

SOUTH AFRICA / JUDGMENT

Rooth v Hanley (A187/17) [2018] ZAGPPHC 637 (28 June 2018)

[2018] ZAGPPHC 637**COURT**

North Gauteng High Court, Pretoria

BEFORE

F. Diedericks, E.M. Kubushi

CASE / FILE NUMBER

A187/17

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION. PRETORIA)****Appeal****Case No: A187/17****Date:**

28 June 2018

In

the matter between:

JOHANNES

DIRK

ROOTH

Appellant

and

CRAIG

HANLEY

Respondent

JUDGMENT**F. DIEDERICKS, A.J.**

- [1] This is an appeal against the judgement of Magistrate A.C. Myambo, delivered on the 28th of November 2016 , sitting in the Regional Magistrates Court for the Regional Division of Pretoria. The appeal is against the dismissal of the two claims of Appellant against the Respondent.

- [2] Respondent instituted action against Appellant on the 25th of March 2014, claiming three different amounts on three different causes of action. Respondent abandoned his third claim and his first two claims were dismissed by the Court a quo.
- [3] Respondent did not file an appeal against the dismissal of his two claims.
- [4] The Appellant filed four counterclaims and abandoned the third and fourth counterclaims and proceeded with the first and second counterclaims.
- [5] The appeal lies against the dismissal of the latter counterclaims, to which I shall refer as the first and second counterclaims.

[6] **FIRST COUNTERCLAIM:**

This claim is for occupational rental provided for by a so-called "Option Agreement", more in particular as provided for in clause 5 of the Option Agreement which was annexed to the counterclaim as Annexure "P1".

[7] **THE SECOND COUNTERCLAIM:**

This claim is premised on arrear rentals in terms of a Lease of Immovable Property Agreement, annexed as Annexure "P2" to Appellant's counterclaim, in particular clauses 2 and 3.1 thereof.

- [8] Respondent and his wife testified in the Court a quo but Appellant opted not to lead evidence in the Court a quo, and closed his case immediately with the intention to argue his case on the evidence of Respondent including concessions made by him during cross-examination, and documentary evidence, read with the evidence of Respondent, which Appellant argues are to be regarded as common cause facts from the pleadings, read with the evidence and the documentation referred to above.

[9]

BACKGROUND:

In order to understand how the two agreements referred to above came into being, this Court had to look at the background surrounding the negotiations between the parties and to this end the relevant background can be summarised as follows:

- [10] The Respondent was desirous to purchase from Appellant a certain property known as Holding 213, Mnandi Agricultural Holdings, Extension 1, measuring 2,0376 square metres in extent and held by Appellant under Deed of Transport T76684/1990.

The purchase price would be R3,800,000.00 (three million eight hundred thousand Rand), payable in the manner as set out in the appendix to Annexure "A" attached to Respondents Particulars of Claim.

- [11] This agreement never materialised in that the Respondent never signed this agreement.

- [12] The Respondent did, however, take up occupation of the said property, according to the evidence tendered by Respondent, in the Court a quo on the 1st of July 2013, where Respondent testified that he in fact took occupation as a result of the Lease to Purchase Agreement that he had with the Appellant.
- [13] This Lease to Purchase Agreement is in fact the document that forms the basis of Appellant's first counterclaim and was dated and signed by the parties on the 14th of August 2013.
- [14] This agreement is in fact not a lease agreement, but an "Option Agreement", in terms whereof an option was granted, against a payment of R100,000.00 to the seller (Appellant) by the prospective buyer (option holder, the Respondent).
- [15] The option to purchase was granted for a specified term and specified that the option holder (Respondent) is already in occupation of the property and would pay occupational rental to the seller in the amount of R20,000.00 per month from the date of initial occupation [my emphasis] until the 1st of October 2013, whereafter such occupational rental shall be dealt with as per the Deed of Sale as detailed in Annexure "A" to the Option Agreement.
- [16] Since no other Deed of Sale Agreement existed, the above reference can only be a reference to the Deed of Sale attached to Respondents Particulars of Claim, which Deed of Sale never materialised as mentioned above.
- [17] It is common cause that on the 26th of September 2013, the Option Agreement was terminated and substituted on the same day with a Written Lease Agreement entered into between the parties in respect of the very same property.
- [18] Appellant's second claim is based on rentals due in terms of clause 2 of this agreement, which Appellant attached to his counterclaim as Annexure "P2".
- [19] The lease period was on a month to month basis, not exceeding twenty- four months, commencing on the 151 day of October 2013. (See paragraph 3.1 of Annexure "P2".)
- [20] The very same paragraph (3.1) stipulates that a two months' notice period would apply. Although it is not described in full, the mention of (two months' notice period) can mean nothing else than that whosoever wanted to terminate the agreement ("P2") should give two months' notice to the other party of his intention to do so.
- [21] APPELLANT'S CLAIMS:
- [22] Appellant's claims, according to the pleadings, are as follows:
- [23] Claim 1:
- [23.1] The Respondent was required to pay occupational rent for the period 1 July 2013 to 30 September 2013 in the amount of R20,000.00 per month as contained in the verbal lease referred to, as well as the Option Agreement
- [23.2] The Respondent only paid R15,000.00 per month for the period referred to above;

