THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case no**:** 366/2013
Reportable

In the matter between:

ROYAL SECHABA HOLDINGS (PTY) LTD **Appellant**

and

GRANT WILLIAM COOTE **First Respondent**
DANIEL ELARDUS ENGELBRECHT **Second Respondent**

Neutral citation: *Royal Sechaba v Coote* (366/2013) [2014] ZASCA 85 (30 May 2014)

Coram: Lewis, Bosielo, Theron and Willis JJA and Legodi AJA

Heard: 15 May 2014

Delivered 30 May 2014

Summary: *Res Judicata* – Issue estoppel – same parties requirement – privity of interest not established – rule not immutable but no reasons advanced for relaxation or extension of the rule.

Same relief – some issues determined in earlier arbitration while other issues not adjudicated upon – respondents not entitled to rely on defence of issue estoppel.

ORDER

On appeal from: North Gauteng High Court, Pretoria (Vorster AJ sitting as court of first instance):

1 The appeal is upheld with costs.
2 The order of the high court is set aside and in its stead is substituted the following order:
'The special plea is dismissed with costs'.
3 The matter is referred back to the high court for adjudication on the particulars of claim and the substantive defence.

JUDGMENT

Theron JA (Lewis, Bosielo, Theron and Willis JJA and Legodi AJA **concurring):**

[1] The appellant, Royal Sechaba Holdings (Pty) Ltd (Royal Sechaba), instituted action against the respondents, Mr Grant William Coote (Coote), and Mr Daniel Elardus Engelbrecht (Engelbrecht), the first and second respondents, respectively, in the North Gauteng High Court for payment of damages of R13 122 516 alternatively R4 140 000, for an alleged breach, by them, of their fiduciary duties. The respondents raised a special plea of issue estoppel. The high court (Vorster AJ) upheld the special plea and dismissed Royal Sechaba's claim with costs. This appeal is against that judgment, with the leave of the high court.

[2] In order to determine whether the special plea was properly upheld, it is necessary to examine the factual background giving rise to this litigation. Coote and Engelbrecht were employees and directors of Royal Sechaba. From February 2007 to September 2009, Coote was the company's chief executive officer and Engelbrecht its chief operating officer. On 1 August 2006, Royal Sechaba and Mr Louis Martin Jones (Jones), entered into a written contract of employment in terms of which Jones was appointed by Royal Sechaba as Director of Business Development and which was effective from 1 March 2007. The parties concluded a further agreement which was styled 'Addendum to Employment Agreement' (the Addendum) and effective from 1 March 2007, in terms of which Jones would be paid commission by Royal Sechaba on every contract he procured for the benefit of Royal Sechaba. In addition, Jones would be paid an incentive commission for managing and overseeing the performance of the contract concerned. In concluding this agreement, Royal Sechaba was represented by Coote, and Jones acted personally.

[3] To the extent here relevant, the Addendum provides that Jones would receive commission and incentive payments as follows:

'1. … All new customers that have no existing contract with Royal Sechaba, a 9% commission based on the projected nett profit as per feasibility document. The nett profit includes the estimated value of any assets that Royal Sechaba would retain at the end of the contract. The estimated value of these assets would be the purchase price less depreciation allowed by the Receiver of Revenue:

Sales Commission Structure:

- 50% upon starting of the business
- A further 25% halfway through the contract
- A further 25% upon completion of the contract

2. All new business from existing Royal Sechaba contracts brought in by Mr Louis Jones will attract the same commission structure as all other business.

3. Managing and overseeing the existing Support Services/remote site business and all new business as stipulated in (1) above Louis Jones will be remunerated at 9% operating incentive of actual nett profit achieved. This is calculated and paid quarterly in arrears.
4. All expenses, including commission and admin fee payable to Royal Sechaba will be deducted from the profits. This money will only be payable for the duration of involvement by Louis Jones'.

[4] Jones was extremely successful in procuring new business for Royal Sechaba. It was common cause that Jones was paid an amount of almost R24 million (half of this amount was shared with his management team) over a period of two years from May 2007 to May 2009. All these payments were authorised by Coote and Engelbrecht, among others. During July 2009 these payments were the subject of an investigation conducted by an auditor, Mr André Dames, at the instance of Royal Sechaba. Dames came to the conclusion that the payments made to Jones were incorrectly calculated on gross profit, rather than net profit, as provided for in the Addendum. He also found that Jones had received payments before he had become entitled thereto in terms of the payment schedule in clause 1 of the Addendum and that Jones had claimed and received commission on 'new business' which had not been procured by him.

