IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

JUDGMENT

NOT REPORTABLE
CASE NO: AR207/2016

In the matter between:

MANYE RICHARD MOROKA APPELLANT

and

ZIMBALI COUNTRY CLUB RESPONDENT

**Coram : Seegobin J et Olsen J**
**Heard : 5 September 2016**
**Delivered : 23 September 2016**

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ORDER

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On appeal from the Magistrates' Court, Kwa Dukuza (Stanger) (sitting as a court of first instance):

1. The appeal succeeds with costs.
2. The judgment of the court *a quo* is set aside and is replaced with the following:

   "In the result judgment is entered on behalf of the plaintiff as follows:

   (a) Payment of the sum of R6400,00;

   (b) Interest thereon at the rate of 15,5% per annum from 1 March 2011 to date of final payment;

   (c) Costs of suit, including the costs of counsel on tariff."

JUDGMENT

**SEEGOBIN J (Olsen J concurring):**

INTRODUCTION

[1] On 9 May 2012 the Zimbali Country Club as plaintiff sued *Mr Manye Richard Moroka* as defendant in the Magistrates' Court, Kwa Dukuza (Stanger), for payment of two amounts which the plaintiff alleged were due to it in respect of subscriptions arising out of Mr Moroka's membership as a composite member of the plaintiff. The first claim in the sum of R6400,00 was due by the end of February 2011 ('the 2011 subscription') while the second claim for R6800,00 was due by the end of February 2012 ('the 2012 subscription').

[2] Mr Moroka raised two special defences to these claims: the *first* was that the court *a quo* lacked jurisdiction to hear the matter on the grounds that he neither resided nor carried on business nor was he employed within the district as contemplated by section 28(1)(a) of the Magistrates' Courts Act 32 of 1944 ('the Act'), and furthermore, that the whole cause of action did not arise within the district as contemplated by section 28(1)(d) of the Act; the *second* was that the claim for subscriptions for the 2011 year which was only introduced by the plaintiff in its amended particulars of claim delivered on 4 February 2015 had prescribed by virtue of section 11(d) of the Prescription Act 68 of 1969 ('the Prescription Act'). On the merits Mr Moroka averred that inasmuch as he and his wife were registered owners of a property in the Zimbali Estate in terms of a sale agreement concluded by them in November 2009, he did not complete any application for membership of the plaintiff. He

accordingly maintained that he never became a member of the plaintiff. Mr Moroka further pleaded that on the plaintiff's version and having regard to the provisions of clause 5.6.3 of the plaintiff's constitution, he would have ceased being a member of the plaintiff in 2011 and as such he would not have been liable for the 2012 subscriptions in any event.

[3] When the trial came before the learned magistrate, *Mr Mgobhozi*, on 1 September 2015, he was requested to decide two issues only: the *first*, concerned the issue of jurisdiction and the second was the question of Mr Moroka's membership of the plaintiff. At the conclusion of all the evidence the learned magistrate found in favour of the plaintiff on both issues and granted judgment against Mr Moroka in the amounts claimed.

[4] This is an appeal by Mr Moroka against the whole of that judgment. The issues that arise in this appeal are precisely the same as those which occupied the attention of the trial court. At the appeal hearing on 5 September 2015 Mr Moroka was represented by *Mr Rathidili* and the plaintiff by *Mr Combrinck*. I mention at this stage that in the course of argument one of the issues raised with Mr Combrinck was whether, in light of the provisions of clause 5.6.3 of the plaintiff's constitution, Mr Moroka had in fact ceased being a member of the plaintiff in 2011 by virtue of his non-payment of the 2011 subscriptions and as such he would not have been liable for the 2012 subscriptions in any event. Despite making certain submissions on this point at the hearing, a few days after we reserved judgment in the appeal, the plaintiff requested leave to file supplementary heads on the issue. Such leave was granted and the plaintiff delivered further heads on 13 September 2016. Mr Moroka was afforded an opportunity of filing further heads in reply and these were delivered on 16 September 2016. I will revert to the issues raised by clause 5.6 of the plaintiff's constitution later in this judgment.

