the application for rescission must be determined.

BASIS OF THE RESCISSION APPLICATION

35. The Minister bases the application for rescission on the common law. At common law, a judgment by consent may be rescinded on the grounds of *justa causa*, where there is an absence of a valid agreement to support the judgment.[1] The Minister contends that in settling the case on the merits the State Attorney acted without the consent of the Minister, and contrary to the directions of the SAPS Legal Service Department to defend the action, and to appoint counsel to do so. Accordingly, the Minister contends that the State Attorney did not have authority, as the agent for the Minister, to concede the merits and the quantum orders, and these orders should be set aside.

36. In addition to the alleged absence of authority, the Minister contends that the concession on the merits by the State Attorney was irrational and contrary to the principle of legality. He contends further that the principle of ostensible authority cannot be applied to hold an organ of state liable to a concession made by the State Attorney in circumstances where the State Attorney was not acting *bona fide*. In this case, says the Minister, Mr Lekabe deliberately failed to comply with his direct instructions and thus acted *mala fide* in conceding the merits of the action. This is particularly so, avers the Minister, in circumstances where, objectively speaking, the Minister had reasonable prospects of defending the Plaintiff's claim on the merits. The Minister contends that if the merits order is rescinded, the quantum order must automatically follow suit. Moreover, the Minister points to the fact that the quantum order included a concession on the part of the State Attorney that the Plaintiff was entitled to damages for unlawful arrest and detention, notwithstanding that the

[1] *MEC for Economic Affairs, Environment and Tourism v Kruizenga & Another* 2008 (6) SA 264 (Ck) at 283B-284B

amendment giving rise to this claim was made after the merits order was granted. To this extent, says the Minister, the quantum order is susceptible to rescission.

37. The Plaintiff disputes that the State Attorney acted contrary to the Minister's instructions in conceding the merits. Even if this is found to have been the case, the Plaintiff contends that the Minister is bound on the basis that the State Attorney had ostensible authority to concede the merits and to agree to the stated case. In the circumstances, the Plaintiff avers that the Minister is bound by the State Attorney's concession and is not entitled to withdraw such consent. Furthermore, in the Plaintiff's view, the concession on the merits was not irrational, but was supported by the objective facts of the case which, he submits, demonstrate that the Minister has no defence. The Plaintiff contends further that the fate of the quantum order is not dependent on the fate of the merits order. In this regard, he avers that the quantum judgment was not based on the consent of the State Attorney.

LEGAL PERSPECTIVE

38. The authority of an attorney to settle or compromise a claim on behalf of her client has been the subject of many judgments over the years. The Supreme Court of Appeal set out the legal position as follows in *MEC for Economic Affairs, Environment and Tourism, Eastern Cape v Kruizenga and Another* (*Kruizinga*):[2]

> "To summarise, it would appear that our courts have dealt with questions relating to the *actual* authority of an attorney to transact on a client's behalf in the following manner: attorneys generally do not have implied authority to settle or compromise a claim without the consent of the client. However, the instruction to an attorney to sue or defend a claim may include the implied authority to do so, provided the attorney acts in good faith. And the courts have said that they will set aside a settlement or compromise that does not have the client's authority where, objectively viewed, it appears that the agreement is unjust and not in the client's best interests. The office of the State attorney, by virtue of its statutory authority as a representative of the

[2] 2010 (4) SA 122 (SCA)

government, has a broader discretion to bind the government to an agreement than that ordinarily possessed by private practitioners, though it is not clear just how broad the ambit of this authority is."[3] (emphasis in the original)

39. For purposes of the matter before me there are two important observations to be made about this summary of the legal position.

