

SOUTH AFRICA / JUDGMENT

Bhijal Properties (Pty) Ltd and Another v Tongaat Paper Company (Pty) Ltd and Others (D12267/2024) [2025] ZAKZDHC 47 (31 July 2025) [2025] ZAKZDHC 47

COURT
Kwazulu-Natal High Court, Durban

BEFORE
Sibiya

CASE / FILE NUMBER
D12267/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

CASE

NO: D12267/2024

In

the matter between:

BHIJAL
PROPERTIES (PTY) LTD
FIRST
APPLICANT
ABDUL
KHALIQ NABEEBUCCAS
SECOND
APPLICANT
and
TONGAAT
PAPER COMPANY (PTY) LTD
FIRST
RESPONDENT
AGAMBARUM

CHENGAPPA NAIDOO
SECOND
RESPONDENT
VASAGEE
NAIDOO
THIRD
RESPONDENT
VANASVERI
NAIDOO
FOURTH
RESPONDENT
PAPERQUEST
CC
FIFTH
RESPONDENT
LOOK
TOWER CONSTRUCTION CC
SIXTH
RESPONDENT
SANTHAN
RAVINDRAN MOODLEY N.O
SEVENTH
RESPONDENT
ORDER
The

following order is made:

1.
The points in limine pertaining to lack of urgency and lis alibi pendens are upheld.
2.
The current proceedings are stayed pending the finalisation of the consolidated proceedings under case numbers D2261/2021 and D5045/2021.
3.
The applicants are ordered to pay costs on scale C.

JUDGMENT

Sibiya AJ

Introduction

- [1] This application arises against the backdrop of a series of ongoing litigation between the applicants and the first to fourth respondents, concerning the interpretation and enforcement of two agreements: namely, Agreement of Sale of Shares in Private Company (the 'Sale of Shares Agreement'), concluded in July 2016, and a subsequent Refresher Agreement, concluded in October 2017.
- [2] The applicants, in the notice of motion, seek urgent interim relief in the following terms:
- '2.1 Pending the final determination of the action under case number D2261/2021:
- 2.1.1 The First Applicant is authorised to lease the immovable property described as 2[...] E[...], M[...] Road, Tongaat, Kwazulu-Natal (the property);
- 2.1.2 Any lease agreement concluded by the First Applicant in terms of paragraph 2.1.1 above shall terminate upon the action under case number D2261/2021 being determined in favour of the First to Third Respondents.
- 2.2 Clauses 7 and 8.1 of the Rectified Refresher Agreement (annexed to the notice of motion) are declared unenforceable;
- 2.3 The respondents, and any other party who oppose the application, are directed to pay the costs, jointly and severally, one paying the others to be absolved, such costs to be on a scale to be determined by the court in terms of Uniform Rule 69(7).'
- [3] No order is sought against the third and fifth respondents.
- [4] The application is opposed by the first, fourth, sixth and seventh respondents (hereinafter collectively referred to as the 'respondents') on two grounds: firstly, lack of urgency, and secondly, the principle of *lis alibi pendens*.
- [5] The respondents' principal contention is that a determination of ownership and the right of occupation of the property, as well as the validity of clause 7 and 8.1 of the Rectified Refresher Agreement, is already pending determination in the action under case number D2261/2021.
- [6] In the action under case number D2261/2021, the first to third respondents, as plaintiffs, seek, inter alia, an order for the rectification of the Sale of Shares Agreement and the Refresher Agreement. They further seek a declaratory relief to the effect that the third respondent is entitled to occupy the property for purposes of giving effect to the agreement between the parties, as rectified.
- [7] The two salient clauses of the Rectified Refresher Agreement, which the respondents, as plaintiffs, seek to have ratified by the court under case number D2261/2021, read as follows:

'7. The Lease and Occupation Agreement is hereby cancelled, and it is agreed that Tongaat Paper will occupy Bhijal's premises on terms and conditions which are to be negotiated and finalized in due course.

8.1 On signature hereof Paperquest and Tongaat Paper will immediately occupy Bhijal's premises. It is recorded that Tongaat Paper was already in occupation of the aforesaid premises prior to the signature of this agreement and that it shall continue to occupy the premises pending the negotiation and finalization on the terms and conditions of such lease with the parties.'