[5] The first issue to be decided is whether the court *a quo* erred in finding that it had the necessary jurisdiction to entertain the matter on the basis that the plaintiff's cause of action arose wholly within its district. On behalf of Mr Moroka it was contended that the court *a quo* lacked the necessary jurisdiction simply because the sale agreement was signed by Mr Moroka and his wife in Gauteng. For the reasons set out hereunder I consider that Mr Moroka has misconstrued the basis upon which the court *a quo* was vested with the requisite jurisdiction to hear the matter in terms of section 28 of the Act.

[6] Section 28 of the Act provides as follows:

"**28 Jurisdiction in respect of persons**

(1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall, subject to subsection (1A), have jurisdiction shall be the following and no other:

*(a)* Any person who resides, carries on business or is employed within the district or regional division;

*(b)* any partnership which has business premises situated or any member whereof resides within the district or regional division;

*(c)* any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself or herself;

*(d)* any person, whether or not he or she resides, carries on business or is employed within the district or regional division, if the cause of action arose wholly within the district or regional division;

*(e)* any party to interpleader proceedings, if-

(i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on business, or are employed within the district or regional division; or

(ii) the subject-matter of the proceedings has been attached by process of the court; or

(iii) such proceedings are taken under section 69 (2) and the person therein referred to as the 'third party' resides, carries on business, or is employed within the district or regional division; or

(iv) all the parties consent to the jurisdiction of the court;

*(f)* any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court;

*(g)* any person who owns immovable property within the district or regional division in actions in respect of such property or in respect of mortgage bonds thereon.

(2) '**Person**' and '**defendant**' in this section include the State." [my emphasis]

[7] In alleging that the court *a quo* had jurisdiction over Mr Moroka, the plaintiff placed specific reliance on the provisions of sub-sections 28(1)(a), 28(1)(d) and 28(1)(g) of the Act. The phrase 'cause of action' as employed in various statutes defining the jurisdiction of courts or providing for the limitation of actions and in other contexts, has often been considered by our courts.[1] In *McKenzie v Farmers' Co-operative Meat Industries Ltd,*[2] the then appellate division held that:

"... in relation to a statutory provision defining the geographical limits of the jurisdiction of a magistrate's court, 'cause of action' meant -

'... every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.' (*Per* MAASDORP JA at 23.) And in *Abrahamse & Sons v SA Railways and Harbours* 1933 CPD 626, a case concerning the prescription of a claim against the Railway Administration, which turned on the question as to when the plaintiff's cause of action arose, WATERMEYER J stated:

> 'The proper legal meaning of the expression 'cause of action' is the entire set of facts which gives rise to an enforceable claim and includes every fact which is material to be proved to entitle a plaintiff to succeed in his claim. It includes all that a plaintiff must set out in his declaration in order to disclose a cause of action. Such cause of action does not 'arise' or 'accrue' until the occurrence of the last of such facts and consequently the last of such facts is sometimes loosely spoken of as the cause of action.'

(See also *Coetzee v SA Railways & Harbours* 1933 CPD 565 at 570 - 1; *Slomowitz v Vereeniging Town Council (supra* at 330A - F.)"

[1] *Evins v Shield Insurance Co. Ltd* 1980(2) SA 838 (AD).
[2] 1922 AD 16.

[8] In *The Master v IL Black and Co. Ltd,*[3] Tebbut J pointed out that a debt can only be said to be claimable immediately if the creditor has the right immediately to institute action for its recovery. This can only happen once the creditor has a complete cause of action available to it. In other words it must be in possession of every fact, which if proved, will entitle it to judgment.

[9] In the present matter the material facts (*facta probanda*) which were alleged and proved by the plaintiff in order to disclose a cause of action were the following viz: the plaintiff's principal place of business is situated within the court's district; Mr Moroka's application for membership to the plaintiff was submitted and accepted by the plaintiff within the district; the plaintiff operates its banking account within the district and Mr Moroka's non-payment of subscriptions to the plaintiff occurred within the district.

[10] In my view, the fact that the sale agreement was signed by Mr Moroka and his wife outside the district of the court, is not a fact material to the plaintiff's cause of action – anymore than it was material to the cause of action in *McKenzie's* case, *supra*, where the application for shares had been signed outside the district of Pietermaritzburg.[4]

[11] It would seem to me that the vital enquiry in a matter such as this would concern the legal relationship of the parties within the district (after the agreement was concluded) giving rise to an entire set of facts which if established would entitle a party to judgment. It is such facts that would give rise to a cause of action and not where or when a contractual relationship had its origin.[5]

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[3] 1981(4) SA 763 (CPD)
[4] See the judgment of Maasdorp JA at pp.20 and 21 of the report.
[5] *Kings Transport v Viljoen* 1954(1) SA 133 (C) at 137.

