

SOUTH AFRICA / JUDGMENT

Exxaro Coal Mpumalanga (Pty) Ltd v ABSA Bank Limited (2023/028000) [2025] ZAGPJHC 499 (27 May 2025) [2025] ZAGPJHC 499

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2023/028000

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, JOHANNESBURG)

Case

no: 2023-028000

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

SIGNATURE

DATE: 27 May 2025

In the matter between:

EXXARO
COAL MPUMALANGA (PTY) LTD
Applicant
and
ABSA
BANK
LIMITED
Respondent

JUDGMENT

WILSON J:

1 The applicant, Exxaro, is the beneficiary of a demand guarantee issued by the respondent, ABSA. The guarantee secured the performance of a third party, TDS Construction and Newrak Mining JV (Pty) Ltd (“TDS”), under a contract between Exxaro and TDS. Under that contract, TDS would construct mining infrastructure for Exxaro. It was a condition of the contract that TDS would secure

the guarantee, which ABSA ultimately provided.

2 In due course, a dispute arose on the contract, and Exxaro made a demand on the guarantee. That demand, issued on 10 June 2020, was for the full amount secured – just over R32 million. ABSA rejected that demand, on the basis that it did not conform to the terms of the guarantee. On 19 June 2020, Exxaro attempted to activate the guarantee again – this time in the amount of just over R22 million.

3 ABSA did not reject the 19 June 2020 demand, but nor did it pay out the amount demanded. It emerged during argument that ABSA’s

principal reason for refusing to do so was that it considered the 19 June 2020 demand to be no more than a renewal of the 10 June 2020 demand, which ABSA had already rejected. Because, so it was submitted, ABSA was entitled to reject the first demand, and in fact did so, ABSA was also entitled to refuse to pay out in respect of the second demand without formally rejecting it.

4 In my view, ABSA was entitled to reject the first demand, but it was not entitled to treat the second demand as no more than a renewal of the first. There were two separate demands, to each of which ABSA was required to respond as distinct attempts to call up the guarantee. While the second demand was defective in much the same way as the first, the terms of the guarantee are such that any defect in a demand may not be relied upon if ABSA fails to reject the demand within five days of it being made. In other words, if ABSA fails to reject a defective demand within five days, the demand must be treated as if it conforms fully to the terms of the guarantee, and the sum demanded must be paid out.

5 ABSA ultimately disavowed any right to argue before me that it could be released from the obligation to pay out on the second demand

because of the demand’s objective failure to conform to the terms of the guarantee. ABSA accepted that it is precluded from

raising such a defect unless it rejects the demand within five days. I am not sure that ABSA was correct to disavow that right, because it seems to me that a court's jurisdiction to determine whether, objectively, the conditions of a contract have been fulfilled can never be ousted by the terms of the contract itself. But since ABSA does not wish to take that point, I consider myself bound by its election.

6 ABSA also contended that the guarantee had expired by the time the second demand was issued, and that, in any event, to order ABSA

to meet the second demand would be unconscionable. Neither of these contentions has any merit. The second demand was made on 19 June 2020, which is the day on which the guarantee was due to expire. On the ordinary principles applicable to the interpretation of contracts, the second demand was made before the guarantee expired. Furthermore, unconscionability is not a recognised ground for refusing to meet an otherwise effective demand, and even if it were, there is nothing in Exxaro's conduct that can reasonably be described as unconscionable.

7 Accordingly, ABSA is obliged to pay to Exxaro the amount specified in the 19 June 2020 demand. In what follows, I set out my

reasons

for reaching these conclusions.

The demands made

8 On 9 June 2020, Exxaro terminated its contract with TDS on the basis that TDS had committed various unremedied breaches. TDS apparently disputed Exxaro's allegations of breach, but nonetheless accepted Exxaro's termination as a repudiation of the agreement. This underlying contractual dispute has been referred to arbitration. In that arbitration, Exxaro claims payment of contractual penalties roughly equivalent to the amount stated in its second demand.

The first demand

9 On 10 June 2020, Exxaro presented its first demand to ABSA. On 15 June 2020, ABSA rejected the demand, on the basis that it was not

clear on the face of the demand that the signatory was authorised to make it. The guarantee requires that "[w]ritten demands shall be signed by a person who warrants that he/she is duly authorised to sign". While ABSA did not expressly invoke this provision, it is clear from the correspondence that passed between the parties that ABSA was not satisfied of the signatory's authority, and that ABSA rejected the demand substantially for that reason.

10 Exxaro suggests that ABSA did not really reject the first demand, because the language ABSA used in its letter of 15 June was inconsistent with an unequivocal rejection. That, in my view, is incorrect. ABSA's letter of 15 June says that the Exxaro's demand had been "deemed unfit for processing". In the context of the guarantee, which provides for multiple demands to be made on the same basis, I fail to see what that could have meant other than that the demand was rejected. All Exxaro had to do was

submit a further demand that was "fit for processing".

