

SOUTH AFRICA / JUDGMENT

Chatiras t/a Angela Chatiras Attorneys v Snell; Chatiras t/a Angela Chatiras Attorneys v Snell (40542/16) [2018] ZAGPJHC 500 (13 July 2018) [2018] ZAGPJHC 500

COURT

South Gauteng High Court, Johannesburg

BEFORE

EF Dippenaar

CASE / FILE NUMBER

40542/16

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 40542/16

Not

reportable

Not

of interest to other judges

Revised.

13/7/2018

In

the matter between:

ANGELA
CHATIRAS t/a ANGELA CHATIRAS
ATTORNEYS Plaintiff
and
SNELL: WILFRED
ANDREW First
Defendant
Case
Number: 40544/2016

SNELL:

JANITA
MELANIE Second
Defendant

JUDGMENT

EF DIPPENAAR, AJ:

Introduction

[1.] This matter was initially instituted as two applications for the sequestration of the estates of the first and second defendants, in which a money judgment was sought in the alternative. The defendants opposed the applications. By agreement an order was granted on 2 May 2017, consolidating the applications and referring the matter to trial. The plaintiff abandoned the sequestration applications.

[2.] The plaintiff claims payment of certain amounts in respect of legal services rendered (including certain disbursements) at the defendants' special instance and request during the period June 2012 to June 2014. She relies on an oral mandate agreement concluded during June 2012 and oral mandates provided during June 2012, August 2012 and August 2012 to March 2014 respectively. She further relies on a written mandate agreement recording the terms of the oral mandate agreements concluded on 26 November 2013.

[3.] The plaintiff is an attorney of some 19 years experience who practices as a sole practitioner. The first defendant is presently unemployed. After terminating his employment in 2010 the first defendant was self employed and conducted business in the trading of shares. The second defendant is the sister of the first defendant. She completed an LLB degree in 2011 and is a forensic investigator, presently employed as such at the Industrial Development Corporation of South Africa. She was previously employed in a similar position at Investec. The second defendant approached the plaintiff for assistance in June 2012.

[4.] In total, the trial lasted six days, with the evidence of six witnesses being led. This is regrettable considering that the true ambit of the disputes between the parties was very narrow and the length of the trial could have been substantially curtailed and unnecessary costs avoided. This has an impact on costs, an issue to which I later return

[5.] Various issues were raised on the pleadings by the defendants which were not supported by their evidence. Once the evidence was concluded it appeared that the plaintiff's version was by and large common cause. The main disputes centred around certain terms of the original oral mandate agreement concluded between the parties and the circumstances surrounding the conclusion of a written mandate agreement on 26 November 2013.

The issues

[6.] The defendants raised two special pleas, which can be shortly disposed of. The first, a plea of non joinder, being that the plaintiff had failed to join the first defendant's wife, Mrs Aurora Snell, to whom he is married in community of property. Mrs Snell was the opposing party in the High Court litigation which pertained to the custody of their minor children. On the first defendant's own version, he separated from his wife during December 2013 and she left the Republic of South

Africa during early 2014. He further testified that there was no joint estate and that a bank had foreclosed on their former matrimonial home. In the circumstances the wife of the first defendant need not have been joined as a party to the proceedings[1]. In my view the first special plea lacks merit and must be dismissed.

[7.] The defendants' second special plea is one of prescription. It is contended that the parties agreed that the plaintiff would account to the defendants on a monthly basis in respect of services which the plaintiff commenced rendering during June 2012. The plaintiff's applications were served during November 2016. It is contended that insofar as the plaintiff's claim relates to services rendered prior to October 2013, such portion of plaintiff's claim has prescribed in terms of section 11 of the Prescription Act[2].

[8.] It was undisputed that the defendant's admitted their liability to the plaintiff for the payment of the reasonable fees for the services rendered to them. These admissions were made in correspondence preceeding the application on various occasions during 2014 and during the trial. In terms of section 14

(1) of the Prescription Act, the running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor. It was undisputed that the defendants acknowledged their liability to the plaintiff for the payment of her legal fees on various occasions from 2014, including during the trial.

