REPUBLIC OF SOUTH AFRICA

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

CASE NO: 30426/2008

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

18/03/16
DATE

SIGNATURE

18/3/2016

In the matter between:

METAL FABRICATORS OF ZAMBIA PLC Plaintiff

and

UNIVERSAL CABLES (PTY) LIMITED Defendant

J U D G M E N T

TEFFO, J:

[1] This judgment relates to the quantum only. The merits have been disposed of. The plaintiff sued the defendant for payment of an amount of R2 055 442,20 which was due and owing to it in terms of escalations in respect of copper cabling sold and delivered by the plaintiff to the defendant in terms of

a contract that existed between the parties. All amounts for the supplies made have been paid save for the escalations.

[2] The dispute between the parties revolved around the escalation of the copper price on the London Metal Exchange ("LME"), whether it was to be calculated one month before the delivery date or one month before the due date set out in the purchase order from the defendant.

[3] I was previously called upon to make a determination on the following issues:

3.1 Whether the '*conditions of sale*' annexed to the plaintiff's notice of amendment (Annexure "Z") and as pleaded in the plaintiff's amended para 3 of the particulars of claim or (Annexure "E" to bundle 1), formed part of the agreement between the parties.

3.2 What other documents formed the written portion of the agreement between the parties.

3.3 What the agreed price of the goods as ordered by the defendant from the plaintiff were.

3.4 The specific month to be used in the calculation of the LME rating to be applied to the agreed price of the goods delivered by the plaintiff to the defendant with specific reference to the "*Due*

date" as appearing in Annexures "A1" to "A4" to the plaintiff's particulars of claim.

3.5 Whether the deliveries on each occasion were to be made within a reasonable time having regard to the provisions of clause 4.2 of the conditions of sale alternatively to the surrounding circumstances under which the agreement was concluded.

[4] I made the following findings and gave judgment in favour of the plaintiff:

4.1 That the terms and conditions of sale formed part of the agreement between the parties.

4.2 That the quotations and the purchase orders also formed part of the agreement between the parties.

4.3 That the agreed price of the goods was subject to escalation according to the LME being the average price one month before delivery.

4.4 That the plaintiff was not liable to pay damages to the purchaser suffered as a result of its failure to deliver the goods timeously.

[5] Subsequent to the granting of the judgment on the merits in favour of the plaintiff, the plaintiff prepared schedules in calculation of the quantum. Eventually a certificate was issued to which a new schedule ("schedule A") was annexed. The plaintiff as a result thereof amended the amount claimed in the particulars of claim to R2 824 403,95.

[6] The plaintiff closed its case without calling witnesses after it had handed up schedule A and the certificate and requested that they be admitted into evidence and form part of the record. The defendant led the evidence of two witnesses, namely, Mr Ockert Johannes Olivier ("Mr Olivier") and Mr Rudi Labuschagne ("Mr Labuschagne").

[7] Mr Olivier testified that during the latter part of 2006 he was employed by the plaintiff as a consultant at its Johannesburg office. He was the face of the plaintiff in South Africa. He was tasked with the marketing of the plaintiff's products in Africa and South Africa. These products were manufactured in Zambia. His duties also involved amongst others, contacting various customers, negotiating prices and deliveries and assisting with the flow of business. This included collecting customers' orders and sending all the documents to Zambia. He also attended to queries from customers. The defendant was one of the plaintiff's customers. Mr Korte and Mr Jackson Zulu, who was the plaintiff's marketing manager, were based in Zambia at the time. He negotiated the contract on behalf of the plaintiff and Mr Labuschagne represented the defendant at the time. The negotiations led to the conclusion of the contract between the parties. He disputed that Mr Korte was involved in

the negotiation of the contract between the parties. He corresponded with Mr Zulu all the time. He also disputed that Mr Zulu interacted with Mr Labuschagne during the latter part of 2005 to 2006.

