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SOUTH AFRICA / JUDGMENT

## Compensation Commissioner & Others v Compensation Solutions (Pty) Ltd and Compensation Solutions (Pty) Ltd v The Compensation Commissioner & Others (997/2021; 1175/2021) [2022] ZASCA 165 (29 November 2022) [2022] ZASCA 165

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COURT

Supreme Court of Appeal

BEFORE

Ponnan, Van der Merwe, Mothle, Goosen, Daffue

CASE / FILE NUMBER

997/2021; 1175/2021

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No. 997/2021

In the matter between:

THE COMPENSATION COMMISSIONER

FIRST APPELLANT

THE DIRECTOR-GENERAL,

DEPARTMENT OF LABOUR OF THE

NATIONAL GOVERNMENT OF THE

REPUBLIC OF SOUTH AFRICA

SECOND APPELLANT

THE MINISTER OF LABOUR

THIRD APPELLANT

and

COMPENSATION SOLUTIONS (PTY) LTD

RESPONDENT

Case no: 1175/2021

And in the matter between:

COMPENSATION SOLUTIONS (PTY) LTD

APPELLANT

THE COMPENSATION COMMISSIONER

FIRST RESPONDENT

REPUBLIC OF SOUTH AFRICA

SECOND RESPONDENT

THE MINISTER OF LABOUR

THIRD RESPONDENT

Neutral citation: The Compensation Commissioner & Others v Compensation Solutions (Pty) Ltd (Case no 997/2021) and Compensation Solutions (Pty) Ltd v The Compensation Commissioner & Others (Case no 1175/2021) [2022] ZASCA 165 (29 November 2022)

Coram: PONNAN, VAN DER MERWE and MOTHLE JJA and GOOSEN and DAFFUE AJJA

Heard: 28 September 2022

Delivered: 29 November 2022

Summary: Compensation for Occupational Injuries and Diseases Act 130 of 1993 (the Act) – interpretation of court order of 31 July 2009 (the 75-day order) – whether order applies to medical accounts that formed the subject matter of application 35047/2009 or whether it also applies to medical accounts to be submitted after 31 July 2009 – whether compliance with the so-called W.CI.20 procedure reflected in the applicable regulations issued pursuant to the Act is mandatory and a jurisdictional prerequisite to legal proceedings – whether s 32 of the Act prohibits the cession by medical service providers of their medical accounts.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Teffo J, case no 30147/2018) and (Fourie J, Mali J and Makhoba J, case no 34386/2020 & 34387/2020) sitting as court of first instance):

1 In the first appeal under SCA case no 997/2021:

1.1 The appeal is upheld with costs, including the costs of two counsel where so employed.

1.2 The order of the high court is set aside and replaced with the following:

‘a. The application succeeds with costs, including the costs of two counsel where so employed.

b. An order issues in accordance with Prayer 1 of the notice of motion.’

2 In the second appeal under SCA case no 1175/2021

2.1 The appeal is dismissed with costs, including the costs of two counsel where so employed.

2.2 The cross-appeal is dismissed with costs, including the costs of two counsel where so employed.

2.3 The State Attorney shall not be entitled to recover from its clients the fees and expenses of more than one senior and one junior counsel.

3 The costs occasioned by the postponement of the matter on 5 September 2022 shall be costs in the appeals.

Daffue AJA (Ponnan, Van der Merwe and Mothle JJA and Goosen AJA concurring)

## Introduction

[1] Before us are two related appeals. Foundational to each is a settlement agreement reached between the parties on 31 July 2009 (the settlement agreement) and, by consent, made an order of court by Makhafola AJ on that day. That order has come to be described in the litigation as the 75-day order. In the first matter, the high court (per Teffo J) held that the settlement agreement, and by extension the 75-day order, was ‘intended to regulate the future relationship between the parties’. In the second, a specially constituted court (per Fourie, Mali and Makhoba JJ), sitting as a court of first instance, took the view that Teffo J was ‘clearly wrong’. We are accordingly required to resolve that difference of opinion.