40. In the first place, as the SCA pointed out in the paragraph following the above in its judgment, this position applies to an attorney's actual or implied authority. It does not deal with an attorney's apparent or ostensible authority. The Constitutional Court has held that ostensible authority is "*the authority of an agent as it appears to others*".[4] It is established if a principal by words or conduct has created an appearance that the agent has the power to act on its behalf, even if such authority was not actually granted by the principal.[5] It was introduced into law for purposes of achieving justice in circumstances where a principal has created the impression that its agent had authority to reach agreement on behalf of the principal. In those circumstances, justice demands that the principal must be held liable in terms of the agreement.[6]

41. What is significant about ostensible authority is that it may be used to hold the client, as principal, to a settlement or compromise of a claim even in circumstances where the attorney acted contrary to the direct instructions of the client. It was on this basis that this court held the MEC for Health in Gauteng bound to an agreed settlement by the State Attorney of a claim even though the State Attorney had acted contrary to the MEC's instructions, which were to seek a postponement or to argue the issue

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[3] At para [11]
[4] *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13, at para [49], citing Lord Denning in *Hely-Hutchinson v Brayhead Ltd and Antoher* [1968] 1 QB 549 (CA)
[5] At para [47]
[6] *Makate*, para [65]

of quantum.[7] As I have already indicated, the Plaintiff in the matter before me avers that even if it is found that the State Attorney acted contrary to the Minister's instructions, the Minister must be held bound by the settlement that led to the merits order on the basis of ostensible authority.

42. The second important observation to be made from the dictum cited above in *Kruizinga* is that the State Attorney's authority to bind its clients to a settlement or compromise of a claim is broader than that of a private attorney. The special position of the State Attorney in this regard is founded on the fact that it derives its authority from statute, in particular, from the State Attorney Act 56 of 1957. Two sections of the Act are important for present purposes:

42.1. Section 3(1), which provides that:

> "The functions of the office of the State Attorney and of its branches shall be the performance in any court or in any part of the Republic of such work on behalf of the Government of the Republic as is by law, practice or custom performed by attorneys, notaries and conveyancers or by parliamentary agents: Provided that the functions in regard to his duties as parliamentary agent shall be subject to the Standing Rules of the respective Houses of Parliament."

42.2. Section 4, which provides that:

> "The rights, privileges and duties of an attorney, notary or conveyancer lawfully performing functions described in section 3, shall, except as is specially provided by this Act, include any of the rights, privileges and duties respectively possessed by or imposed on an attorney, notary or conveyancer practising in the division of the Supreme Court of South Africa where such functions are being performed."

43. Given that its powers derive from statute, as a matter of course, it seems to me, the State Attorney would normally wear the mantle of authority as a representation to the outside world, and to other attorneys that it deals with, that it is mandated to

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[7] *MEC for Health and Social Development, Gauteng v Mathebula & Others*, Unreported case no: 22469/2012, GLD, Johannesburg (4 July 2016)

settle and compromise claims on behalf of organs of state that it represents. For this reason, ordinarily, it would be difficult for an organ of state to avoid being held bound by settlements reached by the State Attorney even if these are against its express instructions: it would be held bound by at least the principle of ostensible authority. It is for this reason that the State Attorney has been held to have a broader discretion to bind state parties than that of private attorneys.

44. The remaining question is, of course, how far does this authority extend? Certainly, as I have indicated already, and as has been held by a number of courts, it could extend to situations where the State Attorney acts without, or contrary to, actual or implied authority from its client. However, in my view it is critical to appreciate that its powers to bind its clients is not unlimited. Importantly, it performs a public function derived from legislation. This means that it is itself an organ of state.[8] As such, it is enjoined to comply with the foundational constitutional principal of the rule of law, or legality.[9] To this extent, at least, its power to bind its clients is restricted. If a court finds that it conducted itself in a manner that is contrary to the Constitution in reaching a settlement or compromise with an opposing party in litigation, the court would be bound to declare its conduct, and hence such agreement or compromise, invalid.

45. It is important to clarify that I am not suggesting that the State Attorney's duty to act in accordance with legality and the rule of law overrides, or limits its powers to bind its clients on the basis of ostensible authority. To hold a state entity bound to a settlement or compromise made by the State Attorney on that basis is not, *per se*, contrary to the rule of law. In fact, it is consonant with it: as I have already pointed out, the Constitutional Court has acknowledged that ostensible authority finds its

[8] In terms of s239 of the Constitution.
[9] In terms of s1(c) of the Constitution.

source in none other than principles of basic justice. However, there may be cases, perhaps exceptional, where the circumstances are such that, notwithstanding the principle of ostensible authority, a court may be constrained to relieve a State Attorney's client from a settlement or compromise reached on its behalf on the basis that to hold the client bound would be contrary to the rule of law and the principle of legality.

