

SOUTH AFRICA / JUDGMENT

Moloi v Nkosi and Others (1713/2025)

[2025] ZAFSHC 153 (15 May 2025)

[2025] ZAFSHC 153**COURT**

Free State High Court, Bloemfontein

BEFORE

Deane, AJ

CASE / FILE NUMBER

1713/2025

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****FREE****STATE DIVISION, BLOEMFONTEIN****Reportable****/ Not reportable****Case****no: 1713/2025****In**

the matter between:

ANNA

MOLOI

Applicant

and

THABISILE

KESSIA MAVIS NKOSI (BORN MAKHUBU) First

Respondent

THABISILE

KESSIA MAVIS NKOSI N.O

Second Respondent

MINISTER

OF HOME AFFAIRS

Third Respondent

MASTER

OF HIGH COURT, JOHANNESBURG

Fourth Respondent

Neutral

citation: XXX

Coram:

Deane, AJ

Heard: 15 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11:15 on 27 May 2025.

Summary: Disputes relating to the validity of customary marriages being brought by way of motion proceedings, will attract the application of the Plascon-Evans principles.

ORDER

The application is dismissed with costs on an attorney and client scale.

JUDGMENT

Deane, AJ

Introduction:

[1] This is an application in terms of s 4(7) read with s 2(1) of the Recognition of Customary Marriages Act 120 of 1998 (the RCMA) for an order declaring the civil marriage between the deceased and the first respondent to be invalid. Alternatively, the applicant seeks an order that the said marriage should not be recognised as a valid marriage in community of property.[1]

[2] An order sought in the notice of motion[2] is to direct as follows:

'2.1 Directing the Minister of Home Affairs and Department of Home Affairs to register the marriage between the applicant and the deceased, Mthandeni Elphas Nkosi, as a valid customary marriage and to issue the applicant with a marriage certificate by attesting to the said registration within 30 days of this order.

2.2 Declaring the marriage concluded between the deceased and the first respondent invalid.

2.3 Directing the fourth respondent to remove the first respondent as executrix in the estate of the late Mthandeni Elphas Nkosi estate number 030471/2024, and to appoint the applicant executrix of the aforesaid estate.

2.4 As an alternative to paragraph 2.1 above, declaring that the marriage between the deceased and the first respondent is not a marriage in community of property as contemplated in section 22(6) of the Black Administration Act 38 of 1927.

2.5 As an alternative to paragraph 2.3 above, directing the third respondent to appoint the applicant as the co-executrix in the estate of the late Mthandeni Elphas Nkosi estate number 030471/2024.'

Submissions

by the applicant:[3]

- [3] The applicant and the deceased met in 1978 at Robertsham, Johannesburg South Africa whilst they worked in Gauteng. The applicant and the deceased entered into a romantic relationship in the year that she attained 19 years of age. Thereafter, they started living together renting a place in Robertsham.
- [4] In 1981, the deceased asked the applicant to marry him and advised that he intended to send a delegation to her home in QwaQwa to ask for her hand in marriage. Both parties were already at the age of majority and the applicant consented to the marriage.
- [5] On 11th April 1981 the applicant's family was informed that the deceased's family would go to negotiate and pay lobola. On the said day, the deceased's family attended the applicant's family home and following negotiations an agreement was reached that the deceased's family would pay, and did pay, lobola in the sum of R6000 to the applicant's family.
- [6] Pursuant to that, on the same day the two families, together with the community, celebrated the conclusion of the marriage between the deceased and the applicant at Thabana-Tsoana village, in QwaQwa. A sheep was slaughtered; food and alcohol were shared. A bottle of alcohol, a blanket for the applicant's late mother and a jacket for the applicant's late father were given as gifts by the deceased's family. Following the celebration, the applicant was formally handed over to the deceased's family. However, since the deceased and the applicant were already living together in Gauteng, they returned to their home in Gauteng. It was agreed that a further celebration would be scheduled on a future date to take place at the deceased's family home in KwaZulu Natal.
- [7] The lobola letter was lost by the applicant's father when he relocated from the Free State to Vosloorus. A letter attesting that the said marriage took place and that he was present at the celebration of the marriage was provided by one Chief Leabua Abimael Mopeli, the traditional leader of the Thabana-Tsoana Village and chairperson of the Matsieng Traditional Council.[4] The applicant further annexes affidavits deposed to by the deceased's aunt, and her two brothers, also attesting that the marriage took place, that they were present at the celebration of the marriage and that the marriage was celebrated in accordance with traditional rites.[5]
- [8] In January 1983, the applicant learned that in 1982, without her knowledge or consent, a marriage between the deceased and the first respondent was arranged. The deceased and the first respondent concluded a civil marriage on 21 December 1982. The applicant contends that the reason for the marriage between the respondent and the deceased was due to her coming from the Sotho tribe whereas the deceased is Zulu, and the deceased's family was of the opinion that the deceased ought to also marry a wife from the Zulu tribe.