11 In any event, the first demand was overtaken by negotiations between Exxaro and TDS. On 11 June 2020, TDS contacted Exxaro and asked it to stay its hand. TDS asked Exxaro to suspend its demand for a week in order to allow the parties to settle the underlying contractual dispute. Exxaro was obviously concerned that the guarantee was set to expire on 19 June 2020. On 12 June, TDS offered to procure a revised guarantee in order to extend Exxaro's security while efforts to resolve the contractual dispute went on.

12 In response to these overtures, Exxaro wrote to ABSA on 12 June 2020 and suspended the first demand. ABSA's response, on 15 June, was not a model of clarity. ABSA first complained that the demand itself was "deemed unfit for processing", but it then said that the letter suspending the first demand was not acceptable either, because it was contained in an email. Obviously,

if the first demand was "unfit for processing", then it did not matter in what form the suspension letter came, because there was nothing to suspend.

13 Mr. Bothma, who appeared for Exxaro, argued that this contradiction also entailed the underlying proposition that the first demand was never really rejected. I do not think that is correct either. The 15 June letter says that neither the demand nor its suspension were acceptable. Since it came on the last day that ABSA could have rejected the claim under the guarantee, I think the only sensible way to construe ABSA's email is that the first demand had failed.

14 In any event, by this time, Exxaro was in talks with TDS about the possibility of an extended guarantee. On 15 June 2020, Exxaro

wrote to TDS and stated that it would suspend its first demand on condition that TDS obtained a new or revised guarantee on the same terms as the existing guarantee, save that the amount guaranteed would be lowered to R22 165 055.66. That new or revised guarantee would have to be obtained before the existing guarantee expired, and would have to be valid until 30 November

2021. A further condition was that TDS had to agree not to attempt to interdict any call on the revised guarantee that Exxaro may subsequently make.

The second demand

15 That revised guarantee never materialised on these or any other terms. Accordingly, on 19 June 2020, Exxaro hand-delivered the second demand to ABSA. The second demand purported to retract the suspension of the first demand and to call up the guarantee in the sum of R22 165 055.66. ABSA never responded to this demand.

16 Mr. Amm, who appeared together with Mr. Peter for ABSA, argued that there was only ever one demand, because Exxaro suspended, and

then purported to unsuspend the first demand, albeit by making a demand on the guarantee in a substantially lower amount.

17 But this argument is contrived. It focusses only on the language Exxaro chose to deploy in its correspondence with ABSA. It requires me to ignore the context in which that language was deployed, and the sequence of events that the correspondence followed. Despite the sometimes vague language that emanates from both ABSA's and Exxaro's messages, when it is read in context, the correspondence seems to me to bear only one sensible interpretation. Exxaro issued two demands. ABSA rejected the first, but did not respond to the second.

18 Mr. Amm's argument is also inconsistent with ABSA's own contention that the first demand was rejected. If that is true,

then any subsequent attempt to make a call on the guarantee could only be treated as a separate demand, notwithstanding Exxaro's

characterisation of the second demand as an upliftment of the suspension it had placed on the first. Moreover, the fact that the

second demand was made in a different amount, based on different considerations arising from Exxaro's negotiations with TDS,

renders it artificial to treat the second demand merely as an upliftment of the suspension Exxaro placed on the first.

19 Courts are not bound by how parties choose to describe their conduct if those descriptions do not fit the facts. Here, the facts

evaluated as a whole are inconsistent with the proposition that there was one continuous demand rather than two separate ones. Moreover, the terms of the guarantee do not provide for a demand to be made and then suspended. The guarantee opts instead for a scheme that favours "the separateness" of demands: demands can be made, and then withdrawn, and then made again without prejudice to Exxaro's rights.

The interdict application

20 On 22 June 2020, TDS applied to this court for an order interdicting ABSA from making payment on the 10 and 19 June demands. The matter was enrolled before Lamont J on 2 November 2020. Lamont J delivered judgment on 16 November 2020. Lamont J found that TDS was entitled to an interdict because neither of Exxaro's demands conformed to the requirements of the guarantee.

21 Lamont J found, in particular, that neither demand warranted the signatory's authority to make a call on the guarantee; that

neither demand specifically alleged that the amount demanded was due and payable; and that neither demand was supported by a statement

setting out the respect in which TDS was in breach of its contractual obligations (see TDS Projects Construction and Newrak Mining JV (PTY) Ltd vs Exxaro Coal Mpumalanga (Pty) Ltd [2020] ZAGPJHC 445 (16 November 2020), paragraphs 19 to 21).

22 Lamont J went on to conclude that ABSA's failure to respond to the second demand made no difference to TDS's entitlement to relief because, though there were two demands, both demands "constituted one act of making demand". Accordingly, Lamont J reasoned, the rejection of the first demand was also a rejection of the second demand (see paragraph 24 of the judgment). For the reasons I have given, I cannot support this conclusion. I find it particularly difficult to understand how the second demand, which Lamont J treated as factually separate from the first, could have been rejected before it was made. Viewed in their factual and contractual setting, the two demands were plainly separate acts "of making demand".

23 In any event, Lamont J's judgment was later overturned by the Supreme Court of Appeal. In Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd

[2022] ZASCA 76 (27 May 2022), the Supreme Court of Appeal concluded that TDS had failed to show that it reasonably apprehended any harm in the event that ABSA paid out on the guarantee.