46. The question that I am left to determine is whether this is such a case.

OSTENSIBLE AUTHORITY IN THIS CASE?

47. Applying the above principles to the present case it is immediately apparent that absent particular circumstances pointing to considerations of legality and the rule of law, the Minister would be bound by the State Attorney's concession on the merits and the tender of R34 077 000 on the quantum. Even if, as the Minister contends, the letters of 20 October 2015 from Colonel Britz, and the email from Lieutenant Colonel Jama on 24 January 2017 constituted direct instructions to the State Attorney to defend the matter, and to brief counsel to do so, the State Attorney's failure to follow that instruction would not, *per se*, save the Minister from being bound on the basis of ostensible authority. The Plaintiff avers that to his attorney and counsel there was no indication that the State Attorney did not have authority to settle the claim. There is no reason to place this averment in any doubt.

48. The Minister points to the fact that in terms of the SAPS delegation of authority, only the Commissioner of Police may authorise settlement in a matter with such a high quantum, and that no such authorisation was given. This averment is not disputed. However, it does not provide the Minister with an escape route insofar as ostensible authority is concerned. Ostensible authority is based on the appearance of authority to others. In *Makate*, the Constitutional Court accepted that this means that even if

an agent is subject to a limitation on her authority, the principal will be bound on the basis of ostensible authority in her dealings with those who do not know of the limitation.[10]

49. Does all of this mean that the Minister is lawfully bound by the State Attorney's concessions and that rescission must be refused? If this is all there was to the case then the answer would be yes. However, as I pointed out at the commencement of this judgment, there are peculiarities in this case that have not, insofar as I am aware, surfaced in other matters where the authority of the State Attorney to bind its clients has been considered. These peculiarities centre on the conduct of Mr Lekabe and Mr Kajee (whether singly or together). The question is whether their conduct was such that to hold the Minister bound to the resultant merits and quantum orders would undermine the principles of legality and the rule of law.

THE CONDUCT OF MR LEKABE AND MR KAJEE

50. Central to this question is the dispute about whether Mr Lekabe was involved in the events leading up to the grant of the merits order by agreement between the parties. Mr Mphephu was the junior state attorney who was originally assigned to the matter when summons was issued against the Minister. It was he who communicated with the SAPS Legal Services Department. As I have indicated, Mr Lekabe was the head of the State Attorney's office in Johannesburg, and thus Mr Mphephu's ultimate boss. Mr Mphephu's version is that it was Mr Lekabe who appeared at roll call before Tsoka ADJP on 6 February to deal with the two interlocutory applications. When Mr Lekabe's opposition to these failed and the matter was referred to trial on the merits it was Mr Lekabe who approached the Plaintiff's attorney and advised him that the Minister would concede the merits. Mr Mphephu says that he (Mr

[10] At para [48], citing Lord Denning MR in *Hely-Hutchinson* at 583A-G

Mphephu) had nothing to do with instructing Mr Kajee to appear before Tsoka ADJP later that day to have the draft merits order made an order of court. This instruction came from Mr Lekabe.

51. According to Mr Mphephu, he was aware of the significance of the matter for the Minister, given the substantial amount that was claimed in the summons. He approached Mr Lekabe twice to request that counsel be appointed to assist in the matter due to its complexity and seriousness. Mr Lekabe is the only person in the Johannesburg State Attorney's office who has authority to appoint counsel. This is common cause, and is expressly confirmed by Mr Lekabe, who stated in his answering affidavit that: "*the appointment of Counsel in all matters is centralised and I am the one who is seized with this responsibility except in instances where I am away from the office and one of my Deputies would be acting in my place and stead.*"