- [9] During the periods of the two aforementioned marriages, the deceased fathered ten children: four children with the applicant and six with the respondent. The children between the deceased and the first respondent were conceived during the times when he would visit his family home and later his farm. The deceased lived with the applicant until he passed away on 6 August 2024.[6] He left a valid will dated 5 August 2024 with ABSA Bank Limited, in which he bequeathed his 50% share of the joint estates by virtue of the marriage in community of property to two of his sons, including one child as born between himself and the applicant.
- [10] There are three fixed properties, two of which are residential properties.[7] Before he passed away, the deceased and the applicant, together with their children, lived on the property situated at [...] E[...] Street, Leondale, Germiston, whereas the first respondent, together with her children, lived on the property situated at Eskom 1[...] Dannhauser, KwaZulu Natal. In his will, the deceased had nominated ABSA Trust Limited (ABSA), to be appointed as the executor of his estate upon his death. However, ABSA renounced this nomination, and the first respondent was appointed executrix by the Master of the High Court (fourth respondent)[8] based on the fact that the marriage between the applicant and the deceased was not registered and that the first respondent was married in terms of a civil marriage.
- [11] The applicant submits that on 6 February 2025, she consulted with MKI Attorneys to assist her, stating that the documents submitted by the first respondent misrepresented to the fourth respondent inter alia that she was the only spouse of the deceased and that the deceased had died intestate. It was further submitted that the first respondent had failed to obtain her nomination from all major heirs of the estate. Accordingly, the applicant lodged an objection against the nomination and appointment of the first respondent as executrix, alternatively, a request that the fourth respondent appoint the applicant and the first respondent as co-executrix of the deceased's estate. The objection was lodged with the fourth respondent on 20 February 2020.[9] However, the fourth respondent, despite the objection lodged, proceeded to appoint the first respondent as the executrix of the deceased estate.
- [12] At the time of the deceased's death, the marriage between the deceased and the applicant had not been registered. The applicant submits that she was not aware that the marriage was not registered nor that it was required to be registered. Upon the advice of her attorneys on 6 February 2025, the applicant proceeded to make arrangements to have the marriage registered. One month later, on 6 March 2025, the applicant went to the Department of Home Affairs' offices in Phuthaditjhaba (Department) and stated that, despite having all the information sought (in terms of the valid requirements for registering a customary marriage entered into before the application of the RCMA), the registering officer refused to assist the applicant and advised that she should refer the matter to the High Court. The reason proffered for the refusal to register the applicant's marriage with the deceased was that the Department already had in its records the civil marriage between the deceased and the first respondent.

[13] The applicant further submits that since the marriage between the applicant and the deceased took place in 1981, prior to the RCMA the only requirements therefore, for a valid customary marriage were:

- (a) the consent of the bride and bridegroom (spouse);
- (b) consent of the bride's father or guardian (parents);
- (c) payment of lobolo; and
- (d) handing-over of the bride.

The applicant submits that these requirements have been duly met and accordingly, her marriage to the deceased is a valid marriage as contemplated in s 2(1) of the RCMA.

