REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO:A5014/18

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
25 OCTOBER 2019

In the matter between:

THE ATTORNEYS FIDELITY FUND BOARD OF CONTROL Appellant/Defendant

And

RODNEY ADRIAN LOVE Respondent/ Plaintiff

JUDGEMENT

GRANT, AJ:

INTRODUCTION

[1] On 13 August 2015 the Respondent, Rodney Adrian Love (the Plaintiff in the main action) instituted an action against the Appellant, the Attorney's Fidelity Fund Control Board (initially the Defendant in the main action) in terms whereof the Respondent claimed payment from the Appellant in the sum of R10 000 000-00 plus interest and costs.

[2] The Respondent's cause of action against the Appellant was based on an allegation that attorneys (Turnbull and Associates – 'Turnbull') with whom the Respondent had deposited R10 000 000-00, had stolen his money.

[3] In virtue of the fact that this deposit constituted trust money, and having regard to the provisions of Section 26 of the Attorneys Act, Act 53 of 1979 ('the Act') the Respondent submitted that the Appellant was obliged to reimburse him for the pecuniary loss that he had suffered as a result of the theft.

[4] The Appellant raised several special pleas, including that the Respondent had failed to comply with section 48(1)(a) of the Act (to file a claim for theft within the prescribed 3 months).

[5] On 19 June 2017, Acting Justice Makose, dismissed all of the Appellant's special pleas.

[6] The Appellant applied for leave to appeal, first to the Court *a quo*, and upon leave being declined, then to the Supreme Court of Appeal.

[7] The Appellant was granted leave by the Honourable Supreme Court of Appeal, by order dated 7 March 2018, per Wallis, JA and Pillay AJA, to appeal to a full bench of this court.

[8] The order of the Supreme Court of Appeal granted leave though limited the appeal to the following issues:

8.1. Whether the Court a quo was correct in refusing the Appellant's application for condonation; and

8.2. Whether the Court a quo was correct in its view that the Respondent had complied with the prescripts of section 48 of the Act.

BACKGROUND

[9] The Respondent, entered into negotiations with one, Lorenzo Pavoncelli, ('Pavoncelli'), whom he believed to be a member and the duly mandated agent, of a company by the name of Sword Fern Trading (Pty) Limited, ("Sword Fern Trading"), that owned shares in another company known as Centrosphere (Pty) Ltd, ("Centrosphere") - a supplier of amongst others, electric light fittings - with the aim of purchasing shares in Centrosphere from Sword Fern Trading.

[10] To facilitate the transaction, the Respondent, at the request of Pavoncelli, made deposits to the amount of R10 million into the trust account of Attorneys, Turnbull and Associates.

[11] Unbeknown to the Respondent, Pavoncelli was an employee of Turnbull and Associates with full control over their trust accounts.

[12] Pavoncelli rapidly proceeded to pay the monies deposited by the Respondent over into third party accounts - none of which was discernibly related to Centrosphere - and to the business accounts of Attorneys Turnbull and Associates.

[13] The Respondent was then unable to recover his money from Sword Fern Trading, Centrosphere, Turnbull and Associates or Pavoncelli, and, finally, submitted a claim to the Fund in terms of the relevant provisions of the Act.

[14] The Appellant held a rule 8bis enquiry, after which it rejected the claim. The Respondent then instituted action against the Appellant in this Court.

[15] The Appellant raised several special pleas, namely:

15.1. *lis alibi pendens*;

15.2. Plaintiff's failure to comply with section 48(1)(a) of the Act;

15.3. Lack of entrustment;

15.4. Pavoncelli not acting in the course and scope of the practice of an attorney; and

15.5. Monies constituted an investment by plaintiff and defendant is not liable for the loss.

[16] The trial commenced on Monday, 7 November 2016, and concluded on Wednesday, 9 November 2016.

[17] On 19 June 2017 an oral judgment was handed down rejecting all the special pleas.

[18] The Appellant filed a notice of intention for leave to appeal on 21 September 2017. This was followed by an application for condonation for the late filing of the application for leave to appeal on 26 October 2017 – at the request of the registrar on 12 October 2017.

[19] The Court a quo dismissed the application for condonation and leave to appeal on 14 December 2017.

