

SOUTH AFRICA / JUDGMENT

Swarts N.O and Another v Gouws N.O and Others (23604/2021) [2023] ZAGPPHC 679 (10 August 2023) [2023] ZAGPPHC 679

COURT

North Gauteng High Court, Pretoria

BEFORE

Munzhelele

CASE / FILE NUMBER

23604/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case No: 23604/2021

REPORTABLE: NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED

Date: 10 August 2023

In

the matter between:

JOHANNES
PETRUS ERASMUS SWARTS N.O
Plaintiff
ANNETTE
VAN ZYL N.O
In
their capacity as trustees of the
Johan
Swarts Family Trust registered
under
Trust No: 489[...]
And
JOHANNES
FREDERICK GOUWS N.O
Defendant
LYNETTE
GOWS N.O
Second
Defendant
WILLEM
JACQUES GOUWS N.O
Third
Defendant
GEORGE
RAYMOND SLOANE N.O
Fourth
Defendant
In
their capacity as trustees of the WM
Gouws
Family Trust registered
under
Trust No:302[...]
JHJ
HOLDING CO (Pty) Ltd
Fifth
Defendant
EVENING
SHADE PROPERTIES 46 (Pty) Ltd
Sixth
Defendant

JUDGMENT

Munzhelele J

- [1] The plaintiffs brought a counter-claim contending in their declaration that an oral agreement for the sale and purchase of shares, amounting to 33,3% and 7,69% of the WM Gouws Family Trust held in the JDJ Company and Evening Shade Company, exists between the plaintiffs, and the defendants. The plaintiffs assert that they have complied or tendered compliance on their end. Consequently, the plaintiffs seek the court's directive to enforce the transfer of the shares against the plaintiffs' payment, along with costs of suit.
- [2] The defendants, opposed the application and in their plea, denies the existence of a binding verbal agreement for the sale of shares between Johan Swarts Family Trust and WM Gouws Family Trust. The defendants maintain that the stipulated condition for the oral agreement was the drafting of a written agreement, subject to consideration and approval by WM Gouws Family Trust and Johan Swarts Family Trust. However, this condition was not met. The first plaintiff indicated an intent to involve their attorney after receiving the drafted agreement, effectively signalling that the written agreement was essential to establish the contract's force and effect. The defendants assert that the verbal agreement lacked the necessary elements to constitute a legally binding and enforceable contract. They further posit that the trustees of WM Gouws Family Trust did not participate in the decision-making process and did not authorize the sale of shares to Johan Swarts Family Trust. Alternatively, the defendants claim that the plaintiffs repudiated the agreement through their letter dated 25 March 2020, which was subsequently accepted by the defendants. As a result, the defendants initiated the section 163 application under the Companies Act[1].

Background

facts of the case

- [3] The entity known as JDJ Holding Company (Pty) Ltd, bearing registration number 200[...] (hereinafter referred to as "JDJ Company"), is composed of three shareholders, namely Olympus Trust, WM Gouws Family Trust, and Johan Swarts Family Trust. On 20 March 2020, JDJ Company convened an annual general meeting of its shareholders at 349 Brage Avenue, Annalin West, in Pretoria. The purpose of this meeting was among others, to deliberate on a proposal put forth by WM Gouws Family Trust on 4 March 2020, which was subsequently circulated on 5 March 2020 for inclusion in the meeting's agenda. The shareholders in attendance included Mr. J Gouws from WM Gouws Family Trust, Mr. JPE Swarts from Johan Swarts Family Trust, and Mr. D Kruger representing Olympus Trust. The proceedings of this meeting were duly recorded and transcribed, and the transcribed record has been filed.

- [4] During the aforementioned meeting, WM Gouws Family Trust introduced a proposal that was presented for consideration to the shareholders of JDJ Company. This proposal encompassed three distinct options. The first two options were not approved, leaving the third option as the most equitable solution for further deliberation.

Option 3 Proposal

- [5] Option 3 entails the following: The collective book values of JDJ Company's investments, as reflected upon, and are to be allocated among the shareholders in such a manner that one shareholder will retain ownership within the company, while the remaining two parties will receive a significant cash sum of twenty-five million Rand (R25 000 000,00) each in exchange for their exit from the company. Consequently, one shareholder will retain ownership of JDJ, while the other two shareholders will possess the funds to utilize at their discretion.