[14] Furthermore, the applicant insists that at the time the marriage was concluded, the provisions of the Black Administration Act 38 of 1927 (BAA), specifically s 22, was applicable. Therefore, it is submitted, the marriage between the first respondent and the deceased is invalid for want of compliance with the requirements of s 22 of the BAA.

The First and Second Respondents Submissions:

[15] The first and second respondents (the respondent) got married on 21 December 1982 in community of property. A copy of the marriage certificate is attached.[10] They met in 1980 and the deceased paid lobola for the first respondent in 1981. He did not pay any lobolo or marry another woman customarily before and during the subsistence of their marriage.

[16] When the deceased and the respondent got married, both the deceased's maternal grandmother and his aunt who raised him, were still alive. There was no other woman whom the deceased was married to. In support thereof, an affidavit of the aunt who brought him up with his late maternal grandmother is attached.[11] In addition, the respondent was informed by the deceased about all the children that were born between him and the applicant. However,

he only referred to the applicant as his girlfriend and not his wife. After he passed away, the deceased was buried by the respondent and their children in KwaZulu Natal and the funeral took place in their common home.

[17] The respondent denies that any member of her or the deceased's family had any knowledge about lobola being paid for the applicant. She applied to the fourth respondent and was appointed as an executor in the deceased estate. She was appointed because of her being married to the deceased and she being the only wife of the deceased.

Analysis:

[18] The existence of a prior civil marriage has direct legal consequences for the applicant's claim, as it affects the validity of any alleged customary union. Section 10(4) of the RCMA expressly prohibits a spouse in a civil marriage from entering into another marriage,

rendering any subsequent union invalid while the civil marriage subsists. Before the RCMA, customary marriages were governed by indigenous African customary law, which varied across different communities and lacked uniform codification. The absence of statutory regulation meant that the validity of a customary marriage was assessed based on traditional practices, which were often subject to interpretation and dispute.

- [19] In casu, the applicant contends that a valid customary marriage existed between herself and the deceased prior to the civil marriage with the first respondent. However, the first respondent disputes this claim, asserting that she was lawfully married to the deceased in terms of civil law. The fourth respondent refused to register the applicant's purported customary marriage, citing a lack of documentary proof and official records reflecting the existence of a civil marriage between the deceased and the first respondent. Given the nature of the dispute, the matter turns on whether the applicant can establish the existence of a valid customary marriage, despite the official records reflecting a civil marriage.
- [20] The determination of whether a valid customary marriage existed prior to the enactment of the RCMA is inherently complex, particularly where conflicting versions are presented by the parties. The applicant has elected to bring the present dispute before this Court by way of motion proceedings. It must be noted that cases of this nature, where the existence of a valid customary marriage is contested, are inherently difficult to resolve without oral evidence. Once the answering affidavit was filed, it should have been apparent to the applicant that the factual disputes presented posed a significant risk to the success of her claim in continued motion proceedings.
- [21] In the present matter, the dispute is not confined merely to the conflicting versions regarding whether a valid customary marriage was concluded between the applicant and the deceased prior to the enactment of the RCMA. It is further compounded by the submission of contradictory affidavits supporting each party's respective position, including affidavits deposed to by relatives of the deceased, which present divergent accounts concerning the deceased's marital status. The existence of such discrepancies reinforces the material nature of the factual disputes, necessitating careful scrutiny in determining the validity of the alleged customary marriage.
- [22] South African case law has consistently recognised that the validity of a customary marriage prior to the RCMA must be assessed in accordance with established customary law principles. In *Manwandu v Manwadu and Others*[12] (*Manwadu*), the Supreme Court of Appeal reaffirmed that the essential requirements for a customary marriage before the RCMA included consent of the spouses, consent of the bride's guardian, payment of lobolo, and the formal handing over of the bride. However, the absence of documentary proof does not necessarily invalidate a customary marriage, provided that the requisite customs were observed.