52. Mr Mphephu claims that he approached Mr Lekabe to appoint counsel for the first time in September 2016 after he received the docket from the SAPS Legal Services Department, but Mr Lekabe denied this request. He again approached Mr Lekabe in January 2018 with the same request in early January 2017, when the trial date would have been about one month away. On this occasion, Mr Lekabe told Mr Mphephu that he would keep the file and would deal with the matter himself. From this point on the file remained in Mr Lekabe's office. Mr Mphephu attended a pre-trial meeting before the date of the hearing, but he did so without the file, which was with Mr Lekabe. Lieutenant Colonel Jama confirmed in his affidavit that when he consulted with Mr Mphephu on 13 January 2017, the latter told him that Mr Lekabe had taken the file and intended to deal with the matter himself. It was this information that prompted Lieutenant Colonel Jama to send the letter of instruction dated 24 January that counsel be briefed in the matter. It is common cause that

counsel was never briefed in respect of the merits aspect of the claim until Mr Kajee came on the scene later in the day on 6 February 2017. Mr Mphephu says that Mr Lekabe gave him the file back on 3 February with instructions to draft the practice note for the upcoming trial.

53. On the morning of 6 February 2017, according to Mr Mphephu, he prepared to attend the High Court for roll call. As Mr Lekabe had told him that he would deal with the matter himself, he sent an sms to Mr Lekabe's number at 9:19 saying: "*Morning, Mr Lekabe is Dovhani here, I am waiting for you for court*". The response came from one of Mr Lekabe's deputies, Mr Dhulam, at 9:29 and said "*Hi. Mr lekabe is on his way to court.*" Mr Dhulam filed a confirmatory affidavit confirming that he received a phone call from Mr Mphephu wanting to know the whereabouts of Mr Lekabe as he was waiting for him at court. Mr Dhulam then phoned Mr Lekabe and conveyed this to him. Mr Lekabe informed Mr Dhulum that he would meet Mr Mphephu at court, after which Mr Dhulum sent the above text message to Mr Mphephu. Copies of both text messages are annexed to the applicant's affidavit.

54. As I have indicated, Mr Mphepu's version of events is that Mr Lekabe then dealt with the matter at court, and made the decision to concede the merits on behalf of the Minister. Mr Mphephu says that he did not have authority to concede the merits for such a big matter. Only Mr Lekabe had authority to do so.

55. Mr Lekabe disputes Mr Mmphephu's version. His version is that he only knew of the existence of the case on 19 February 2017 after the merits order had been granted. He had no involvement prior to that date. Mr Lekabe says that he appeared at roll call on 6 February 2017, but only in respect of an entirely different matter. He denies that he had anything to do with the Plaintiff's case at roll call; he did not argue the two interlocutory applications; he did not approach the Plaintiff's

attorney; he did not concede the merits on behalf of the Minister; and he did not ask Mr Kajee to appear before Tsoka ADJP to have the order formally granted. Mr Lekabe's version is that Mr Mphephu is solely responsible for all of this. As I have already explained, he does not deny that he is responsible for appointing counsel, but he says that Mr Mphephu never approached him with this request. He paints Mr Mphephu's conduct as having been grossly negligent, warranting disciplinary action.

56. These, then, are the two conflicting versions of the role-players from the State Attorney's office. If I find Mr Lekabe's version to be credible, being motion proceedings I would be bound to accept his version. In this event, I would be constrained to find that at best for the Minister, Mr Mphephu grossly neglected his duties by not preparing for trial. The question then would be whether such gross negligence on the part of Mr Mphephu could enable the Minsiter to avoid being held bound by the concessions made on rule of law or legality grounds.

57. The difficulty for Mr Lekabe and the credibility of his version is that there is objective evidence that soundly refutes it. I have already referred to the exchange of text messages which provide a contemporaneous record of Mr Lekabe's intended movements on the morning of the 6 February 2017. Mr Dhulam confirms that he was told by Mr Lekabe that he would meet Mr Mphephu in court. It is common cause that Mr Mphephu was only involved in one matter on the roll that day, being Plaintiff's case. The inescapable conclusion from this contemporaneous evidence is that contrary to what Mr Lekabe stated in his affidavit, he was scheduled to meet Mr Mphephu in court for Plaintiff's case on that morning.