[23.3] In the premises Respondent is in arrears with the amount of R15,000.00, which amount is due and payable.

[24] Claim 2:

[24.1] In terms of the written lease agreement, the Respondent occupied the property from the 1st of October 2013 for the rental amount of R25,000.00 per month;

[24.2] The lease agreement was duly cancelled and the Respondent was required to pay rent for the period up to the 31st of December 2013. This would include the two-month notice period;

[24.3] Respondent failed to pay the lease amount for the period referred to, and is in arrears with the lease in the amount of R44,117.00.

[25] COMMON CAUSE FACTS FROM THE PLEADINGS:

[26] According to the pleadings, the following facts are common cause between the parties:

[26.1] Both the so-called Option Agreement and the Lease of Immovable Property Agreement were properly entered into;

[26.2] Occupational rental had to be paid in terms of the Option Agreement in the amount of R20,000.00 per month;

[26.3] The Option Agreement contains a so-called non-variation clause, which provides that no waiver of any right arising from this agreement shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives;

[26.4] Respondent had to pay R25,000.00 per month from 1 October 2013 in terms of the Lease of Immovable Property Agreement

[26.5] The lease of the property in terms of the Lease of Immovable Property: Agreement would continue on a month to month basis with any party electing to cancel the agreement obliged to give the other party at least two months prior notice of such cancellation;

[26.6] The Lease of Immovable Property Agreement was cancelled either at the end of October or the 1st day of November 2013;

[26.7] Respondent failed to pay rental in respect of the two month cancellation period as provided for by the Lease of Immovable

Property Agreement; and

[26.8] The Lease of Immovable Property Agreement also contained a so-called non-variation clause, which provides that no other terms and conditions of whatsoever nature not contained in the written agreement would be of any force or effect, unless reduced to writing

and signed by the parties or their duly authorised agents.

[27] AMOUNTS PAID BY THE RESPONDENT TO APPELLANT:

It is not disputed by Respondent that Respondent in fact made the following payments to the Appellant:

[27.1] R15,000.00 on 24th of June 2013;

[27.2] R15,000.00 on 31st of July 2013;

[27.3] R15,000.00 on 2nd September 2013;

[27.4] R25,000.00 on 30th September 2013; and

[27.5] RS,833.00 on 1st November 2013.

[28] Respondent's case is that he in fact made the above mentioned payments on account of the fact that an oral arrangement to make the payments in the amounts as he did, existed, notwithstanding the existence of a non-variation clause in both agreements, which Respondent avers does not even constitute valid non-variation

clauses.

[29] In summary, I therefore find in a nutshell the following aspects as being common cause between the parties:

[29.1] In respect of Appellant's first counterclaim, Respondent only paid R15,000.00 per month rental for a period of three months, as opposed to R20,000.00 as agreed upon in terms of the Option Agreement and as alleged in the pleadings; and

[29.2] In respect of Appellant's second counterclaim, Respondent only paid an amount of R30,833.00 in respect of the Lease of Immovable Property Agreement, and not R75,000.00, which Appellant insists of in terms of the agreement, i.e. a period of three months, one month from conclusion of the contract until and including two months in respect of the cancellation period provided for in clause 3.1 at the rate of R25,000.00 per month.

[30] THE SO-CALLED "NON-VARIATION CLAUSES":

[31] I find it necessary to interpret the so-called non-variation clauses and make a ruling on the validity thereof.

