

SOUTH AFRICA / JUDGMENT

# Bright Ideas Projects 249 CC v Sanker and Others (9258/2009) [2014]

## ZAKZPHC 48 (19 September 2014)

[2014] ZAKZPHC 48

## COURT

Kwazulu-Natal High Court, Pietermaritzburg

## BEFORE

M R Chetty

## CASE / FILE NUMBER

9258/2009

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IN

THE HIGH COURT OF SOUTH AFRICA,  
KWA-ZULU-NATAL  
DIVISION, PIETERMARITZBURG  
CASE NO: 9258/2009

In

the matter between:

BRIGHT  
IDEAS PROJECTS 249  
CC..... PLAINTIFF  
and  
ROSHEN  
SANKER..... FIRST  
DEFENDANT  
RAMOTSUDI  
JOSEPH  
MOIMA..... SECOND  
DEFENDANT  
RICHARD  
ARTHUR  
THOMPSON..... THIRD  
DEFENDANT

## JUDGMENT

## Judgment

delivered on: 19 September 2014

CHETTY, J:

## INTRODUCTION

- [1] The plaintiff, represented by its sole member, Mr Vishnu Lakraj ('Lakraj') instituted action against the first, second and third defendants in their capacity as partners of an entity which conducted business under the name and style of Vuka Wenze Logistics (Pty) Ltd. The plaintiff's claim is that in or about August 2007 it concluded a verbal agreement with the first defendant ('Sanker') acting as a representative of the partnership known as Vuka Wenze Logistics (Pty) Ltd, in terms of which the plaintiff's garage, known as Big Wheel Garage, would supply diesel fuel to Vuka Wenze Logistics (Pty) Ltd on 30 days credit. Vuka Wenze Logistics (Pty) Ltd was involved in the transportation and logistics business, and the arrangement to supply fuel on credit was to ensure that Vuka Wenze Logistics (Pty) Ltd remained operational as a business entity. The availability of credit facilities for fuel was an important component of the business model, in that without the credit facility, fuel would have to be paid in cash.
- [2] In accordance with the agreement to supply diesel fuel, the partnership (which I shall refer to as 'Vuka Wenze' for convenience) deposited an amount of R100 000 (one hundred thousand rand) with the plaintiff. This amount was retained as security for the advance supply of fuel on credit. The plaintiff supplied diesel fuel to the vehicles belonging to or doing business for Vuka Wenze from November 2007 until May 2008. It is not in dispute that the plaintiff, as at May 2008, was owed a cumulative amount of R331 860,74 (three hundred and thirty one thousand eight hundred and sixty rand and seventy four cents) in respect of fuel sold and delivered. The plaintiff called upon the defendants, on the basis that they were the partners of Vuka Wenze, to settle their indebtedness.
- [3] When no payments were forthcoming, the plaintiff appropriated the R100 000 (one hundred thousand rand) it held as security towards a reduction of the amount owing and due to it. As a result, the plaintiff instituted action against the first, second and third defendants, jointly and severally, the one paying the other to be absolved from liability for payment of the amount of R231 860,74
- (two hundred and thirty one thousand eight hundred and sixty rand and seventy four cents) together with interest as from 1 June

2008. The action was defended by the first and third defendants; the essence of their defence being that there was no partnership agreement in existence as at the time when the plaintiff entered into an arrangement to supply diesel fuel to Vuka Wenze. On the contrary, the first and third defendants contend that the plaintiff contracted with an entity known as Vuka Wenze Logistics (Pty) Ltd, whose 100% shareholder was the second defendant. Accordingly, the first and third defendants deny any liability for the amounts owing to the plaintiff and contend that any indebtedness is that of the private company.

## ISSUES

### FOR DETERMINATION

- [4] It is against this background that the matter proceeded to trial. In light of the second defendant not having filed a plea, Mr Naidoo, who appeared on behalf of the plaintiff, indicated that at the conclusion of the trial he would seek judgment by default against the second defendant; and that in the event of the Court finding in favour of the plaintiff, he would ask that the first and third defendants be held jointly and severally liable together with the second defendant for their indebtedness to the plaintiff.
- [5] There was no dispute between the parties as to the amount claimed, and the only issue in dispute was whether the debt in question was one for which the defendants were liable in their personal capacities as partners of Vuka Wenze, or whether such liability attached solely to the company trading under the name of Vuka Wenze Logistics (Pty) Ltd.

