REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 28354/2012

(1)	REPORTABLE: NO	
(2)	OF INTEREST TO OTHER JUDGES: NO	
(3)	REVISED.	
(4)	Signature	Date

BEKITHEMBA MASIZA **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

KHUMALO J

INTRODUCTION

[1] This is an action instituted against the Defendant as a juristic person created for the purpose of payment of compensation for damages or loss caused by the negligent driving of motor vehicles to any user on a road within the borders of South Africa in terms of the Road Accident Fund Act 56 of 1996 ("the Act") as now amended. The action is brought by a Zimbabwean national ("the Plaintiff") for damages arising from personal injuries that he sustained in a motor accident on a road between Pietersburg and Mokopane on 31 May 2008.

[2] The Plaintiff was being transported as a passenger in a motor vehicle with registration number T[…] when it collided with a motor vehicle with registration number D[…] driven by David Modise ("the first insured driver") and another one bearing the registration number T[…] whose driver was not identified.

[3] It is common cause that Plaintiff sustained the following injuries:

[3.1] A fracture of the left clavicle; left shoulder injury
[3.2] Bruised face;
[3.3] Lacerations and abrasions;
[3.4] Psychological stress and trauma.

and as a result and s*equelae* thereof, received medical and hospital treatment. He alleges that he would hereafter also require future medical and hospital treatment and to have suffered a temporal and partial disability, a loss of past and future earnings and/or earning capacity, pain, suffering, discomfort, loss of amenities of life, experienced shock and psychological trauma and accordingly sustained the following damages:

[4.1]	Past Medical and Hospital related expenses:	R10 000.00
[4.2]	Future and Medical and Hospital expenses	
[4.3]	Loss of earnings /earning capacity	R200 000.00
[4.4]	General Damages	R200 000.00

[5] The Plaintiff's particulars were amended on 17 March 2014 to increased amounts of R1 000 000.00 for loss of earnings and R500 000.00 for general damages. Defendant has conceded that the accident was caused entirely by the negligent driving of the insured driver and the parties reached an agreement that the Defendant compensate the Plaintiff in an amount of R150 000.00 for general damages and issue him with an Undertaking in terms of s 4 (a) for Future Medical and Hospitalisation Expenses.

[6] The only issue that remained in contention to be determined by the court was in respect of what the Plaintiff referred to in his particulars of claim as present and future loss of earnings and earning capacity that Defendant contested on the basis that Plaintiff's earnings if any, were indeterminable and illegal as he has been at all relevant times an illegal foreigner without a work permit.

[7] Consequently Plaintiff led evidence in that regard outlining his employment history, the nature thereof and the extent of his past and present earnings and of Dr Pretorius to submit the assessments and quantifications done to substantiate his claim for loss of earning capacity. No evidence was led by the Defendant.

[8] Plaintiff's testimony was that he was born on 18 April 1981 in Zimbabwe and at the time of trial he was staying in Polokwane. At the date of accident he was in the country illegally and staying in Rosettenville. He came to South Africa in 2002 and without a work permit secured a job with a fellow Zimbabwean, Mandla Ndlovu, the driver of the motor

vehicle in which he was a passenger and who since passed away succumbing to the injuries sustained from the collision (herein after referred to as "the deceased"). He had an on-job training as a boilermaker by the deceased who was a boilermaker by trade and in 2006 worked as an assistant boilermaker cutting steel and iron, welding, making TV stands, trailers and palisades. He started working for the deceased as a construction worker in 2002 and throughout his entire employment as a labourer and as an assistant boilermaker earned a steady monthly salary of R4 500. He however occasionally would earn amounts of between R6 000 and R9 000 if his employer had managed to secure a big contract which happened randomly. He passed Grade 10 at Kameroen High School and had no formal vocational training.

[9] The deceased paid his salary in cash in an envelope which had the name of the company, Makhalim Engineering ("the company"), and an amount written on it without issuing him with a payslip. He has never opened a bank account in his life. He kept the salary envelopes at his place of abode. He was not able to produce them at the trial because since the accident he has not been back to his residence. Due to the length of time it took him to recuperate and the extent of his injuries he has not been able to secure another job as an assistant boilermaker. After the accident he went back to Zimbabwe for some time and made a leaving by selling tomatoes with his wife until a year to the trial when he secured his present job as a cleaner at a small butcher in Polokwane. Since the accident he has had no contact with his co-workers because he lost his phone in the accident and does not know what happened to the deceased's company.