[8] In resisting the action, the applicants, Farhana Nabeebuccas (the second applicant's wife) and Paperquest, as defendants, in their plea, deny that the Sale of Shares Agreement and the Refresher Agreement are susceptible to rectification. They further dispute that the first respondent possesses any lawful entitlement to occupy the property.

The parties

[9] The first applicant, Bhijal Properties (Pty) Ltd ('Bhijal'), is a private company duly registered and incorporated in terms of the old Companies Act 61 of 1973, and has its registered office at 2[...] E[...], M[...] Road, Trurolands, Tongaat. It is the registered owner of this property.

[10] The second applicant, Abdul Khaliq Nabeebuccas ('AK Nabeebuccas') is an adult businessman and the current sole shareholder and director of Bhijal. He is also the sole director of the fifth respondent, Paperquest CC ('Paperquest').

[11] The first respondent, Tongaat Paper Company (Pty) Ltd ('Tongaat Paper'), is a company duly registered and incorporated in terms of the old Companies Act 61 of 1973, and has its registered offices at 3rd Floor, Corporate Place, [...] G[...]Street, Durban.

[12] The second respondent, the late Agambarum Chengappa Naidoo ('AC Naidoo'), prior to his passing on 6 February 2023, was a shareholder and director of various entities collectively described as ACN Group Companies ('ACN Group') which included the following entities:

- (a) Bhijal Properties (Pty) Ltd;
- (b) Hemal Properties (Pty) Ltd;
- (c) Papco Paper Mills (Pty) Ltd;
- (d) Rohini Properties (Pty) Ltd;
- (e) Tongaat Paper (Pty) Ltd; and
- (f) Spiral Paper (Pty) Ltd.

[13] The third respondent, Vasagee Naidoo, was married to the late AC Naidoo in community of property.

[14] The fourth respondent, Vanasveri Naidoo ('Vanasveri'), is the daughter of the late AC Naidoo and the sole director of Tongaat Paper. No order is sought against her personally.

- [15] The fifth respondent, Paperquest CC, is a close corporation with registered offices at 1[...] T[...] Place, Desainager, Tongaat. AK Nabeebuccas is its sole member of the corporation.
- [16] The sixth respondent, Look Tower Construction CC, is a close corporation with registered offices at 2[...] C[...] Crescent, Buffelsdale, Tongaat. It is cited as an interested party due to its alleged right of retention on the property in respect of repairs and renovations it conducted.
- [17] The seventh respondent, Santhan Ravindran Moodley N.O ('Moodley N.O') is a nominated executor of the estate of the late AC Naidoo. He is cited as an interested party due to his application to the Master of the High Court to be appointed the executor.

Background

facts

- [18] The factual matrix giving rise to the conclusion of both the Sale of Shares Agreement and the Refresher Agreement is largely common cause and is recorded in the agreements themselves. The principal issue in dispute pertains to the proper interpretation and enforceability of the terms contained therein.
- [19] Prior to 2016, Paperquest was involved in the business of supplying raw materials and wastepaper to ACN Group on a monthly basis. The ACN Group was involved in manufacturing toilet tissue paper by converting raw materials and waste paper into bulk paper rolls. The paper rolls are then supplied to Paperquest to sell to its customers at a price determined by Paperquest. On receiving payments from customers, Paperquest would pay ACN Group what is due to it. As at 31 January 2016, Paperquest had determined that ACN Group was indebted to it in excess of R 4.5 million.

The Sale of Shares Agreement

- [20] As a result of ACN Group's inability to discharge its indebtedness to Paperquest, AC Naidoo, on 21 July 2016, entered into the Sale of Shares Agreement, pursuant to which he sold his shares in Bhijal to AK Nabeebuccas, for a purchase price of R4.5 million.
- [21] It is a term of the Sale of Shares Agreement that the purchase price shall not be paid by AK Nabeebuccas, but shall be set off against the debt owed to Paperquest, and once the final amount owed to Paperquest is accurately determined and agreed on, the remaining debt will be repaid either by way of agreed monthly instalments or by the parties taking the reconciled amount into consideration when the resale of shares in Bhijal takes place.
- [22] The parties agreed that AC Naidoo has a right to repurchase his shares within a period of three years from the date of conclusion of the agreement, and upon the exercise and implementation of this right, the parties shall be obliged to execute and conclude a new repurchase of shares agreement, pursuant to which the purchase price shall be calculated on a base amount of R4.5 million, subject to an annual escalation of 15%.

