

SOUTH AFRICA / JUDGMENT

Enyuka Internet Support Access v EDUPAC Software Support Services (Pty) Ltd (10929/2015) [2017] ZAGPJHC 262 (25 August 2017) [2017] ZAGPJHC 262

COURT

South Gauteng High Court, Johannesburg

BEFORE

Siwendu

CASE / FILE NUMBER

10929/2015

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IN

THE HIGH COURT OF SOUTH AFRICAGAUTENG LOCAL DIVISION,
JOHANNESBURG

CASE

NO: 10929/2015

Reportable

Of

interest to other judges

Revised.

25/8/2017

In

the matter between:

ENYUKA
INTERNET SUPPORT
ACCESS PLAINTIFF
And
EDUPAC
SOFTWARE SUPPORT SERVICES (PTY)
LTD DEFENDANT

JUDGMENT

SIWENDU J:

INTRODUCTION

[1] This judgment concerns an application for absolution from the instance brought by the defendant at the close of the plaintiff's

case in terms of Rule 39 (6).

[2] The plaintiff, Enyuka Internet Access (Pty) Ltd ("Enyuka"), originally traded as a Close Corporation but converted into a proprietary limited company in 2008[1]. The evidence indicates that the company was subsequently organized into a group structure with Enyuka as a subsidiary company. Enyuka's main business is to provide internet based services to the public. The suite of services offered includes inter alia, internet connectivity, email hosting, web site hosting, and fax to mail / mail to fax accounts[2]. These services are listed in the schedule and charges forming part of the contract Terms and Conditions. Amongst the list of services referred to is the SMS Service, the subject of the contract dispute in this matter.

[3] Enyuka alleges that in or about September 2005, it entered into a partly written and partly oral agreement with the defendant, Edupac Software Support Services (Pty) Ltd ("Edupac") to research, design, develop and implement an exclusive SMS delivery

system for Edupac. The bespoke system was to be customised to integrate with Edupac's existing software platform.

[4] Edupac provides integrated school management software services. The system enabled Edupac to process information received from its customers ("the schools") and communicate with students and parents ("third party users"). The system provided for the bulk SMS services communication platform at predetermined monthly rates.

[5] Enyuka's pleadings state that the terms of the written agreement with Edupac were that the agreement would commence in

September 2005 for an initial period of approximately 12 months ending on 30 September 2006. The agreement was to be renewed automatically on 1 October each year for a further period of 12 months[3]. I pause to mention that the written agreement relied upon by Enyuka, is silent with regards to the SMS volumes and rates to be purchased by Edupac.

[6] Enyuka alleges that on 30th September 2014 Mr. Theo Kleynhans representing Edupac repudiated the agreement. He had addressed an email to Enyuka purporting to cancel the agreement with effect from 1 November 2014 without giving Enyuka the month calendar notice prior to the anniversary date.

[7] Enyuka claims that it accepted the repudiation and now claims contractual damages suffered as a result. The amount claimed is the "best estimate" of the damages based on an estimate of the bulk SMS volumes for the period October 2014 to 30 September 2015.

[8] The damages are computed as follows: $(V \times R) \times P = C$

V represents Volumes of 340 910 SMSs per month

R represents the Rate of 25,08 per SMS excluding VAT[4]

P represents the period reckoned from October 2014 to 30 September 2015

A total Monthly Average R85 500 - 23 x 12 giving rise to the globular amount of R1 026 002 76 is sought as damages.

[9] Mr Elton Andrew had testified that the computation is based on a simple calculation derived from SMS volumes sent and/ or purchased by Edupac the previous year. Even though the volumes of 340 910 used to calculate the loss were below actual consumption/ purchase figures, they were based on what the plaintiff believed was the "average" consumption/ purchase. The figure of 340 910 rendered 170 455 in sms volumes as the volumes were divided into half because Educap carried part of the cash flow implications. The figures were below the average purchased but were nevertheless the most verifiable as the plaintiff could not use 2014 figures. The 2014 would not be a true reflection of the position because Edupac was already using another supplier. They were the best estimate available to compute the contractual damages. The amount claimed represented the loss of revenue Enyuka would incur over a year. Invoices presented in evidence show that the Cost Per Unit (CPU) varied between a range of 22c, 25c and 26c over the period.

[10] The issue is whether absolution sought can be granted in the circumstances. It is essential that I first deal with the evidence of Enyuka to provide context to the disputed issues.