[8] He testified that the calculations on schedule A were not fair and accurate. He disputed the correctness of the certificate signed on 9 February 2015 by Mr Zulu in the amount claimed. He challenged the competence of Mr Korte and Mr Zulu to issue a certificate on behalf of the plaintiff. He contended that the employees of the plaintiff in Zambia never understood the procedure that was applicable to escalations. He was the person who introduced the application and procedure of escalations in the plaintiff's business in South Africa. The escalations never existed prior to his appointment. They were introduced because of his involvement in the South African market. Accordingly, so he testified, Mr Zulu heavily relied on third parties' inputs to apply escalations. The escalations were exclusively his domain. He was called on a number of occasions to explain the procedure to be followed in the application of escalations by Mr Korte and prior to the application thereof, he had compiled a complete set of procedures to apply to escalations. He disputed that the plaintiff was entitled to the amount claimed. The plaintiff was according to him not in a position to apply escalations because of its agreement with the defendant. He told Mr Korte and Mr Zulu that the plaintiff was not in a position to apply escalations to the defendant. Eventually he was removed from the responsibility of handling escalations. They were handled by the plaintiff's employees in Zambia.

[9] He introduced Annexure "D" which he wrote on 7 December 2005 to Mr Korte. The idea was to put all the names of the customers to be escalated. He also emailed the procedure of price escalations to be applied to the business in South Africa to Zambia for the attention of Mr Zulu, Mr Frans Kabwe and others. Annexure "D" contains the escalation procedure that he personally wrote and which was applicable to business in South Africa. Mr Zulu was never asked to issue certificates personally, he issued them with the assistance of others. He also challenged the certificate issued prior to 6 October 2014 and the amount included on it. Five months after he was removed from the handling of escalations, he was retrenched. He was invited to do certificate basis of escalations but he turned the offer down. The escalations were later handed to Mr Kangwa Bwalya who was an accountant at the time.

[10] Under cross-examination he testified that the proper procedure that should have been followed for the proper calculation of escalations was the LME based on one month prior to the due date as per the purchase order. When told that the schedule that Mr Zulu used was a calculation of the LME one month prior to the actual date of delivery, his response was he has not been an employee of both parties for 8 to 9 years. He did not have source documents to verify the calculations. He could not dispute the calculation and how the amount claimed was arrived at. He could not tell what was wrong with the schedule except to say that he was not happy that it was done by plaintiff's employees from Zambia while he was sidelined. He expressed concern that the previous schedules' values changed considerably and

consistently and that the initial schedule value was lower. When told that the schedules he was raising concerns about were verified by Mr Labuschagne on behalf of the defendant, he said he did not know that.

[11] He could not dispute that Mr Labuschagne filed an 11 page document pointing errors to the previous schedules from Mr Zulu in an attempt to resolve the issue of the quantum. He also could not dispute that Mr Zulu met with Mr Labuschagne who represented the defendant where they discussed errors and problems with the previous schedules and schedule A in terms of which the amount claimed was calculated, was prepared. He was adamant that the schedule A was not agreed upon by the parties and that Mr Zulu and Mr Labuschagne only agreed on the calculations.

[12] He conceded that once the court has given the parties a formula, it does not need a genius to do the calculations. Anybody can do them.

[13] Mr Rudi Labuschagne also testified. He is the managing director of the defendant and he handled the order of the defendant to the plaintiff which forms the subject matter of the claim *in casu*. The claim concerns escalations which were not paid. He personally compiled Annexure "EE2". Annexure "EE2" is a schedule (spreadsheet) of calculations relating to all the transactions between the parties relevant to this matter. It contains purchase orders and documents received with regard to purchase orders from the plaintiff (commercial invoices). He attended to making comments on a schedule similar to schedule A from the plaintiff and his comments were

delivered to the plaintiff prior to 6 February 2015. He attended a meeting of experts at a conference in Sandton with the plaintiff's expert, Mr Zulu. The purpose was to see if the parties could reach an agreement on Schedule A. He pointed out to Mr Zulu that there were a few discrepancies where the price escalation formula and the inputs were incorrect. Mr Zulu admitted to the mistakes on the spreadsheet and amended them. The amendments made were incorporated in schedule A. They did not agree on schedule A. They only agreed on the arithmetic. He compiled "EE2" to ascertain the values of the invoices from the plaintiff. He referred to the defendant's order numbers, viz, JPO 030065, etc and mentioned that there were debit notes raised on the invoices received from the plaintiff and there were invoices where there were no debit notes. He also explained that some prices from some invoices from the plaintiff were not correct. Further that there was a duplication of debit notes on the same order. He also mentioned that some debit notes were only generated three months later. He contended that it would not have been proper to generate a debit note three months after the actual delivery. He referred to a number of invoices and debit notes and stated that in all the invoices where the issue of duplication of debit notes was raised and where he mentioned that there were no debit notes, the metal adjustment value was zero. He disputed the amount claimed by the plaintiff as per schedule A and the certificate compiled by Mr Zulu and contended that they do not owe the plaintiff any amount. He contended that they did not receive any working document in respect of schedule A as well as the debit notes. They have also not received any source document to support the debit notes received.