58. There is additional, and even stronger, objective evidence to refute Mr Lekabe's version. This is the evidence provided by the Plaintiff's attorney, Mr Mafate, and his

junior counsel on 6 February 2017, Ms Docrat. It is common cause that Mr Lekabe's name appears on all three draft orders that were prepared on 6 February, viz. the two interlocutory orders, and the merits order. Ms Docrat prepared these orders on her laptop computer. She confirms as much in an affidavit she filed in the proceedings on the advice of the JSA. She states that she included Mr Lekabe's name in the orders because he was the State Attorney that appeared for the Minister at roll call and opposed the two interlocutory applications. After the interlocutory issues had been dealt with and the matter referred to Meyer J, Mr Mafate told Ms Docrat that Mr Lekabe had approached him and advised that he was conceding the merits on behalf of the Minister.

59. Mr Mafate confirms this in his affidavit filed before this court. He says that he was in court GC speaking to a Correctional Services warder who had brought a witness in Plaintiff's case to court from prison when Mr Lekabe approached him with this advice. He instructed Ms Docrat to prepare a draft merits order, which she did, including Mr Lekabe's name at the end of the order.

60. Once the order was printed, Ms Docrat insisted that Mr Lekabe should read it, as it had been drafted by her, without his input. Mr Mafate and Mr Mphephu approached Mr Lekabe who was still in court to confirm that the order was satisfactory and he did so. Before the draft could be made an order of court Tsoka ADJP adjourned court proceedings. For this reason, the draft was made an order of court in chambers. Between the adjournment and proceeding to Tsoka ADJP's chambers, Mr Kajee came on the scene. He told Ms Docrat and Mr Mafate that he had been requested to confirm the draft order before the Judge, as Mr Lekabe had to attend to an emergency at the State Attorney's office. Ms Docrat subsequently, and at the insistence of ADJP Tsoka, inserted Mr Kajee's name in manuscript on the draft merits order alongside Mr Lekabe's typed details.

61. The versions put before court by Mr Mafate and Ms Docrat are detailed and logical. Ms Docrat went to extraordinary lengths to explain why Mr Lekabe's name did not appear on the versions of the court rolls that the administrative staff worked on in roll call court on 6 February 2017. It is not necessary to go into details in this regard. However, affidavits were secured from the relevant administrative staff that explain this, and I am satisfied that nothing can be made of the fact that Mr Lekabe's name was not inserted as the representative on behalf of the State Attorney next to item 21 (being the Plaintiff's case). In fact, even though Mr Lekabe states that he did appear for the State Attorney in item 20, his name was not inserted there either. Further, Mr Mphephu's name is also absent from the list, which means that the list does not support Mr Lekabe's case on this score either.

62. What is of enormous significance is that Ms Docrat and Mr Mafate have no reason to misrepresent the true position as to who represented the Minister at court on 6 February 2017, and who conceded the merits on the Minister's behalf. In fact, it would have made the Plaintiff's case much easier if they had supported Mr Lekabe's position. This is because, as I have indicated, if Mr Mphephu had indeed been responsible, rather than Mr Lekabe, the Minister's case for rescission would be significantly harder.

63. I can think of no logical reason why Ms Docrat and Mr Mafate would have sought to mislead the court: first, by misleading Tsoka ADJP by falsely inserting Mr Lekabe's name on the draft orders in circumstances where Mr Lekabe had nothing to do with the matter; and second, by misleading this court in putting forward an untrue version of what transpired in court on 6 February 2017. Mr Lekabe was unable to think of any when I pressed him in court. The overwhelming probability is that their version is truthful, and Mr Lekabe's is not. I should add that Mr Lekabe produced a *pro forma* confirmatory affidavit from the State Attorney who was responsible for the

other matter that he was involved in at roll call to support his version that he did not remain in court after he had dealt with that matter. I do not place much store on this to support Mr Lekabe's version: Mr Lekabe was the State attorney's head of office and he was thus in a position of authority over her; the affidavit, as I have said is pro forma and provides no detail; and, in any event, it simply cannot override the abundance of other, objective evidence that refutes his version.