### THE EVIDENCE

- [6] The plaintiff relied on the evidence of its sole member Mr Lakraj who testified that he had been engaged in a business relationship with Sanker in or about 2005, at the time when the latter traded under the name of an entity known as RTA Logistics. During this time, Lakraj supplied diesel on credit to vehicles operated by RTA Logistics until it ceased trading. In 2007 Sanker approached Lakraj and informed him that he (Sanker) was starting a new business in the form of a partnership with two other individuals, and that it he was again in need of credit facilities to purchase fuel. Mr Lakraj testified that he had no reason not to grant similar credit facilities as had been made available to Sanker when he traded as RTA Logistics. Lakraj testified that the first defendant was a “good payer” and he accordingly entered into a verbal agreement with him to provide diesel on 30 days credit. Lakraj further testified that shortly after concluding this agreement in May 2007, the first defendant introduced him to his partners, being the second and third defendants. According to Lakraj, he had at all times been brought under the impression that he was dealing with a partnership; represented by the first defendant, and which traded under the name of Vuka Wenze.
- [7] Lakraj testified that at first, payments in respect of the fuel which had been sold, was prompt. However approximately 3 months after the agreement had been entered into, signs emerged that all was not well. Some of the cheques tendered in payment by Vuka Wenze had

been dishonoured. Whenever this occurred, Sanker had always made good any dishonoured cheques. It is common cause that the plaintiff continued to supply diesel to Vuka Wenze until 12 May 2008 when the total arrears in respect of fuel advanced stood at R331 860,74 (three hundred and thirty one thousand eight hundred and sixty rand and seventy four cents) . As set out above, the plaintiff had requested a security deposit of R100 000 (one hundred thousand rand) from Vuka Wenze for the credit facilities. In light of it not receiving any payment in respect of the debt owed to it, the plaintiff appropriated the security deposit towards the amount of the debt. Lakraj stated that he had attempted to recover the outstanding amount from the first and third defendants, but instead was given “the run around”. Eventually he was called to a meeting in August 2008 with the attorney acting on behalf of Vuka Wenze, as well as the first and third defendants. At the meeting he was informed that the entity with which he had entered into an agreement to supply fuel, was a company with a separate legal personality and not a partnership as he had been led to believe. More particularly, he was informed by the attorney that the first and third defendants were employees of Vuka Wenze (Pty) Ltd. Lakraj said that he considered this explanation to be a farce.

- [8] Following the meeting, the attorney acting for the first and third defendants wrote to the plaintiff on 18 August 2008 and confirmed the contents of the discussion with Lakraj, and confirmed that the first and third defendants were employees of Vuka Wenze Logistics (Pty) Ltd, and not directors. In addition, the attorney advised the plaintiff to proceed against the second defendant and Vuka Wenze Logistics (Pty) Ltd for the outstanding debt, as the second defendant had signed a surety for the outstanding debt owing by the company. The letter concludes that “in the event of Vuka Wenze recovering outstanding debts owing to it, consideration will be had to your outstanding account.”
- [9] Mr Naidoo for the plaintiff highlighted this particular aspect of the letter in furtherance of his submission that the distinction between the partnership which traded under the name Vuka Wenze Logistics (Pty) Ltd and the private company which traded under the exact same name, was nothing more than a sham in order to deceive the plaintiff and to avoid liability for a debt which had been incurred by the first, second and third defendants in their capacity as partners of the entity known as Vuka Wenze.
- [10] In essence the plaintiff’s evidence was that he had never been informed that Vuka Wenze was a private company. As far as he was concerned, he had entered into an agreement with the first defendant who represented himself as one of the partners of a business in which the second and third defendants were also partners. Lakraj further stated that he had been informed at the meeting with the first and third defendants’ attorney that the company known as Vuka Wenze Logistics (Pty) Ltd had been placed in provisional liquidation, and was therefore aware that if he had contracted with the company, it was not likely that he would recover much of the debt owed to him. Lakraj was adamant in his testimony that had it not been for the involvement of the first defendant, who put himself out as a partner; he would never have granted credit facilities to an entity or to persons whom he had no prior

business dealings with. It was not disputed that neither the second nor third defendants had prior dealings with the plaintiff.