[2] In June 2009, Compensation Solutions (Pty) Ltd (CompSol), a private company that conducts the business of factoring the accounts of medical service providers (MSP’s), brought an application in the Gauteng Division of the High Court, Pretoria (the high court) under case no 35047/2009 against the Compensation Commissioner (the Commissioner), the Director-General of the Department of Labour (the DG) and the Minister of Labour (the Minister) as first, second and third respondents respectively (collectively referred to as the State parties). That matter was settled and pursuant to the settlement

agreement the 75-day order issued.

The two judgments on appeal to this Court

[3] Under case no 30147/2018, the State parties inter alia sought a declaratory order that the 75-day order was ‘specifically meant and intended to settle the issues and claims that were the subject matter of litigation between the parties as on [31 July 2009, incorrectly referred to as

2 June 2009 in the notice of motion] and upon which [Makhafola AJ] was called upon to adjudicate'. On 17 July 2020 the application was dismissed with costs by Teffo J (the first judgment), who also subsequently dismissed an application for leave to appeal. The appeal by the State parties, under appeal number

997/2021, against the order of Teffo J is with the leave of this Court.

[4] In September 2020, the Judge President of the high court constituted a special court consisting of three judges to sit as a court of first instance to consider several claims that had been instituted under case numbers 34386/2020 and 34387/2020 by CompSol, as plaintiff, against the Commissioner and the DG, as defendants. This, because the same legal issues had featured in many other matters between the same parties. The defendants raised several special pleas, eight of which eventually came to be considered by the high court as discrete legal issues, without the need for the hearing of oral evidence.

[5] On 11 August 2021 a unanimous judgment was delivered by the three judges (the second judgment). The first special plea was upheld. It found, contrary to the first judgment, that the settlement agreement and 75-day order did not 'regulate the processing and payment of claims submitted [by CompSol] after 31 July 2009'. The second special plea, dealing with the alleged premature institution of proceedings on the basis of non-compliance with the so-called W.CI.20 procedure reflected in the applicable regulations, was dismissed. The third special plea, pertaining to the alleged prohibition of the cession of medical claims relied upon by CompSol, suffered the same fate. The fourth special plea relating to CompSol's

alleged non-compliance with ss 1 and 2 of the State Liability Act 20 of 1957 was upheld. This issue, against which there is no appeal and which pertains to whether the Minister should have been joined, will

be returned to shortly. The fifth special plea was abandoned and the full court dismissed the other special pleas, all of which are irrelevant for purposes of this appeal.

[6] CompSol applied for leave to appeal against the upholding of the first special plea, whilst the Commissioner and DG applied for leave to cross-appeal the dismissal of the second and third special pleas. On 14 September 2021 the high court granted leave to the parties to appeal and cross-appeal to this Court. The appeal and cross-appeal are before us under appeal number 1175/2021.

[7] Thereafter, CompSol applied to the President of this Court for the consolidation of the two appeals. That, however, was to misconceive the position. No provision exists in the rules either in this Court or the high court for a consolidation of appeals. What should have been requested, given the common ground in both appeals and for

**reasons**

of convenience, was that both matters be set down for hearing on the same day before the same panel of judges. That, in the event,

happened.

[8] The Minister did not initially feature as a party in appeal number 1175/2021. Prior to the hearing of the matter, the presiding judge requested the Registrar to despatch the following note to the parties:

‘Inasmuch as leave was neither sought nor granted to appeal against paragraph 4 of the order of the Court below:

1. The appellant is required to indicate as a matter of urgency whether there has been:

1.1 compliance with s 2 of the State Liability Act 20 of 1957; and

1.2 the Minister has been joined as a nominal defendant (see Judgment para 105 – record page 280)?

2. If not, whether the appeal can proceed in the absence of (1.1) and (1.2) above?’

[9] In response, the parties asserted that it was not necessary for the Minister to be joined as a party and that the matter should be heard and finalised in the Minister’s absence. This view was shaped in part, it would seem, by the erroneous view that the appeals had been consolidated. However, when the issue was raised again at the hearing on 5 September 2022 it was conceded that the Minister was a necessary party. Consequently, both matters had to be postponed to 28

September 2022 for hearing, with directions for the joinder of the Minister. The Minister thereafter filed an affidavit, with the leave of this Court, to which CompSol responded. In the affidavit and in oral argument before us, the Minister supported the position of the Commissioner and the DG.