[12] In light of the above and the material facts found proved by the plaintiff as set out in para [9] above, I consider that the learned Magistrate was correct in finding that the court *a quo* had the necessary jurisdiction to entertain the matter.

[13] With regard to the second issue concerning Mr Moroka's membership of the plaintiff, it is necessary to sketch the following background facts which are not only common cause but which serve to provide some insight into what actually transpired:

13.1 On 6 February 2009 a close corporation known as Motshaotshele Transport CC which was owned by Mr Moroka's wife concluded an agreement of sale ('the first sale agreement') with Little Rock Trading 295 CC ('Little Rock Trading') for the purchase of certain immovable property described as section 1 in a sectional title development in the Zimbali Estate. The sale was made conditional upon the close corporation meeting certain conditions.

13.2 A material condition of the sale was that the purchaser was obliged to become a composite member of the plaintiff within the meaning of its constitution. This was governed by Clause 4 of the sale agreement and had to be read with the relevant provisions of annexure A to the plaintiff's constitution. Since the issue of membership goes to the heart of Mr Moroka's defence, it is necessary to set out the relevant clauses in some detail.

13.3. Clause 4 of the sale agreement reads as follows:

"4. **SALE CONDITIONAL UPON MEMBERSHIP**

4.1 The PURCHASER shall be obliged to become a Composite member of the Zimbali Country Club, within the meaning of the Constitution of the said Club.

4.2 The PURCHASER undertakes duly to complete and sign the membership application form which is Annexure "B" hereto. As soon as the other suspensive conditions to this CONTRACT have been fulfilled, the SELLER shall submit the application to the Club.

4.3 The PURCHASER shall be obliged to accept transfer of the PROPERTY subject to a condition registered against the Title Deed to the PROPERTY to the effect that the PROPERTY, or any position thereof or interest therein, shall not be alienated or otherwise transferred without the prior written consent of the Zimbali Country Club first being had and obtained, provided that the Zimbali Country Club shall grant the aforesaid consent in the event of the Transferor having complied with all its obligations to the Zimbali Country Club (and in no way detracting from the generality of the aforesaid, the Transferor having paid all amounts due to the aforesaid Club) and the Transferee undertaking to become a composite member of the aforesaid Club and purchasing the requisite DEBENTURE(S) in this regard.

4.4 The PURCHASER hereby purchases 1 (ONE) R class debenture in the Zimbali Country Club, for a purchase price of R50 000,00 (FIFTY THOUSAND RAND). The purchase of such DEBENTURE shall be on the terms and conditions set out in this CONTRACT OF SALE and those conditions set out in the DEBENTURE certificate."

13.4 Annexure A to the plaintiff's constitution deals with the various classes of membership and the obligations which flow from such membership. Composite membership is dealt within clause 1 of the plaintiff's constitution. For purposes of this judgment I merely set out the relevant provisions of clause 1 which are as follows:

"1. **COMPOSITE MEMBERS**

1.1 **General**

The Club shall be entitled to admit, as composite members up to 1000 (ONE THOUSAND) persons who are residents in the Zimbali Estate and up to 100 (ONE HUNDRED) persons who are not resident in the

Zimbali Estate. It is recorded, that certain residents within the Zimbali Estate, including those deriving their membership through the purchase of property in the Zimbali Golf Course Estate as well as residents who have purchased in certain parts of the Zimbali Estate, are obliged to become composite members.

1.2 …

1.3 **Debenture**

A composite member will be required to hold a composite member's debenture, the current par value of which is R20 000,00 (TWENTY THOUSAND RAND) but which amount shall be subject to increase from time to time. The debenture will carry with it the rights and obligations specified on the conditions of the debenture and will be redeemable only when the composite member ceases to be a composite member. The debenture will not be transferable nor will it be convertible.

1.4 **Subscriptions**

Composite members hall pay full annual subscriptions to the Club.