[5] On 30 September 2009, Coote and Engebrecht were dismissed by Royal Sechaba, for among other things, authorising payments to Jones to which he was not entitled. During the course of the investigation, Jones as well as Coote and Engelbrecht, disputed that Jones had been overpaid. According to them the phrase 'net profit' as used in the Addendum meant 'net contract contribution' which differs from net profit in the ordinary accounting sense. They also alleged that all the payments received by Jones had been due to him. Even though the payment schedule provided for in clause 1 of the Addendum was not adhered to, the respondents alleged that they entered into an oral agreement with Jones in terms of

which Jones was entitled to receive his full sales commission prematurely (up-front) if cash flow permitted.

[6] The disputes between Royal Sechaba and Jones eventually culminated in the cancellation of both Jones' employment contract and the Addendum. Their disputes were subsequently referred to arbitration. The arbitrator was called upon to determine various disputes between the parties, including the interpretation of the Addendum, whether the Addendum was varied by way of a further oral agreement and whether Jones had been overpaid. The arbitration was protracted, lasting six weeks. Jones called some 19 witnesses, including nine experts. The respondents were key witnesses who testified on behalf of Jones.

[7] The arbitrator found, inter alia, that reference to 'actual net profit' in clause 3 of the Addendum, read with clause 4 thereof, meant net profit in the accounting sense of the phrase, namely, net profit after all expenses had been taken into account. The arbitrator also found that Jones did not procure a particular contract in respect of the Ingula Dam for Royal Sechaba and that he was not entitled to commission in respect thereof.

[8] Jones appealed against the arbitrator's award to an arbitration appeal tribunal (the Tribunal) comprising Kriegler J, Blieden J and Suttner SC. Royal Sechaba also cross-appealed against certain of the arbitrator's findings. The Tribunal upheld the appeal, dismissed Royal Sechaba's cross-appeal and substituted the arbitrator's award with one in terms of which Royal Sechaba was ordered to pay Jones an amount of R 1 673 608, 55 plus interest and the costs of the arbitration.

[9] The Tribunal found, inter alia, that the term 'net profit' in clauses 1 and 3 of the Addendum meant net contract contribution as contended by Jones and the

respondents. The Tribunal also found that the parties had concluded a further oral agreement in terms of which it was agreed that Jones would be paid prematurely and not in tranches as provided in the Addendum, provided Royal Sechaba had sufficient cash resources. Royal Sechaba instituted a review application in terms of s 33(1) of the Arbitration Act 42 of 1965 in the North Gauteng High Court, for the setting aside of the appeal tribunal award. The application was dismissed with costs.

[10] In this appeal, Royal Sechaba contended that the plea of issue estoppel had been wrongly upheld by the high court on two main grounds. First, it argued that the 'same person' requirement had not been met in that the respondents were not parties to the Jones arbitration. In reply, the respondents alleged that they were privies of Jones. Secondly, it contended that the 'same cause' requirement had not been satisfied as the issues which would arise in Royal Sechaba's claim against the respondents were not the same as those determined in the arbitration. I shall deal with each of these grounds in turn.

[11] The requisites of a valid defence of *res judicata* in Roman Dutch law were that the matter adjudicated upon must have been for the same cause, between the same parties and that the same thing must have been demanded.[1] Voet, *Commentarius ad Pandectas* 44.2.3 (as translated in *Bertram v Wood* 1893 (10) SC177 at 18) wrote:

'under no other circumstances is the exception allowed than where the concluded litigation is again commenced between the same parties, in regard to the same thing, and for the same cause of action, so much so, that if one of these requisites is wanting, the exception fails'.[2]

[1] Simply stated the requirements are *eadem persona* (same person), *eadem causa pretendi* (same cause) and *eadem res* (same right). *National Sorghum Breweries Ltd (t/a) Vivo African Breweries v International Liquor Distributors (Pty) Ltd* 2001 (2) SA 232 (SCA); *Bafokeng Tribe v Impala Platinum Ltd & others* 1999 (3) SA 517 (BH).
[2] See *African Wanderers Football Club (Pty) Ltd v Wanderers Football Club* 1977 (2) SA 38 (A) at 45E-F.