Relevant factual background leading up to the 75-day order

[10] MSP’s who have provided medical aid to employees are entitled to the payment of the costs of such medical aid subject to the provisions of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (the Act) and the regulations. Traditionally medical accounts were submitted by individual MSP’s to the Commissioner in respect of services rendered by them. CompSol has its principal place of business in Port Elizabeth, from where it conducts, as mentioned above, the business of factoring medical accounts payable in terms of the Act. According to the uncontested evidence in the application for declaratory relief it has approximately 1400 MSP’s as its customers, consisting of some 4 000 individual service providers. It handled, at that time, 45% of all medical accounts submitted to the Commissioner. In terms of written agreements with these customers, CompSol purchases the right, title and interest in medical account claims against the Commissioner at a

discount and

takes cession thereof to allow it to submit claims for payment of the medical accounts so factored and to claim payment of the validated medical accounts for its own account.

[11] CompSol confirmed in its answering affidavit in the application for declaratory relief that it had experienced inordinate delays with the finalisation of payment, which caused it to launch the application in 2009. The second judgment summarised CompSol's version and, inter alia, stated that as at 18 May 2009, an amount of about R137 million was outstanding and that 5 500 new claims were submitted weekly.

[12] As mentioned, numerous actions had been instituted by CompSol against the Commissioner and DG in the high court since the grant of the 75-day order. In these actions CompSol invariably relied on the 75-day order as a cause of action.

The issues

[13] Against that background, three issues arise for determination. These are whether:

- (a) on a proper interpretation, the settlement agreement and the 75-day order applied only to the medical accounts that formed the subject matter of the application that served before Makhafola AJ or also to accounts that were to be submitted by CompSol in the future;
- (b) CompSol had commenced proceedings prematurely in that it did not comply with the W.CI.20 procedure contained in the applicable regulations issued under the Act; and
- (c) s 32 of the Act prohibits cession of the MSP's claims relied upon by CompSol.

Issue (a) is common to both appeals and, if answered in favour of the State parties, would necessarily be dispositive of both appeals in their favour. Issues

- (b) and (c) form the subject of the cross-appeal by the State parties under appeal number 1175/2021.

The 75-day order

[14] The settlement agreement reads:

'BY CONSENT, IT IS ORDERED THAT:

1 The First Respondent [the Compensation Commissioner] shall process all medical accounts submitted to him in relation to medical aid provided to employees by medical practitioners, as envisaged in the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("the Act") within a reasonable time from the submission of such accounts.

2 In respect of the submission of a medical account relating to a claim which has been accepted (i.e. the first respondent has accepted liability for the claim), and in respect of a medical account submitted after such acceptance, a reasonable time for the First Respondent to process, validate and effect payment of such validated medical accounts is within 75 days of acceptance of a claim,

or where this occurs after the acceptance of the claim, the date of submission of such accounts. For avoidance of doubt, it is recorded that in respect of medical accounts submitted before acceptance of a claim, the 75 days will be calculated from the date of acceptance of the claim.

3 The First Respondent shall process the backlog of medical accounts referred to in Annexure JL12, at page 88 of the Record in this application, by 30 October 2009.

4 The First Respondent shall pay the Applicant [Compensation Solutions (Pty) Ltd] interest at the current legal rate of interest (being 5.5 per cent per annum) on all currently outstanding medical accounts to which the letter of demand dated 25 March 2009 (record, pages 88-9) relates, from such date of demand to the date of payment of each such respective account.

5 The Applicant will submit a CD to the First Respondent on a fortnightly basis containing a list of claims, and the First Respondent shall thereupon provide the status of each claim, and where the claim has been accepted, the date of such acceptance, to the Applicant within 7 (seven) days of receipt of the CD.

6 The parties record their mutual commitment to a functional process in relation to claims and medical accounts submitted by the Applicant, and a good working relationship in that regard. Accordingly, to resolve any queries, disputes or discrepancies in relation to medical accounts submitted for payment, the Applicant and the First Respondent (or his designated representatives) shall meet weekly at the latter's Port Elizabeth offices.

7 This agreement shall apply equally to the Second Respondent [the Director General] as the party principally responsible for compliance with the obligations and performance of the functions set out in the

Act.

8 The Respondents shall pay the party and party costs of this application, as taxed or agreed, including the costs of two counsel.