[14] Under cross-examination he testified that the amount claimed by the plaintiff as per schedule A was arrived at by not applying the calculations as agreed by him and Mr Olivier. The debit notes were raised subsequent to receiving the invoices and they were not generated as per his agreement with Mr Olivier. The fact that the calculations were amended on numerous occasions by the plaintiff made it very difficult for him to work on the documents received from it. He explained that his problem with schedule A was based on the fact that he believed that the calculations should have been done according to the LME one month before the due date as against one month prior to the delivery date. Escalations, if any, should have accompanied invoices at the point of delivery. There should not have been any debit notes at all. The escalations, if they were applied correctly, should have reflected their value on the invoices. The formula applied in the calculation of escalations, should have accompanied the invoices.

[15] He conceded that schedule A was compiled after Mr Zulu had corrected the mistakes he pointed out to him from the previous schedules from the plaintiff. He had purchase orders and source documents to verify the previous schedules which culminated into the compilation of schedule A. He was able to verify if the orders in schedule A were correct. He also had the invoice numbers and delivery dates. When he compiled "EE2" he had the opportunity to verify all the source documents which included the universal delivery dates. He had all the necessary information to verify that all the entries in Schedule A were correct. He carefully checked schedule A because he was requested to do so by the plaintiff in its correspondence to the

defendant on 28 January 2015 in order to narrow the issues between the parties. He conceded that no debit notes had been received on the amount claimed. When asked that the indebtedness for the escalations was not based on the debit notes but by agreement, he said he was not a financial person to answer the query. He disputed that the reason for the non-payment of the amount claimed was because they did not receive the debit notes. When asked why does he believe the defendant did not owe the plaintiff any cent, he said the debit notes were raised after receiving delivery and that they worked on the invoice amounts as per the documents received from the plaintiff. The documents from the plaintiff showed according to him that the amount owed was zero. He was further asked whether he arrived at zero when he applied the LME one month prior to delivery date. His response was he only worked on the documents that were available.

[16] He conceded that "EE2" raised the problems regarding quantifications and duplications on debit notes but when asked whether those duplications and/or problems with quantifications were not repeated in schedule A, he testified that he revisited the schedule as he was being cross-examined and during his meeting with Mr Zulu on 6 February 2015. He and Mr Zulu and agreed on the values for the calculations. After reviewing schedule A as and when he was giving evidence, he pointed out things he was not happy about. He raised an issue about a date of 4 October 2014 which appeared on the right hand corner of Schedule A and contended that it was not correct as the schedule was reviewed on 6 February 2015. He indicated that there was a debit note numbered 369R on the schedule. He was not familiar with such

debit note and that according to "EE2" the only debit notes he was aware of were on bundle 6-3 of "EE2". Furthermore the amounts on the debit notes in "EE2" bundle 6-3 did not correspond with those that appeared on schedule A. All the issues raised are on record. I will not deal with them specifically but they mainly revolved around the different debit notes.

[17] He testified that he received debit notes from the plaintiff late and this made it impossible for him to know the costs for the materials. He further stated that in some instances the plaintiff generated debit notes before it could receive the goods. When told that none of the issues raised affect the amount claimed by the plaintiff in schedule A, he said the calculations with regard to the values as recorded were correct. It was put to him that the issues he had were resolved in accordance with the judgment on the merits in schedule A. His response was that the problem he had with schedule A was the number of revisions made and that those revisions were made in the weeks prior to coming to court. He mentioned that he was concerned about the time frame. He conceded that all the issues raised did not affect the correctness of Schedule A.

[18] When asked whether there were any fabrications in Schedule A he said he was informed that the plaintiff backdated the delivery dates on the debit notes when they were generated. He testified that Mr Olivier told him that the delivery dates on the debit notes were generated manually and Mr Korte admitted during their consultation that the debit notes were generated on a self-created system. When asked whether that affected the correctness

of Schedule A he said he was not an accountant but that was not the practice. He could not respond when he was told that the defendant never pleaded that it had to receive debit notes by a specific date.