THE PLAINTIFF'S EVIDENCE

[11] Enyuka called two witnesses, Mr Glen Andrew and Mr Elton Andrew. Mr Glen was involved with the business from inception. He had negotiated the agreement with Mrs Marie-Anne Kleynhans who was the owner of Edupac. At the time of the trial, he was no longer actively involved. He was nevertheless privy to the early contract negotiations. Mr Elton Andrew, his brother on the other hand joined the business in 2009. He is the Financial Director and Managing Director of the Group. The relevant aspect of the evidence relates to the cross-examination of these two witnesses. It is common cause on the evidence that the SMS Services business became the largest revenue generating part of Enyuka's business over time.

[12] Mr Glen Andrew testified that the written agreement was a standard agreement used with all Enyuka's clients. It was a new business, there were no other agreements at the time. There were no other clients Enyuka provided the SMS bulk services to. The main client was Edupac. The written agreement was used to indicate the term ("duration") of the agreement

with Edupac. The invoice sent to the client indicated and regulated the volume and the rate applicable. This was to obviate the need to have a client sign an agreement every month as the volume and the rate were variable hence why the section dealing with SMS services was left in blank. Other than the SMS services, the balance of the services provided to Edupac were priced on the schedule of the agreement.

[13] He testified that when a client contracted for other services, the same agreement was used even though that client may not have made use of the SMS service. When there was no off-take by a client who was contracted to use the SMS service, an invoice with the Zero amount due would be sent.

[14] Clause 10 dealing with cancellation reads as follows:

"this is an annual agreement that commences on the Billing Start Date and continues after the initial period in successive periods of 12 months unless either party gives the other party a calendar month notice's prior to the anniversary of this agreement".

[15] When asked about the manner of cancellation of the agreement [which is to be understood within the context of clause 10 above] where a client uses less or zero of the SMS Service, whether that client was required to wait for the month before the anniversary to terminate the agreement, he testified that the client would need to cancel the agreement within the term of the agreement. Enyuka would not enter into an agreement to supply zero SMSs. There would be never Zero SMS Supply. He further testified that in the current case, there was a development of a system involved. This was developed at no cost to Edupac. Enyuka was guaranteed volumes and a certain rate over a period.

[16] Mr Glen Andrew was examined on the consolidated invoices, showing SMS volumes, rates and billing sent to Edupac which reflected Zero billings for April 2006 and June 2006 respectively[5]. These were the periods when there was a Zero SMSs off-take. He conceded to the error when he had testified that there would not be Zero SMSs attracting a Zero Rand invoice. He qualified this and stated that if there were Zero Invoices these would not have been longer than three months. He had not enquired as this had not been a continuous trend but had it continued he would have questioned it.

[17] He testified that the 2005 agreement was still in effect in so far as it regulated the term of the SMS Services. Other services were regulated by 2012 and 2014 agreements. The SMS business grew over time but not at commencement. There had been no costs raised from Edupac for the development of the SMS Service platform because they expected the business. These terms relating to the development were not incorporated in the 2005 written agreement but had been discussed and agreed between the Edupac's representative Mrs. Marie Anne Kleynhans and the representatives of Enyuka. The discussions were followed by the provision of the services when Enyuka billed Edupac for the units used. Mr Glen Andrew had testified in his evidence in chief that there were instances where more than a million SMS off-take was utilized a month. These volumes were not born out by the invoices sent which showed that the million in volumes was only achieved in August 2010 throughout the

duration of the contract. He had to retract and tender an apology as the closest number of volumes which did not reach more than half a million volumes was 716 evident in March 2012.

- [18] The damages claimed were based on what Enyuka would have earned had Edupac continued to purchase the SMS services from the plaintiff. A sequence of emails exchanged between Mrs. Marie-Anne Kleynhans and Mr Elton Andrew on 24 October 2014 [6] were put Mr to Glen Andrew in particular, the portion that reads the following:

“Hi Marie Anne

I do not agree with all the points set out below.

As Edupac has signed agreements with Enyuka Internet, which cater for a three month cancellation of services being rendered, although SMS is not specifically defined, it is a service we are providing from this company...”

- [19] Mr Glen Andrew had not dealt with the contradiction between the period of termination referred to by Mr Elton Andrew and what he had testified in chief, namely that it would not have been a one-month termination. The email reads:

“Hi Theo

Please advise how we are to come to an agreement regarding the development and billing attached thereto until now.