9 The Respondents consent to this agreement being made an order of court.

10 The parties accept the above undertakings in settlement of the above application.

11 This agreement and its contents are confidential to the parties.'

Evaluation of the parties' submissions pertaining to the law, the facts and the aforesaid two judgments

Does the 75-day order regulate the processing and payment of medical claims submitted after 31 July 2009?

[15] CompSol contended that the word 'submitted' in the 75-day order does not refer to the past tense as held in the second judgment, but should be construed to refer to the past, present and future and therefore to include future claims as well, especially when the order is read in context. The phrase 'medical account(s) submitted' is found in paragraphs 1, 2 and 6 of

the

75-day order. There is a clear and apparent difference between the wording of paragraphs 1, 2 and 6, on the one hand and paragraphs 3 and 4, on the other. Paragraph 1 does not take the matter any further as it merely records that all medical accounts submitted to the Commissioner must be processed within a reasonable time. The first group of paragraphs does not deal with the deadline of 30 October 2009 and interest payable, which is expressly dealt with in paragraphs 3 and 4 in respect of the claims submitted by 18 March 2009, being the letter of demand dated 25 March 2009. These last mentioned two paragraphs, dealing with the backlog as at 18 March 2009 provide for processing of those claims by 30 October 2009 and payment of interest thereon. They do not deal with the thousands of medical accounts submitted since 18 March 2009 until 31 July 2009.

- [16] In my view, the differentiation between the two groups of paragraphs cannot lead to a conclusion that the parties intended to include future claims submitted after 31 July 2009. In context, the word 'submitted' in these paragraphs points to the past tense and indicates that the parties intended to deal only with medical accounts submitted before the date of the order, to wit 31 July 2009. It seems to me that if the parties had future claims in mind, they would have used words such as 'medical claims to be submitted'.
- [17] The arrangements pertaining to weekly meetings and the submission of CDs with lists of claims to be forwarded to the Commissioner on a fortnightly basis do not support the construction advanced by Compsol. Their apparent purpose was to address the problems experienced by CompSol in respect of existing claims. It could hardly be construed as imposing an obligation on the DG to meet with CompSol to regulate the processing of future claims ad infinitum. The only business-like and sensible construction therefore is that the envisaged meetings could only relate to claims that were already extant when the settlement agreement was concluded.
- [18] Bearing in mind the thousands of medical accounts submitted since 18 March 2009 until the date of the issuing of the application at the beginning of June 2009, as well as several thousand further accounts that would have been submitted in the period from the date of the application to 31 July 2009, I am satisfied that the 75-day order regulated the backlogged claims as well as all other medical accounts which had already been submitted by the time that the 75-day issued, but not any future accounts to be submitted after this date. CompSol conceded during oral argument that the 75-day order does not explicitly refer to future claims (namely

claims to be submitted after 31 July 2009). It accordingly had to accept that the order dealt with the subject matter before the court at the time, unless it contained a tacit term to the contrary. It could not point to such a term and I find no such tacit term in the 75-day order.

- [19] Paragraph 10 of the 75-day order is the final nail in CompSol's coffin. It reads as follows, with my emphasis: 'The parties accept the above undertakings in settlement of the above application.' The 'above' application could have had nothing to do with future medical accounts. The purpose was to settle the issues that were before the court at the time and not beyond. Put otherwise, the settlement agreement as contained in the 75-day order was backward-looking and did not deal with medical accounts to be submitted in perpetuity.
- [20] Although this finding means that the State parties have been successful in both appeals, it is nonetheless important to recognise that the parties agreed that the period of 75 days was a reasonable period for the Commissioner to process, validate and effect payment of medical accounts. Also, the high court put its imprimatur on the agreement. It follows that the settlement agreement and 75-day order will continue to have precedential value to which the parties are bound, unless a court may find in the future that in the given circumstances of a particular case the Commissioner should not be held to this period.