[23] On 21 July 2016, Paperquest and Papco Mills concluded a written agreement for the supply of raw materials and manufacture of toilet tissue paper ('The Toilet Tissue Paper Agreement') while Bhijal, Tongaat Paper, and Paperquest concluded a written lease agreement pertaining to the property ('The Lease and Occupation Agreement'). I am not privy to the terms of the two agreements, because they were not submitted for my consideration.

The Refresher Agreement

[24] It is recorded in the Refresher Agreement that, on 15 May 2017, AK Nabeebuccas and Bhijal, as applicants, instituted legal proceedings out of this court under case number 5329/2017, alleging the non-fulfilment of obligations in terms of the Toilet Tissue Paper Agreement and the Lease and Occupation Agreement. The court papers were however, not placed before me.

[25] On 11 October 2017, AC Naidoo and AK Nabeebuccas, in an effort to resolve the disputes which had arisen, entered into fresh negotiations and concluded the Refresher Agreement.

[26] It is an express term of the Refresher Agreement that the Sale of Shares Agreement would remain of full force and effect and would not be varied by the conclusion of the Refresher Agreement. It was further agreed that AC Naidoo would resign as director of Bhijal and, within seven days of signature of the Refresher Agreement, would instruct his accountant, Prushotham Subramoney Pillay (also known as 'Kanthan'), to take all necessary steps to effect transfer of the shares to AK Nabeebuccas, who would thereafter be appointed as the new director of Bhijal.

[27] The Toilet Tissue Paper Agreement and the Lease and Occupation Agreement were duly cancelled and superseded by the terms set out in clause 8 of the Refresher Agreement.

[28] In terms of clause 8.1 of the Refresher Agreement, the parties agreed that on signature of the Refresher Agreement, Paperquest would immediately occupy the premises of Bhijal.

[29] In terms of clause 9, it was resolved that, upon obtaining possession of the share certificate evidencing his ownership of the shares in Bhijal, AK Nabeebuccas shall withdraw the legal proceedings instituted under case number 5329/2017, with each party bearing their own costs of litigation.

Action under case number D2261/2021

[30] On 17 March 2021, the first to third respondents, as plaintiffs, instituted an action under case number D2261/2021, in which they pleaded that the terms of the Sale of Shares Agreement and the Refresher Agreement, in their current form, do not accurately reflect the true and common intentions of the parties due to a bona fide mutual error. They contended that the conclusion of the Sale of Shares Agreement was intended solely to serve as security for indebtedness owed by the ACN Group to AK Nabeebuccas, and was not intended to constitute an outright disposal of AC Naidoo's shares in Bhijal.

Urgent application under case number D5045/2021

[31] While the action under case number D2261/2021 remains pending, the applicants instituted an urgent interlocutory application under case number D5045/2021 against Tongaat Paper, Vanesveri and Look Tower Construction CC, in which they seek relief for the restoration of access to, and possession of the property. This application has since been consolidated with the action under case number D2261/2021.

[32] In terms of the court order dated 14 September 2024, under case number D5045/2021, the parties were ordered and directed as follows:

'1. The First and Second Respondents are directed to furnish the Applicants with a set of keys to the gate and premises at 2[...] E[...] M[...] Road (the premises);

2. (That) the Applicants are ordered that:

2.1 (that) they and any person accompanying them may only access the premises during the hours 08h00 and 16h30;

2.2 they shall at all times during the inspection be accompanied by a supervisor or a designated representative of the Second Respondent which supervisor/ representative shall remain out of earshot.

3. It is recorded that the Applicants shall give 24 hours' notice of their intention to access and inspect the premises.

4. The Applicants are granted leave to file a counterclaim in case D2261/2021 within 20 days of the grant of this order.

5. The parties to D2261/2021 are directed to convene a mediation and to make discovery within 20 days of the filing of the plea to the counterclaim failing which (the) parties' rights to proceed in terms of the Uniform Rules of Court are reserved.

6. The parties shall agree (on) the identity of the mediator within 10 days of filing of the plea in case D2261/2021 failing which the chairman of the bar counsel shall appoint a qualified mediator.