64. The version of the Plaintiff's attorney and counsel dovetails with that of Mr Mphephu in all material respects, at least insofar as both they and Mr Mphephu are adamant that it was Mr Lekabe, and not Mr Mphephu who represented the Minister on the day and who conceded the merits. For these reasons, I find Mr Lekabe's version of what transpired to be so implausible as to warrant rejection on the papers.[11] I find that it was indeed Mr Lekabe who took control of the matter and represented the Minister on 6 February 2017. It was he who conceded the merits of the matter, and who consequently put into motion the events that led to the tender of a payment of R34 million, and the acceptance of that amount by the Plaintiff. Furthermore, I reject Mr Lekabe's version that Mr Mphephu neglected to approach him to appoint counsel. Mr Mphephu's version of what happened before 6 February is confirmed by Lieutenant Colonel Jama: Mr Lekabe took control of the file (as he admitted he sometimes does, when he "harvests" - his words - matters to deal with personally). Despite a clear request by his client, the Minister, to appoint counsel, he failed to do so.

THE LINK WITH THE RULE OF LAW/LEGALITY ISSUE

65. How do these findings tie in with the broader question of whether the Minister is entitled to a rescission of the orders on the basis of the rule of law or legality? In the

[11] *Plascon-Evans Paints Ltd v Van Rievbeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C

first place, it must be a matter of grave concern to any court that an order was made by consent by the State Attorney in circumstances where that State Attorney is shown to have misled the court by giving an untruthful account of what occurred, and how it came about that the concession was made. It is even more concerning when the State Attorney involved is the head of the office. This, in itself, is a factor that implicates questions of the due administration of justice, and hence legality and the rule of law.

66. What further implicates these questions is the fact that Mr Lekabe stated the following in an affidavit filed in response to that of Ms Docrat:

> "I am certain that I would not have dealt with the matter in the manner alleged in the light of the experience that I amassed during my 16 years sojourn as the office head of the State Attorney. Had I been in attendance in court as alleged, which I deny, I would have brought a substantive application for a postponement of the matter on the basis that Mr Mphephu had at that stage dealt with the matter poorly. ... I would have argued further that as a result of Mr Mphephu's inaptitude (sic), the Minister of Police was in no position to mount a credible defence to Mr Kunene's claim. In order to further buttress the Minister's application for a postponement I would have indicated to the court that the Minister was not made aware of the inaptitude (sic) on the part of Mr Mphephu and also had no right not to use the services of the state attorney." (my emphasis)

67. Of course, as I have found, Mr Lekabe was indeed in court on that day dealing with the matter. The question then is why did he not proceed to make a substantive application for a postponement? This is particularly so given that it is common cause that the matter involved an amount of over R30 million in damages; police witnesses had not been consulted at all; counsel had not been appointed; and no instructions were sought from the Minister to concede the merits. Although the Plaintiff disputes that the Minister had prospects of succeeding in a defence to the claim, the fact is that the police did have a version of events that required consultation with witnesses and proper evaluation before a decision could rationally be made to concede the merits. The fact that Mr Lekabe did so without consultation and without the benefit

of the assistance of counsel in circumstances where he knew that the prudent thing to do would be to make a substantive application for a postponement lends credence to the submission made by the Minister that Mr Lekabe's conduct points to a deliberate attempt to subvert the course of justice in this matter at the expense of the Minister.

68. What lends further credence to this submission is the broader context of the relationship between Mr Lekabe and Mr Kajee, and their actions subsequent to the concession on the merits. As I briefly explained earlier, Mr Kajee started invoicing the State Attorney for work on the Plaintiff's defence of the quantum issue in December 2017. Both he and Mr Lekabe contend that he was briefed on 15 December 2017. What is alarming is the fact that the letter of instruction from the State Attorney briefing Mr Kajee is dated 14 February 2018. Furthermore, the Register of counsel briefed in matters for February 2018 also records, in Mr Lekabe's handwriting, that Mr Kajee and his junior counsel were briefed in the matter on 14 February 2018. At the very least, this gives rise to an inference that the relationship between Mr Lekabe and Mr Kajee was such that Mr Kajee could invoice for work done on, and would be paid for, matters in respect of which he had not yet received his brief. This is particularly so given Mr Lekabe's own evidence that he kept control of the briefing of counsel in his office.