[12] The expression 'issue estoppel' is a convenient description of instances where a party may succeed despite the fact that the classic requirements for *res judicata* have not been complied with because the same relief is not claimed, or the cause of action differs, in the two cases in question.[3] The common law requirements of same thing and same cause (*eadem res* and *eadem petendi causa*) have been relaxed by our courts in appropriate circumstances. As was pointed out by Lewis JA in *Hyprop Invesments Ltd v NSC Carriers and Forwarding CC & Others*,[4] the relaxation and the application of issue estoppel effectively started in *Boshoff v Union Government*, where it was held that the strict requirements for a plea of *res judicata* (*eadem res* and *eadem petendi causa*) should not be understood literally in all circumstances and applied as inflexible or immutable rules.[5] Despite some debate as to the approach of Greenberg J in *Boshoff*, Botha JA in *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* confirmed the correctness of the approach and added that in particular circumstances these requirements may be adapted and extended in order to avoid the unacceptable alternative that the courts would be obliged:

'om met letterknegtige formalisme vas te klou aan stellings in die ou bronne, wat onversoenbaar sou wees met die lewenskragtige ontwikkeling van die reg om te voorsien in die behoeftes van nuwe feitelike situasies.'[6]

[13] Following the decisions in *Boshoff* and *Kommissaris*, Scott JA in *Smith v Porritt* summarised the development of the law in this regard:

'… the ambit of the *exceptio rei judicata* has over the years been extended by the relaxation in appropriate cases of the common-law requirements that the relief claimed and the cause of action be the same (*eadem res* and *eadem petendi causa*) in both the case in question and the earlier judgment. Where the circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (*idem actor*) and that the same issue (*eadem*

[3] *Kommissaris van Binnelandse Inkomste v Absa C Bank Bpk* 1995 (1) SA 653 (A) at 670I-671B; *Smith v Poritt & others* 2008 (6) SA 303 (SCA) para 10.
[4] [2014] 2 All SA 26 (SCA) para 14.
[5] *Kommissaris van Binnelandse Inkomste*, *supra*, at 669F-H.
[6] *Supra*. To cling to doctrines of old authorities with literal formalism is irreconcilable with the development of the law to provide for requirements of new factual situations. (My translation.)

quaestio) must arise. Broadly stated, the latter involves an inquiry whether an issue of fact or law was an essential element of the judgment on which reliance is placed. Where the plea of *res judicata* is raised in the absence of a commonality of cause of action and relief claimed it has become commonplace to adopt the terminology of English law and to speak of 'issue estoppel'. But, as was stressed by Botha JA in *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* 1995 (1) SA 653 (A) at 669D, 670J - 671B, this is not to be construed as implying an abandonment of the principles of the common law in favour of those of English law; the defence remains one of *res judicata*. The recognition of the defence in such cases will however require careful scrutiny. Each case will depend on its own facts and any extension of the defence will be on a case-by-case basis. (*Kommissaris van Binnelandse Inkomste v Absa Bank* (supra) at 670E - F.) Relevant considerations will include questions of equity and fairness not only to the parties themselves but also to others. As pointed out by De Villiers CJ as long ago as 1893 in *Bertram v Wood* (1893) 10 SC 177 at 180, 'unless carefully circumscribed, [the defence of *res judicata*] is capable of producing great hardship and even positive injustice to individuals.'[7]

[14] It was contended by Royal Sechaba that one of the essential requirements for a successful reliance on either *res judicata* or issue estoppel, that the parties must be the same (*idem actor*), was not proven by the respondents. It is accepted that the *idem actor* requirement does not mean identical parties but that 'same parties' for the purposes of *res judicata* and issue estoppel include their privies. The principle that a party's privies may also rely on an earlier judgment to found a defence of *res judicata* or issue estoppel originated from a statement in Voet's *Commentarius ad Pandectas* 44.2.5 where various illustrations are given of those who are 'deemed' to be the 'same person' or who are identified with one another for the purposes of *res judicata*, such as a deceased and his heir, a principal and his agent, a person under curatorship and his curator, a pupil and his tutor, a creditor and debtor in respect of a pledged article if the debtor gave the article in pledge after losing a suit in which a third party claimed it, a purchaser and seller, if the seller has won or lost the action.[8]

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[7] *Smith v Poritt & others* 2008 (6) SA 303 (SCA) para 10.
[8] This list is set out in *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 654.