[9.] Moreover, the plaintiff only acquired a complete cause of action[3] on 7 July 2016 following the taxation of the two High Court bills of cost and upon receipt of the Law Society's letter dated 6 December 2016 setting out the findings of the Fee Assessment Committee regarding the other two bills of cost.

[10.] In the circumstances, and considering the various admissions of liability to the plaintiff, the second special plea lacks merit and must fail.

[11.] The defendants further disputed that they were jointly and severally liable to the plaintiff. They contended that certain services were rendered to them individually in the various matters, in which they were respectively involved. During evidence, it became clear that the second defendant was the person who provided the plaintiff with the majority of the instructions, even in respect of the matters which involved her brother, the first defendant.

[12.] It was undisputed that the second defendant assisted the first defendant with the payment of fees, as the first defendant did not have the financial means to do so. Based on their own evidence and conduct, the defendants jointly provided instructions to the plaintiff and in all correspondence to the plaintiff jointly referred to the first and second defendants as the plaintiff's clients. They did not allocate any payments to any specific matters and there is no evidence supporting the defendants' version. Rather, the available facts indicate the contrary.

[13.] Numerous issues were raised on the pleadings as disputes by the defendants, which, after evidence and cross examination appeared to be common cause. In various instances, the defendants' allegations in their plea in support of their defences were not directly addressed in evidence nor was the case as pleaded, supported by the evidence led. I shall only refer to such instances insofar as they are relevant to the issues which required

determination.

[14.] The main issues during the trial were the following:

[14.1] The terms of the oral mandate agreement concluded between the parties during June 2012;

[14.2] Whether the written mandate agreement concluded on 26 November 2013 was null and void because the defendants concluded it under duress;

[14.3] Whether the reasonableness of the fees charged by the plaintiff was to be determined considering the financial position of the defendants

The evidence

[15.] In summary, the plaintiff's version was that the second defendant had first approached her in respect of an application to have the latter admitted as an advocate. During June 2012, the second defendant again contacted the plaintiff and requested assistance with an urgent application in which the first respondent was involved. In addition to the urgent applications, the plaintiff further assisted the defendants with proceedings related to protection orders, criminal proceedings against the first defendant and the first defendant's divorce proceedings.

[16.] A substantial trust relationship developed between the parties, which broke down when the plaintiff started asking for contributions to her fees once the various proceedings were at an end. The plaintiff testified that she had telephonically advised the second defendant that she would charge the defendants a reduced rate of R1700.00 per hour to assist the defendants as the second respondent would become a colleague once she was admitted and provided fees were paid timeously, failing which her rate would be R1965 per hour.

[17.] The plaintiff further advised that disbursements to counsel and other third parties would have to be paid immediately upon demand, but that she would defer her fees until the end of the matters. The plaintiff further requested a deposit of R17 000.00 for the payment of counsel's fees in respect of the urgent application.

[18.] The plaintiff testified that the parties had agreed to these terms, that the defendants would be jointly and severally liable for the plaintiff's fees and that the second defendant was assisting the first defendant with the payment of legal fees.

[19.] She further testified the second defendant kept detailed notes of the fees paid so that a record was kept as between the defendants of what the first defendant owed the second defendant.

[20.] The first and second defendants' testified in similar vein. They testified that the plaintiff had agreed to charge them reasonable fees and that they would be afforded time to pay her in instalments, even if it took ten years. They further contended that the plaintiff had not agreed on a specific tariff, only that her fees would be reasonable.

[21.] It is common cause that the defendants mandated the plaintiff to represent them in various legal proceedings and legal services were rendered to the defendants.