69. This suspicion around the nature of the relationship between Mr Lekabe and Mr Kajee is deepened if one considers Mr Kajee's billing patterns. Copies of some of the invoices he submitted to the State Attorney in respect of the Plaintiff's case were attached to the Minister's affidavits. They show a remarkable pattern of Mr Kajee invoicing for what appears to be a set number of hours over consecutive days for work performed on expert reports received in respect of quantum. The standard invoicing pattern reflected in these invoices was 7 hours per day at the rate of R2

500 per hour. In almost all cases (bar a few exceptions) the standard invoicing pattern was to bill for 2 days' work on each expert report - in some cases, only one day was claimed. It was this billing pattern that accounted for the high fees charged by Mr Kajee on the matter.

70. As a Judge in the High Court in Johannesburg, I am very familiar with the nature of expert reports filed in personal injury matters. These matters take up the bulk of work conducted in our Civil Trial court. I can honestly say that I have never come across an expert report that required 14 hours for consideration. An advocate or an attorney familiar with this line of work (as Mr Kajee clearly is) would know exactly what to focus on to glean the information pertinent to a case from an expert report. It is simply untenable that all of the expert reports filed in the Plaintiff's matter required either 14 hours or 7 hours' consideration as a matter of course.

71. It seems to me to be glaringly obvious from the invoices that were submitted by Mr Kajee that this case was a cash cow for him. As if this was not bad enough, it did not stand on its own. In the JSC judgment, Mokoathleng J recorded that according to the JSC, the State Attorney made payment of an amount of R34 211 875 to Mr Kajee for matters in which Mr Kajee was briefed on behalf of the state during a period of approximately 18 months, from April 2017 to 30 August 2018. These invoices were allegedly captured and authorised for payment on the same day. Broken down, the figures amount to a payment of R66 522 per day every day for 517 consecutive days. The JSC averred that the only reasonable conclusion to be drawn was that there existed a corrupt and collusive relationship between Mr Kajee and the State Attorney.

72. The judgment further records that according to the JSC, who obtained its information from Brigadier Beukes of the SAPS Legal Services Department, Mr Kajee was

briefed in five other matters to represent the Minister involving a quantum of over R1million. In each of these cases, the *modus operandi* was alleged to be the same as in the Plaintiff's matter. A memorandum motivating a proposed settlement was prepared shortly before the trial or on the day of the trial, thus not affording the Minister sufficient time to consider the settlement proposal. Despite being given ample opportunity to defend these allegations against him before Mokoathleng and Modiba JJ, he failed to do so.

73. I should add that the memorandum drawn up by Mr Kajee and submitted to the SAPS Legal Services Department on the day of the quantum trial shows all the hallmarks of having been a superficial document. The language is poor and difficult to follow at time. Not only that, but reference is made to the incorrect trial date (3 May instead of 28 February) and it is recorded that fruitful discussions were held with the State Attorney, Mr Mashoebane, who apparently had confirmed to Mr Kajee that the amount he recommended by way of settlement was reasonable and fair. It is common cause that Mr Mafiri dealt with the matter for purposes of the quantum trial. Presumably Mr Kajee cut and pasted from an existing memorandum, leaving in incorrect details. It is quite clear from this memorandum that it could not possibly have formed the basis for a considered instruction from the Minister, and in all probability was never prepared with that goal in mind. It was of poor quality, and sent to Mr Lekabe the day before the trial. It was only transmitted to the SAPS Legal Services Department on the afternoon of the trial. It did not represent a real attempt to obtain proper instructions from the Minister.

74. While the views expressed in the judgment of the court in Mr Kajee's matter are the opinions of that court, I cannot ignore the broader context painted in that matter about the relationship between Mr Kajee and Mr Lekabe. Nor can I ignore the fact

that the Plaintiff's case does not stand alone in terms of how these two legal professionals dealt with it.

75. The overwhelming probability is that Mr Kajee and Mr Lekabe were, as the JSC submitted in the matter before Mokoathleng and Modiba JJ, involved in a collusive relationship in terms of which matters like that of the Plaintiff were milked at the expense of the state. The Plaintiff's case against the Minister formed part and parcel of this scheme. This would explain why Mr Lekabe acted so as to scupper the Minister's chances of defending the merits of Plaintiff's claim. A concession on the merits smoothed the path towards the dispute on quantum, and the gateway to significant fees on the part of Mr Kajee. One can only speculate as to what whether Mr Lekabe got something out of the deal, and if so, what. Importantly, what is clear is that, in his own words, he was responsible for briefing counsel in these matters: as such he was an indispensable cog in the scheme.