5.1 Notable considerations for this option include: • The selling shareholders will receive cash proceeds for investments that lack immediate convertibility to cash, particularly BBC2, Tamboti, and Evening Shade. • This option represents the exclusive means by which shareholders will terminate their medium-term business relationship. The conclusion of CFM is imminent in the short term. • Valuation remains subject to individual perspectives. • Paying an excess of two point five million rand (R2 500 000,00) to EY for valuation is counterproductive for all parties. Thus, a reasonable and logical approach has been employed to value JDJ's investments, relying on the principles of cash flow and fair value: Disparities in valuation opinions among the parties will not significantly impact the net cash flow. • Anticipated net cash flow from contracts through Zamori until the commencement of 2021 has been factored into the assessment.

5.2 WM Gouws Family Trust does not object to the sale of its shares nor to remain the sole remaining shareholder. The decision on whether to proceed with the sale or retention of shares rests with Olympus Trust and Johan Swarts Family Trust. Johan Gouws, representing WM Gouws Family Trust, asserts that this option presents the most equitable and appropriate method for terminating the business relationship, ensuring the continuity of the businesses, preserving employment for the employees, and avoiding further expenditure on legal fees. For transparency, the detailed calculations are attached for the shareholders' review. These calculations will also be submitted to Savage Jooste & Adams for incorporation as an agenda item in the upcoming shareholders' meeting on 20 March

2020. Shareholders are hereby urged to thoroughly consider the proposal and its ramifications before the aforementioned meeting. Should shareholders not find favor with the proposed options, they are invited to present alternative propositions that would serve the collective interests of all parties and the enterprises, subject to prior consideration before the shareholders' assembly.

- [6] Following Mr. Gouws' presentation of the proposal for the shareholders' assessment, Mr. Kruger, representing Olympus Trust, was unable to deliberate on the proposal due to an existing court

judgment concerning the sale of its shares. Consequently, the discussion of the proposal was left to the remaining two family trusts, namely WM Gouws Family Trust and Johan Swarts Family Trust.

- [7] The transcribed record and the testimonies provided by Mr. Swarts and Mr. Gouws served as essential evidence for the court's evaluation of the likelihood of an oral agreement for the share sale. The transcribed record was translated into English, and all shareholders concurred that the translation accurately captured the discussions during the meeting.
- [8] In the course of the deliberations at the Annual General Meeting, (AGM) meeting, Mr. Swarts of Johan Swarts Family Trust expressed that "the trust does not seek to sell its shares. However, if WM Gouws desires to sell, Johan Swarts Family Trust is willing to accept the presented offer at the stated price and under the outlined conditions"[2]. In response, Mr. Gouws indicated, "if you wish to buy me out or accept the offer, that's fine with me. We can proceed in that

manner"[3].

- [9] Mr. Gouws sought clarification from Mr. Kruger regarding the intended recipient of the shares' sale - whether JDJ Company or Johan Swarts Family Trust. Mr. Kruger confirmed that the shares were to be sold to Johan Swarts Family Trust, which would consequently hold a 66% stake in JDJ Company. Mr. Gouws concurred with this clarification. He elaborated that although his initial draft had suggested JDJ Company repurchasing the shares, his later reflections led him to view the distinction as immaterial. Mr. Swarts concurred, emphasizing that the identity of the buyer was inconsequential[4].
- [10] Mr. Swart requested a thorough discussion on the conditions of the sale. However, Mr. Gouws specified that a singular condition pertained to the retiring party refraining from future involvement in the company was crucial. Upon realization that an oral agreement was reached, the parties contemplated formalizing the offer and acceptance through a draft contract. Mr. Swarts asserted his right to retract the offer if any inaccuracies emerged after the acceptance. Mr. Gouws acknowledged and understood this position[5].
- [11] Mr. Swarts inquired about the tax implications for a shareholder who agrees to the valuation and distribution within JDJ Company. He noted that such an agreement would entail capital gains tax. Considering the valuation and the offer, the shareholder would experience no net gain, as dividends would offset the purchase cost. This issue, was never entertained[6].
- [12] In light of these discussions which culminated into an oral agreement, Mr. Kruger advised Mr. Gouws to draft an agreement formalizing the sale of WM Gouws Family Trust's shares to Johan Swarts Family Trust. Mr. Gouws sought guidance on the approach to drafting the agreement, considering whether it should be jointly created by him and Mr. Swarts. A proposition was made for Magdel, the attorney of JDJ Company, Johan Swarts Family Trust, and WM Gouws Family Trust, to undertake the drafting. However, Mr. Swarts declined the suggestion of both of them going to the attorney, expressing concerns about potential