[22.] The plaintiff, with the assistance of a costs consultant Mr Rosslee, prepared four bills of cost in relation to all the matters in which she represented the defendants. He further represented the plaintiff in relation to the taxation and assessment of the said bills. Two bills of cost were prepared in respect of litigious matters in the High Court and two bills of cost in respect of the other matters (referred to in evidence as 'the non-litigious matters').

[23.] It was undisputed that both the plaintiff and the defendants were represented by costs consultants during the processes of assessing the various bills of cost. In the High Court proceedings, the defendants were represented by attorney Muller. The quantum of the two High Court bills was agreed upon between the parties in an amount of R700118.11.

[24.] It was further common cause between the parties that the two High Court bills of costs, prepared under case numbers 32481/2012 and 24003/2012 could be tendered in evidence without the need to have the taxing master testify thereon. It was common cause that the two bills of cost were signed by Mr Zeelie, pursuant to the parties agreeing on the quantum of the said bills of cost

[25.] The plaintiff's evidence was undisturbed despite rigorous cross examination. Similarly, the evidence of Messrs Rosslee, Muller and Suttner was largely uncontested.

[26.] The evidence of the first and second defendants on various material issues supported the evidence of the plaintiff. In certain respect the evidence of the first defendant was evasive and he was reluctant to respond directly to questions put to him under cross examination. The evidence of both the first and second defendants was unconvincing in various respects and at variance with the probabilities.

[27.] During the trial both the first and second defendants made various significant concessions:

[27.1] The defendants both admitted liability to the plaintiff for the payment of the plaintiff's reasonable fees on various occasions: in evidence, in correspondence emanating from both the defendants and their attorney of record and in the answering papers in the application proceedings.

[27.2] The defendants further admitted that they never disputed that they were liable to the plaintiff for her reasonable costs incurred in rendering the legal services to them.

[28.] Under cross examination the defendants made certain further important admissions. It was admitted that:

[28.1] By entering into an agreement with the plaintiff in respect of the quantum of the two High Court bills of cost they accepted liability for such amount;

[28.2] By submitting to the procedure of the Fee Assessment Committee of the Law Society of the Northern Provinces, they requested that body to assess the reasonableness of the fees charged by the plaintiff in respect of the matters wherein the plaintiff represented them which were not litigious.

The oral mandate agreement

[29.] The plaintiff's version was that she telephonically explained the fee structure and billing method to the second defendant during a telephonic conversation. She explained that she was prepared to charge a reduced rate of R1700 (one thousand seven hundred rand) per hour provided that timeous payment was made, failing which a rate of R1965 (one thousand nine hundred and sixty five rand) would be charged. She agreed to defer her legal fees for services to the finalisation of the matter to assist the defendants.

She informed the defendants that advocates fees and disbursements to advocates would have to be paid and that she required a deposit of R17 000 (seventeen thousand rand) in order to brief counsel.

[30.] From the evidence it was undisputed that the defendants did pay the deposit and that the plaintiff from time to time requested to pay certain amounts for counsel's fees. The payment of disbursements to counsel were not in dispute during the trial. The plaintiff did not render invoices in respect of her fees on a monthly basis. These undisputed facts support the plaintiff's version.

[31.] It was further undisputed that the plaintiff briefed various advocates in the various matters to represent the defendants and that such advocates had been paid. It was further undisputed that between the period June 2012 to December 2013 an amount of R435 975.00 (four hundred and thirty five thousand nine hundred and seventy five rand) had been accounted for and paid to advocates and other third parties for disbursements.

[32.] The conduct of the plaintiff is consistent with her evidence that she agreed to defer payment to the end of the various matters, as she did not render monthly accounts until requested for a detailed accounting by the second defendant once she started asking for payments towards her fees once the matters were reaching an end.

[33.] The defendant's version and specifically the version of the second defendant who conducted the telephonic conversation with the plaintiff regarding the oral mandate agreement, was that the question of fees was not discussed. The plaintiff had advised her not to concern herself with the fees, as the fees would be reasonable and the defendants would be able to afford same. According to the second defendant the plaintiff said that she should not worry about the fees, she could pay them off even if it "takes ten years to pay." This version does not accord with the probabilities or with the concessions made by the defendants during cross examination.