[10] During cross examination he explained the discrepancy between his evidence in chief that he at the time of accident stayed in Rosettenville and his particulars of claim that state that he stayed in Tembisa by alleging that he rented a room at Rosettenville only a few months before the accident. Prior thereto he stayed with the deceased in Tembisa. It was also his version under cross examination that he heard from his cousin, the wife of the deceased that the company is no longer in operation. He also in contravention of his evidence in chief stated that he did go back to Rosettenville after the accident to fetch his things and found only his blankets which were removed from the room and stored in the garage. He could not find his other belongings and the salary envelopes that he kept in the room. He started working as an assistant boilermaker only in 2006 when he qualified and from 2002 he was just learning. The deceased told him that it is illegal to work without a permit and promised to assist him with it. Then the accident happened. He still does not have a work permit and proof of his earnings prior to the accident.

[11] Dr Pretorius, the Industrial Psychologist who sat throughout the Plaintiff's evidence confirmed that he heard the evidence and had sight of the reports prepared by the various experts who consulted and conducted different assessments to determine the aftermath of the accident on the Plaintiff. Most importantly he confirmed to have had sight of Elsabe Krone, the Occupational Therapist's report before the Joint Minute ("JM") that he presented in his evidence was prepared. He testified that according to his analysis, the normal procedure of determining loss of income is to look at the experience, type of environment, the earnings in the labour market and corporate sector. Now, if it is found as a fact that the Plaintiff earned a salary of R4 500 he in terms of this test postulated it as a factual amount he was earning, or alternatively looked at the type of qualification that he had as an assistant boilermaker, the specific labour market based on his experience and period to

determine what he could have earned as indicated. His method is generic (standard) as people of the same age will find work and grow their career to a certain category that he referred to as B1 type of earning which he said was equivalent to R6 988. He addressed Plaintiff's school qualifications as Form 3 (Grade 10) because that is what Plaintiff presented to him even though to Krone he said he has a Form 4 (Grade 11). He regarded his job content as of a semi-skilled nature. He also did concept variations, looking at the unskilled with no vocational training then the skilled when trained in that environment and licensed as artisans, having the necessary papers and semi-skilled if they attend artisan training but do not qualify and since the skill is not formally learnt there is no proof of having had training.

[12] According to Pretorius Plaintiff is an unqualified artisan- on a lower scale artisan who was working under the supervision of a skilled and qualified artisan boilermaker. Usually the qualification is done by OV (outcome verification). Since he was working with sheets of metal he would say he is graded from medium to heavy type of work. He would not have worked in the corporate sector but in the informal sector. His basic salary will be on A1 in 2013 which is +- R7 040. That type of salary when on the increasing scale overlaps with each other on low level semi-skilled and semi-skilled of the scales, they will be earning the same. A boilermaker's assistant now earns R7 469. According to Koch table (Quantum yearbook 2014) of suggested assumptions for the non-corporate sector, as a semi-skilled worker he would be earning R17 400 pa in the lower quintile medium and for the informal sector a salaried worker in the lower Q R earned an amount of R7 200 pa and medium quintile R29 000. However a boilermaker assistant in Witbank with 3 years' experience would earn R6300 in 2014 which is R1 575 per week which translates to R40 to R55 per hour with variations influenced by the period.

[13] He concluded that it is therefore reasonable to accept evidence of the Plaintiff that in 2008 he was earning R4 500 and with 7% inflationary increase, he could have earned an amount of R6 750 - R7 000 in 2013. By the age of 45, he could have earned anything between R69 500 and R77 000.00 pa. If he works on the actual income and history as presented by the Plaintiff looking at him as a non- corporate, semi- skilled worker the factual position would be R49 000 to R50 000. At age 45 in 2026 he would have reached his pinnacle and applying the consecutive way of calculation earning R55 000 with overtime and a bonus not taken into consideration as executive earnings. It can be the ceiling but not sooner than age 30 something. R45 000 escalated to 2014 to be R88 000, but in calculation using a more consecutive approach it is escalated until 2026 considering other than expert opinion.