- [11] Under cross-examination, Lakraj confirmed the existence of a surety ship agreement which was purportedly signed by the second respondent in December 2006. The signature of the second defendant was seemingly witnessed by Lakraj's son, who assisted his father at the garage. Counsel for the plaintiff submitted that the surety ship agreement relied on by the defendants was of no moment as the second defendant was not present at Court to testify in relation to the document. In any event it is not clear what debt the second defendant was standing surety for, as the surety ship was ex facie limited to R200,000 (two hundred thousand rand).
- [12] A closer look at the document reveals that it was signed in December 2006. On the plaintiff's version, which was not disputed by the defendants, the agreement to supply diesel fuel was only concluded in 2007, with the actual supply commencing in November 2007. It is inconceivable that the second defendant would have entered into a surety ship agreement before any deal was concluded with the plaintiff. Lakraj in any event denied any knowledge of the surety ship agreement or the assertion that the first defendant had merely introduced the second defendant to the plaintiff.
- [13] In relation to a payment which had been made by the first defendant to the plaintiff in the sum of R90,000 (ninety thousand rand) it was suggested by Mr Govender, acting for the first and third defendants, that this payment was in respect of a debt which the first defendant owed to the plaintiff in respect of RTA Logistics. Lakraj denied this and stated that at the time when RTA Logistics ceased trading, there was a credit balance owing to it, which the first defendant had asked be transferred to the new account under the name of Vuka Wenze.
- [14] It was also suggested to Lakraj that contrary to his belief that RTA Logistics had a credit balance at the time when it ceased trading; it actually owed money to the plaintiff at the time. This line of argument was not persisted with, and wisely so, as the plaintiff would have no reason to falsify a credit balance in the name of any of its customers.
- [15] It was further put to the plaintiff that he was fully aware that he was transacting with a company and not a partnership because the first defendant had made a point of furnishing all of the company registration documents pertaining to Vuka Wenze Logistics (Pty) Ltd, to him. Lakraj denied this and maintained that at all times he was brought under the impression that he was dealing with a partnership, which was represented primarily by the first defendant.
- [16] The plaintiff closed its case without leading any further evidence. It should be recorded that at the outset of the trial, a dispute arose as to the duty to begin. I ruled that on the documents, this duty should be borne by the plaintiff. If after the evidence led by the defendants, the plaintiff wished to deal with aspects not pleaded or anticipated by it; it could bring an application to re-open its case. As matters turned out, this proved unnecessary.

- [17] The first defendant then gave evidence that he had known Lakraj for approximately 2 years since 2005, during which time he traded as RTA Logistics. The first defendant gave the court the impression that he had enjoyed an honest relationship with Lakraj, which had been soured by the present litigation. In fairness to the first defendant, there is nothing before me to suggest that he did not enjoy a good relationship with Lakraj while he traded as RTA Logistics. All of this eventually turned sour. Sanker's evidence was that at no stage did he represent to the plaintiff that he was acting as a partner, or that he was binding the partnership. He stated that after he ceased to trade as RTA Logistics; he together with the third defendant, decided that they would go into business; pursuant to which a shelf company was purchased and its name changed from Niren Singh Enterprises to Vuka Wenze Logistics (Pty) Ltd.
- [18] What also emerges from the evidence of Sanker is that he did not have an un-blemished financial track record. This made it difficult for any new business in which he was involved to secure the necessary credit finance facilities. What the first defendant could bring to a new business venture was the contracts which he had secured whilst at RTA Logistics. He testified that these contracts were worth in the region of R5 million. However in order for these contracts to be sustained, trucks were required to transport goods. This is where the third defendant entered into the partnership.
- [19] The third defendant, Thompson, gave evidence that he was previously the dealer principal in a trucking business, and upon being approached by the first defendant, he decided to venture into business with the first defendant in trucking and logistics. The remaining ingredient for a successful business at the time, according to the first defendant's testimony, was to secure the signature of an individual who would be able to secure contracts under the rubric of black economic empowerment. It was the first defendant's belief that such a person would also be able to more easily access credit facilities through the banks as opposed to either himself or the third defendant. It is with this in mind, that the second defendant was brought into the partnership.
- [20] Prior to a partnership agreement being entered into amongst the defendants, Sanker testified that he resigned as a director of the newly formed company and the second defendant was installed as the 100% shareholder. Sanker and Thompson testified that they had, through the second defendant, secured the essential ingredient for a successful business venture in the logistics arena. Apart from the details of the second defendant having previously been employed at Unilever and thereafter in the construction industry, nothing is known of his business acumen or of his particular skills or contacts to expand the business of a logistics and cartage company. The third defendant was strident in his denial of the second defendant being installed as 100% shareholder only to satisfy a black economic empowerment agenda and indicated that he would not engage in "window dressing".