[20] The appellant did not apply to the Court *a quo* for leave to appeal the condonation application that was dismissed by the Court *a quo*.

[21] The Appellant then brought an application for leave to appeal in the Supreme Court of Appeal (SCA).

[22] The SCA , by order dated 7 March 2018, per Wallis, JA and Pillay, AJA, granted leave to appeal to a full bench of this Honourable Court.

LEAVE TO APPEAL – CONDONATION

[23] It must be noted that although this court addresses the questions which the SCA directed it to address, it is unclear why the SCA granted leave to appeal when the appellant did not approach the Court *a quo* for leave to appeal the condonation application that was dismissed.

[24] In the absence of that application, either having been allowed or refused, the Appellant was not at liberty to approach the SCA for leave to appeal the condonation application. This Court has since it is in the interest of justice to finalise this matter and since it has been ordered by the SCA to do so decided to deal with the appeal on the two grounds on which leave to appeal was granted, namely:.

24.1. Whether the Court a quo was correct in refusing the Appellant condonation; and

24.2. Whether the Court a quo was correct in its view that the Respondent had complied with the prescripts of section 48 of the Act.

CONDONATION

[25] The time frame within which an appeal must be brought is governed by rule 49(1)(b) of the High Court Rules, as follows:

> "When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within fifteen days after the date of the order appealed against: Provided that when the

reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within fifteen days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of fifteen days."

[26] The judgment of the Court a quo was handed down on 19 June 2017.

[27] A correspondent attorney was sent to note the judgment. The Appellant attributes to the attorney who noted the judgment the belief that a written judgment would be handed down, and so he failed to take extensive notes of the judgement.

[28] The Appellant explains that, at first, it had understood from the correspondent, that the full judgment had not been handed down, and that it needed the court's reasons, which it applied for on 29 June 2019.[1]

[29] The Appellant proceeds to explain that:

29.1. A transcript of the proceedings was received on 21 July 2017.

29.2. On 1 September 2017 a certified copy of the Judgment was received, and it delivered its notice of intention to Appeal on 21 September 2019.

29.3. On 12 October 2017 the Registrar requested an application for condonation and, the Applicant states: "The application for condonation was duly filed on 26 October 2017."[2]

[30] The Appellant submits that it gave a complete account of the delay.[3]

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[1] Paragraph 11 of their application for leave to appeal to the SCA (for the period 19 June 2017-29 June 2019).

[2] Paragraph 31 of Applicant's Heads.

[3] Paragraph 31 of its Application for leave to appeal to the Supreme Court of Appeal.

[31] It is helpful to map out the Appellant's timeframe here:

Date	THE APPELLANT's submissions
19 June 2017	Judgment delivered
29 June 2017	Application for Reasons
21 July 2017	Received transcript
1 September 2017	Received certified judgment
21 September 2017	Notice of Intention to Appeal
12 October 2017	Registrar's request for condonation application
26 October 2017	Application for condonation delivered.

[32] The Appellant omits to indicate that the Registrar twice requested a condonation Application.

[33] In addition, although, on the Appellant's version, the delay was occasioned entirely by 'inadequate' notes[4] taken by the Appellant's correspondent attorney, on the basis of which the Appellant decided it might appeal – the Appellant did not disclose the 'inadequate notes'.

[34] The Appellant's affidavit proffered, by the correspondent attorney, in support of this allegation does not address the issue except to say: 'I have read the Appellant's affidavit of Brendan Muller and confirm the content in so far as it relates

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[4] Referenced at paragraph of the application for leave to appeal to the SCA, where the following appears: "In the present instance, a member of my correspondent firm, Mr Sello Matsepane, noted the judgment. He had expected that the learned judge would hand down written judgment and therefore did not take extensive notes. I refer to his confirmatory the Appellant affidavit, filed herewith."

to me.'[5] The significance of this is that there is a vast discrepancy in detail between the explanation given regarding the 'inadequate notes' and the detail given for every step he took after that (from 29 June 2019).

[35] As far as evidence goes, this must be of the weakest form possible offered in support of the most critical issue. It seems that in the absence of the confirmatory affidavit the Appellant's affidavit of the correspondent, bald as they are - the allegations regarding the failure to take substantial notes would constitute inadmissible hearsay and would have had to be excluded from the Appellant's affidavit in support of condonation. These allegations are now permitted on the technical basis that the correspondent himself filed a supporting affidavit in which he simply confirmed the allegations of the deponent to the main the Appellant's affidavit.