[15] In *Ferreira v Minister of Social Welfare*, it was noted, with reference to the illustrations listed by Voet, that the persons who are 'deemed' to be the same as the persons concerned in the previous action all derive their interest in the later action from the parties to the original action.[9] In *Ferreira*, the mother of a child, who alleged that the appellant was the father, had obtained a judgment by default against the appellant for maintenance. She later issued summons for maintenance for a later period. The appellant filed a plea contesting the allegation of paternity. The mother, relying on the effect of the earlier judgment, objected to the appellant leading evidence in support of his plea and this objection was upheld on an application of the principle *res judicata*. On appeal, the court held that the order in the original action was designed to determine the amount of liability between the spouses *inter se*, and that the mother was there exerting a right of her own and not of the child. The court concluded that the right to a contribution order arose from the provisions of the Children's Act 31 of 1937 and that the right to claim such contribution was not 'derived' from the mother in the sense necessary to establish the applicability of the principle of *res judicata*.[10]

[16] The basis of the respondents' special plea in this case is that:

'The defendants [respondents] in this matter are parties associated with the parties in the arbitration, alternatively their privies, rendering the arbitration proceedings a final adjudication between the plaintiff and the defendants by arbitration of competent jurisdiction.'

In support of their contention that they were privies of the parties in the arbitration, the respondents rely on the following: (1) at all material times Coote was the chief executive officer and Englebrecht, the chief financial officer, of Royal Sechaba; (2) at all material times both respondents were directors of Royal Sechaba; (3) both respondents were actively involved in the negotiations that led to the conclusion of the Addendum; (4) they represented Royal Sechaba in these

[9] *Ferreira v Minister of Social Welfare* 1958 (1) SA 93 (E) at 95H-96A.
[10] Section 60 of the Act provided that a contribution order may be made against a respondent, who is defined as a person legally liable to maintain or to contribute towards the maintenance of a child.

negotiations with Jones; (5) Coote executed the Addendum; (6) from May 2007 to May 2009, both respondents were actively involved in the execution of the Addendum in the form of the verification of Jones' incentives and commissions; (7) both respondents were called as witnesses to the interviews relating to Jones' commission while they were still employees of Royal Sechaba, and (8) both respondents played an active role in the arbitration.

[17] This court in *Shokkos v Lampert NO*[11] held that to establish the relationship of 'party and privy' the privy must 'derive title' from the party.[12] Similarly in *Rail Commuters Group & others v Transnet Limited & others*,[13] it was held that for a plea of *res judicata* to succeed, the parties concerned in both sets of proceedings must either be the same individuals or 'persons who are in law identified with those who were parties to the proceedings.' On the other hand, in *Man Truck & Bus SA (Pty) v Dusbus Leasing CC & others*,[14] Rabie AJ stated that the list of privies should:

'… not be limited only to those listed by *Voet*. The question as to whether a person should be so regarded, should depend upon the facts of each particular case and should not only apply to the specific person or persons against whom judgment had been obtained.'

In *Man Truck* it was held that the sole members and controlling minds of two close corporations who had bound themselves as sureties for and co-principal debtors with their close corporations were bound by a court decision in earlier proceedings against the said close corporations, even though they were not themselves parties to that litigation.[15]

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[11] *Shokkos v Lampert NO* 1963 (3) SA 421 (W) 425H- 426A.
[12] See also *Cassim v The Master & others* 1960 (2) SA 347 (D) at 355A-D.
[13] *Rail Commuters Group & others v Transnet Limited & others* 2006 (6) SA 68 (C) at 82H-83A.
[14] 2004 (1) SA 454 (W) para 34. *Man Truck & Bus* was followed in *Kruger & another v Shoprite Checkers* (65/05) [2006] ZANCHC 114 (26 May 2006) where a close corporation and its sole member were found to be privies.
[15] Brand JA in *Prinsloo*, did not find it necessary to decide whether the principle, as endorsed in *Man Truck*, that a privy included the sole member of a close corporation, was correct.