[32] The first non-variation clause is found in the "Option Agreement" which can be found in paragraphs 6.2, read with paragraph 6.6 of Annexure "P1" attached to Appellant's counterclaim.

[33] Paragraph 6.2 reads as follows:

"6.2 Whole Agreement-

The parties acknowledge that this agreement contains the whole agreement between them and the parties acknowledge and agree that they have not relied upon any oral or written representations made to them by the other, its employees or by other authorised agents and each party has made, and is satisfied by, its own independent investigations into all matters.

[34] Paragraph 6.6 of Annexure "P1" reads as follows:

"6.6

Variations -

No addition or variation consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives."

[35] In reading these two sub-paragraphs together, I am of the view that it passes the muster of a non-variation clause and find that it is nothing else than a non-variation clause. There can be no other interpretation attached to these clauses.

[36] Having perused the option agreement in its totality, insofar as it might be necessary, I also find that there is nothing contained therein to justify a ruling that the agreement is null and void on any ground. I therefore find the agreement to be a valid agreement.

[37] Of importance, with specific reference to the facts at hand, referred to above and to which I shall also refer to later on, I need to emphasize the following words contained in paragraph 6.6, as part of the non- variation clause:

".... No waiver of any right arising from this agreement or its breach or termination shall [my emphasis] be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives."

[38] THE SECOND NON-VARIATION CLAUSE:

The second so-called non-variation clause is to be found in paragraphs

14.1 and 14.2 of the Lease of Immovable Property Agreement,

Annexure "P2" to Appellant's counterclaim in the Court a quo, (page 64 and further of the record).

[39] Paragraph 14 reads as follows:

"14.1 This agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or terms and conditions [my emphasis] of whatsoever nature not contained herein shall be of any force or effect, unless reduced to writing and signed by the parties or their duly authorised agents.

14.2 No indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor and shall not hereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future."

[40] In reading this and applying the normal rules of interpretation of contracts, what stands out in this paragraph is that it provides that:

"or other terms and conditions ... shall [my emphasis / peremptory] be of any force or effect, unless reduced in writing and signed by the parties or their duly authorised agents."

[41] The above, to my mind, also encapsulates an oral agreement to the effect that an arrangement that the two months' notice period and payment of rent in respect thereof, was not reduced to in writing. This clause requires, to my mind, that such an arrangement (or variation of the agreement) should have been reduced to in writing and signed by both parties in order to be binding on the parties.

[42] In the same vein, clause 14.2 also specifies that any indulgence should not be construed as a waiver of any condition of the agreement.

[43] I therefore find that clause 14.1, read with clause 14.2, constitutes a non-variation clause, and passes the muster for a non-variation clause.

See: SA Sentrale Ko-op Graanmaatskappy Bpk v. Shifren &

Andere [1964] 4 All SA 520 (A);

Brisley

v. Drotosky [2002] JOL 969 3 (A); and

Affirmative Portfolios CC v. Transnet Ltd t/a Metrorail

[2009] 1 All SA 303 (SCA)

[44] I now turn to the question of, how much the Respondent was supposed to pay to the Appellant, and what was in fact paid according to the evidence and what is regarded as common cause between the parties in this regard.

[45] PAYMENTS MADE BY THE RESPONDENT TO APPELLANT THAT ARE COMMONCAUSE BETWEEN THE PARTIES:

The evidence shows that the Respondent has paid a total amount of R45,000.00 to Appellant in respect of the Option Agreement and

R33,833.00 in respect of the Lease Agreement which amounts were paid specifically in respect of rental.

[46] PAYMENTS THAT RESPONDENT WAS SUPPOSED TO MAKE TO THE APPELLANT IN TERMS OF THE TWO AGREEMENTS:

[47] In applying the interpretation to the two contracts in casu, Respondent was supposed to pay R60,000.00 in respect of the Option Agreement,

i.e. three months rental, and R75,000.00 in respect of the Lease Agreement, i.e. one month rental as well as two months' notice period in the amount of R25,000.00 per month. I have already referred to these figures above.

[48]

CONCLUSION:

It is clear that, having regard to what was supposed to have been paid and what was in fact paid, the only conclusion is that there is a shortfall of R15,000.00 in respect of the Option Agreement and R44,167.00 in respect of the Lease Agreement. On the basis set out above, and against the backdrop of my finding that the two non-variation clauses passes the muster of a non-variation clause on an interpretation thereof, I find that Respondent is indebted to the Appellant in the amounts of R15,000.00 and R44,167.00 respectively.