disagreements in the presence of the attorney. Trusting that Mr. Gouws would faithfully convey the mutually accepted verbal agreement, Mr. Swarts intended for Mr. Gouws to oversee the drafting process. Mr. Swarts would solely be furnished with the initial draft of the agreement for review, and if deemed necessary, he would forward it to his personal legal counsel[7]. Subsequently, following the attorney's completion of drafted agreement, the agreement proposed new term concerning payment of R25 million after tax proposal, Mr. Swarts disputed the contents, asserting that they did not accurately reflect the terms of the oral agreement, as communicated in his letter dated 25 March 2020 which letter was advising the attorney about such discrepancy.

- [13] Following a lapse of time without the parties executing their oral agreement, the defendants initiated an application under Section 163 of the Companies Act 71 of 2008. This application directed JDJ Company and Evening Shade Properties 46 (Pty) Ltd (Evening Shade) to either purchase the shares of WM Gouws Family Trust or undergo liquidation. The plaintiffs responded with a counter-application, asserting the existence of a valid contract arising from 20 March 2020 AGM meeting. The application was brought before Madam Justice Koovertjie who referred the counter-. application for trial first. Declarations were filed by the plaintiffs on 17 March 2022, and the defendants countered with their plea on 22 March 2022[8].

Arguments by the Parties

- [14] The plaintiffs argued that a valid verbal agreement was reached; encompassing the essential terms of a sale agreement, including the specific shares' sale, the parties involved, and the purchase price. They contend that these essentials were sufficient to establish a legally enforceable agreement, and further terms were unnecessary for contractual validity. The plaintiffs cited legal precedent, including *Loggenberg No v Maree*[9], and *Commissioner for Inland Revenue v Wandrag Asbestos (Pty) Ltd*[10] to support their assertion that the agreement's essentials are binding and enforceable. On the contrary, the defendants deny the formation of a valid agreement due to the absence of a written contract as a stipulated condition. They stress that the materialization of a written and signed agreement was a prerequisite for contractual force.
- [15] The defense contends that the WM Gouws Family Trust's trustees were not involved in the sale decision, rendering the agreement unenforceable. The plaintiffs counter this assertion, arguing that the defendants bear the burden of proving their defense. They further emphasize that Mr. Gouws had consistently represented the trust in dealings with the companies and shareholders, thereby implying his authority to act on their behalf. The plaintiffs draw parallels with the case *bf Makate v Vodacom*[11], arguing that Mr. Gouws' conduct established apparent authority. They also emphasized that this was a meeting of the shareholders', wherein Mr. Gouws acted as WM Gouws Family ,rust's representative in this discussion of the selling of shares.

[16] The defendants claim that the plaintiffs repudiated the agreement by refusing to address tax implications and indemnification clauses. They assert that the plaintiffs' conduct indicated an unequivocal intention to disregard the agreement's terms. In response, the plaintiffs argue that their letter dated 25 March 2020 sought legal advice and clarified aspects of the proposal, rather than repudiating the agreement. The plaintiffs contend that the letter did not pertain

to the agreement established on 20 March 2020 but to the proposal drafted by the attorney.

Discussions

[17] The onus rest on the plaintiffs to establish the existence of a concluded oral agreement. see Kaplan and Radus v Benjamin and Others[12]. In Ptout v North Cape Livestock Co-operative Ltd[13]: Corbett said:

"The question which arises, accordingly, is whether the undertaking, given as it was during the course of uncompleted negotiations, had, or has been shown to have had, contractual force. Was the undertaking an offer made, *animo contrahendi*, which upon acceptance would give rise to an enforceable contract, or was it merely a proposal made by the appellant while the parties were in the process of negotiating and were feeling their way towards a more precise and comprehensive agreement? This is essentially a question to be decided upon the facts of the particular case."

[18] During the oral evidence the plaintiffs emphasized that a binding agreement was reached on 20 March 2020 at the AGM meeting, involving an offer by WM Gouws Family Trust and its acceptance by Johan Swarts Family Trust. The plaintiffs argue that the contract was finalized, with no additional conditions, during this meeting. They stress that no indication was given that the oral agreement was provisional or subject to future negotiation. The plaintiffs refute the defendants' claim that tax payment was a condition of the agreement, as it was not part of the proposal and was not discussed during the meeting.