[36] However, when one considers why it is that hearsay is ordinarily inadmissible and precluded from the Appellant's affidavits is that the opponent is deprived of the opportunity to engage with and test the allegations of the witness on whom the probative value of the allegations depend.[6] Even though the two Appellant's affidavits read together may technically escape being labelled as hearsay, the scant details provided beg so many questions as, in my view, to continue to pose the dangers of hearsay evidence.

[37] Furthermore, and even accepting that there were such inadequate notes, there is an anomaly here that has managed to remain in the shadows because of the way in which the explanation was constructed.

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[5] Paragraph 2 of The Appellant's affidavit of Sello Matsepane, at page 1379 of the bundle.

[6] DT Zeffertt & AP Paizes *The South African Law of Evidence* 3rd ed (2017) 399ff; *S v Ndhlovu and Others* 2002 (2) SACR 325 (SCA) at paragraph 13.

37.1. On the one hand it is the Appellant's submission that its correspondent had been in Court and had only failed to take comprehensive notes of the full judgment which was handed down. They do not explain how it is that the failure by the correspondent to take substantial notes under the misapprehension that a written judgment would be provided, could ever have translated into the belief that a full judgment had not been handed down.

37.2. It is true that the Appellant switches to submitting that - after a communication from the learned Judge *a quo* that she had handed down the full judgment - to explaining that they required the transcript and made the appropriate application for this. It is significant that no date is given for this application which makes it impossible to keep track of whether a proper account is given of the passage of time.

37.3. In addition, it remains a mystery as to how they would need to be advised by the Judge that a full judgment had been given, whereas their correspondent was present when the full judgment was handed down.

37.4. Although the correspondent may have initially thought that a written judgment would be made available – this does not translate, as the Appellant needs it to, into any grounds for believing that the full judgment had not been handed down.

37.5. Significantly, the Appellant does not even allege, nor is there anything from the correspondent on the point, that the correspondent's initial belief that a written judgment would be handed down, and although he was privy to the entire judgment, he continued to think that the entire judgment had not been handed down.

[38] This court is required to believe that because an attorney had taken brief notes of a full judgment, that the attorney could have any basis on which to believe that what he was privy to was not a full judgment, *because* he had expected it to be written. There is an irredeemable gap in logic here and it gives rise to an equally irredeemable gap in time and in the good faith of the application for condonation.

[39] In addition, the application for condonation did not address itself to the prospects of success on appeal – as it is required to. In *Van Wyk v Unitas Hospital*[7] the unanimous Constitutional Court said:[8]

> "This court has held that the standard for considering an application for condonation is the ***interests of justice***. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the ***prospects of success***. [*Brummer v Gorfil Brothers Investments* (Pty) Ltd and Others 2000 (2) SA 837 (CC) (2000 (5) BCLR 465) in para 3.]"
>
> (emphasis added)

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[7] 2008 (2) SA 472 CC.

[8] Emphasis added; paragraph 20. This paragraph was most recently endorsed by the Constitutional Court in *Baron and Others v Claytile (Pty) Ltd and* another 2017 (5) SA 329 (CC).

[40] There is a conspicuous omission to deal with the prospects of success on appeal - which was conceded in argument. The closing paragraphs of the Appellant's affidavit in support of condonation read:

> '21. In order to assess its prospects on appeal, it was necessary for counsel for Applicant/Defendant and I to peruse the written reasons for judgment with reference to the transcribed record, and to advise Applicant/Defendant accordingly.
>
> 22. This would clearly not have been possible without the transcriptions, including the certified transcribed Judgment.
>
> 23, In the circumstances I humbly pray for an order condoning the (late filing of the notice of application for appeal herein and extending the date for the filing thereof to 22 September 2017.'[9]

[41] Not only is there any attempt to address the prospects of success, but the deponent does not even venture to suggest that it would be in the interests of justice to condone the late filing.

[42] When one considers that this was a matter for the discretion of the judge who presided over the matter and may only be overturned if it may be concluded that the trial judge was wrong,[10] there appears no basis on which to interfere with the trial Court's exercise of its discretion.