[21] I am in agreement with counsel for the plaintiff that the first and third defendants offered more in the way of evidence under

cross-examination than in evidence in chief; as to their knowledge of the relationship between the private company and the partnership

known as Vuka Wenze. Under cross-examination by counsel for the plaintiff, the first defendant was clearly not at ease and frequently

associated himself with the company, as opposed to the partnership with the remaining defendants in the matter. Although on his version he was employed by the company and was not a director, he frequently (in reference to the company) referred to “we”,

suggesting that his evidence of being an employee was not entirely truthful.

[22] What is evident from the testimony of the first and third defendants is that on their own versions, they made significant capital

injections into the private company. In this regard, the evidence of the first defendant is that he invested an amount of approximately

R1.1 million into the company in the form of his payment for the deposit on two (2) trucks as well as a trailer. In addition, further

vehicles were purchased via finance from a second banking institution. According to the loan account details provided by the first defendant, he also put up an amount of R38 000 (thirty eight thousand) for the payment of tolls. Apart from the capital injection,

the first defendant’s evidence is that he had brought along with him from RTA Logistics, transport contracts to the value of approximately R5 million. The third defendant testified that he had secured the use of (2) two trucks to start off his contribution

towards the business. In addition, his evidence was that he had injected an amount of R100 000 into the company.

[23] Neither the first nor the second defendant were able to provide a satisfactory answer to the question posed by Mr Naidoo for the plaintiff as to why neither had done anything to secure their financial injection into the private company by insisting on a shareholding therein.

What is further evident is that the sole shareholder in the company, being the second defendant, did not

contribute anything towards the start-up capital of the company. This, notwithstanding the terms of the partnership agreement concluded on 25 July 2006, in which it is specifically recorded that the second defendant was obliged to contribute an amount of R200 000 (two hundred thousand rand) within three months of the signing of the partnership agreement.

[24] On the first and third defendant’s own versions, the second defendant failed to honour the terms of the agreement. Moreover,

neither of these defendants was able to explain why their investments in the company were not secured with a commensurate shareholding and why neither had done anything to take action against the company to recover the investments. It was only after the company had been placed into liquidation on application by the second defendant that the first and third defendants submitted claims to the liquidators.

[25] Counsel for the plaintiff submitted that it would have been improbable that a logistics company would have been able to sustain

itself for almost two years on the capital injections of only the first and third defendants. In this regard he submitted that those involved in the starting up of the business would have also benefitted from the value added tax (VAT) refunds which followed

after the purchase of the four (4) trucks with the credit assistance of the banks. The first defendant denied that this was his motivation or that of the other partners. In essence, the first and third defendants denied that they were liable in any way to the plaintiff and contended that if anyone was liable, it was the second defendant.