7. The applicants are ordered to give the Respondents' attorneys K. Maharaj Incorporated 10 working days written notice of their intention to implement the terms of any contract for the sale of the premises or the sale of the shares in the First Applicant.

8. The costs of D5045/2021 are reserved for determination by the mediator or the court or an arbitrator who finally disposes of D2261/2021.'

[33] Pursuant to the aforementioned court order granted, the parties have conducted a joint inspection of the property. The legal representatives have convened a pre-trial conference in terms of Uniform Rule 37, however the parties have not convened mediation.

- [34] Ms Deoduth, on behalf of the respondents, submitted that the aforementioned consolidated matter is presently awaiting enrolment for judicial case management and allocation of a trial date.
- [35] Bhijal has since delivered its counterclaim under case number D2261 /2021, in which it claims, inter alia, an order for vacant occupation of the property as well as payment of damages quantified as occupational rental, together with interest thereon. In its pleadings, Bhijal avers that certain machinery and equipment owned by Tongaat Paper remains situated on the premises, and that, as a consequence thereof, Bhijal has been precluded from leasing its immovable asset to prospective tenants.

Issues

- [36] The issues for determination, in the present application, are the following:
- (a) Whether the applicants have established grounds justifying the enrolment of this matter on an urgent basis; and
 - (b) Whether the defence of *lis alibi pendens* is applicable.

Urgency

- [37] It is trite law that a party seeking relief on an urgent basis bears the onus of satisfying the court that the matter warrants deviation from the ordinary procedural timelines. In terms of Uniform Rule 6(12)(b) the applicants are required to explicitly set out the circumstances which they contend render the matter urgent, as well as the reasons they allege they will not be afforded substantial redress at a hearing in the ordinary course.
- [38] The applicants' contention, in the founding affidavit, is that Bhijal, as the owner of the property, and AK Nabeebuccas, by virtue of his financial contributions towards the acquisition of the property and consequent legal interest therein, are entitled to take steps to protect and preserve the commercial asset pending the final determination of the parties' respective rights under case number D2261/2021.
- [39] The applicants' primary contention is that the property is abandoned by Tongaat Paper and is presently in a significant state of disrepair. On this basis, and premised upon grounds of urgency, they seek vacant occupation of the property to enable them to effect renovations and thereafter to lease the property to a third party. The intended effect, they submitted, is the preservation and safeguarding of the property as a commercial asset, pending the final determination of the parties' respective rights, in the pending action.

- [40] The respondents have submitted, in limine, that the application falls to be dismissed for lack of urgency, averring that the applicants unduly delayed in instituting the proceedings. They contended that AK Nabeebuccas only deposed to the founding affidavit on 07 October 2024, four days after the draft application papers had been delivered and the certificate of urgency had been issued by counsel, and that an additional day thereafter elapsed before the applicants caused the application papers to be issued at court on 08 October 2024.
- [41] The respondents contended further that the present application forms part of a recurring pattern of urgent applications brought annually by AK Nabeebuccas, purportedly with the intention of exhausting the respondents' financial resources and obstructing the progression of the pending legal proceedings, notwithstanding the respondents' full knowledge that the issues pertaining to ownership and occupation of the property remain unresolved and are the subject of adjudication in case number D2261/2021.
- [42] In reply, AK Nabeebuccas denies that there was any undue delay in the institution of the urgent application. He submitted that, as at 03 October 2024, when the draft application papers were delivered for his attention, he was out of town and only returned during the course of the ensuing weekend. He was accordingly only in a position to attend to the signature of the application papers on Monday, 07 October 2024, when a commissioner of oaths was available.
- [43] Mr Veerasamy, on behalf of the applicants, submitted that the dispute regarding urgency is relevant solely for the purposes of determining the issue of costs, as the further conduct of the urgent application was regularised by consent in terms of the court order granted on 25 October 2024.
- [44] Ms Dheoduth, on behalf of the respondents, submitted that the respondents' contention has always been that, due to the duplicity of the proceedings and disputes of facts pertaining to the issues raised, this matter was not supposed to be instituted by way of an urgent application.
- [45] In *New Model Projects v Levenbro Centre (Pty) Ltd and Another*,^[1] the court, in dealing with the determination of urgency, held that an owner of a property is entitled to take urgent action to prevent the destruction of its property and if the applicant is able to prove all the elements of its case, the matter is urgent.
- [46] In the case of *Volvo Financial Services Southern Africa (Pty) Ltd v Adamsas Tkolose Trading CC*,^[2] the court held that the 'destruction of property, or even crippling commercial loss,' fall within a class of factors likely to justify urgency.
- [47] The issues raised in the present application pertaining to urgency are inextricably linked to the merits of the application. In the event the applicants succeed in proving their case on the merits, such finding would militate in favour of a conclusion that the matter is indeed urgent and that the applicants have discharged the onus of establishing urgency. The converse, however, would equally hold true.