[34.] During evidence both the first and second defendants testified that they were not aware that they had been paying only disbursements but that they thought that they were paying “legal fees’. This evidence is in conflict with the plaintiff’s version that she advised the defendants that her fees would be more or less the same as counsels’ fees and that she had advised the defendants on each occasion what amount was due for counsel’s fees at any particular time. The ignorance professed by the defendants is not supported by their conduct at the time and on the probabilities, the plaintiff’s version is preferred.

[35.] In the circumstances I find that on the probabilities the oral mandate agreement was concluded on the terms averred by the plaintiff.

The written fee mandate agreement

[36.] It was common cause between the parties that the written mandate agreement was signed by the defendants at court on 26 November 2013, before an appearance by the first defendant in his criminal matter.

[37.] The plaintiff’s evidence was that it was signed in confirmation of the oral agreement and that she was at the time under the impression that such a written agreement was required, in order to tax the bills of cost granted in the High Court in favour of the first defendant in the proceedings against his wife.

[38.] The defendants’ evidence confirmed the plaintiff’s advices to them that the written agreement had to be signed to draw the bills of cost. The second defendant further confirmed that the plaintiff had been instructed to recover on the costs orders awarded in favour of the first defendant and confirmed in evidence that the plaintiff had on various occasions informed them that a written mandate agreement should be signed. The defendants during evidence sought to blame the plaintiff for not proceeding with

the instruction. The plaintiff’s response was that she was not placed in fees to do so.

[39.] Although admitting their signatures to the mandate agreement, the defendants however contended that it was concluded under duress in circumstances where they were anxious about the pending criminal proceedings against the first defendant and they were not afforded a proper opportunity to consider the agreement before signing it. They both contended that the plaintiff had threatened to withdraw if the agreement was not signed, thus leaving the first defendant vulnerable to incarceration.

[40.] The plaintiff disputed this and testified that the matter was due to be postponed by agreement on that date and that she had never threatened to withdraw.

[41.] The agreement was amended in manuscript by the first defendant who had corrected his identity number on the document. In addition, a further clause, clause 13, had been inserted into the agreement by the plaintiff in manuscript, at the instance of the defendants and in terms dictated by them.

[42.] This conduct is in my view in conflict with their version that insufficient time was afforded to the defendants to consider the documents. In the correspondence exchanged between the parties, no mention was made of any duress nor did the defendants complain about the circumstances under which the mandate agreement was signed or their liability in terms thereof. Moreover, the second defendant on her own version considered herself bound by the written mandate agreement as evidenced by her email of 12 decemer 2014

wherein she advised the plaintiff:

‘I unfortunately, now cannot make a commitment as promised by the 15th December 2013, as to how we will make repayment”.

[43.] The first mention of duress was made in correspondence from the defendants present legal representatives on 7 August 2014, some months after the relationship between the parties had broken down and the plaintiff’s mandate had been terminated.

[44.] By this time, the first defendant’s criminal proceedings had been finalised and the matter had been referred to diversion and his wife had absconded from the country with the minor children contrary to a court order. Until June 2014 when the plaintiff’s mandate was terminated, the defendants had not objected to the plaintiff rendering legal services as and when required.

[45.] On the evidence presented, I am not satisfied that the defendants have made out any case that the agreement was signed under duress, or that the duress they experienced was anything other than the stress normally associated with being involved with litigation involving serious criminal charges, protection orders, divorce proceedings and custody issues.

[46.] In the circumstances, the version of the plaintiff accords with the probabilities and I find that the written mandate agreement is valid and binding between the parties.

Reasonableness of plaintiff’s fees

[47.] Despite a substantial amount of time being spent on the issues surrounding the oral and written mandate agreement, they are not in my view, determinative of the matter, considering the events which followed and the admissions made by the defendants.