## ANALYSIS

### OF THE EVIDENCE AND APPLICABLE PRINCIPLES

- [26] The crux of the matter is whether the first was bona fide in his dealings with the plaintiff (at all times represented by Lakraj) and did he bring him under the impression that he was dealing with a partnership, or did the plaintiff contract with the second defendant as the sole shareholder of the private company? I am in agreement with Mr Naidoo's submission on behalf of the plaintiff that a critical aspect in answering the above query is to have regard to the conduct of the parties at the time.
- [27] The plaintiff's Mr Lakraj was unequivocal that he entered into an arrangement with the first defendant, who was a partner in a business called Vuka Wenze. At a later stage, Lakraj stated that he was introduced to Thompson and Moima, the third and second defendants respectively. Sanker would have the Court accept that he never engaged with the plaintiff as a partner. I find his evidence that he would have copied all of the company registration documents of the company Vuka Wenze Logistics (Pty) Ltd, and handed these over to the plaintiff, to be unconvincing. In my view his evidence was tailored to suit the version that he was at all times not acting as a partner, but merely an employee of the private company.
- [28] The plaintiff's evidence was that he trusted the first defendant to be a "good payer" based on his record and business dealings while the latter was at RTA Logistics. The plaintiff would not have required anything more to pass on credit facilities to the first defendant. Moreover, it would be entirely out of the ordinary for an ordinary "employee" to have had access to company registration documents. These documents would more often than not reside with a director than an employee. These reasons cause me to reject the evidence of Sanker that he was nothing more than an employee of the private company and that he had never given the

plaintiff the impression that he was a partner in a business.

- [29] The version on behalf of the plaintiff stands in direct contradiction to that of the defendants. As set out earlier, it is not in dispute that the plaintiff contracted through the first defendant to supply diesel fuel to Vuka Wenze. Was the first defendant acting as a partner and representing the partnership or was he, as is the defendant's case, merely facilitating an agreement as an employee on behalf of the private company? Where there are two diametrically opposing versions, the test to be employed in

determining which version is to be preferred is set out in *Stellenbosch Farmers Winery Group limited and Another v Martell Et Cie and Others* 2003 (1) SA 11 (SCA) at 14, para. 5:

*"[5] On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a)(i), (iv) and*

- (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

- [30] Counsel for the plaintiff correctly submitted that in regard to determining which of the two versions is to be preferred, I should have regard, in addition to the factors set out in *Stellenbosch Farmers Winery*, to the conduct of the contracting parties. In this regard, it was submitted that I should accept the version of Lakraj, who I considered to be an honest and forthright witness, that at all times he contracted with the first defendant whom he believed to be a partner of Vuka Wenze. It was contended by the defendant's counsel that Lakraj would have good reason for contending that the first defendant was representing the partnership at the time. On the other hand, if Lakraj were to say that he contracted with the

company, this would result in the claim of R231 860,74 (two hundred and thirty one thousand eight hundred and sixty rand and seventy four cents) ranking as a concurrent claim, along with those of all the other creditors as the company, Vuka Wenze Logistics (Pty) Ltd, is under provisional liquidation. On that basis it was argued that Lakraj tailored his version to pursue judgment against the defendants in their personal capacities, on the ground that he contracted with the partnership.

[31] It was further contended on behalf of the plaintiff that I should have particular regard to the conduct of the first defendant in assessing which of the two versions would be more probable. In so doing, counsel for the plaintiff elicited from the first defendant

that during the period when he traded under the name of RTA Logistics, he was never a member of the close corporation, but his

wife was. When he joined Vuka Wenze, it was put to him that he insulated himself from liability by resigning as a director of the

company shortly after its registration, allowing the second defendant to become liable for any debts incurred. After Vuka Wenze Logistics (Pty) Ltd was placed into liquidation, the first and third defendants went into business again and are part of a new logistics business called MUG Construction, otherwise known as Malwande Logistics. With this new business, the first defendant's son was brought in as a member, but has since resigned. Counsel for the plaintiff submitted that the first defendant's track record is suggestive of an individual who carries on business behind a shield of "non-involvement". His modus operandi at all times being to shield himself from personal liability in the event of any of the business entities collapsing.