[48] I am in agreement with Mr Veerasamy's submission that a determination of urgency is linked to the issue of costs to be awarded. I will revert to this point later in the judgment when I deal with the issue of costs.

[49] Having addressed the issue of urgency in part, I now turn to consider the issues pertaining to the defence raised.

Lis alibi pendens

[50] The respondents submitted that the applicants, in their founding affidavit, failed to disclose to the court that there are six pending matters before this court, under different case numbers, pertaining to inter alia, the interpretation and enforcement of the terms of the Sale of Shares Agreement and the Refresher Agreement, and determination of ownership and occupancy of the property.

[51] The respondents submitted further that the enforceability and interpretation of the Refresher Agreement, as rectified, are the subject of adjudication in case number D2261/2021, consolidated with case number D5045/2021. Accordingly, they argue that the relief presently sought in the notice of motion, if granted, would in effect constitute a dismissal of the pending action under the aforementioned case number.

[52] The respondents averred that the summons under case number D2661/2021 seek to interrogate the clauses of the Refresher Agreement in their entirety and as such the validity or invalidity of clause 7 and 8.1 require extrinsic evidence, in the form of oral evidence, in order to determine and to give effect to the true intentions of the parties. They averred that AK Nabeebuccas, by the present application, intentionally avoids the finalisation of the pending matters because he seeks to deal with the property on his own terms, to the prejudice of the respondents.

[53] The applicants dispute that the issues raised in the present application are already before the court in case number D2261/2021. They contended that for the limited purpose of the present application, consideration of the issues for determination should proceed on the respondents' own version of the Rectified Refresher Agreement. The contention is that, the court, in interrogating the terms of the Rectified Refresher Agreement, ought to find that clause 7 and 8.1 thereof are unenforceable to the extent that they provide for an agreement to agree in future without providing a deadlock breaking mechanism.

[54] It is trite law that in order for a respondent to succeed with a plea of lis alibi pendens, he/she must satisfy the court of the existence of the following essential elements:[3]

- (a) That there is litigation between the same parties;
- (b) Based on the same cause of action; and
- (c) That the same relief is sought in both.

[55] In *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite CC*,^[4] the Supreme Court of Appeal in dealing with the principle of *lis alibi pendens*, held as follows:

'[2] As its name indicates, a plea of *lis alibi pendens* is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years.

[3] The plea bears an affinity to the plea of *res judicata*, which is directed at achieving the same policy goals. Their close relationship is evident from the following passage from Voet 44.2.7:

"Exception of *lis pendens* also requires same persons, thing and cause. - The exception that a suit is already pending is quite akin to the exception of *res judicata*, inasmuch as, when a suit is pending before another judge, this exception is granted just so often as, and in all those cases in which after a suit has been ended there is room for the exception of *res judicata* in terms of what has already been said. Thus the suit must already have started to be mooted before another judge between the same persons, about the same matter and on the same cause, since the place where a judicial proceeding has once been taken up is also the place where it ought to be given its ending.'" (footnotes omitted)

[56] In *Nestle (South Africa) Pty Ltd v Mars Inc*,^[5] the Supreme Court of Appeal, at paragraph 16, held as follows:

'The defence of *lis alibi pendens* shares features in common with the defence of *res judicata* because they have a common underlying principle which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it the suit must generally be brought to its conclusion before that tribunal and should not be replicated (*lis alibi pendens*). By the same token the suit will not be permitted to be revived once it has been brought to its proper conclusion (*res judicata*). The same suit between the same parties, should be brought only once and finally.'

[57] It is common cause that the consolidated matter under case number D2261/2021 and D5045/202 is pending and is awaiting allocation of a judicial case management and trial dates.