- [23] Similarly, in *MM v MN*,^[13] the court emphasised that a customary marriage contracted before the RCMA would only be recognised if it was valid at the time the Act came into operation. If a purported customary marriage did not comply with the applicable customary law requirements, it remained invalid despite the enactment of the RCMA. Furthermore, s 10(4) of the RCMA explicitly prohibits a spouse in a civil marriage from entering into another marriage, reinforcing the legal consequences of an existing civil union.
- [24] Given the conflicting versions presented in this matter, the court is faced with the challenge of determining whether the applicant has discharged the burden of proving that a valid customary marriage existed before the RCMA. The procedural constraints of motion proceedings further complicate this inquiry, as the absence of oral evidence prevents the court from assessing credibility, testing inconsistencies, and making factual determinations beyond the limitations of affidavits.
- [25] Ultimately, the difficulty in ascertaining the legal requirements for recognition of a customary marriage prior to the RCMA underscores the necessity of a thorough evidentiary inquiry. Where substantive factual disputes exist, courts have traditionally required oral testimony to resolve such conflicts.
- [26] The submissions in the affidavits submitted by the parties reveal substantive discrepancies regarding the deceased's marital status. These factual disputes are central to the determination of the relief sought and are not merely incidental issues. Ordinarily, where motion proceedings involve material disputes of fact, courts must resolve such disputes in accordance with the principles as enunciated in *Plascon Evans Paints v Van Riebeeck Paints*^[14] (*Plascon Evans*) where the Court held:
- '... These principles are, in sum, that the facts as stated by the respondent party together with the admitted or facts that are not denied in the applicant party's founding affidavit constitute the factual basis for making a determination, unless the dispute of fact is not real or genuine or the denials in the respondent's version are bald or not creditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable, that the court is justified in rejecting that version on the basis that it obviously stands to be rejected.. '
- This rule dictates that final relief may only be granted on the version of the respondent, unless that version is demonstrably far-fetched or untenable. In the end, therefore, the applicant must stand or fall on the basis of how these kinds of factual disputes are ordinarily resolved in motion proceedings.
- [27] In *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others*,^[15] the Court added another dimension to the enquiry in applying the *Plascon-Evans* principle, where the Court said:

'Ordinarily, the Court will consider those facts alleged by the applicant and admitted by the respondent together with the facts as stated by the respondent to consider whether relief should be granted. Where, however, a denial by a respondent is not real, genuine or in good faith, the respondent has not sought that the dispute be referred to evidence, and the Court is persuaded of the inherent credibility of the facts asserted by an applicant, the Court may adjudicate the matter on the basis of the facts asserted by the applicant.'

[28] As to when a denial (factual dispute) by the respondent party may not be considered to be real or genuine, the Court in *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another*[16] provided the following guidance:

'...the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected ... '

[29] In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*[17] the Court explained:

'A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit

seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied...'

[30] Furthermore, there are judgments in which the Court made it clear that disputes relating to the validity of customary marriages being brought by way of motion proceedings, would attract the application of the *Plascon-Evans* principles.[18] In *Mawandu* the Court was critical of a case concerning the validity of a customary marriage being brought by way of motion proceedings where there were several material factual disputes. The Court had the following to say:[19]

'Bearing in mind that there are a vast number of disputes of fact in this case, and that there are two mutually exclusive versions, this Court must weigh the probabilities to determine which version is most probable. This case falls squarely within the ambit of the *Plascon-Evans* rule. The respondent, being the original applicant, had the onus to prove her case that she and the deceased were married by customary law. If the appellant's version was not clearly untenable (which it was not), the application must be determined on her version. Not only did the appellant

raise genuine and bona fide disputes of fact. but her version was more probable. It was corroborated by numerous members of both her and the deceased's family, whereas the respondent's version is filled with inaccuracies and patent nondisclosures and failures to provide admissible evidence and/ or corroboration.'