[19] Under re-examination he testified that the defendant was not aware of the debit notes reflected on schedule A. He contended that he was never in a position to verify the existence of the debit notes as they appear in schedule A and to ascertain the source and their basis. Accordingly, so he testified, he was not in a position to consider and assess the correctness of schedule A.

[20] The issue for determination is whether the plaintiff has discharged its *onus* of establishing the quantification of its claim by relying on a certificate of indebtedness with schedule A evidencing that the amount due and payable to the plaintiff was R2 824 403,95.

[21] Clause 7.4 of the conditions of sale between the parties reads:

> *"A certificate signed by a director or manager of Zamefa, or any independent third party solely nominated by Zamefa whose office need not be proved, shall be prima facie proof both of the existence of debt as well as the amount owed by the Buyer."*

[22] The court in *Senekal v Trust Bank of Africa Ltd* 1978 (3) SA 375 (A) at 382G-383F articulated the following principles when dealing with the production of a certificate to prove the amount of indebtedness:

"As to the second of the grounds referred to above, Mr Toit's contention was, in effect, that once such a certificate is shown to be suspect as to its accuracy or reliability in any respect whatever, it has no evidential value and must be entirely disregarded. I have no doubt that that broad contention must be rejected. There might be several items to which such a certificate relates, some of which may appear to be unassailable while others may either be shown to be inaccurate or appear to be of dubious reliability, or might require some modification or adjustment. I can find no reason why in such circumstances the certificate is to be entirely disregarded merely because it is found or thought to be inaccurate or unreliable in certain respects. At the end of the case, when all the evidence (which includes the certificate) is in, the court must decide whether the party upon whom the onus rests has discharged it on a proper balance of probabilities. As was pointed out by STRATFORD JA in Ex parte Minister of Justice: In re R v Jacobson and Levy 1939 AD 466 at 478:

> *'Prima facie evidence, in its more usual sense, is used to mean prima facie proof of an issue the burden of proving which is upon the party giving that evidence.'*

If the prima facie evidence or proof remains unrebutted at the close of the case, it becomes 'sufficient proof' of the fact or facts (on the issues with which it is concerned) necessarily to be established by the party bearing the onus of proof. (Salmons v Jacoby 1939 AD 588 at 593.)

The onus in this case was clearly on the respondent to establish the amount of the indebtedness of the principal debtor, Luna. (See Narlis v South African Bank of Athens 1976 (2) SA 573 (A) at 579G-H.) It sought to discharge that onus, inter alia, by the production of the certificate which, by agreement between the parties, was to be regarded as prima facie evidence (or proof) of the amount of such indebtedness. The inquiry, then, in the light of what I have just said, is whether at the end of the case the prima facie evidence afforded by the certificate had been so disturbed as to prevent its becoming sufficient proof. I may say at once that when considering that question the court a quo was fully entitled to take into account, as it did, that the appellant closed his case without having led any evidence whatever. There is no question of the certificate transferring the onus, in the full sense of the word, to the appellant, but in the light of the provisions of the certificate clause in the deed of suretyship, the appellant could only at his peril refrain from giving or leading evidence to counter the prima facie proof of the amount of the indebtedness afforded by the certificate. It was contended on the appellant's behalf that the court a quo gave undue weight to his failure to lead evidence, since he was, as surety, at a disadvantage in challenging the correctness of a debt incurred by the principal debtor, but that was a risk which lie expressly accepted when he signed the deed of suretyship containing the certificate clause.

Moreover, he had a financial interest in Luna, having acquired shares in that company, and the evidence reveals that he showed a direct interest in its affairs and in the state of its finances, which he discussed with officials of the respondent bank. Because of the absence of any evidence to contradict or rebut that afforded by the certificate, the appellant's strategy in defence was to attack the certificate in every respect in which it appeared that it might conceivably be vulnerable. It is to that attack that I now turn."

[23] The *onus* of establishing the amount of indebtedness as claimed in current matter is on the plaintiff. Instead of adducing oral evidence to prove its claim, the plaintiff produced a certificate to which schedule A was annexed and closed its case without calling witnesses . I have to determine whether at the end of the case when all the evidence which includes the certificate, the plaintiff has discharged its *onus* on a balance of probabilities.