[48.] The defendants have consistently admitted their liability to the plaintiff for her reasonable fees in respect of the legal services rendered. They have not disputed their mandates to the plaintiff nor that the services have been rendered.

[49.] On 22 January 2014, the second defendant lodged a complaint against the plaintiff with the Law Society of the Northern provinces, the crux of which was the following:

“my complaint is not related to the funds to be paid to Ms Chatiras. My concern is related to the lack of clarity regarding the account. Ms Chatiras keeps mentioning that her fees are about what has been paid in counsel fees. I would like a full detailed account of time spent and how the hours billed are made up”.

[50.] Pursuant thereto and during May 2014 a fee assessment in an amount of R1 388 200.00 (one million three hundred and eighty eight thousand and two hundred rand) was done by Mr Rosslee at the plaintiff's cost and served on the defendants. On 23 June 2014, the second defendant addressed a letter to the plaintiff wherein she advised, inter alia

“now that you have provided us with an accounting of your efforts in our matters, we will naturally withdraw our referral to the Law Society and also provide them with a copy of this mail”.

[51.] By this time, the defendants were represented by new attorneys of record, who responded to the plaintiff's demand for payment on 7 August 2014 and insisted on a referral of the matter to the Law Society to determine the reasonableness of the plaintiff's

hourly fee as set out in the written fee agreement and the assessment of the account presented by the plaintiff. The Law Society instructed the plaintiff to have the High Court bills of costs taxed.[4]

[52.] The central issue which must in my view to be determined is whether the fees were reasonable and what the concept ‘reasonable’ means in this context.

[53.] It was common cause between the parties that detailed bills of cost were prepared by the plaintiff's cost consultant, Mr Rosslee, in relation to all the matters which the plaintiff dealt with on behalf of the defendants. Two bills of cost were prepared for the High Court matters and two bills of cost for the other non litigious matters in the lower courts for which no tariff structures existed.

[54.] In argument, the defendants contended that appropriate Magistrates' Courts tariffs existed which should have been used, but no evidence was led on these issues. More importantly, these issues could and should have been dealt with during the assessment of the two bills of cost by the Fee Assessment Committee of the Law Society, at which the defendants were legally represented by costs consultants.

[55.] At all material times, the defendants were legally represented, in the High Court bills of cost, by an attorney, Mr Cyril Muller, who testified and in material respects corroborated the evidence of Mr Rosslee and the plaintiff. He further confirmed that he was mandated to settle the High Court bills of cost in an amount of R700 188,11 (seven hundred thousand one hundred and eighty eight rand and eleven cents).

[56.] Both Mr Rosslee and Mr Muller testified that by virtue of the dispute about the terms of the mandate, the High Court bills of cost could not be taxed. An alternative solution to the problem was proposed by Mr Rosslee who requested Mr Muller to agree to the quantum of the two High Court bills. Mr Muller obtained instructions from the second defendant and the quantum of the said bills was agreed between the parties. The bills were then signed by the taxing master, Mrs Zeelie, in the agreed amounts of R662 996.78 (six hundred and sixty two thousand nine hundred and ninety six rand and seventy eight cents) and R37 191.33 (thirty seven thousand one hundred and ninety one rand and thirty three cents) respectively, totalling an amount of R700 188.11 (seven hundred thousand one hundred

and eighty eight rand and eleven cents).

[57.] During cross examination, the second defendant conceded that the defendants were liable to the plaintiff in that amount pursuant to the agreement in respect of the two High Court bills of cost.

[58.] Both the plaintiff and Mr Rosslee testified that plaintiff paid Mr Roslee the amount of R61 212.00 (sixty one thousand two hundred and twelve rand) in respect of the cost of preparing the detailed bills of cost here in issue. In terms of the written mandate agreement, the defendants are jointly and severally liable for the costs of preparing detailed statements of account. This is the subject matter of the plaintiff's third claim.