[14] He pointed out that Dr Diedericks, the Industrial Psychologist did not agree with him on the scenario where the semi-skilled and the skilled salary scales overlap which is of the same values and that they reach the pinnacle of their career at 45. Diedericks was of the opinion that it might not be true. His viewpoint as in the JM applies the same value with the unskilled worker due to uncertainty in the low level skill workers. He disagreed with the opinion of Diedericks. In terms of his summary it was possible that when Plaintiff started he might have earned that amount, but does not think a boiler maker will have worked for that kind of money. In the assumption on his mortality, they used the date of accident to date of calculation being 17 March 2014. They both proposed a high contingency to be considered

due to not being possible to determine with any level of certainty the potential future impact of the accident. He considered the other experts reports and concluded that Plaintiff's body cannot work like before and his work environment is more vulnerable because of his injuries and unless he undergoes certain kind of recommended treatment.

His post accident scenario

[15] Dr Pretorius indicated that the other relevant factor that indicates the seriousness of impairment is Dr Enslin report that equates Plaintiff's impairment to 15 % loss of earning capacity as he is limited to a market where he can only perform light work or tasks until the age of 58 unless he finds an employer who can keep him until age of 60. He has found that to a certain extent Plaintiff is accommodated by his present employer and the other employees. He spoke to Plaintiff's co-employee at the butcher who confirmed that the Plaintiff can only do light work, cleaning the butcher and packing the meat and his employer is sympathetic. However they are at a threshold of accommodating him due to his periodic absence that is causing a concern to the employer. His work choice options are limited to sedentary work or he might not find work. He has been told that the business has been sold and the employees are going to move over to the new employer. If he does not stay with new employer he will struggle to find a new job. His work security will be in danger in future due to work absence. He recommends that a 10% deduction will be appropriate and if 15 % premorbid. He was unemployed for 4 years after the accident during which he worked as a hawker selling tomatoes. He was already restricted and was only able to get new work as a result of a referral by a Mr Smit. There is 75% chance that he may lose his job and his condition may degenerate. The amount of R500 per week that he made as a hawker was discussed when making the joint minute. In the informal labour he could have made R 7 200.00 as in 2013. The joint minute of Msiza and Krone does not anticipate an early retirement but at age 60.

[16] Under cross examination Dr Pretorius agreed that there were no collateral earnings at the time of accident and also no proof. He just made a comparison with what is in the labour market. When he has to consider his true work experience, he was working as a semi low skilled person and his earnings were to grow whilst he was qualifying but never grew. Even though he was earning the same amount of money R4 500 throughout his working experience and his qualification as a boilermaker and that is what was indicated at consultation, the reported income is on his projection with the amount considered market related and based on what he earned from the industry. His lack of permit and necessary papers meant he would not have had the same salary growth opportunity. He agreed that the earnings of foreigners are not usually market related. He also agreed that illegal foreigners are exploited but could not see Plaintiff being exploited and that **proof of actual income** instead of market related will be his real earnings. He submitted that people pay for skill due to shortage and the impact is in the middle stream of semi- skilled.

[17] He confirmed that Diederick's report seeks to be depended on what he actually earned than what he could be earning in the labour market. The alternative scenario by Diedericks is based on that there was no proof of earnings and therefore he could not validate Plaintiff's allegations and so, he postulated that he would have worked as a lower level semi-skilled worker. Diedericks does not agree that as from 2002 Plaintiff started with

the process of training until the date of accident with a lot of growth and development happening based on the training he got from the employer. Whilst his (Pretorius) opinion is that a person can learn within the semi-skilled category, the proof of his vocational training is in doing the work. He believes that Plaintiff was a semi- skilled worker dependent on the training. Koch's report that he follows is based on explanation how he does his job. Diedericks and himself are far apart with no middle ground. He would say that they should take Plaintiff back to R50 0000 per year that can still grow over time. Diedericks suggests that unless he can provide proof of his exceptionally high and indeed unlikely reported income the calculation should be based on a level between medium and upper quantile earnings of unskilled workers in the non-corporate sector of the labour market (in the region of R24 000-R36 000 per annum). He still submits however that the salary of R4 500 at the time of accident and a 7% inflationary increase annually is reasonable which roughly would have been R6 750 p/m in 2013.