[58] The parties herein are the same as in the aforementioned consolidated matters. In the case of *Caesarstone*,^[6] it was held that it is immaterial that the party raising the plea of *lis alibi pendens* is the plaintiff in the other proceedings. In both matters, the parties seek the interrogation of the Refresher Agreement in order to give effect to the parties' respective rights to the occupation and ownership of the property. On this basis the requirement of the same cause of action is satisfied.

- [59] The applicants' contention that the analysis of the issues herein is distinct to the interrogations sought in case number D2261/2021 is misplaced. In order for this court to analyse the issues raised herein, and to find that clause 7 and 8.1 are unenforceable, the court would be required to interpret the terms of the Refresher Agreement and to make determinations pertaining to the right of occupancy and ownership of the property. The same interrogations await the court in the pending consolidated matter, the subject matter being to give effect to the parties' true intentions in concluding the Refresher Agreement.
- [60] Ms Dheoduth submitted that, the applicants, having formulated the view that the issues raised in the present application warranted urgent judicial intervention, and being fully aware that the interpretation of the terms of the Refresher Agreement, as rectified, is currently pending judicial adjudication in case number D2261/2021, ought to have approached a senior judge to seek authorisation for the expedited hearing of the consolidated action, rather than to duplicate the dispute by instituting the present application.
- [61] In the case of *Eravin Construction CC v Twin Oaks Estate Development (Pty) Ltd*,^[7] the court at paragraph 26, held that 'the principles behind the plea of *lis alibi pendens* and *res judicata* are, like estoppel also founded on public policy to avoid multiplicity of actions in order '*inter alia*' to conserve the resources of the courts and litigants'.
- [62] I have noted that, the applicants, while disputing the applicability of the defence of *lis alibi pendens*, conceded that the effect of the granting of the declaratory relief sought would dispose of and effectively terminate the action instituted under case number D2261/2021.
- [63] Having found that the three essential elements pertaining to the defence of *lis alibi pendens* are present in this case, I find that there will be duplication of litigation processes to make determinations pertaining to occupancy of the property and to allow the interrogation of clause 7 and 8.1 of the Rectified Refresher Agreement to proceed herein.
- [64] The parties are at liberty to deal with the merits of the present application once litigation in the consolidated matter under case number D2261 /2021 and D5045/2021 has been disposed of. Should they decide to proceed, it would be for the court, at that stage, to determine whether the principle of *res judicata* is applicable or not.
- [65] Having considered the submissions made, the totality of the evidence and the relevant case law, I come to the conclusion that the respondents have succeeded in proving the existence of the three essential elements for the defence of *lis alibi pendens*.
- [66] The applicants, having failed on the merits of their case, accordingly fail on the issue of urgency.

Costs

- [67] The respondents argued that costs be ordered on scale C.

[68] Costs follow the results. In determining the scale of costs applicable herein, I considered the history of litigation between the parties and my finding that the present application amounts to duplication of the court processes. The respondents should not be put out of pocket by the applicants' ill-considered conduct of duplicating court processes.

Order

[69] In the result, the following order is made:

1. The points in limine pertaining to lack of urgency and lis alibi pendens are upheld.
2. The current proceedings are stayed pending the finalisation of the consolidated proceedings under case numbers D2261/2021 and D5045/2021.
3. The applicants are ordered to pay costs on scale C.

SIBIYA AJ

CASE INFORMATION

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Fifth respondent:

No appearance

C/O V Chetty Inc

Heard on: 25 April 2025

Delivered on: 31 July 2025

- [1] New Model Projects v Levenbro Centre (Pty) Ltd and Another 2025 JDR 0744 (GJ) para 5.
- [2] Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC 2023 JDR 2806 (GJ) para 6.
- [3] Hassan and Another v Berrange NO 2012 (6) SA 329 (SCA) para 19.
- [4] Caesarstone Sdot-Yam Ltd v The World of Marble and Granite CC 2013 (6) SA 499 (SCA) paras 2-3.
- [5] Nestle (South Africa) Pty Ltd v Mars Inc 2001 (4) SA 542 (SCA) para 16.
- [6] Caesarstone Sdot-Yam Ltd ibid fn 4.
- [7] Eravin Construction CC v Twin Oaks Estate Development (Pty) Ltd [2012] ZANWHC 27.

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