#### Non-compliance with the W.CI.20 procedure and premature actions

- [21] The first of the two issues in the cross appeal is the contention by the State parties that CompSol had instituted the actions prematurely in that it had failed to comply with the mandatory billing procedure set out in the regulations issued in terms of the Act. According to them, the so-called W.CI.20 procedure is a jurisdictional prerequisite and CompSol's failure to comply therewith constitutes a bar to proceeding. In the application for declaratory relief CompSol provided uncontested evidence in its answering affidavit that the billing procedure was geared for singular accounts only, but that this procedure had, in any event, been abandoned by the Commissioner with the introduction of the paperless electronic system called 'CompEasy' and before that the 'Umhleko' system. Bearing in mind the test in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[1] (*Plascon-Evans*) pertaining to the adjudication of opposed applications, there is no reason not to accept this version, especially as the Commissioner did not respond thereto in its replying affidavit.
- [22] The second judgment held that there was no indication that the regulation pertaining to unpaid medical accounts was intended to regulate and prescribe the procedure to be followed regarding the institution of legal proceedings and that the apparent purpose of the procedure was to regulate enquiries to avoid thousands of telephone calls regarding unpaid accounts. It held that if the legislature intended to make compliance mandatory and a jurisdictional requirement for the institution of legal proceedings, that should have been stated clearly. I agree. There is accordingly no merit in the cross-appeal in respect of the dismissal of this special plea.

#### Does s 32 prohibit the cession of medical claims?

- [23] The remaining issue in the cross-appeal is whether s 32 of the Act prohibits the cession of medical claims. Section 32(1) reads as follows:

'Notwithstanding anything to the contrary in any other law contained, compensation shall not-

- (a) be ceded or pledged;
- (b) be capable of attachment or any form of execution under a judgment or order of a court of law;
- (c) . . .
- (d) be set off against any debt of the person entitled to the compensation.'

[24] The argument of the State parties is entirely dependent on the proposition that the word 'compensation' in s 32(1) includes the cost of medical aid. For the reasons that follow, the proposition is untenable. Section 32 cannot be read in isolation but with regard to the scheme of the Act as a whole as well as its object and purpose. The preamble confirms that it is to provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries or diseases; and to provide for matters connected therewith. As I shall show, the Act draws a clear distinction between compensation and the cost of medical aid.

[25] The following relevant definitions are contained in s 1:

"compensation" means compensation in terms of this Act and, where applicable medical aid or payment of the cost of such medical aid.' (Emphasis added.)

"medical aid" means medical, surgical or hospital treatment, skilled nursing services, any remedial treatment approved by the Director-General, the supply and repair of any prosthesis or any device necessitated by disablement, and ambulance services where, in the opinion of the Director-General, they were essential.'

[26] The Commissioner is appointed by the Minister to assist the DG in the performance of the functions set out in s 4 of the Act and the functions of the Commissioner are set out in s 6A. A Compensation Fund (the Fund) has been established in terms of s 15, consisting inter alia of assessments paid by employers. Section 16 stipulates that the Fund shall be under the control of the DG and its moneys shall be applied inter alia for '(a) the payment of compensation, the cost of medical aid or other pecuniary benefits to or on behalf of or in respect of employees in terms of this Act where no other person is liable for such payment;'. (Emphasis added.) The differentiation between compensation and medical costs is apparent.

[27] Chapter IV deals with compensation for occupational injuries. Section 22, the first section under Chapter IV, deals with the right of an employee to compensation in the event of an accident resulting in the employee's disablement and in the event of the employee's death, their dependents shall, subject to the provisions of the Act, be entitled to the benefits provided for and described in the Act. Section 31 provides that the DG may hold an employer individually liable to deposit such security as in the opinion of the DG is sufficient to cover the liabilities of the employer in terms of the Act. The heading of the section distinguishes between compensation and the cost of medical aid. It states: '[s]ecurity for

payment of compensation and cost of medical aid for employers individually liable'. The same differentiation is found in s 26 entitling the DG to refuse to pay either the whole or a portion of compensation on the one hand and on the other to refuse to pay the whole or any portion of the cost of medical aid.