[24] It is common cause between the parties that in an attempt to resolve the issue of quantum previous schedules were drawn by the plaintiff and sent to the defendant's expert for verification. Eventually both parties' experts met, problems with regard to calculations and the formula used thereof were highlighted to the plaintiff's expert and the end product was Schedule "A" attached to the certificate. Mr Labuschagne testified that he compiled "EE2" to verify the entries made in the previous schedules. He had the opportunity to check all source documents which included universal delivery dates, invoice numbers, purchase orders, etc, when he compiled "EE2".

[25] What I find strange in the defendant's evidence is that despite the fact that it is conceded that Mr Zulu, the plaintiff's expert, had corrected the mistakes which were pointed out to him by Mr Labuschagne, the defendant's expert, the defendant's witnesses, Mr Olivier and Mr Labuschagne kept on challenging schedule A annexed to the certificate on issues it conceded were rectified. It also became clear from their evidence that they could not distinguish schedule A from the previous schedules. Despite the court's finding on the merits that the formula to calculate the value of escalations as agreed between the parties was based on the LME one month prior to the actual delivery date, both defendants' witnesses kept on challenging schedule A because according to them the formula used to calculate the value of escalations was incorrect. I will deal with Mr Olivier's evidence later in the judgment but at this stage I wish to point out that under cross-examination Mr Olivier testified that the proper procedure that should have been followed in the calculation of the value for escalations was the LME based on one month prior to the due date as per the purchase order from the defendant. This formula was not found on the merits to have been the correct formula to calculate the value of escalations. When it was put to him calculations made on schedule A were based on the court's findings, he responded by saying that he has not been an employee of either of the parties for 8 to 9 years. He therefore could not dispute the amount claimed and the calculation thereof.

[26] Mr Olivier did not testify when the court dealt with the merits of this case. His evidence basically was an attempt to revisit the merits. There was no evidence that he was an expert to deal with the issue of quantum in this

matter but he went to the extent of adducing evidence to challenge the competence of Mr Zulu to issue a certificate on behalf of the plaintiff. I find that evidence to be irrelevant. I also find his evidence regarding his involvement with the transactions between the parties as a representative of the plaintiff in South Africa and how he was moved from the section that dealt with escalations, irrelevant. That evidence does not assist or take the defendant's case any further with regard to the calculation of quantum in this matter. It would have been relevant when the merits were dealt with.

[27] Mr Olivier did not appear as a good witness at all. His evidence was full of bitterness and emotions. He was just disputing the calculations on the basis that he did not believe in the competencies of the plaintiff's employees who were based in Zambia at the time. He clearly stated that he was sidelined. He did not even know that both parties' experts met and discussed the previous schedules which were ultimately rectified by Mr Zulu of the plaintiff.

[28] While Mr Labuschagne testified that he met with Mr Zulu and pointed out the mistakes he made on the previous schedules and that Mr Zulu attended to the mistakes and rectified them, he was adamant that he and Mr Zulu did not agree on schedule A but only agreed on the arithmetic. He then kept on referring to "EE2" highlighting debit notes which he indicated were either duplicated or generated late and also challenging the correctness of certain invoices. His evidence was also to the effect that in all instances where there were either no debit notes or there duplications thereof, the metal

adjustment value was zero. In his evidence-in-chief he disputed schedule A and the certificate and contended that the defendant did not owe the plaintiff any amount. Further that the defendant did not receive any working document in respect of schedule A as well as the debit notes and or any source documents to support them.

[29] It became clear from his evidence under cross-examination that his main challenge and criticism of schedule A was because it was not calculated according to the LME based on one month before the due date as per the purchase order from the defendant. His further evidence revealed that the concerns raised in "EE2" were in relation to the previous schedules which were rectified and resulted into schedule A. He clearly testified that when he compiled "EE2" he had the opportunity of checking all the source documents. That was the reason he was able to point out all the mistakes he picked up in the previous schedules.

[30] He also testified that he also checked schedule A as he was requested to do so in the plaintiff's correspondence to the defendant dated 28 January 2015 as the parties wanted to narrow the issues. He stated that he checked schedule A carefully as he had all the necessary information to verify all the entries on it. When asked why he was of the view that the plaintiff was not entitled to any amount claimed, he stated that the debit notes were raised after receiving delivery and that the documents received from the plaintiff showed according to him that the amount owed was zero. When asked whether he arrived at the zero amount when he applied the LME one month

prior to the delivery date, the response that he gave was that he worked on the documents that were available. This response did not answer the question whether he applied the formula as found by the court on the merits.