76. As a result of their conduct, Mr Lekabe and Mr Kajee subverted the administration of justice in the Plaintiff's matter. They denied the Minister the opportunity to properly defend the matter or to compromise or settle the matter on a rational basis. They used their positions to obstruct that process. Their conduct goes directly to the rule of law: to bind the Minister to a concession and a tender made in circumstances like this would fundamentally undermine the rule of law.

77. I am mindful of the fact that there is no evidence before me that the Plaintiff was involved in any collusive or corrupt relationship with the Minister's legal representatives. This is obviously a factor I must take into account in weighing the prejudice to the Plaintiff in granting a rescission and the prejudice to the Minister in refusing it. Unfortunately for the Plaintiff, my view is that this is a case where the

public interest demands that the imprimatur of the court should not be given to the orders that were granted by refusing rescission.

78. I am also mindful that it remains open whether the Minister ultimately will be able to succeed in defending the Plaintiff's case on the merits. The Plaintiff has subsequently been criminally tried and was discharged under s174 of the Criminal Procedure Act. The magistrate in the trial was not complementary about the police witnesses. It may in any event be that, properly advised, the Minister reaches a settlement with the Plaintiff on reasonable and rational grounds. Regardless of the eventual outcome of the matter, the public interest in the particular circumstances of this case requires that the administration of justice must be allowed to take its proper course, unsullied by the shenanigans that beset the matter the first time around.

CONCLUSION AND COSTS

79. For all of these reasons, I am satisfied that the Minister's application for rescission should be granted. In order to expedite the matter, particularly for the benefit of the Plaintiff, who should not be saddled with any further unreasonable delay in the finality of his damages claim, I will direct the parties to hold a pre-trial conference within 15 days of this order for the purposes of discussing any issues they might regard to be important for the matter to proceed speedily to trial, including those matters listed in my order below.

80. As far as costs are concerned, the Minister has sought a personal costs order against Mr Lekabe and Mr Kajee (the former in his personal and not official capacity). Given the findings I have made as to their conduct, in my view a punitive costs order of this nature is appropriate. Furthermore, I will ensure that a copy of

this judgment is forwarded to the attention of the Gauteng Provincial Office of the Legal Practice Council, and the Johannesburg Society of Advocates.

81. The Minister does not seek a costs order against the Plaintiff.

82. I make the following order:

1. The order granted on 6 February 2017 (which order is dated 7 February 2017) by Tsoka ADJP under case number 2015/32422 is hereby rescinded and set aside.

2. The order granted on 2 March 2018 by Matojane J under case number 2015/32422 is hereby rescinded and set aside.

3. The second respondent, in his personal capacity, and the fourth respondent are ordered, jointly and severally, to pay the applicant's costs.

4. The legal representatives of the applicant and the first respondent are directed to conduct a pre-trial meeting within 15 days of this Order with a view to discussing what steps may be taken to facilitate the trial being dealt with expeditiously, including, but not limited to:

4.1 An agreed time-table for all pre-trial steps that either party may intend taking.

4.2 An approach to the Deputy Judge President for an expedited trial date to coincide with counsels' availability.

4.3 A consideration of whether, if pre-trial disputes are anticipated, and in the interests of expedition, it would be appropriate to appoint a Judge to case manage the matter.

R M KEIGHTLEY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date Heard	: 25, 30 August 2019
Date of Judgment	: 18 October 2019
Counsels for the Applicant	: D Joubert (SC)
	: GVR Fouche
Instructed by	: Geldenhuys Malatji Inc
Counsel for 1st Respondent	: M Patel
Instructed by	: Mafate Inc Attorneys
For the 2nd Respondent	: KG Lekabe (self-represented)
For the 4th Respondent	: M Valley
Instructed by	: Muhammed Vally Attorneys