- [31] Given that the fourth respondent's records confirm the existence of a civil marriage between the deceased and the first respondent, and in light of the applicant's own concession that no documentary proof of a customary marriage exists, these disputes cannot be resolved on affidavits alone. It is well established in South African jurisprudence that where material factual disputes exist in motion proceedings, referral to oral evidence or trial may be necessary to allow for cross-examination and proper interrogation of conflicting versions. As already mentioned above, the absence of oral testimony prevents the court from assessing credibility, testing inconsistencies, and making factual determinations beyond the limitations of affidavits.
- [32] However, the applicant has consistently denied that there is a dispute of fact and indicated, even during oral submissions, that the applicant would not be in a better position at a trial than she is at present. This assertion reinforces the procedural dilemma the applicant faces. The applicant has elected to proceed by way of motion, despite the presence of significant factual disputes and has not sought a referral to oral evidence. Consequently, the applicant must accept the constraints imposed by the Plascon-Evans rule and the implications of motion proceedings. Without oral evidence to address the contradictions between the parties' versions, the matter must be determined in accordance with the respondent's version, unless the court finds sufficient grounds to reject that version as untenable.
- [33] The conflicting affidavits submitted in support of the parties' respective claims do not take the applicants case any further. The applicant contends that affidavits confirm the existence of a customary marriage between herself and the deceased, one of which was deposed to by a relative of the deceased. However, the respondent counters this assertion by submitting that affidavits from another relative confirm that the deceased was married only to the respondent, and that no other customary union existed.
- [34] Regardless of whether these affidavits originate from the same relative/s, the contradiction presents a direct factual dispute requiring proper evidentiary scrutiny. The reliability of the affidavits, the circumstances under which they were obtained, and the credibility of the deponents cannot be adequately tested in motion proceedings. Ordinarily, in instances where affidavits contain substantive contradictions concerning core issues in dispute, the matter would require oral evidence to allow for cross- examination and assessment of witness reliability.
- [35] In this case, the first respondent's reliance on official records maintained by the fourth respondent, as well as affidavits supporting her claim of a civil marriage, strengthens her contention that no other marriage existed.

[36] Ultimately, this dispute reinforces the difficulty of resolving the matter on affidavits alone and underscores the procedural limitations inherent in motion proceedings where substantive factual conflicts exist. Despite this, the applicant proceeded without seeking a referral to oral evidence, even though counsel conceded during oral submissions that no documentary evidence exists to substantiate the alleged customary marriage. The lobolo certificate, which might have supported her claim, was lost. Indeed, there exists a fundamental dispute as to whether any celebrations took place, whether lobolo was duly paid, and the composition of the delegation sent to the applicant's home. Specifically, the identity of the individuals forming such delegation, their number, and their relation to the deceased remain contested.[20]

[37] When one further considers the answering affidavit filed by the first and second respondents, I do not believe it can be said that the factual disputes raised are not real or not genuine. In the answering affidavit, the first respondent submits at para 39 that:

'AD PARAGRAPH 17

... My late husband was brought up by his maternal grandmother and maternal aunt. The dates that are stated by the applicant of this alleged marriage, they were still alive, and they do not know anything about this alleged la Bola payment and celebrations. His aunt even deposed to affidavits confirming that there is no other woman that was married to my late husband other than myself..'

[38] At para 41, the first respondent further submits that:

'AD PARAGRAPH 19

The contents of this paragraph are denied. The affidavits of individuals mentioned are made with intent to mislead the court and are tantamount to the criminal offense of perjury, reason being that there were no such celebrations that took place. I know for the fact that Busisiwe Elizabeth Mdaki met the applicant for the first time in 1994 March 21 in a funeral of my late husband's brother by the name of Mshiyeni Nkosi. My late husband introduced the applicant to Busisiwe Elizabeth Mdaki on that particular day as his girlfriend whom he had children with. When Busisiwe Elizabeth Mdaki says that she was present in celebrations that did not take place, she is misleading the court for reasons that are only known to her and the applicant. And the reason the applicant attended that funeral was because her and the wife of the late Mshiyeni Nkosi knew each other as they were working together.'

[39] Furthermore, at para 42 the first respondent states that:

'AD PARAGRAPH 20

It is unfathomable as to who the family of the applicant agreed with that further celebrations will take place in my late husband's family home in KwaZulu Natal as there was no member of my late husband's family at the alleged celebrations. Contents of this paragraph are denied, and the applicant is therefore put to proof.'