[18] So at the end of the trial the court had only the evidence of the Plaintiff to consider and ascertain the factual history of his employment and earnings prior and after the accident. The experts as well had relied upon this evidence to compile their reports on the consequence of the accident to his earning capacity. Defendant's Counsel argued that the evidence of the Plaintiff should be disregarded as unreliable as a result of its discrepancy and inconsistency. Arguing further that, Plaintiff failed to justify the consideration of his illegal earnings for the claim for loss of earnings. He had no other evidence to substantiate any of his allegations, especially his earning history. He could not prove his employment with the deceased since 2002, the amount of R4 500 that he allegedly earned and his training and qualification as a boilermaker or assistant boilermaker from 2006.

[19] Plaintiff is the only source of information that relates to his history of employment and earnings and has proven himself to be an unreliable source. There were serious discrepancies and inconsistencies in the Plaintiff's evidence and some allegations were so highly improbable that any reliability thereon would be suspect. The Defendant's Counsel's arguments had merit. He had two contradictory versions of what was the reason why he could not produce his salary envelopes. He first alleged that it was because he never went back to his residence and under cross examination alleged to have gone back but found the envelopes missing, consequently creating doubt if they ever existed. Since the employer is 'deceased", conveniently he alleged to have never opened an account or been able to trace his co-workers, so his pre-accident earnings and nature of work can never be verified. His explanation on where he resided at the time of accident was also suspect as well as his allegation that his employer was a boilermaker but he worked for him as a construction worker in 2002. A further incongruity is with respect to the alleged informal training and qualification as a boilermaker and promotion to assistant boilermaker that he strangely earned the same salary in those different capacities for a period of 6 years. Implying that the alleged duration of his employment, the improvement and acquisition of new skills and experience did not improve or make any difference to his earning capacity.

[20] The evidence is of crucial importance and material relevance. Its unreliability poses a serious problem in establishing the resultant loss of his earning capacity as none of these highly improbable facts could provide a verifiable basis upon which the court can rely on. This was a very challenging situation. Obviously the envelopes, co-workers, bank account

statements would have readily allayed any doubts or difficulties that existed, even the deceased's wife who it came to light that she was the Plaintiff's cousin. Therefore Dr Diedericks' reservations to base any opinion on such evidence were justified because an expert's opinion is only as reliable as the evidence on which it is based. As the court could not find the facts according to Plaintiff legally reliable, the opinions become to that extent unusable. The courts must ensure that the facts underlying the experts' opinions were sufficiently reliable. The court also has a problem with the hearsay evidence by Dr Pretorius on the status and environment of the present work of the Plaintiff that he introduced through his testimony and was not adduced to by the Plaintiff.

[21] The evidence of the unreliability of Plaintiff's evidence was unquestionably remarkable. Apparently even the information that the other experts, besides Pretorius and Diedericks, based their assessment on to determine the nature, extent and effect the accident had on Plaintiff's capacity to earn as presented in their reports was inconsistent and discrepant.

[22] In illustration thereof, the first issue considered in that regard was the information on his place of abode. He alleged that at the time of accident he stayed at Rosettenville and under cross examination said in Tembisa with the deceased employer and his wife who was his cousin. To Dr Pretorius and Dr Birrell the Orthopaedic Surgeon, he alleged to have been staying with a friend in Tembisa at the time.

[23] On the level of his education, Plaintiff testified that he passed Grade 10, equivalent to a Form 3, obtained at Kameroen School. However to Dr Enselin the Orthopaedic Surgeon he said he completed his O levels and immigrated to South Africa in 2006 and to Dr Pretorius alleged to have completed Form 3 at Sotjean Secondary School and not sure which year. To Krone, the Occupational Therapist, he alleged to have completed Grade 6 (Std 4) in 1999 at Kameroen Primary School and due to his parents being poor could not go any further. According to Dr J J Viljoen the neurosurgeon, Plaintiff only obtained a Std 3 certificate and his neurological higher function was weighed with consideration of that fact. Both Viljoen and Krone's reports were annexed to Plaintiff's summons in support of his claim. Dr Diedericks's report, indicates that he completed Form 4 (Grade 11) whilst he told Dr Birrell that he passed Form 2 that is Grade 9.