1.5 …" [my emphasis]

13.5 Clause 9 of the constitution is an explanatory note which relates to members who are residents of the Zimbali Estate. Once again I merely set out the relevant provision for purposes of this appeal. Clause 9.1 reads as follows:

"9.1 **General**

Although there shall not be a specific class known as "residential member" for the purposes hereof "residential member" refers to those members of the Club who are residents in the Zimbali Estate. Such persons will be either social members or composite members.

The provisions hereof are intended to deal with the different types of entitles which may become residents in the Zimbali Estate and hence qualify for either composite or social membership of the Club."

[my emphasis]

13.6 Clause 9.2 deals with joint ownership/syndicates and provides, *inter alia*, that 'where co-owners own a property in the Zimbali Golf Course Estate, at least one of the co-owners shall be obliged to be a composite member'.

13.7 In compliance with the conditions pertaining to membership as set out above, Mr Moroka and his wife duly completed an application for composite membership on 6 February 2009. However, as matters turned out, for some reason or the other, the first sale fell through and was cancelled.

13.8 On 1 November 2009 Mr Moroka and his wife, now acting in their personal capacities, concluded the second sale agreement with Little Rock Trading for the same immovable property and on precisely the same terms and conditions as on the first agreement. The only difference, however, was that neither of them signed another application for membership of the plaintiff.

13.9 On 18 November 2009 the plaintiff consented to the sale agreement and on 23 December 2009 the immovable property was transferred into the names of Mr Moroka and his wife. On 24 December 2009 Mr Moroka duly paid the sum of R50 000,00 which amount represented the purchase price for the single R class debenture referred to in sub-clause 4.4 of the agreement and clause 1.3 of the plaintiff's constitution.

13.10 On 30 August 2010 Mr Moroka caused an amount of R6 100,00 to be transferred from his personal bank account into that of the

plaintiff's. As far as the plaintiff was concerned this amount was paid in respect of subscriptions for the 2010 year. Mr Moroka, on the other hand, averred that it was in respect of levies. He further disputed that he was liable for any subscriptions on the grounds that he never signed a further application for membership of the plaintiff when the second sale agreement was completed and as such he was not a member of the plaintiff.

[14] For the reasons that follow I consider that the trial court was correct in concluding that Mr Moroka did in fact become a member of the plaintiff and as such he became liable for the payment of subscriptions. This conclusion is based not only on the evidence of the plaintiff's witness *Mr Shearer* who is the general manager of the plaintiff, but is also borne out by the conduct of Mr Moroka himself after the second sale agreement was concluded in November 2009.

14.1 *Firstly*, as I already pointed out, it was a material condition of the sale agreement that the purchaser shall become a member of the plaintiff in terms of clause 4 of the agreement read with the relevant provisions of its constitution. To this end Mr Moroka purchased a single R class debenture in the plaintiff for the sum of R50 000,00 as provided for in clause 4.4. Pursuant to this the plaintiff issued a debenture certificate in his name. As Mr Shearer explained the par value of the debenture was R20 000,00 and as reflected on the debenture certificate was payable on transfer. The remaining R30 000,00 went directly to the plaintiff in order to meet its cash flow commitments for the year.

14.2 *Secondly*, Mr Moroka paid an amount of R6 100,00 from his own bank account into that of the plaintiff on 30 August 2010. While he contended that this was in respect of levies, the correspondence emanating from the plaintiff's side shows that it was for the 2010 subscriptions.

14.3 *Thirdly*, as Mr Shearer further explained the application form that was completed in February 2009 and submitted to the plaintiff was a valid document as nothing in the plaintiff's constitution precluded it from considering Mr Moroka's membership despite the fact that the form was signed some nine months previously. In my view, Mr Moroka and his wife were purchasing the same property on precisely the same terms and conditions as before and as such it would have been an unnecessary duplication on the plaintiff's part to have them sign another application for membership. On behalf of Mr Moroka it was submitted that since a further application for membership was not signed when the second sale agreement was concluded, it cannot be said that the parties had the requisite intention to conclude a binding agreement. In my view, this is a fallacious argument, one which ignores completely the fact that transfer and registration of the property into the names of Mr Moroka and his wife would not have been possible unless the plaintiff confirmed that Mr Moroka and his wife had complied fully with their obligations relating to membership of the plaintiff.