[59.] Mr Roy Suttner, the chairperson of the Law Society's Fee Assessment Committee testified that the committee had satisfied itself that it had jurisdiction to assess the fees and the parties had submitted to the Law Society's jurisdiction. He confirmed that the other two bills of cost had been assessed as reasonable after a deduction of R10 000 (ten thousand rand) in each bill in relation to travel costs.

[60.] He confirmed that in order to assess the fees, the committee had had access to and had considered all the plaintiff's files relating to the matters. The parties had made both written and oral submissions regarding the reasonableness of the fees whereafter they were assessed. The parties were present at the assessment and were represented by legal fee costs consultants. Mr Suttner confirmed that the work done by the plaintiff was important and urgent and that she had exercised good skill, labour, knowledge and responsibility.

[61.] He testified that the bills of cost were assessed in amounts of R252 341.75 (two hundred and fifty two thousand three hundred and forty one rand and seventy five cents) and R242 341.75 (two hundred and forty two thousand three hundred and forty one rand and seventy five cents) respectively, totalling an aggregate amount of R588 264.00 (five hundred and eighty eight thousand rand two hundred and sixty four rand).

[62.] He testified that the fees were assessed based on the reasonableness thereof and not on the basis of the written mandate agreement. He further testified that although it is unusual for an attorney to defer payment to the end of a matter and not to render monthly invoices, it is not unheard of. In investigating the matter, Mr Suttner did not become aware of any facts which required him to refer the matter to the disciplinary committee of the Law Society for investigation of the Plaintiff's conduct, although his primary mandate was the assessment of fees.

[63.] Despite the defendants' counsel in argument contending that the conduct of the plaintiff was improper in not presenting monthly statements, relying on Rule 35.11 of the Law Society's rules, no evidence was presented in support of such contention. During argument, the defendants' counsel contended for an implied term in the mandate agreement that invoices would be rendered by the plaintiff on a monthly basis.

[64.] I am not satisfied that any case has been made out for such an implied term. Considering rule 35.11, it requires that attorneys account to their clients in writing within a reasonable time after the performance of any mandate or earlier termination of any mandate. It does not require invoicing on a monthly basis in its terms.

[65.] Importantly, although being legally represented and having the opportunity to review the findings of the Fee Assessment Committee, the defendants did not do so. Their explanation during evidence was that they did not have the funds to do so. This does not detract from the fact that in not launching review proceedings, the defendants acquiesced to the findings of the Fee Assessment Committee.

[66.] During September 2014, the plaintiff commenced making unilateral payments to the plaintiff of R2000.00 (two thousand rand) per month. These payments continued until August 2017. In total an agreed amount of R91 000.00 (ninety one thousand rand)[5] has been paid, which must be deducted from the plaintiff's claims.

[67.] When the evidence was completed it became apparent that the true issue raised by the defendants is one of affordability. This issue was however never pleaded. They contended that despite the agreed amount of the High Court bills and the assessment of the remaining bills of cost as reasonable, they could not afford the fees and that the plaintiff must be held to what they contend was agreed in the oral mandate agreements, namely that the reasonableness of the fees must be assessed according to their affordability. Both defendants testified that they could not afford payment of the amounts claimed.

[68.] The first defendant went so far as to testify under cross examination that "reasonable fees" would be "nothing" as he is unemployed and could not afford to pay anything to the plaintiff.

[69.] The second defendant contended that her home is modest and that the plaintiff ought to have known that the defendants would not be able to afford her legal fees. She contended that the plaintiff should have charged the defendants according to her observations regarding their means. She further testifies that if she had known how high the plaintiff's fees would be, she would have made other plans. This evidence is conconvincing and improbable.

[70.] The issue of affordability was however not raised in the pleadings. The defendants did not provide any documentary or other cogent evidence establishing their financial position and refused to provide the financial information sought by the plaintiff in a Rule 35(3) notice on the basis that "it was not germane to the issues".