[19] Based on the facts presented above, I find it evident that the acceptance of a proposal accompanied by the conditions delineated in option 3 in response to the offer or proposal unequivocally signifies the manifestation of intent to establish a contractual relationship. This transaction signified a clear intention to mutually engage in a contractual relationship, consequently, this act has given rise to a valid and legally binding agreement, thereby engendering legal rights and responsibilities upon the respective parties.

[20] All requisite elements essential for the formation of a contract of sale have been duly satisfied. Notably, the identification of the buyer and seller was unequivocal, as they are recognized shareholders. The shares comprising the subject matter of the sales

agreement were unambiguously defined. The stipulated price of R25 million was both proffered and accepted. Furthermore, a consensus has been established through mutual concurrence between the contracting parties during the course of the aforementioned meeting.

- [21] Upon an assessment of the factual circumstances of this case, it is evident that the parties have effectively addressed all the terms stipulated within their oral agreement. Consequently, no additional conditions remain outstanding or in a state of suspension, thereby obviating the need for subsequent fulfillment. Consequently, upon the acceptance of the proposition by Mr. Swarts: a legally binding agreement has duly crystallized.[14]
- [22] The testimony presented by the first defendant asserts that their proposition entailed the WM Gouws Family Trust divesting itself of shares in JDJ Company and Evening Shade, thereby effecting a sale back to JDJ Company, rather than to the Johan Swarts Family Trust. The stipulated consideration for the shares amounts to R25 million, under the proviso that the tax liability is to be discharged by Zamori using funds from its cash reserve. Johan Swarts duly acceded to this proposition, yet subsequently declined to fulfill the tax obligation as agreed upon. In contradiction to the assertions presented by the defendants, the plaintiffs provided their own testimonial evidence, asserting that the designated price was indeed R25 million rand, devoid of any attendant stipulations. Subsequently, upon discovering a divergent proposal attributed to attorney Magdel van Biljon, the plaintiffs proceeded to write a letter dated 25 March 2020, thereby rectifying the proposal formulated by attorney Mrs. Magdel van Biljon pertaining to the proposition to remit R25 million, exclusive of tax, as consideration for the shares held by WM Gouws

Family Trust.

- [23] Upon meticulous examination of Proposal 3 and the verbatim transcription of the proceedings held on 20 March 2020, it is my view that, it has become evident that the testimony furnished by the first defendant has diverged substantially, thereby introducing provisions that were not originally characterized as conditions during the said meeting, nor were they integral to the composition of the proposal. The contentions put forth by the defendants within the ambit of their substantive legal arguments, as expounded in paragraph 46, are therefore inaccurate and have the potential to mislead.
- [24] Regarding the issue that JDJ Company was to buy the shares and not Swart Family Trust, during the convened meeting, Mr. Gouws directed an inquiry to Mr. Kruger, seeking elucidation on the intended recipient of the shares-whether JDJ Company or the Swarts Trust. In response, Mr. Kruger provided clarification, affirming that the shares were destined for acquisition by Johan Swarts Family Trust.[15] Following Mr. Kruger's elucidation, Mr. Gouws reflected on it and subsequently declared the identity of the recipient to be inconsequential or immaterial. He refrained from availing himself of the opportunity to apprise the shareholders of his constrained mandate, limited to the sale exclusively to JDJ Company.[16] Hence, he opted to characterize the issue as being devoid of significance. Manifestly, by adopting the position of deeming the

issue immaterial, he must be reasonably construed to have intended to convey his acquiescence to the proposition that the shares were, indeed, to be transferred to Johan Swarts Family Trust and there by taking a decision on behalf of the WM Gouws Family Trust as a representative thereof. The matter was conclusively resolved and its immaterial nature was similarly acknowledged by Mr. Swarts.