[24] A further a discrepancy is with regard to his employment. He testified that he worked for the deceased from 2002 when he first came into the country doing construction work and later trained and qualified as a boilermaker whereafter he worked as an assistant boilermaker in 2006, until the date of accident in 2008. According to Krone's report he worked on building sites in Bulawayo where he learned the trade of bricklaying for 2 years from 2002 and only migrated to South Africa in 2005 and in 2006 was taught and worked as an assistant boilermaker at Orange Farm. According to Dr Pretorius he worked for Bongane construction mixing dugga/dougha and on the construction sites in Zimbabwe. He did a similar job in Botswana before he relocated to South Africa and in May 2008, he was working for the deceased as a boilermaker. Dr Pretorius is the only one to whom Plaintiff could not furnish with dates. Dr Birrell reported that Plaintiff's occupation was an assistant boilermaker since 2005. His working experience was reported by Dr Enselin as having

started in Zimbabwe as a cattle herder for two years, a labourer (duggaboy) for three years working for Bongani and a bricklayer in Botswana for one year in 2005 then immigrated to South Africa in 2006 and worked for Mandla as an assistant boilermaker until date of accident. He was then from June 2012 selling vegetables making R500 a week.

[25] He also told Pretorius during the consultation on 29 October 2013 that he does not have contact details for Mr Ndlovu as he lost contact with him when he returned to Zimbabwe after the accident. Whereas according to Krone Mr Ndlovu died in the same accident.

[26] There is overwhelming indication that he was not in South Africa from 2002 until 2005 at least. With a few of these examples it is obvious that the Plaintiff's credibility is questionable and the whole information suspicious. What exactly is the nature of Plaintiff's work experience? Was he ever trained on the job? What was his past earning capacity? Did he work for the deceased and how much did he earn exactly R4 500? To an extent that it worried Diedericks and Pretorius such that they both proposed a high contingency to be considered due to not being possible to determine with any level of certainty the potential future impact of the accident. They were both not committed to the facts as per Plaintiff's evidence, Diedericks 100% and Pretorius partially uncommitted. As a result the key facts in his testimony that are required to profile him for a proper assessment of his past earning capacity and an accurate calculation of the future loss were then understandably deferred to factual information by Diedericks, regrettably that has been proven to be unreliable. It is therefore my conclusion that the unsubstantiated evidence of the Plaintiff cannot be relied upon. The Defendant's argument this far has merit.

[27] The Defendant's argument that the Plaintiff's alleged income should not be considered at all as it was illegal is however misguided. The illegality of his earnings may be a factor to consider as an inhibition or an inherently diminishing factor of his capacity to earn but not an instant disqualifier for consideration of the loss; see *Santam Versekeringsmaatskappy Bpk v Byleveldt 1* **973 (2) SA 146**. It has been confirmed in the decisions mentioned hereafter that what the court is called upon to determine is his loss as a result of his diminished capacity to earn vis a vis his qualifications, experience and nature of work. Defendant's Counsel referred to *Dlamini en Andere v Protea Assurance Company Ltd* 1974 (4) SA 906 (A) where no concessions were made. That judgment was criticized based on the established principle that this is in fact a claim for a loss of the claimant's earning capacity which is an asset in his estate; See *Rudman v Road Accident Fund* **2003 (2) SA 234** (SCA) para [10]. In *Shield Insurance Co Ltd v Booysen* 1979 (3) SA AT 964 D-E it was said that even though some activities may be found to be illegal, they can nevertheless be relied upon as an indication of a person's earning capacity. In *Dlamini v Multilateral Motorvoertuig Ongelukkefonds* 1992 (1) SA 802 (T) where it was held that illegal earnings as in illegal taxi-driving could be taken into account as an indication of earning capacity and that a deduction of 30 % should be made for the change-over from illegal to legal taxi driving.

[28] I accept the best case scenario projected by P Diedericks in the joint minute that if he continued working as a boilermaker assistant and continued to receive on the job training, bar proof of same he may be viewed as a low level semi-skilled worker and unless

he can provide proof of his exceptionally high and indeed unlikely reported income, calculations on his income at the time of accident should be based on a low level between the lower median and upper quantile earnings of unskilled workers in the informal labour market sector (that is in the region of R29 000-R36 000 p.a) and the appropriate discount applied for having to speculate on his past earnings. It would therefore be projected at R213 594.00 less fifteen percent. Nevertheless on that scale his present earnings surpass the threshold as it is to be projected for the future earnings. He is presently earning R42 600. He also confirmed under cross examination that he still does not have a work permit. The income earned presently not guaranteed and a chance that he would have continued to stay in the country under the same circumstances working without a work permit is speculative.