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[9] Original paragraph numbering. The closing paragraphs of the Appellant's affidavit submitted in support of Condonation appears at page 1373-4 of the bundle.

[10] *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 A at 781 I - 782 B.

[43] Nevertheless, in the interests of finality, I proceed to consider the question on the merits – regarding whether the notification of theft was given in time – in case I am wrong that condonation was rightly refused – or, more accurately, that the trial court was not wrong in refusing condonation.

APPEAL

[44] The Appellant submits that the Respondent did not comply with the 'notice' requirement under the Act. The Act provides, in section 48(1)(a), as follows:

> "No person shall have a claim against the fund in respect of any theft contemplated in section 26 unless -
>
> (a) written notice of such claim is given to the council of the society concerned and to the board of control within 3 months after the claimant became aware of the theft or by the exercise of reasonable care should have become aware of the theft; ..."

[45] The Appellant's submission is that the Respondent had become aware of the theft already on 15 May 2012, or, at least, by 28 November 2012 and that, accordingly, notice of the claim had to be given by the end of February 2013 – which the Respondent failed to do.

[46] The Respondent explains that while it had access to the trust account of the relevant attorney's firm (Turnbull) and regarded the transactions which these revealed with suspicion, he only became aware – in the required sense – that his

money had been stolen, when on or about 13 September 2013[11] he was able to access Turnbull's business account.

[47] It is undisputed that the Respondent filed his claim against the Appellant on 7 October 2013.[12]

[48] The Appellant correctly relies on *SVV Construction (Pty) Ltd v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund*[13] ('*SVV*'). Although two cases have referred to this case (of *SVV*) and criticised the decision on a different point,[14]

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[11] Paragraph 57, Respondent/Plaintiffs heads – relying on the transcript of proceedings, volume 6, p65, lines 24 - 25; p66, lines 1-8.

[12] Volume 6, p125, line 5.

[13] 1993 (2) SA 577 (C).

[14] Relating to the requirement of 'entrustment'. In *Industrial and Commercial Factors (Pty) Ltd v Attorneys Fidelity Fund Board of Control* 1997 (1) SA 136 (A) the court said as follows: 'I do not understand these passages, and similar remarks in the case of *SVV Construction (Pty) Ltd v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund* 1993 (2) SA 577 (C) at 589G, to convey that the liability of the Fidelity Fund is limited to those cases where the money or property concerned was impressed with a trust in the technical legal sense of the word.' (at page 144)
In *Bic Southern Africa (Pty) Ltd v Attorneys Fidelity Fund Board of Control* 2003 (6) SA 757 (W) the Court addressed itself to yet another portion of the judgment in *SVV*, as follows: 'The learned Judge of Appeal went on to say that he did not understand the remarks of Nicholas J, and similar remarks in *SVV Construction (Pty) Ltd v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund* 1993 (2) SA 577 (C) at 589G, to convey the impression that the liability of the fund is limited to those cases where the money was entrusted with a trust in the technical legal sense of the word. Having regard to the use of the word 'toevertrou' in the Afrikaans text of the Act, it was held on the facts that the Appellant in that matter had shown a sufficient element of entrustment to bring it within the ambit of s 26(a).' (at paragraph 11).

its reasoning on what constitutes knowledge has been left undisturbed. It is therefore the leading authority on the point.

[49] The Appellant relies, virtually entirely, on the decision in *SVV* as follows:[15]

> 'In *SVV Construction (Pty) Ltd v Attorneys Notaries and Conveyancers Fidelity Guarantee Fund* 1993 (2) SA 577, the Honourable Court set the requirements as follows (at 584I - 585H/I):
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> > "For the Plaintiff to have been held to have become aware of the theft, meant that he must have had actual personal knowledge thereof, knowledge connoting an awareness of material facts which would create in the mind of the reasonable man the belief or conviction not merely the suspicion that a theft, in the sense of wrongful dealing by the attorney of the monies entrusted to him, had been committed."' [original emphasis]

[50] Following on this, the Appellant seeks to persuade this Court that the Respondent did indeed know – as defined in *SVV*, because, at best for the Appellant, although stripping out the repetition:[16]

> 50.1. when Pavoncelli agreed to pay the Respondent himself (on about 15 May 2012), the Respondent became 'convinced'[17] that the money had been stolen;

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[15] At para 59 of Appellant's Heads of Argument.