[25] In relation to the price of the shares in the amount of 25 million after tax, it is notable that Option 3 lacked any explicit provision stipulating that tax would be discharged by Zamori from its cash reserve. The proposition presented entailed a cash payment amounting to R25 million for each of the two selling shareholders, with any cash deficit arising from the purchase price to be drawn from the cash reserves of Zamori. During the convened session, when Mr. Swarts endeavored to engage in a discussion concerning the tax ramifications, as detailed on page B6-193, paragraph 5, when Mr. Gouws responded by failing to provide clarity on the matter. Instead, Mr. Gouws inquired,

"Okay, then can I just ask, Johan what time scale should we link, or how do you think we should approach it? Must I have an agreement drawn up what do y u want?"[17]

[26] Mr. Gouws' demeanor and behavior, marked by dismissiveness, in response to Mr. Swarts' inquiry regarding the tax matter, does not seem to ascribe the status of a substantive term possessing sufficient significance within the oral agreement as seen on the above paragraph 25. Therefore, its elucidation or discourse during that meeting does not appear essential, as indicated by Mr. Gouws' dismissive response to Mr. Swarts' concern. Additionally, it is noteworthy that the issue of tax was not even encompassed within the proposal tabled for deliberation, aimed at achieving the requisite level of binding agreement in accordance with Option 3. Hence, characterizing it presently as a term capable of invalidating the existence of the oral agreement would likely result in a misleading interpretation. Consequently, I arrived at the determination that the assertion made by the defendants, namely, that the trust intended to vend its shares at the value of R25 million tax free, contingent upon the tax liability being settled from Zamori's cash reserves, and that this precondition necessitated consensus prior to the formation- of the agreement between the parties, is erroneous. The non-agreement on such a tax-related issue, which is deemed immaterial in nature, does not possess the capacity to impede the contractual efficacy of the agreement. See the case of Cgee Alsthom Equipments Et Enterprises (Electriques, South African Division) v GKN Sankey (Pty) Ltd[18] when the following statement was made:

"The existence of such outstanding matters does not, however, necessarily deprive an agreement of contractual force."

[27] In relation to the assertion of the contract repudiation attributed to the plaintiffs' refusal to remit tax, it is imperative to initiate this analysis with regard to the argument as delineated in paragraphs 78.2 and 78.3 of the defendants' heads of arguments. It is pertinent to highlight that such argument does not accurately align with the content of Option 3 proposal, as elucidated in the aforesaid paragraphs. Consequently, the incorporation of

these supplementary propositions renders them misleading. Therefore, the behavior exhibited by the plaintiffs, manifested through their decline to effect tax payment, as indicated in the letter dated 25 March 2020, in my view, should not be construed as tantamount to repudiating the contract. This conclusion is underpinned by the fact that the stipulated condition, which they have declined to fulfill, neither comprised an integral element of the initial proposition nor was it included in the deliberations of the shareholders' meeting convened on 20 March 2020.

- [28] The first defendant contends that the transfer of shares to Johan Swartz Family Trust lacked the authorization of the remaining trustees within WM Gouws Family Trust. This contention arises from the premise that the initial proposal envisaged JDJ Company as the purchaser of shares from the two selling shareholders. My aforementioned stance elucidates that, in my assessment, the demeanor of Mr. Gouws and his corresponding response underscored this issue. The jurisprudential basis for ascertaining authority resides in the observed conduct of Mr. Gouws during the convened assembly. Furthermore, concurrence is extended to the plaintiffs' assertion, which underscores that Mr. Gouws has consistently acted as a representative of the trust since 2004, overseeing all interactions with corporations and shareholders in a representative capacity. The board of trustees had duly empowered Mr. Gouws to formulate and present the proposition during the shareholders' meeting, an assembly that solely accommodated shareholders who were acting in their representative status. Hence, he made decisions on behalf of WM Gouws Family Trust on date of the meeting, wherein he declared the question of whether to sell the shares to JDJ Company or to Johan Swartz Family Trust as inconsequential or immaterial.
- [29] Finally, the salient observation from the shareholders' assembly pertains to Mr. Gouws' response upon realization that a legally binding oral agreement had been consummated. In this regard, he sought counsel from Mr. Kruger concerning the subsequent course of action, as documented in Page B6-192, paragraph 5, wherein Mr. Gouws inquired, "so what will it be, must we draw up an agreement?" To which Mr. Kruger responded, "you will have to draw up an agreement where you, your interest, the trust makes its interest in the JDJ Holdings company available or sell it to Swartz Trust." The advisement conveyed was that an agreement should be formally documented in writing. It is my position that the mere desire for a written rendition of the agreement did not serve to introduce a new contractual term. Rather, the sole intent was to safeguard the interests of the family trusts, with no intention to impugn the validity of the existing oral agreement. Had such an intent been present, it would have been explicitly articulated within the proposal that the agreement's validity was contingent upon its transcription and execution. Interpreting the request for a written embodiment of the oral agreement as indicative of a substantive contractual condition mandating the drafting and execution of a formal contract would be disingenuous on the part of the defendants or any party advocating such a position. My opinion is that the intent was centered on safeguarding the parties' interests through a written instrument.