There has been no charge based on the understanding SMSs would be routed through Enyuka exclusively and trends years of business attest to this verbal understanding, the Edupac website even lists as a valued SMS partner.

Why are you dealing in this matter when I have been dealing with Marie since inception of this JV.

We are in process of summing lost margin on volumes to schools since 2008 which as you know is also subject to equal margin by both parties.

Marie- Anne is patently wrong when she feels arrangements she had verbal or written do not bind the company by virtue of her status as director and several sections of the Companies Act.

We regard R100k excluding Vat to close this matter”[7].

I am bitterly disappointed

Regards

Glen

- [20] He testified that he was referring to the development costs even though the email did not specifically state this, in his mind, that is what he was communicating, even though the letter was a response to the cancellation. He conceded that it could be read as referring to the settlement of the whole dispute, it had been an emotional time for him. He received a notice of termination on the day the service was terminated.
- [21] They had been told that if they developed the platform, they would get the business which they did for 9 years until it was moved away. The business was supposed to continue indefinitely. The reason they were in litigation was because they could not come to an arrangement. The version by Edupac is that the 2005 agreement was for the schedule of services provided by Enyuka. There was no written agreement with regards to the SMS services and the 2005 agreement relied upon by Enyuka did not regulate, and it was not envisaged that it would regulate, the SMS bulk services. It was put to Mr Glen Andrew that there was a verbal agreement with Edupac to purchase bulk SMS at a certain price and volume as and when Edupac required. The agreement could be terminated at any reasonable time. Edupac was not obliged to purchase any SMSs, the two Zero purchases in 2006 referred to earlier are indicative that there was no obligation to purchase such volumes.
- [22] Mr Glen Andrew agreed that the invoice could not be viewed as an agreement or the term of the agreement as the invoices were rendered for SMSs bought, and did not indicate how many SMSs should be bought. He testified that this may have been so at the beginning of the relationship, however, there had been further negotiations between the parties, when the purchase of a minimum amount of SMS volumes and rates were pre-agreed between them to improve the Enyuka's cash flow position. He had not been directly involved in these negotiations. Edupac's version is that the purchase of pre-paid agreement was to ensure a preferential rate per SMS but did not oblige it to buy a minimum amount of SMS volumes. Even though he did not negotiate this, it was borne out by subsequent invoices sent.
- [23] Mr Glen Andrew had recorded a meeting held with Edupac using his cell phone. He had gestured to indicate that he was recording the meeting. He did not verbally tell Edupac he was recording the meeting. The transcript of the meeting formed part of the trial bundle.
- [24] The second witness for the plaintiff, Mr Elton Andrew testified in his evidence in chief about the billing history between Edupac and Enyuka[8]. He had been at the 2012 meeting with Edupac when the agreement to bill Edupac for 170 455 at the rate on 22c exclusive of Vat as prepaid and the balance of the sms volumes billed in the final invoice was concluded. The implementation of the agreement was evident from invoices raised from 2012 onwards. The prepaid purchase figure was determined based on historical performance. It was to assist Enyuka with its cash flow as approximately 4.4 million SMSs were being sent a year impacting their cash flow. Enyuka had to prepay for the required SMS volumes to meet Educap's requirements. The net result is that by this agreement, Educap agreed to carry part of the cash flow implications.

- [25] He testified that in April 2014, they witnessed a drop in the uptake of the volumes, a trend which continued for approximately 4 months. They had initially attributed this to the school holidays. They had sent their Technical Director Mr. Heath Jordaan to investigate. It was clear that the underlying issue was the cost per unit rate charged. They had discussions with Edupac to enforce their rights in August 2014 and Mr Theo Kleynhans disputed the agreement and had changed his position many a time. He established that Edupac was charging its own clients 32c per unit excluding Vat.
- [26] There had been a joint working relationship between Edupac and Enyuka. In 2011, they had taken joint advertisements for the school's magazine to market the Bulk SMS business together[9]. A "screen-grab" from Edupac's website which was subsequently deleted refers to Enyuka's SMS services and to Enyuka as a strategic business Partner[10]. They rented offices together and were partners in perpetuity.
- [27] I deal with only those aspects of Mr Elton Andrew's evidence which at first blush appeared problematic for Enyuka.
- [28] When Mr. Elton Andrew was cross-examined, there were errors highlighted with regards to the VAT raised on invoices presented.