[15] In a well-considered and well-reasoned judgment the learned magistrate found, correctly in my view, that Mr Moroka had indeed become a composite member of the plaintiff. He further found that Mr Moroka was not an

impressive witness whose version was 'not without scrutiny and contradictions'. Having closely examined Mr Moroka's evidence on record I am satisfied that the learned magistrate's findings in this regard cannot be faulted in any way. I further find that his conclusions regarding Mr Moroka's membership of the plaintiff cannot be assailed on the evidence.

[16] I now turn to address the issue which arises from clause 5.6 of the plaintiff's constitution and the further submissions made by the parties in this regard. The provisions of clause 5.6 deal with matters pertaining to a defaulting member and read as follows:

"5.6 DEFAULTING MEMBER

5.6.1 In this sub-clause "debt" shall mean any amount due and owing by a MEMBER to the CLUB, whether in respect of subscription for membership, an amount due under a DEBENTURE held by a MEMBER or any other amount due and owing, howsoever arising.

5.6.2 Without prejudice to 5.6.3. A member who has failed –

5.6.2.1 to pay his annual subscription by the due date therefor; or

5.6.2.2 has failed to pay any other debt for a period of 30 (THIRTY) days after the same is due, shall cease to be able to enjoy the privileges of the CLUB or to use the facilities or amenities of the CLUB and shall become a DEFAULTING MEMBER.

5.6.3 Any DEFAULTING MEMBER who fails to remedy his breach within 30 (THIRTY) days of receipt of written notice from the SECRETARY calling upon him to do so shall cease to be a MEMBER of the CLUB.

5.6.4 Any MEMBER suspended in terms of 11.4 during the period of such suspension and any MEMBER who has been requested to resign in terms of 11.4 shall be deemed to be a DEFAULTING MEMBER.

5.6.5 For as long as MEMBER is a DEFAULTING MEMBER such MEMBER shall not be entitled to exercise a vote.

5.6.6 The EXECUTIVE COMMITTEE or PROFCO as the case may be, may subject to the approval of the BOARD OF GOVERNORS

> reinstate any person who has ceased to be a MEMBER or who is a DEFAULTING MEMBER."

[17] On behalf of the plaintiff it was contended that clause 5.6 of its constitution was not an issue that was identified for determination by the court *a quo* and that the only issues which required determination were (a) the jurisdiction of the court *a quo*, and (b) whether Mr Moroka became a member of the plaintiff or not.

[18] As I pointed out in para [4] above, the provisions of clause 5.6.3 were specifically pleaded by Mr Moroka in sub-para 9.9 of his amended plea. At no stage was this defence ever abandoned. Additionally, the record reveals that the provisions of the clause were raised at various stages of the trial by *Mr Naicker*, who appeared on behalf of Mr Maroka in the court below. The references in the record are set out here below:

> 18.1 Mr Shearer was first cross-examined by Mr Naicker on the implications of the clause. Mr Combrinck only interjected when the witness was asked to interpret the document. The interjection by Mr Combrinck went as follows:
>
> > "Your Worship, sorry, I didn't want to interrupt when it comes to interpretation of documents, including contracts, legislation, etcetera, it is not a question of an interpretation that is done by the witnesses it si done by the Court. It is left to the Court to interpret a document using the normal rules of interpretation, so this questioning of the witness as to what his understanding is and what my learned friend's understanding is, is not allowed because we are dealing with the interpretation of documents. He's well within his rights to argue at the end of the matter that the interpretation that should be placed on the clause is whatever interpretation he wants to put on it, no problem, but it's not something that the witnesses are required to give evidence about as to how it should be interpreted. That's the basis of my objection."

18.2 It is significant that the learned magistrate's ruling in this regard was confined to the issue of interpretation and nothing else.

18.3 In his closing argument Mr Naicker submitted that Mr Moroka's membership had ceased in 2011 by virtue of the provisions of clause 5.6 of the plaintiff's constitution.

18.4 In paragraph 6.4 of his Notice of Appeal, the issue was once again raised as follows:

> "Clause 5.6 of the plaintiff's/respondent's constitution also provides that a defaulting member ceases to be member of the plaintiff/respondent if he or she fails to remedy his or her breach within thirty days of receipt of a notice calling upon him or her to do so, which the defendant filed to do."