- [30] Additionally, subsequent to the culmination of the meeting, there exists no indication on the part of the involved parties that the oral agreement was of a provisional nature, subject to suspensive conditions or ongoing negotiations. Construing Mr. Swarts' statement in a manner that infers the introduction of a suspensive condition into the concluded oral agreement would be incongruous with the particular context of his statement. The totality of Mr. Swarts' assertion was centered on the proposition that he should be furnished with the finalized written contract, with the possibility of involving another legal practitioner only if such becomes necessary. The conditional utilization of another attorney was expressly contingent on necessity. This renders evident that the agreement had attained a definitive state, thereby solidifying its finality.
- [31] To conclude, subsequent to a comprehensive evaluation of all presented evidence, it can be reasonably ascertained that the plaintiffs have effectively proved their case. The proposition as was advanced by WM Gouws Family Trust and subsequently accepted by Johan Swarts Family Trust with a clear and explicit intention to formalize the establishment of a legally binding contract, primarily motivated by the deteriorated relationship among the shareholders, which had evolved to a degree where the prevailing atmosphere proved detrimental to the functioning of the entities. As a result, a valid contract was conclusively established. This has resulted in the agreement acquiring the legal status of an enforceable contract.

Order

[32] In the result the following order is made:

1. The first, second, third and fourth defendants are jointly directed to transfer to the first, second and third plaintiffs jointly the 33,33% of shares that the first, second, third, and fourth defendants jointly hold in the fifth defendant and the 7.69% of the shares that the first, second, third and fourth defendants jointly hold in the sixth defendant against payment by the first, second and third plaintiffs jointly of an amount of R25 million (twenty-five million rand) to the first, second, third and fourth defendants jointly.
2. The first, second and third plaintiffs are jointly directed to pay the amount of R25 million to the first, second, third and fourth defendants jointly against transfer to the first, second, and third plaintiffs jointly of 33,33% of shares that the first, second third and fourth defendants jointly hold in the fifth defendant and the 7.69% of the shares that the first, second, third and fourth jointly hold in the sixth defendant.
3. The counterclaim is successful with costs including costs of senior counsel.

M Munzhelele J

Judge of the High Court, Pretoria

Heard On: 22 - 26 May 2023 Electronically Delivered On: 10 August 2023 Appearances: For the Plaintiffs/ Respondents: Adv S.D Wagener SC Instructed by: Weavind & Weavind For the Defendants/ Applicants: Adv P.L Uys Instructed by: Savage Jooste & Adams

[1] 71 of 2008

[2] Refer to page B3-142, paragraph 5 of the transcribed meeting record

[3] Refer to page B-3142, paragraph 20 of the transcribed version

[4] Refer to B3-145, paragraphs 10-25 and B3-146, paragraphs 20-25, and page B3-147)

[5] Refer to page B-144, paragraphs 5-25 of the transcribed record

[6] Refer to B. 3-146, paragraph 5 of the transcribed record

[7] Refer to B3-145, paragraphs 10-25 and B3-146, paragraphs 20-25, as well as page B3-147, paragraph 5

[8] Refer to B1-18. See also paragraph 1 and 2 of this judgment

[9] (2018 JDR 0425, SCA)

[10]

[1994] ZASCA 148; (1995 (2) SA 197, A)

[11] (2016 (4) SA 121, CC)

[12] 1928 TPD 180 at page 183

[13] 1977(4) SA 842(A) at 850C-D

[14] See Boudewyn Hamberg De Vries Smuts v Department of Ecomnomic Development and Environmental Affairs 2010 JDR 0918 (ECB) para 6-11.

[15] Page B6-192, paragraphs 10-15

[16] Page B6-192, paragraph 20

[17] See Page B6- 193, paragraph 5

[18] (128/86) [1986] ZASCA 108; [1987] 3 All SA 619 (AD)

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Prepared on 10 October 2026 · Esheria