[71.] The defendants' version that the plaintiff agreed to determine the reasonableness of her fees taking into account their personal circumstances and financial circumstances is untenable and improbable. The defendants' could not at any stage reasonably have expected the plaintiff to render substantial important legal services over an extended period of time in which substantial success was achieved, for free or on the basis proposed by the defendants.

[72.] The defendants did not present any evidence in substantiation of what they aver 'reasonable fees' would be. They further actively participated in the various proceedings to determine the reasonableness of the fees with legal representation and aware of their rights.

[73.] The defendants have made out no basis, either in law or in fact, for this court to come to their assistance. Significantly, the defendants did not raise any counterclaim for substantive or declaratory relief. Instead, the plaintiff was left to speculate as to the exact case she had to meet. I have already mentioned that various of the issues raised on the pleadings by the defendants were not sustained by any evidence or sustainable legal argument.

[74.] The plaintiff is in my view entitled to the judgment she seeks, save that the amounts already paid by the defendants which must be taken into account and deducted from one of the claims.

Costs

[75.] I now turn to the issue of costs. The way in which the defendants have conducted themselves in this matter can be criticised in various respects. Despite pleading a lack of financial means, they have been legally represented throughout and have opposed the plaintiff at every turn, instead of seeking a sensible and acceptable resolution to the matter. In doing so, it is clear that they had sufficient funds to fund the opposition to the plaintiff's claim, whilst simultaneously pleading poverty in response to the plaintiff's demands for payment of amounts which had either been agreed or determined to be reasonable.

[76.] In doing so, substantial additional legal costs have been incurred, including the costs of a six day trial, which could have been avoided. The interests of all parties would have been better served if the defendants had adopted a practical approach to the matter and had sought to limit rather than increase the costs involved, specifically after the reasonableness of the fees had been established. If the defendants had adopted a sensible approach, this litigation may well have been avoided.

[77.] Considering the way in which the defendants conducted themselves throughout the matter and in conducting their defence, the interests of justice would not be adequately served by the granting of a costs order on the scale as between party and party.

[78.] In the special circumstances of this case, an order on the scale as between attorney and client is justified in the interests of

justice[6].

[80.] In the circumstances, I make the following order.

[80.1] Judgment is granted against the defendants, jointly and severally, the one paying the other to be absolved, for:

[80.2] Payment of the amount of R609 188.11; (R700 188,11 less R91 000.00);

[80.3] Payment of the amount of R588 264.00;

[80.4] Payment of the amount of R61 212.00;

[80.5] Interest on the amounts in paragraph [80.1] to paragraph [80.3] at the rate of 10% per annum from date of judgment to date of payment;

[80.6] Costs of suit, including the costs of the applications instituted under case numbers 40543/2016 and 40544/2016 dated 16 November 2016, on the scale as between attorney and client.

EF DIPPENAAR

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

DATE OF HEARING

: 14 to 20 and 22 June 2018

DATE OF JUDGMENT

: 13 July 2018

PLAINTIFF'S COUNSEL

: Adv M Strydom

PLAINTIFF'S ATTORNEYS

: Di Siena Attorneys

Ref: D Di Siena

011 218 8110

DEFENDANTS' COUNSEL

: Adv L Morland

DEFENDANTS' ATTORNEYS

Witz, Calicchio, Isakow & Shapiro Attorneys

Ref: C Datnow

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[1] Ntsoereng and Another v Sebofi and Another (unreported judgment of the Free State High Court Division case no 4518/2012 (19 March 2015);

[2] 68 of 1969, as amended

- [3] Santam Ltd v Ethwar 1999 92) SA 244 (SCA) 252D-253B
 - [4] Letter from Law society to plaintiff dated 3 September 2014
 - [5] Pretrial bundle, A1-A3, pp25-27
 - [6] Nel v Waterberg Landbouers Ko-operatiewe Vereeniging 1946 AD 597 at 607; Swartbooi & Others v Brink & Others 2006 (1) SA 203 Cc para [27]
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