- [28] Section 34 stipulates that compensation owing to the death of an employee shall not form part of their estate. Surely, insofar as the employee does not personally have to pay for the medical costs incurred, no claim for payment of medical costs incurred can form part of the estate of the employee. Therefore, the reference to compensation in this section can only be compensation as determined and calculated in Chapter VI.
- [29] Chapter VI deals with the determination and calculation of compensation in ss 47 to 64. In terms of these sections, compensation excludes medical aid or payment of the cost of such medical aid. Compensation for occupational diseases is dealt with in Chapter VII and again, if this chapter is considered in context, especially pertaining to the calculation of compensation, there can be no doubt that medical aid or payment of the cost of medical aid is excluded from compensation payable as a result of an occupational disease suffered by an employee.
- [30] Chapter VIII deals with medical aid in ss 72 to 79. It includes the reasonable costs of conveyance as provided for in s 72. Section 73 deals with reasonable costs incurred by or on behalf of an employee in respect of medical aid necessitated by an accident or disease. The fees for medical aid shall be calculated in accordance with a tariff determined by the DG from time to time as provided for in s 76. Section 77 prohibits contributions by employees towards the cost of medical aid supplied or to be supplied in terms of the Act.
- [31] Importantly, where it is intended that compensation includes the cost of medical aid, as envisaged in the definition of 'compensation', the Act says so expressly. For example, subsec 36(4) provides that for the purposes of s 36, compensation includes the cost of medical aid. Subsection 39(10), in turn, stipulates that for the purposes of subsec 39(8), compensation includes the cost of medical aid.
- [32] I agree with the second judgment that there are three categories of persons who might be entitled to claim in terms of the Act, to wit employees, their dependants in the event of their death and MSP's who provided medical aid. The central theme of the Act is the payment of compensation to employees and their dependants, whereas the payment to MSP's for medical aid rendered deals with ancillary matters or matters connected therewith as contained in the preamble. There can be no doubt that the purpose of s 32 is to protect the interests of employees against themselves in case of their disablement and their dependants in the case of their death. Employees are also protected against their creditors as compensation is not capable of attachment or any form of execution. Furthermore, no set-off is allowed against the debt of a person entitled to compensation. None of that finds application to MSP's. Consequently, for the reasons given, the cross-appeal must fail.

## Costs

- [33] I referred to the fact that the hearing of the matter had to be postponed on 5 September 2022. There is no reason why those costs, which were reserved, should not form part of the costs in the appeals.
- [34] The judgment cannot be concluded without dealing with the Commissioner's decision to appoint five counsel in appeal 1175/2021. When the matter was called on 5 September 2022, the State parties were represented by seven counsel in total, a senior and junior in appeal 997/2021 and a senior and four juniors in appeal 1175/2021. This Court called for an explanation as to why it was deemed necessary to appoint so many counsel. When the appeal was eventually heard, the State parties were only represented by two counsel in appeal 1175/2021 and as previously, the two other counsel in appeal 997/2021. Money that could be made available for the payment of compensation to worthy claimants was wasted on unnecessary legal costs. There was simply no explanation as to why that many counsel were briefed. It would accordingly not be appropriate for the State Attorney to recover from its clients in appeal 1175/2021 the fees and expenses of more than one senior and one junior counsel.

## Conclusion

- [35] The parties were in agreement that the costs should follow the result. In conclusion, appeal 997/2021 should be upheld, such costs to include the costs of two counsel where so employed. Both the main and cross-appeals in appeal 1175/2021 should be dismissed with costs, such costs to include the costs of two counsel where so employed.

## Order

- [36] The following order is made:

4 In the first appeal under SCA case no 997/2021:

4.1 The appeal is upheld with costs, including the costs of two counsel where so employed.

4.2 The order of the high court is set aside and replaced with the following:

5 In the second appeal under SCA case no 1175/2021

5.1 The appeal is dismissed with costs, including the costs of two counsel where so employed.

5.2 The cross-appeal is dismissed with costs, including the costs of two counsel where so employed.

5.3 The State Attorney shall not be entitled to recover from its clients the fees and expenses of more than one senior and one junior counsel.

6 The costs occasioned by the postponement of the matter on 5 September 2022 shall be costs in the appeals.

J P DAFFUE

ACTING JUDGE OF APPEAL

Appearances

For appellants in appeal 997/2021: S S Maakane SC and A N Tshabalala

Instructed by:

State Attorney, Pretoria

State Attorney, Bloemfontein

For respondent:

P G Robinson SC and C J Welgemoed

Instructed by:

VDT Attorneys, Pretoria

Phatshoane Henney Attorneys, Bloemfontein

For appellant in appeal 1175/2021

(respondent in cross-appeal): P G Robinson SC and C J Welgemoed

For respondents

(appellants in cross-appeal):

J O Williams SC and W N Mothibe

Instructed by:

State Attorney, Pretoria

[1] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A).

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