[32] Even more telling, it was submitted, was the conduct of the first and third defendant in continuing to trade and carry on business under the name of Vuka Wenze even though they had terminated their partnership agreement with the second defendant on 13 November 2006. In this regard, any third party who may have entered into any agreement with the first or second defendants after the date when they had supposedly severed ties as partners, could be forgiven for believing that they were contracting with the partnership and not with an employee of the private company. This possibility becomes even more apparent when one has regard to the fact that the partnership traded under the exact same name as the private company – Vuka Wenze Logistics (Pty) Ltd 67/5318/07. This is self-evident from a perusal of clause 2 of the partnership agreement dated 25 July

2006. Moreover, it was submitted on behalf of the plaintiff that the creation of the company known as Vuka Wenze Logistics (Pty) Ltd was an alter ego for the partnership which had been entered into. In *Gcilitshana v General Accident Insurance Co SA Ltd* 1985 (2) SA 367 Friedman J remarked at 371 A that:

*"A partnership is not a legal persona and has no legal personality separate from its members as, for example, a company has. It is*

merely a group of individuals who are associated together by their partnership contract. See *Divine Gates & Co v African Clothing*

*Factory* 1930 CPD 238 at 240; *Muller en 'n Ander v Pienaar* 1968 (3) SA 195 (A) at 202 - 203. When a person contracts with a partnership he is in effect contracting with all the partners individually. The individual partners are jointly and severally liable under the contract and debts arising under the contract are owed to the

individual partners jointly and severally.”

[33] Mr Naidoo for the plaintiff submitted that the company was “set up to fail” and was merely used as a vehicle to access credit by having Mr Moima, the second defendant, as the sole shareholder of the company, whilst the first and third defendants carried on business as usual despite their partnership agreement coming to an end in November 2006.

[34] In considering the evidence before me, together with the supporting documentation, I have no hesitation in concluding that at the time when the plaintiff entered into an arrangement to supply diesel fuel to the entity known as Vuka Wenze, the plaintiff at all material times believed, or was led to believe, that it was contracting with a partnership comprising of the first, second and third defendants. This was so even though the partnership was dissolved in November 2006 and that the plaintiff only commenced with the supply of fuel on credit in November 2007.

[35] It has been held that a partnership is a contract *uberrimae fides* and that the duty to observe good faith is not confined to partners in an existing partnership. It extends to persons negotiating for the establishment of a partnership, as well as to the parties in a partnership which has been dissolved but not finally wound up. See *Sempff v Neubauer* 1903 TH 202 at 216; LAWSA [Vol.19]

291. Counsel for the first and third defendants accepted that as a general proposition, a partner who contracts on behalf of a partnership within the limits of his authority, either express or implied, acts as an agent of the partnership. The position in relation to liability that attracts to a partner is aptly set out in LAWSA [Vol.19] para 304 where the following is stated:

*“As principal he is bound by what he does himself and by what each of his partners does on behalf of the partnership, provided that they act within the limits of their authority; as an agent he binds each of them by what he does on behalf of the partnership, provided he acts within the limits of his authority. Hence in contracting on behalf of the partnership a partner sustains the double character of agent of his partners and principal in one and the same transaction, and not merely for a share, but in each capacity for the whole. It has consequently been held that the liability of partners for partnership debts is joint and several and, to the same effect, that partnership debts are in law the debts in solidum of all the partners and, in more refined terminology, that the partners are liable singuli in solidum for partnership debts. There is now no doubt that this is the position on dissolution of a partnership.”*

[36] As set out in paragraph [4] above, there was no appearance on behalf of the second defendant, and judgment was sought against him by default.

[37] In light of the above, I make the following Order:

1. Judgment is granted for the plaintiff against the first, second and third defendants in the sum of R231 860, 74 (two hundred and thirty one thousand eight hundred and sixty rand and seventy four cents).
2. The first, second and third defendants are jointly and severally liable to the plaintiff, the one paying the other to be absolved from liability for payment of R231 860,74 .
3. Interest on the amount of R231 860, 74 at the rate of 15.5% per annum as from 1 June 2008 to 31 July 2014; and thereafter at the rate of 9% from 1 August 2014 to date of final payment.
4. Costs of suit on a party and party scale.

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M R CHETTY

JUDGE OF THE HIGH COURT

APPEARANCES:

For the Plaintiff: Adv. J Naidoo, instructed by Anand-Nepaul Attorneys, Durban.

For the Defendant: Adv. P Govender, instructed by Neesha Ramgoolam Attorneys, Durban.

Date of hearing: 1 September 2014.

Date of judgment: 19 September 2014.

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