[49] OTHER ARGUMENTS:

There were also further arguments before us, such as:

[49.1] That the two contracts were null and void due to the fact that both, or either one of them, were in contravention of the Consumer Protection Act ("CPA"), 2008, Act 68 of 2008, and the National Credit Act, 2005, Act 34 of 2005; and

[49.2] That evidence that was allowed by the Magistrate should not have been allowed on account thereof that the basis of the evidence never formed part of the pleadings before the Court a quo. It was argued in this regard that parties are bound to their pleadings and it cannot be expected of one party to answer to any evidence tendered by the other party if the latter did not incorporate the subject matter in his/her or its pleadings.

[50] First and foremost, I must mention that the Magistrate found that:

"Plaintiff (Respondent in casu) replied to the counterclaim by pleading that the Option Agreement did not comply with the necessary legislation to wit the Consumer Protection Act as well as the National Credit Act."

[51] The Magistrate also correctly found that in accordance with Rule 6.11 of the Magistrates' Courts Rules, there is an obligation on a party to specifically plead that he has complied with the provisions of specific acts if those Acts are required to be complied with as part of the cause of action.

[52] In this regard Rule 6.11 provides as follows:

"6.11 If a claim is founded on any cause of action arising out of or regulated by legislation, the plaintiff shall state the nature and extent of plaintiff's compliance with the relevant provision of the legislation."

In this regard it is accepted that the reference to a Plaintiff would include a Defendant where he institutes a counterclaim, where he is the Plaintiff in terms of the counterclaim.

[53] The Magistrate found that Appellant had the burden of proof to prove validity of the Option Agreement in that it complied with the legislation. The legislation herein referred to is the Consumer Protection Act and the National Credit Act. This finding the Magistrate made, notwithstanding the fact that it was the Respondent (Plaintiff in the Court a quo) who specifically pleaded that the Plaintiff was supposed to comply with these legislation. Plaintiff never pleaded anything whatsoever in this regard.

[54] The Magistrate did, however, mention that the counsel for Defendant (Appellant in casu) made submissions in his Heads of Argument regarding the applicability and consequences of these Acts, but seems to have thought that those submissions would only have a bearing on the onus of proof, and not whether or not these Acts should or should not have been pleaded by the Appellant in terms of Rule 6.11 of the Magistrates' Courts Rules in the event that they do not apply [my emphasis] to the particular cause of action.

[55] It is trite that if a party relies on statutory provisions or the fact that he complied therewith, the provisions should be pleaded.

See: Nuwe SA Prinsipale Beleggings Bpk v. Saambou Holdings, 1992(4) SA 696 (W) on 707;

P. Trimborn v. Grave Trucking CC, 2006(1) SA 427 (430)

In the same vein, if a party relies on an implicit provision of a statute, the provision should be pleaded.

See: Arun Property Development (Edms) Bpk v. Stad Kaapstad,

2003(6) SA 82 (C)

Logic dictates that in the event that where a party does not rely on compliance of a statute and/or is not required to rely thereon to be successful in his claim, there is no obligation on him to plead that it is not expected of him not to comply to such statute.

A negative allegation can hardly be susceptible to prove of the existence thereof:

See: C.4.19.23

"Perrum naturam, factum negantis probation nulla cit."

[56] The question whether or not these two acts applies to either of these two contracts were properly ventilated before us and I now turn to the question whether or not they do apply to the said two contracts.

[57] In order to determine whether or not any transaction (in particular the two "transactions forming part of the two non-variation clauses in casu) falls within the ambit of the Consumer Protection Act or the National Credit Act, it is in my view important to determine the nature and characteristics of the particular transactions as a first step. As a second step, one should then compare the characteristics and nature of the transactions to those contemplated in the two Acts.

[58] CHARACTERISTICS AND NATURE OF THE "OPTION AGREEMENT":

The Option Agreement:

In this agreement we find that:

[58.1] there is a seller and a buyer of land;

[58.2] this agreement is not an outright sale of the particular land;

[58.3] in terms of the agreement an "option to buy" is granted by the seller, to an "option holder";

[58.4] the "option holder" obtains the "option" on certain conditions; See: paragraph 1 of Annexure "P1" on page 56 of the papers

[58.5] an exclusive option is granted to the option holder to purchase the property of which the seller is the owner, subject to the terms of the option as set out in paragraph 1 of the Option Agreement;

[58.6] the consideration payable to obtain the "option to purchase" is an amount of R100,000.00 which will be regarded as a "non- refundable deposit" payable by the option holder to the seller.