[16] See footnotes 17 and 19 - from the Appellant's Application for Leave to Appeal and its heads (particularly at paragraphs 58-74).

50.2. and that at times (September 2011[18] and 28 November 2012)[19] the Respondent held a 'strong suspicion'.

[51] It is significant to note that the Appellant attributes nothing more to the Respondent, on its own grounds (in paragraph [50]), than a conviction or strong suspicion. It stops short, in its own argument; of making the claim that any of this amounted to *knowledge* on the part of the Respondent – as is required.

[52] Although the Appellant relies on *SVV*, it is right not to attribute to the Respondent knowledge – because *SVV* does not say, or, does not *only* say what the Applicant has selectively quoted. Instead it said the following – to the effect that knowledge can only be claimed or attributed once a person has evidence for his belief:

> "What is then required is the awareness of material facts which would create in the mind of a reasonable man the knowledge, in the sense of the belief or conviction, not merely the suspicion, that a theft had been committed (by a practising attorney in the course of his practice). 'Belief or conviction' connotes something less than certainty in the mind, but at least that which amounts to 'mental acceptance of a proposition, statement or fact, as true, on the ground of authority or evidence (OED sv 'belief'); 'conviction' is 'strong belief on the ground of satisfactory reasons or evidence' (OED); just as this is more,

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[17] Appellant's Heads, paragraphs 58(b), 58(c)(v), 63, and 65.

[18] Supposedly (since no reference is provided) from the testimony of THE RESPONDENT during the section 8(5) proceedings.

[19] The Appellant affidavit of Respondent/Plaintiff of 28 November 2012 in the Rule 8(5) proceedings.

> considerably more, than mere suspicion (however well founded the suspicion may subsequently prove to be) so also is it stronger than an impression (cf *Jeffrey v Andries Zietsman (Edms) Bpk* 1976 (2) SA 870 (T) at 871E-F). In other words, the person in the position of a claimant has to be able to say: 'with the evidence at my disposal I, as a reasonable man, am satisfied that the attorney has committed theft' (cf *Gramophone Co Ltd v Music Machine (Pty) Ltd and Others* 1973 (3) SA 188 (W) at 207F-G)."[20]

[53] Not only was the Appellant selective in what it quotes from *SVV*, – on which it bases its entire case, but the quote attributed to the case appears nowhere in the text of the case – but instead in the head-note.[21]

[54] Yet, even if the Appellant had only confined its research to the headnote – the very next paragraph, from the headnote is directly against the Appellant:

> "Held, further, that the plaintiff (in the person of B) did not actually become aware of the fact that L had committed a theft until he was shown the bank statement from which this could be inferred with sufficient certainty to engender the necessary belief or conviction, by which time defendant had received the letter of 1 May 1985, which defendant accepted as constituting notice for the purposes of s 48."[22]

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[20] *SVV Construction (Pty) Ltd v Attorneys Notaries and Conveyancers Fidelity Guarantee Fund* 1993 (2) SA 577 p 585.

[21] *SVV Construction (Pty) Ltd v Attorneys Notaries and Conveyancers Fidelity Guarantee Fund* 1993 (2) SA 577 p578.

[22] At page 578.

[55] At best for the Appellant, and Counsel for the Appellant pressed this point in argument: the Respondent supposedly had the required 'evidence' when he obtained the Trust Account statements, and was able to identify from them payments to third parties, as follows:

> "Moreover, already in his evidence in chief, he admitted that when he examined the trust bank accounts of Turnbull and Associates, he saw that some of the payments out of monies that he had deposited, had been made to third parties, such as salaries and amounts paid to "Hodges", Pavoncelli, "Autumn Star", "Best Removals" and a "Tony Gibbs"."[23]

[56] Yet on the Appellant's own authority (*SVV*), which, as discussed, is indeed the leading authority on the point, one may not conclude from trust account statements that theft had occurred:

> "It is important to appreciate that a debit balance in an attorney's trust account is not necessarily indicative of a theft - reckless dealing with trust moneys does not necessarily amount to theft - cf *Die Prokureursorde van die Oranje-Vrystaat v Schoeman* 1977 (4) SA 588 (O) at 601G; similarly, deficiencies in a trust account leading to a debit balance (which would in turn result in dishonoured trust account cheques) can be due, not to dishonesty, but to errors and miscalculations resulting from a failure to keep proper books of