Invoices were inclusive of VAT and not exclusive of VAT as testified in chief. The claim referred to a cost-per-unit price of 25, 08c instead of 22c which should have been inclusive of Vat[11]. He conceded the error and testified that the error did not change the value of the claim. The interpretation of termination provisions, as requiring a calendar month notice before the anniversary of the agreement was tested with Mr. Elton Andrew. He had referred to subsequent agreements, where there was a three-month termination period. These agreements did not have SMS Services. He stated that he had been aware that there was a 2005 agreement which had been filed in archives. The business was never designed based on a one -month cancellation

period. He had been unsure until he retrieved the missing contract. When the email of 24 October 2014[12] was put to him, where he referred to a 3-month cancellation period, he eventually conceded that he had tried to mitigate the damages to the business by getting the best financial position and was not going to accept one-month cancellation period. In addition Mr Theo Kleynhans had offered them 3 months termination at a meeting held on 10 October 2014.

- [29] With regards to the computation of damages, he testified that they were the best estimate and not based on the actual quantum. He was also examined on what was guaranteed by Edupac given that the off-take fluctuated and was dependent on third party users and consumption. He testified that to obtain the actual quantum, they would have been required to subpoena all the schools for records of where the SMSs were sent. Something he "regretted not having done". In view of what transpired during the proceedings, my impression is that the response was initially intended to be derisive. Its practical implementation is doubtful, nevertheless it was viewed as a concession of the short comings in Enyuka's damages claim by Mr Richard who appeared for Edupac.

APPLICABLE LEGAL PRINCIPLES AND ANALYSIS

[30] There were differences between Mr Elton Andrew's testimony and that of Mr. Glen Andrew with regards to whether Edupac took up the SMS volumes every month. This relates to the 2006 entries of April and June. Mr. Elton Andrew had been of the view that Edupac took SMS volumes every month while Mr. Glen Andrew had been of the view that there were instances, like the above, where there was a Zero off-take. Mr Elton Andrew attributed this to a timing difference in the administrative booking entry system.

[31] Enyuka had invoiced Edupac up to December 2014. In explaining why, Enyuka billed for the 170 455 volumes up to December 2014 instead of the full 340-910, he testified that Edupac had cancelled the contract and were sending the SMS volumes somewhere else. He posed the question:

"How can I bill you for something you're sending to somewhere else?"

He explained that Edupac had found Infobib, a new supplier at a better rate.

They were sending the volumes there.

[32] In his argument for absolution, Mr. Richard for Edupac submitted that the cause of action advanced by Enyuka was based on:

- (1) the repudiation of the contract in that Edupac did not properly terminate the contract in terms of the 2005 agreement; and
- (2) that Edupac would have continued to send approximately 340 910 SMSs from 1 October 2014 to 30 September 2015 using the SMS Bulk Service, giving rise to liability of R 85 500-23 per month over this period.

[33] Mr Richard submitted that the 2005 agreement relied upon purports to be what it claims to be. It is silent on the terms that regulate the relationship with Edupac. It did not regulate the provision of the Bulk Supply Services, was not intended to regulate the supply, and it was unlikely that a large portion of Enyuka's business would be regulated by the standard agreement of the nature presented which was used with all other clients of the business. He submitted that Enyuka seeks to force the agreement into what it is not. Based on the decision in *Gandy v Makhanya*[13] where the court held that:" the court will grant the application for absolution if it is satisfied that no reasonable court could draw inference for which the plaintiff contends". He submitted that, I should find that no such reasonable inference can be drawn that the agreement regulated the Bulk SMS Supply.

[34] The second thrust of the argument was that Enyuka dismally failed to prove the quantum of damages suffered, and as stated in *Gordon v Lloyd & Assoc v Riviera & Another*[14], to survive absolution, the plaintiff is required to make a prima facie case that there is evidence relating to all the elements of the claim. He relied on two fronts, the first being the contention that Edupac would have continued to send an average of 340 910 SMSs and the second, being the evidence of Mr. Elton Andrews' that figure was theoretical. He argued that

Mr Elton Andrew had conceded that there was a shortcoming in the plaintiff's case as they had failed to subpoena further information to quantify the damages suffered. Mr. Elton Andrew had testified that he did not know what was sent. Mr Richard argued that Enyuka came to court on a claim of R1m and has failed to prove R1 of that claim. There was no guarantee for the off-take of the SMS volumes, so the argument went.