[18] The respondents were not 'in law identified' with either Jones or Royal Sechaba and neither did they 'derive title' from these parties. All they had in common with Jones is that they were former employees of Royal Sechaba and they were all witnesses in the arbitration. Jones' success or failure in the outcome of the arbitration would have no effect whatsoever on their personal rights and obligations. There is no basis upon which this court can find that the respondents were privies of the parties in the arbitration. The respondents had no control over Jones and neither did he represent them in the arbitration. They had no legal or beneficial interest in the arbitration. They undoubtedly had an interest in or concern with the outcome of the arbitration, but that is not sufficient to establish the requisite privity. On the facts of this case, they were not privies to the arbitration in the manner in which the concept of being a privy has been interpreted by our courts.

[19] It is, however, the view of this court that the 'same parties' requirement is not immutable and may in appropriate cases and in line with this court's duty to develop the common law, be relaxed or adapted in order to address new factual situations that a court may face. There is no reason in principle, why a court cannot relax the same person requirement for the very reasons why the two other requirements have, over time, been relaxed. In *Prinsloo NO & others v Goldex 15 (Pty) Ltd & another*, Brand JA put the matter thus:

'In our common law the requirements for *res iudicata* are threefold: (a) same parties, (b) same cause of action, (c) same relief. The recognition of what has become known as issue estoppel did not dispense with this threefold requirement. But our courts have come to realise that rigid adherence to the requirements referred to in (b) and (c) may result in defeating the whole purpose of *res iudicata*. That purpose, so it has been stated, is to prevent the repetition of law suits between the same parties, the harassment of a defendant by a multiplicity of actions and the possibility of conflicting decisions by different courts on the same issue (see eg *Evins v Shield Insurance Co Ltd* 1980 (2) SA 815 (A) at 835G). Issue estoppel therefore allows a court

to dispense with the two requirements of same cause of action and same relief, where the same issue has been finally decided in previous litigation between the same parties.'[16]

[20] Most recently, in *Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC & others*, Wallis JA stated that it was not clear that Voet confined 'same person' narrowly to those who 'derived their rights from a party to the original litigation' and continued:

'[I]t may be that the requirement of "the same person" is not confined to cases where there is an identity of persons, or where one of the litigants is a privy of a party to the other litigation, deriving their rights from that other person. Subject to the person concerned having had a fair opportunity to participate in the initial litigation, where the relevant issue was litigated and decided, there seems to me to be something odd in permitting that person to demand that the issue be litigated all over again with the same witnesses and the same evidence in the hope of a different outcome, merely because there is some difference in the identity of the other litigating party.'[17]

[21] In order to develop the common law, by either relaxing or extending the 'same person' requirement, persuasive reasons must be placed before the court for doing so. If fairness and equity dictate a development of the law, and to do otherwise would defeat the very purpose of the defence, consideration should be given to allowing issue estoppel as a defence even where there is not, strictly speaking, identity of parties. The doctrine of *res judicata* is founded on the policy considerations that there should be finality in litigation and an avoidance of a multiplicity of litigation or conflicting judicial decisions on the same issue or issues.[18] As Brand JA in *Prinsloo* said, our courts have recognised that rigid adherence to the requirements of same cause of action and same relief would defeat the purpose of *res judicata*.[19] There is no reason why a similar approach

[16] [2012] ZASCA 28 para 23. See also the comments made by Botha JA in *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* 1995 (1) SA 653 (A) at 676B-E, referred to in para 26 above.
[17] *Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC & others* 2013 (6) SA 499 (SCA) para 43.
[18] *Ibid* para 2. *Yellow Star Properties 1020 (Pty) Ltd v MEC, Department of Development Planning and Local Government* 2009 (3) SA 577 (SCA).
[19] Para 23.

should not be adopted to the same parties requirement. But in this matter, it was not argued why the requirement should be relaxed or extended, since counsel for the respondents persisted with the contention that the respondents were privies of the parties to the arbitration. He also disavowed any suggestion that the institution of action against the respondents amounted to an abuse of the court's processes.