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[23] Footnotes omitted; Paragraph 68 of Application for leave to appeal to SCA, pages 1527-8 of the bundle; repeated at paragraph 72 of the Appellant's Heads.

account - cf *Law Society, Cape v Segall* 1975 (1) SA 95 (C); *Law Society of the Cape of Good Hope v C* 1985 (1) SA 754 (C); on appeal *Law Society of the Cape of Good Hope v C* 1986 (1) SA 616 (A). It could even have an error on the part of the bank."[24]

[57] In case there could remain any doubt on the point, King J makes the following deeply insightful observation in *SVV*:

> "Thus the theft here connotes the material facts necessary to entitle the claimant to bring a claim because it is this which he would have to prove in order to succeed in his claim if it became necessary to institute a court action ..."[25]

[58] The Respondent could not have succeeded in a claim for theft on the basis of the transactions which appeared in the Trust Account of Turnbull, and certainly not on his convictions or suspicions. It was only when he obtained access to the Business account statements that he had what could have stood as evidence of theft.

[59] In exactly the same way as the Court held in *SVV* that suspicions based on what may appear to be irregularities in an attorney's Trust bank account does not provide the necessary basis for the required knowledge, the trial Court was, in my view, right to find that the required knowledge was only obtained by the Respondent in this case, when he was presented with the business accounts. It follows that, in

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[24] At 586D-E.

[25] At pages 585G-586B.

my view, the trial Court rightly held that the Respondent had given notice within the required time frame.

[60] The submission that the trial court had failed to properly consider the probabilities based on inferential reasoning,[26] is stillborn.

[61] The Appellant conceded in argument that only one version had been put to the trial Court. In addition, it was conceded that there had not even been any contradictions in the testimony of the witnesses presented by the Respondent.[27]

[62] In these circumstances, the question of the proper consideration of the probabilities does not arise. There was – as the Appellant's counsel conceded – nothing against which the version put by the Respondent was to be considered.

[63] In my view, the trial Court correctly considered all the issues that the Appellant has raised in this appeal before us. It was alive to the issues that it was called upon to determine and not oppress in its judgment. It follows that the appeal is to be dismissed.

IT IS THEREFORE ORDERED THAT:

1. The appeal is dismissed.
2. Costs are awarded in favour of the Respondent on the ordinary scale of party and party costs.

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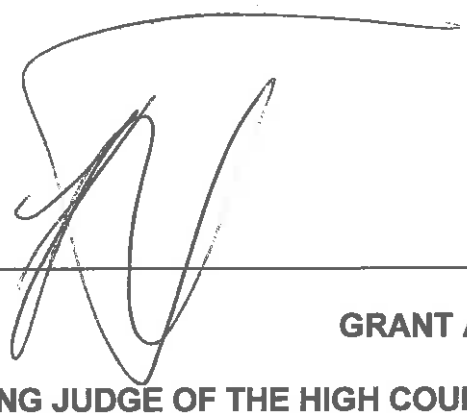
[26] Paragraphs 70-83 of its Appellant's Application before the SCA (page 1529-1532 of the bundle).

[27] As observed by the trial Court at paragraph 9 of its judgment.



GRANT AJ

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA GAUTENG LOCAL DIVISION

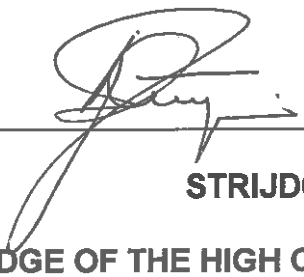
I agree and it is so ordered:

FRANCIS J

JUDGE OF THE HIGH COURT

OF SOUTH AFRICA GAUTENG LOCAL DIVISION

I agree:



STRIJDOM AJ

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA GAUTENG LOCAL DIVISION

FOR THE APPELLANT: G OLIVER

INSTRUCTED BY: BRENDAN MULLER INC

FOR THE RESPONDENT: A P BRUWER

INSTRUCTED BY: MALHERBE, RIGG & RANWELL INC.

DATE OF HEARING: 4 SEPTEMBER 2019

DATE OF JUDGMENT: 25 OCTOBER 2019.