[31] At some stage under cross-examination Mr Labuschagne conceded that the issues he raised with regard to the late receipt of debit notes as alleged, the allegation that the plaintiff generated debit notes before they could receive the goods, etc, did not affect the correctness of schedule A. When asked whether schedule A was fabricated, he stated that Mr Olivier told him that the plaintiff backdated the delivery dates on the debit notes when they were generated. I find it strange that the defendant attempted to bring in the evidence of debit notes while it never pleaded that it had to receive debit notes by a specific date.

[32] It was argued on behalf of the defendant that the court should draw an adverse inference against the plaintiff for having failed to call Messrs Korte and Zulu who were available during the trial in the light of the unchallenged evidence of the defendant. I was referred to the decision of *Durban City Council v SA Board Bills Ltd* 1961 (3) SA 397 (AD) at 405E-F and the full court judgment in *Monteoli v Woolworths (Pty) Ltd* 2000 (4) SA 735 (W) at 742F. I do not agree that these cases are applicable to the present matter in that they are distinguishable from the facts before me. The issue in this matter is whether a certificate agreed upon by the parties to constitute *prima facie* evidence of the existence of the debt and the amount owing, can be regarded as sufficient proof of the plaintiff's claim where the plaintiff produced it without

leading evidence to support it at the end of the case after hearing the totality of the evidence. The admissibility of certificates agreed upon by the parties in their contracts as providing conclusive proof of the debt was dealt with previously in different courts and ultimately it was decided that if a certificate provided for conclusive proof, it should not be used as it was contrary to public policy. However, where such certificate provided *prima facie* proof of the existence of the debt and the amount owing, it could be relied upon as the defendant would then be afforded the opportunity of rebutting it *(Ex parte Minister of Justice: In re E Nedbank Ltd v Abstein Distributors (Pty) Ltd and Others and Donelly v Barclays National Bank Ltd 1995 (3) SA 1 (A))*.

[33] It is clear from clause 7.4 of the conditions of sale between the parties that the parties had agreed that a certificate of indebtedness signed by either a director or manager or any third party solely nominated by the plaintiff whose office need not be proved, shall be *prima facie* proof of the existence of the debt as well as the amount owed. It is common cause between the parties that the certificate that was produced by the plaintiff and admitted into evidence and schedule A attached to it was issued and signed by Mr Zulu who is and has always been the manager of the plaintiff at all material times. After the production of the certificate and schedule A annexed to it and their admission into the evidence, the defendant therefore had to rebut the *prima facie* evidence afforded by schedule A and the certificate. I therefore do not agree that an adverse inference should be drawn against the plaintiff in this matter for failing to call witnesses who were present when the matter was

heard taking into account the totality of the evidence. Having analysed the evidence of the defendant above, it cannot be said that that evidence was not shaken during cross-examination. Without repeating my evaluation of the defendant's evidence, it is my view that for the reasons highlighted above I am not persuaded that the *prima facie* evidence afforded by the certificate and schedule A had been so disturbed as to prevent its becoming sufficient proof for the existence of the debt and the amount claimed (see *Salmons v Jacoby* and *R v Jacobson and Levy supra*). The defendant has therefore failed to rebut the *prima facie* evidence afforded by the certificate and schedule A as produced by the plaintiff. I am therefore satisfied taking into account the totality of the evidence that the *prima facie* evidence afforded by the certificate and schedule A remained unrebutted at the end of the case. It therefore became sufficient proof of the existence of the debt owed to the plaintiff by the defendant and the amount thereof.

[35] I therefore find under the circumstances that the plaintiff has discharged its *onus* on a balance of probabilities to establish the amount claimed.

[36] In the result I make the following order:

36.1 The defendant is ordered to make payment to the plaintiff of the amount of R2 824 403,96 with costs and interest on the aforesaid amount *a temporae morae* at the prescribed rate of interest of 15,5% per annum from date of service of summons

on 12 September 2008 to 31 July 2014 and 9% per annum from 1 August 2014 to date of final payment.

M J TEFFO
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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DATE OF JUDGMENT	18 MARCH 2016