[29] It is trite law that an award of damages for the loss of a claimant's earnings or earning capacity is intended to place him in the financial position he would have been in, had it not been for the delict, to allow him to enjoy financial benefits equal to the quantum of the earnings lost by him. It is not intended to be a lucrative business or a money making scheme as it has turned out to be. In *Rudman* para [11] of the judgment, it was made quite clear that a reduction in earning capacity only results in a loss if it gives rise to a pecuniary loss. 'Similarly, and on grounds of public policy, a South African court would not make an award for diminution in earning capacity if the only way in which the earning capacity could remain productive was by a failure on the part of the claimant post-accident to comply with his legal duties' see *Heese NO v Road Accident Fund* (A 586/2012) [2013] ZAWCHC 157; 2014 (1) SA 357 (WCC) (23 October 2013). It seems illegality will still pervade Plaintiff's earnings into the future. There is also the other issue of tax as well that would have to be considered. On the level that is recommended by Diedericks that of R29 000-R36 000, past earnings would in my view be appropriately discounted at 15%. I am of the view that Plaintiff has not proven that at the time of the accident he had an enduring capacity to legal earnings with a value that potentially would have in the future, exceeded his present earning capacity.

[31] As a result, I hereby make the following order:

[31.1] The Plaintiff's claim for future loss of earnings is dismissed.

[31.2] Plaintiff's claim for loss of past earnings is granted

[31.3] The Defendant is to pay to the Plaintiff:

[31.3.1]	in respect of past loss of earnings	R181 282.52

And as agreed between the parties:

[31.3.1]	in respect of general damages -	R150 000.00
TOTAL		R331 282.52

the total amount shall be paid within 14 days to the credit of the trust account of the Plaintiff's attorneys of record, Savage Jooste & Adams Inc. Pretoria, whose trust account details are as follows:

Nedbank: NEDCOR – ARCADIA

Account type: Trust Account

Branch Code: 16-33-45-07

Account no: 1[…]

[31.4] the Defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act, No 56 of 1996, to compensate Plaintiff for 100% of the costs of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to Plaintiff resulting from injuries sustained by him as a result of an accident that occurred on 31 May 2008;

[31.5] The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs, on the High Court scale including costs up until and including 19 March 2014, inclusive of the trial from 17th March 2014 until 19th March 2014. These costs will include inter alia the following:

[31.5.1] Dr Viljoen, Neurosurgeon;

[31.5.2] H B Enslin, Orthopaedic Surgeon;

[31.5.3] Dr J D Erlank, Plastic and Reconstructive Surgeon;

[31.5.4] Dr Willie Pretorius, Industrial Psychologist (inclusive of reservation fees and attendance fees to give evidence in Court)

[31.5.5] Human & Morris, Actuaries;

[31.5.6] Elsabe Krone, Occupational Therapist;

[31.5.7] The costs incurred of all of the experts of the Plaintiff that had to provide joint minutes;

[31.5.8] Costs of Senior –Junior Counsel;

[31.5.9] The costs of pretrials and attendance by Counsel;

[31.5.10] No interest will be payable on the capital sum, provided that payment is made 14 days after the Court Order, Should payment not be made timeously, the Defendant will pay interest at the rate of 15.5% per annum from date of the stamped allocator to date of payment;

31.5.11] The Plaintiff shall in the event of the coasts not agreed upon between the Plaintiff and the Defendant's attorneys, serve a notice of taxation on Defendant's attorney of record;

[31.5.12] Following agreement on or taxation of the costs, the Plaintiff shall allow the Defendant seven Court days after the allocator has been made available to the cost, whereafter interest will

be charged at 15.5% per annum from date of the stamped allocator to date of payment.

[31.5.13] The Plaintiff did not enter into any contingency fee agreement with attorneys of record.

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N V KHUMALO J

JUDGE OF THE HIGH COURT GAUTENG DIVISION: PRETORIA

For the Plaintiff: Adv P J Vermeuleng

Instructed by: Savage Jooste & Adams Inc

Hayes/MS/RP2733

Pretoria

For Defendant: Adv M M Kgwane & S Zulu

Instructed by: Iqbal Mahomed Attorneys

M20198/Martins/Raf