18.5 The issue was again raised in the heads of argument filed on behalf of Mr Moroka in this court.

[19] In light of all of the above, it seems to me that the issues raised by clause 5.6 of the plaintiff's constitution were very much alive both on the pleadings and in the evidence when the matter was heard. There is, in my view, no substance in Mr Combrinck's argument that clause 5.6 had nothing to do with the issue of Mr Moroka's membership which was the second issue which required determination in the court *a quo*. I accordingly agree with the submissions advanced on behalf of Mr Moroka to the effect that clause 5.6 and in particular 5.6.3 of the plaintiff's constitution are inextricably linked to the issue of membership and cannot be overlooked having regard to what transpired at the time. I deal with this aspect hereunder.

[20] It is apparent on the evidence that by 2011 Mr Moroka was vehemently denying that he was a member of the plaintiff for reasons already dealt with above. He refused to pay any subscriptions for the 2011 and 2012 years. On 15 March 2011 he was placed on terms by *Mr Dan De Bruyn*, the plaintiff's then golf director, to pay the 2011 subscriptions within 30 days of the notice, failing which his privileges would cease. A further letter was sent to Mr Moroka on 11 June 2011 advising him that the subscription became due on 28 February 2011. A further demand emanating from the finance department was sent on 28 June 2011. Perhaps more importantly, the respondent instructed its attorneys to demand payment, which they did by letter dated 5 August 2011. It is common cause that Mr Moroka continued to remain in default and in terms of clause 5.6.2.2 he was a defaulting member. This position continued into 2012.

[21] Mr Combrinck submitted that clause 5.6.3 contemplates that the written notice referred to in the clause was required to emanate from the secretary of the club and no one else before it could be said that Mr Moroka's membership had ceased. For the reasons that follow, I do not consider that there is any merit in this argument.

[22] As pointed out by Mr Combrinck in his supplementary argument, the term 'Secretary' is defined in the Constitution of the respondent as the person appointed to that office, but including "any person, in the absence of the Secretary, fulfilling the functions of the Secretary". The situation is thus that no recipient of a written notice not signed by the Secretary, but being one which the Secretary may give in the performance of the functions of his or her office, can discern whether it is given by a person who is fulfilling the function of Secretary. Furthermore, a notice furnished by someone giving it on instructions of the Secretary is the latter's agent in this regard. When the plea was delivered

the plaintiff was fully aware of the fact that more than one notice had been given to Mr Moroka after he had become a defaulting member, and yet:

(a) no replication was delivered to the effect that all such notices were given by persons not standing in for the Secretary (as contemplated by the definition); and to the effect that none of the persons in question gave such notice as agent of the Secretary; and

(b) the question of the occupation of the office of "Secretary", and authorities given by him or her, was ignored in the presentation of the plaintiff's case, despite the fact that these matters were presumably within the exclusive knowledge of the plaintiff.

[23] In the end, whatever may be said about the roles of Mr De Bruyn and the officials in the plaintiff' finance department, it is overwhelmingly probable that the demand sent by the plaintiff's attorneys was authorized by the Secretary.

[24] In light of the above, I conclude that the consequences flowing from clause 5.6 of the constitution were relevant to the overall issue of membership which the learned magistrate was required to decide. To that extent the judgment of the learned magistrate insofar as the 2012 subscriptions are concerned is wrong and must be corrected. The effect of this is that the appeal succeeds insofar as the plaintiff's claim for the 2012 subscriptions is concerned. In view of the fact that Mr Moroka has been substantially successful in his appeal, there is no reason why the plaintiff should not bear the costs of the appeal.

ORDER

[25] The order I make is the following:

1. The appeal succeeds with costs.

2. The judgment of the court *a quo* is set aside and is replaced with the following:

"In the result judgment is entered on behalf of the plaintiff as follows:

(a) Payment of the sum of R6400,00;

(b) Interest thereon at the rate of 15,5% per annum from 1 March 2011 to date of final payment;

(c) Costs of suit, including the costs of counsel on tariff."

_____

_____ I agree

OLSEN J

| | | |
|---|---|---|
| Date of Hearing | : | 5 September 2016 |
| Date of Judgment | : | 23 September 2016 |
| Counsel for Appellant | : | N.R. Rathidili |
| Instructed by | : | Naicker & Naicker<br>c/o Siva Chetty & Company |
| Counsel for Respondent | : | P Combrinck |
| Instructed by | : | Messrs De Wet Leitch Hands Inc.<br>c/o Stowell & Company |