[59] From the above, it is clear that the transaction is simply an "option" to buy certain land and in order to secure this "option", the "option holder" will pay an amount of R100,000.00 as consideration for the granting of the option.

[60] To my mind this can never be interpreted that the subject matter to be "sold" is the land itself. It is in fact the "option" to buy the land that is paid for here. Land, however, indirectly may or may not ultimately be sold.

[61] TRANSACTION IN TERMS OF THE CONSUMER PROTECTION ACT ("CPA"):

[62] In terms of section 1 of the CPA, a "transaction" is divided into two possible transactions, i.e. those in paragraph (a) referring to a person acting in the ordinary cause of business and

(b) an interaction contemplated in section 5(6), irrespective of whether it falls within paragraph (a).

[63] To my mind the transaction in casu can never fall under paragraph (b) of the definition simply because paragraph (b) refers to interactions as envisaged in section 5(6) of the Act, which in turn deals with goods or services delivered or rendered in the ordinary course of the business and/or franchise agreements, which are not applicable here.

[64] However, paragraph (a)(ii) should be considered, which reads as follows:

"Transaction means -

(a) in respect of a person acting in the ordinary course of business:

(i)...

(ii) the supply by that person of any goods [my emphasis] to or at the direction of a consumer for consideration [my emphasis]."

[65] In my view, the above calls for consideration of two aspects, i.e.

(a) what (who) is a person (acting in ordinary course of business); and

(b) whether the granting of an "option to buy / or obtain land falls under the umbrella of "supply of goods" to a consumer for consideration.

[66] The latter aspect, i.e. definition of "goods" is also to be found in section 1 of the Act, and insofar it pertains to land or property, goods is described as follows:

"Goods includes:

(a)...

(b)...

(c)...

(d) a legal interest in land or any other immovable properly, other than an interest that falls within the definition of 'service' in this section; and

(e)"

[67]

In casu, as mentioned above, the "option holder" obtained an "option" to buy land or immovable property.

In my view, this "option" that the "option holder" obtained, needs no stretch of imagination to conclude that he in fact obtained a "legal interest" in "land or any other immovable property" as mentioned above.

[68] I therefore find that the transaction between the parties to be found in the so-called "Option Agreement" falls within the ambit of the definition of "goods" as contemplated by the CPA.

[69] The above finding can to my mind, however not be conclusive of the fact that the "Option Agreement falls within the ambit of the Consumer Protection Act.

[70] The agreement, to my mind, still has to pass the muster that it must be:

(a) in respect of a person acting in the ordinary course of business.

[71] From the facts it is common cause that the seller was the owner of the property involved and, according to the evidence, this is clearly a once-off deal. Simply put: it is an owner of immovable property, selling that property in a once-off deal, to a buyer or granting an "option to buy" to such potential buyer.

[72] The above begs the question as to what the words "in respect of a person acting in the ordinary course of business" means.

[73] In section 1 of the CPA, business is defined as follows:

" 'Business' means the continual marketing of goods or services." [my emphasis]

[74] There is no definition of "person acting in the ordinary course of business".

[75] In my view, this is not a strange phenomenon simply because the word "business" implies in its definition "continual activities", i.e. continual marketing of goods or services. In my view that would exclude an incidental or once-off sale of an article that fits the description of "goods" or even a once-off incidental supply of service by an individual to a consumer where the so-called supplier is not ordinarily in the business of selling or supplying goods that would otherwise fall within the ambit of the Consumer Protection Act.

[76] On the above interpretation, I find that the deal between the parties whereby the "option holder" becomes entitled to rights in respect of immovable property, does not fall within the ambit of the Consumer Protection Act.

[77] THE LEASE AGREEMENT:

The lease agreement is, simply put, an agreement in terms whereof the lessee leased immovable property from the lessor, who, according to the evidence, is not in the business of leasing property.

The lessor clearly wanted (and did) lease his property to the lessee for an unspecified term and at an agreed monthly rent.