[40] The averments advanced by the first respondent are corroborated by confirmatory affidavits from individuals closely associated with the deceased, including his maternal aunt, Julia Yoyo Nkosi. In arguments, the applicant disputes the nature of the relationship between Nkosi and the deceased, further exacerbating the factual contestations in this matter. These are clearly material disputes of fact that cannot be disregarded. There is no basis upon which to conclude that the first respondent's assertions in the answering affidavit are fictitious, palpably implausible, far-fetched or otherwise untenable.

[41] Considering the relevant principles and different judgments warning against motion proceedings in such matters, I do not see any reason why this matter should not be decided on the basis of the admitted facts, together with the version as contained in the answering and supplementary affidavits of the first respondent. In the end, as it was held in TIBMS (Pty) Ltd t/a Halo Underground Lighting Systems v Knight and Another:[21]

'... Credibility is only capable of being addressed on paper when the assertions are palpably absurd or demonstrably false. The threshold that had to be cleared is 'wholly fanciful and untenable'. Moreover, the appetite to resolve paper contests by reference to the probabilities, though ever present, is not appropriate.'

[42] Accordingly, this court finds that the disputes are not merely incidental or bare denials, but it goes to the heart of the applicant's claim. It is not a matter capable of resolution through affidavits alone, as it requires a thorough evidentiary inquiry, which motion proceedings do not ordinarily allow. The applicant, having chosen to proceed via motion proceedings, must stand or fall within the constraints imposed by this procedural mechanism. In light of the material disputes of fact and the evidentiary deficiencies in the applicant's case, the application cannot succeed.

Costs

[43] There is no compelling reason why the costs should not follow the result. The general principle in cost orders is that costs are awarded to the successful party unless exceptional circumstances justify a departure from this rule. No such circumstances have been demonstrated in this matter.

Order:

[44] Accordingly, the following order is granted:

The application is dismissed with costs on an attorney and client scale.

DEANE AJ

Appearances:

Attorney for the Plaintiff: TM Kanyane Instructed by/ c/o Lovius Block Incorporated
Bloemfontein Attorney for 1st & 2nd Defendant: M Khumalo Instructed by/ c/o Chauke N.B
Attorneys Bloemfontein

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- [1] Founding Affidavit at 2.
- [2] Index at 1-2.
- [3] Founding Affidavit at 4-11.
- [4] Annexure AM1.
- [5] Annexures AM2, AM3 and AM4.
- [6] Annexure AM6.
- [7] Annexure AM7.
- [8] Annexure AM8.
- [9] Annexure AM9.
- [10] Annexure 'C'.
- [11] Annexure 'B'.
- [12] *Manwadu v Manwadu and Others* [2025] ZASCA 10; [2025] 2 All SA 27 (SCA) para 56.
- [13] *MM v MN* [2010] ZAGPPHC 24; 2010
- (4) SA 286 (GNP).
- [14] *Plascon Evans Paints v Van Riebeeck Paints* [1984] ZASCA 51; 1984
- (3) SA 623 (A) at 634E-635C (*Plascon-Evans*).
- [15] *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* [2004] ZACC 20; 2005 (2) SA 359 (CC) para 53.
- [16] *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another* (2009] ZAGPHC; 2009 (3) SA 187 (W) para 19.
- [17] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* (2008] ZASCA 6[2008] ZASCA 6; ; 2008 (3) SA 371 (SCA) para 13. See also *Minister of Home Affairs and Others v Jose and Another* (2020] ZASCA 152; 2021 (6) SA 369 (SCA) para 20.
- [18] See *Malatjie v Sekgobela and Others* 2025 JDR 0295 (GP) at para 29; *Tsambo v Sengadi* (2020] JOL 47138 (SCA) at para 19; *Sikhosana v Kabini and Others* 2023 JDR 2964 (GJ) at paras 22 - 25.
- [19] Footnote 12 paras 61-62.
- [20] Answering Affidavit, para 38.
- [21] *TIBMS (Ply) Ltd t/a Halo Underground Lighting Systems v Knight and Another*
- [2017] ALAC 59; (2017) 38 ILJ 2721 (LAC) para 29.

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