[22] The high court correctly concluded that the same parties requirement was not established but nevertheless, and without any analysis, went on to find that it was 'appropriate to extend the application of *res judicata* to the facts in the instant case'. The only reason advanced by the high court for extending the rule in this manner was that 'the identities of the defendants in this matter as the persons who agreed and authorized the payments of commissions to Jones are inextricably linked to Jones as the receiver of those payments'. That, in my view, was not sufficient to allow the court to extend the principles governing issue estoppel.

[23] I turn now to deal with the second ground of appeal relied on by Royal Sechaba, that the same cause of action requirement has not been satisfied in that the issues determined by the Tribunal are not the same as those to be determined in this action although the relief sought was identical (the amount of the damages claim). The respondents, on the other hand, and in terms of their special plea, have alleged that the issues which will arise in this action are the same as those which have already been determined in the arbitration, and Royal Sechaba is accordingly precluded from proceeding against them on a basis inconsistent with the findings of the Tribunal. They do not plead *res judicata*, but issue estoppel. Thus, while the breach of a fiduciary duty complained of in the action against the respondents is different from the cause of action in the arbitration, the issues, the respondents argue, are the same. This enquiry requires an examination of the Tribunal's award as well as the pleadings.

[24] It was common cause that Royal Sechaba's claim against the respondents for overpayment of commission based on the interpretation of clauses 1 and 3 the Addendum had been determined by the Tribunal. This portion of the claim is pleaded as follows:

'[In breach of their fiduciary duties, the respondents] calculated the commissions and operating incentives paid to Jones and the designated employees on the basis of a measure referred to by them as "net contract contribution" (essentially gross profit), instead of net profit, as provided for in the addendum …'.

This was the main issue decided by the Tribunal.

[25] It was, however, contended that there were other issues between the parties and articulated in the particulars of claim which were not covered by, and adjudicated upon their merits, in the arbitration. One such issue was whether the respondents had breached their fiduciary duties to Royal Sechaba in that they had:

'Authorised and/or approved a payment of sales commissions to Jones and designated employees despite the fact that such sales commissions and operating incentives had not yet become due and payable in terms of the Addendum'.

The alleged improper behaviour related not to the conclusion of the Addendum, but the implementation thereof, more particularly whether the respondents, in agreeing to pay commission prematurely, had breached their fiduciary duties and not acted with the degree of skill, care and diligence that could reasonably be expected of a director. The issue of a 'breach of fiduciary duty' was not determined by the arbitration.

[26] The argument by Royal Sechaba that some of the issues were not decided by the Tribunal is correct. The Tribunal, for example, was called upon to determine whether Jones was entitled to commission in respect of the Ingula Dam contract. In terms of the Addendum, Jones was entitled to commission on contracts concluded for the benefit of Royal Sechaba and which he had secured.

There was a dispute whether Royal Sechaba had concluded a contract in respect of Ingula Dam. The Tribunal held:

'The defendant [Royal Sechaba] represented by Coote and Engelbrecht agreed on the payment to the claimant [Jones], and the evidence indicates that the contract has been continued albeit on a monthly basis. *Once the claimant and the defendant, represented by its officials, agreed that the claimant was entitled to be paid, there is no reason to set aside this agreement*'. (Emphasis added.)

It was common cause that although there had been reciprocal performance in respect of Ingula Dam, no formal contract had been concluded. It is therefore, at the very least, arguable whether Jones is, in terms of the Addendum, entitled to commission in respect of Ingula Dam.

[27] In these circumstances, I am inclined to agree with Royal Sechaba that while the issues to be determined between Royal Sechaba and the respondents are largely the same as the issues determined in the arbitration, there are issues which were not adjudicated upon in the arbitration.

[28] For these reasons, the appeal must be upheld.

1 The appeal is upheld with costs.

2 The order of the high court is set aside and in its stead is substituted the following order:

'The special plea is dismissed with costs'.

3 The matter is referred back to the high court for adjudication on the particulars of claim and the substantive defence.

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L V THERON

JUDGE OF APPEAL

APPEARANCES

For Appellant:	J A Van der Westhuizen Instructed by: Weavind &Weavind, Pretoria Matsepes, Bloemfontein
For Respondents:	W J De Bruyn Instructed by: Cowan-Harper Inc, Johannesburg Lovius Block Attorneys, Bloemfontein