[78] Along the very same argument as set out above (paragraphs 62 to 76) in respect of the "option holder" I can find no reason in law or logic that the Consumer Protection Act would apply to the once-off lease agreement.

[79] I therefore find that the Consumer Protection Act is not applicable to either of the two agreements forming part of the transactions between the parties.

[80] THE NATIONAL CREDIT ACT, 2005, ACT 34 OF 2005:

I do not find it necessary to repeat the given facts on how it came about that the Respondent came in possession of the property as a lessee.

The only question to the answer is whether the private lease agreement falls within the ambit of the National Credit Act.

[83] THE FOLLOWING FACTS REGARDING THE CHARACTERISTICS AND NATURE OF THE LEASE AGREEMENT ARE COMMON CAUSE:

[83.1] All lease I rent amounts payable by Respondent were to be paid in advance by the lessor;

[83.2] At no stage did the Appellant grant any "credit" to the lessor;

[83.3] Even in respect of the purported sale of the property, there was no hint of a suggestion that the seller would grant a bond to the buyer as security for the sale of the property;

[83.4] Although the first agreement was an option agreement it contained a lease agreement of the property in terms whereof occupational rent was payable by the option holder;

[83.5] It is obvious from both agreements that they were lease agreements of immovable property.

[84] Section 8(2)(b) of the National Credit Act reads as follows:

"8(2) An agreement, irrespective of its form, is not a credit agreement if it is:

(b) a lease of immovable property; or

(c) ..."

[85] In view of the above I conclude that the National Credit Act does not apply to any of the two agreements between the parties.

[86] In conclusion, it must be pointed out that the Magistrate found that the burden of proof lied with the Appellant to prove that the Consumer Protection Act and the National Credit Act was not applicable to these transactions and further that Appellant therefore had an obligation in terms of Rule 6(11) to plead that these Acts are applicable and that Plaintiff complied with same.

[87] In my view Rule 6(11) is clear in that there is only an obligation on a Plaintiff to plead applicability and compliance of an Act or Regulation if or in the event that the Act or Regulation is applicable.

Plaintiff will then have the burden of proof to prove the compliance of the Act so pleaded.

[88] In casu it is clear that Defendant pleaded that the two Acts were applicable and it is trite that the party who pleads in this fashion, has the burden to prove his allegation.

See: Groenewald v. Minister van Justisie, 1972(3) SA 956 (0) 600 B

[89] Defendant failed to prove that and the Magistrate, in my view, erred to find that there was such burden of proof on the Plaintiff.

[90] CONDONATION FOR LATE FILING OF APPEAL:

[90.1] The Appellant filed an application for condonation of the late prosecution of his appeal.

[90.2] No opposing papers were filed by Respondent to this application and neither was this aspect ventilated in Court, in the sense that Respondent was opposing the Applicant's condonation application;

[91] Insofar as it might be necessary, condonation of Appellant's late prosecution of his appeal is therefore granted.

[92] Under the circumstances, I do not find it necessary to make any ruling with regard to the dispute between the parties that evidence that was allowed by the Magistrate should not have been allowed on account thereof that the basis of the evidence never formed part of the pleadings before the Court a quo.

[93] Under the circumstances the appeal of both claims is upheld.

[94] The judgment in the Court a quo is set aside and substituted with the following:

CLAIM 1:

1. Judgment is granted against Respondent (Plaintiff in the Court a quo) , in the amount of R15,000.00;
2. Interest on the amount of R15,000.00 calculated at the prescribed moratore interest rate from the 1st day of October 2013 to date of payment
3. Costs of the action on a party and party scale;

CLAIM 2:

1. Judgement is granted against Respondent (Plaintiff in the Court a quo) , in the amount of R44,167.00;
2. Interest on the amount of R44,167.00 calculated at the prescribed moratore interest rate from the 1st day of October 2013 to date of payment;
3. Costs of the action on a party and party scale.

F.DIEDERICKS AJ

JUDGE OF THE GAUTENG DIVISION, PRETORIA

I concur and it is so ordered.

E.M. KUBUSHI J

A187/17

Heard on:

8 February 2018

Counsel for the Appellant: Adv. W. Gibbs

Instructed by: Van Eeden Rabie Incorporated

Counsel for the Respondent: Adv. Z.F. Kriel

Instructed by:

Du Toit's Attorneys

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