- [35] At the close of Mr. Richard's argument, I requested both counsel to prepare argument and address me on; the effect of the officious bystander test, if any on what Mr. Richard argued were short comings in respect of the terms of the agreement relied upon by Enyuka, particularly the disputed portion relating to the SMS service which was left blank. In addition, I requested an address of the effect of the decision of *De Klerk v Absa Bank Limited & Others*[15] in respect of the court's role in determining damages in circumstances where quantification is based on an uncertain future

event and seemingly indeterminate. I am indebted to both counsels for the submissions made.

- [36] Mr. Richard, correctly pointed out that at the end of its case, the plaintiff must make out a prima facie case relating to all the elements of the claim to survive absolution[16] The test is not whether the plaintiff has established what is finally required but whether the court "could or might" find for the plaintiff. The Gordon decision relied upon also states that the court must make its own judgment and order absolution in the interests of justice.[17] Further, it states that absolution will nevertheless be granted sparingly. I pause to mention that where absolution is sought at the end of the trial proceedings, as opposed to at the close of the plaintiff's case, the requirement of proof by the plaintiff are at a higher level than at the close of the plaintiff's case[18].

- [37] On return, Mr Richard correctly submitted in his Heads of Argument that the officious bystander test would have required unanimous

confirmation of the terms by both parties.

- [38] Given the disputed terms it is clear there would have been no agreement. However what defeats Mr. Richard's argument on the applicable contract terms of the Bulk Supply SMS services is that Enyuka also relies on an oral agreement with Educap as testified to by both Mr. Glen Andrew and Elton Andrew to prove aspects of the contract. In this regard, I have considered this evidence against the decision in *Trident Sales (Pty) Ltd v AH Pillaman & Sons (Pty) Ltd*[19], namely that, the fact that the contract contained express provisions for termination in certain circumstance prima facie excluded any implied

power to terminate by notice outside of those circumstances. The court held that the principles are that it is a question of construction of the agreement according to the ordinary principles of construction. The intention is determined in the light of all admissible evidence in the light of what the parties said or omitted to say in their agreement.

- [39] Without seeking to delve deeply into the effects of this evidence, Enyuka's witnesses testified that the bespoke Bulk SMS Service was developed for Edupac. There was an exclusive arrangement and they jointly operated the business with Edupac. They jointly shared in the margins from the sales. There had been a renegotiation of the contract to assist with Enyuka's cash flow by arranging for pre-paid off-take of SMS volumes. This evidence was not seriously challenged in cross-examination. On the face of it, subject to Edupac's version, it seems to be supported by the conduct of the parties. I deal with the expectation interest of the Enyuka below in respect of the damages.
- [40] The second attack is in respect of what is recognized as a difficult question of fact involving proof of contractual damages and the alleged failure by Enyuka to prove same. The general principle is that damages cannot be presumed, they must be established and/proved or none will be awarded. The aim is to place the plaintiff in the position it would have been as far as it is possible and without undue hardship on the defaulting party had the contract been performed. In this case, two factors bedevil the question of the proof of damages. The first is that computation was based on an estimate and a theoretical calculation because Edupac had taken the volumes to an alternative supplier. Secondly, even if there was a contract to take up specified volumes, the ultimate off-take depended on the third-party users making it difficult to guarantee the volumes. The expectation interest of Enyuka seemed indeterminable. This was compounded by Mr. Elton Andrew who conceded that the plaintiff had not subpoenaed the information from third party users.
- [41] Once more, it is not essential to delve into the applicable legal principles for computing damages save those aspects that deal with the role of the court. Mr. McKenzie for the plaintiff based his argument on the dicta in *Bowman v Stanford*[20] where Selke J took the view that the requirement for proof of damages is not an inflexible rule applicable in every instance without regard to the circumstances of the parties in respect of the availability of the evidence:

"there must be many types of claims due to breaches of contract which do not admit, for various reasons, of strict or detailed proof in terms of so much money, for example loss of business, especially in relation to the future"[21].

- [42] As in *De Klerk v ABSA Bank Ltd and Another*[22], where the exact quantification of damages was not possible, the court wisely cautioned against slavish application of principles of general application to cases which are different from those in which the statements were made. It went on to hold that:

"There have been decisions in which our courts have said that a court will come to a plaintiff's aid in case of uncertainty and make an estimate in his favour provided he has led the best evidence available.... As to the "best evidence", the court went on to state that facts may not only be proved by direct evidence but by inference also.

- [43] When a plaintiff fails to place evidence which it is in a position to lead, the court will grant absolution, but if he has adduced all evidence which is reasonably available to him the court must assess the damages as best as it can, see *Esso Standard SA (Pty) Ltd v Katz*[23],
- [44] I would be hard pressed to ignore the evidence before me that the plaintiff's Bulk SMS Supply business was a start- up business in the information technology sector. The context in which the general principles for contractual damages must factor in this case is that bespoke and co- and/or joint development of IT products and services is not uncommon in the technology sector. Upon the face of the prima facie evidence before me, this was not an arms-length relationship. The fluctuation in volumes and the uncertain off-take by the end user market cannot be viewed in isolation but in conjunction with the readjusted contract terms agreed to in 2012. The evidence is that both parties agreed to a prepaid rate which secured Enyuka's cash flow. This agreement also informed in part, the basis upon which the plaintiff's damages were computed. When the evidence relating to this agreement was put to Mr. Richard, I was left with the distinct impression that it called for an answer from the defendant. In saying so, I do not purport to apply a different test to the requirements for absolution based on an evidentiary burden. It is merely to indicate that there is prima facie evidence as required.
- [45] I was urged to apply the principles in *Stellenbosch Farmers Winery Group v Martell et Cie*[24] at this early stage of the trial and must decline this request. It is correct that there were some contradictions in the evidence of Enyuka. I also acknowledge that Mr. Elton Andrew had been irascible and combative under cross- examination. In view of the low threshold the plaintiff must cross at this stage, it would be premature to make definitive findings on the probabilities and credibility of the witnesses.
- [46] I determine that the interests of justice will be best served by the full ventilation of what was in the contemplation of the parties. For reasons set out above, I decline absolution sought.
- [47] In the circumstances, I make the following order:
- [47.1] The application for absolution is dismissed, and
- [47.2] The defendant is ordered to pay the costs of the application.
-
- SIWENDU J
- JUDGE OF THE HIGH COURT
- DATE:
- Heard on: 16-18 August 2017
- Delivered on: 25 August 2017
- Counsel for Plaintiff: Adv. A.C. McKenzie

Instructed by: Swartz Weil Van Der Merwe Greenberg Incorporated

Counsel for Defendant: Adv. C. Richard

Instructed by: Meise Nkaiseng Incorporated

- [1] Pleadings Bundle POCA page 14
- [2] Pleadings Bundle PoC2 Page 23.
- [3] Plaintiff's Amended Particulars of Claim Paragraph 6.8 and 6.9
- [4] There is evidence that this amount was inclusive of VAT and should have been 22c. Mr McKenzie was granted leave to amend paragraph 15 of the particulars of claim to reflect that 25,08c was inclusive of VAT.
- [5] Trial Bundle 2; Page 107
- [6] Trial Bundle 1 Page 63
- [7] Trial Bundle 1 Page 48
- [8] Trial Bundle 2 P 107 to 114
- [9] Trial Bundle 3, P 251-257
- [10] Trial Bundle 3 P257
- [11] Pleadings Bundle P 11 Para 15
- [12] Trial Bundle 1 P 63
- [13] 1974
- (4) SA 853 N
- [14] SCA 2001 (1) SA 88
- [15] De Klerk vs ABSA Bank Ltd & Others 2003 (4) SA 315 SCA
- [16] Gordon Lloyd Page & Associates v Rivera and Another 2001(1) SA 88 at Para 2
- [17] Gordon supra Para 2
- [18] De Klerk Supra Para 38 C-D
- [19] 1984 (1) SA 433(W)
- [20] Bowman v Stanford 1950 2 SA 210 (D) 222
- [21] Plaintiff Heads of Argument: cf Bower v Sparks Young Farmers' Meat Industries Ltd 1938 NPD 1, at p23
- [22] Supra

[23] 1981

(1) SA 964 (A) 969 H - 970 H 1981 (1) SA 964 (A) 969 H - 970 H

24 2003(1) SA11SCA at paragraph 5

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