24 The essence of TDS's case was that ABSA was not entitled to pay out on Exxaro's demand, because that demand failed to

conform to the guarantee. If ABSA did so, however, it did not automatically follow that TDS would have to honour any claim for the sum so paid out. In circumstances where ABSA honoured a demand that did not conform to the terms of the guarantee, TDS would have "a complete defence to any claim founded on the honouring of the guarantee when ABSA was not obliged to do so" (see the Supreme Court of Appeal's judgment at paragraph 15). TDS had accordingly failed to demonstrate, so the Supreme Court of Appeal found, that it was entitled to interdictory relief.

25 ABSA argued that Exxaro is issue estopped from challenging Lamont J's factual findings on the validity of each of the demands, and his finding that the two demands "constituted one act of making demand". I do not agree. Issue estoppel is fundamentally an equitable doctrine. A party will not be issue estopped from re-opening a previously decided factual issue if to prevent them from doing so would be unfair in all the circumstances (*Prinsloo NO v Goldex 15 (Pty) Ltd* 2014 (5) SA 297 (SCA), paragraph 26).

26 In this case, the unfairness to Exxaro is manifest. It has maintained throughout that Lamont J's factual findings are wrong. It won an appeal against Lamont J's judgment. However, the question of whether Lamont J was right to conclude that the first

and second demands were both inseparable and invalid was never finally answered because the Supreme Court of Appeal set aside Lamont

J's judgment on different grounds. Exxaro now has no way of challenging those findings except by asking me to reconsider them. And, left undisturbed on the basis that Exxaro is issue estopped from challenging them, Lamont J's findings would spell the end of Exxaro's application, rendering its victory on appeal nugatory. That result would plainly be both perverse and grossly inequitable.

The application before me

27 The decision of the Supreme Court of Appeal left the parties back where they started. This meant that Exxaro had to sue ABSA to make good on either the 10 or 19 June 2020 demand. Exxaro now asks me to order ABSA to make payment in terms of the 10 June 2020 demand. In the event that I should find that ABSA is not obliged to pay out on that demand, Exxaro asks that I order it to pay out on the 19 June 2020 demand. TDS applied for leave to intervene in the application, but Fisher J refused that relief. Both Fisher J and the Supreme Court of Appeal refused leave to appeal against that decision.

28 The primary questions before me are accordingly whether either the first or the second demand conformed to the terms of the guarantee, and whether, if they did not, ABSA is nonetheless precluded from withholding payment because it failed to reject either or both of them. If Exxaro is entitled to payment on either demand, then ABSA raises the question of whether it would nevertheless be unconscionable to order payment on an otherwise actionable demand.

29 I turn first to the guarantee and its terms.

The guarantee and its terms

30 It was common ground between the parties that the guarantee at issue in this case is an "on demand" guarantee. Guarantees of this nature provide an especially strong form of security for an employer under a construction contract. "On demand" guarantees – sometimes referred to as "call bonds" – provide for the employer to call up the guarantee in any amount on the mere notification to the guarantor that an event specified in the guarantee has taken place. In other

words, all that is needed is a demand that conforms to the terms of the guarantee. It is not incumbent upon the employer to establish the

nature and extent of the contractor's liability to it (Minister of Transport and Public Works *Western Cape v Zandbuild* 2011 (5) SA 528 SCA, paragraph 16). Nor does the employer have to allege that there is any specific amount due to it at all, unless, of course, the amount owing by the contractor to the employer itself constitutes part of the event specified in the guarantee.

31 So, for example, if a guarantee states that it may be called up on a breach of contract, all the employer, in this case Exxaro, has to allege is that there is such a breach. In that event, the full amount due in terms of the guarantee becomes payable if that is what the employer demands. If, however, the guarantee states that the employer may call up the bond on breach only to the extent that it is necessary to remedy the breach, then the employer must allege both that there is a breach and the amount it considers necessary to remedy the breach. In neither case, however, is the employer required to establish that there is a breach, or the nature and extent of the amount necessary to cure it. The guarantee is called up on the mere say-so of the employer.

32 Accordingly, it does not matter to the guarantor, in this case ABSA, whether there is actually a breach of contract, or whether the

amount called up is necessary to cure the breach. The guarantor is not entitled to go behind the employer's demand, so long as the demand conforms to the terms of the guarantee itself. The guarantor's obligation to pay out on the guarantee is wholly independent of the underlying contract between the employer and the contractor. Any disputes between the employer and the contractor, in this case TDS, about whether there really is a breach, and the extent of the liability arising from it, are irrelevant to the guarantor's duty to pay on demand from the employer (see *Coface South Africa Insurance Co Ltd v East London Own Haven t/a Own Haven Housing Association* 2014 (2) SA 382 (SCA) ("Coface"), paragraphs 13 to 16, 22 and 25 to 26).

33 The one exception to this position is fraud. If the employer makes a demand on the guarantee knowing full well that the event specified in it has not occurred (for example that there is not actually a breach of contract), then the guarantor has no duty to pay out on the demand, and the contractor is entitled to an interdict restraining it from doing so (see *Guardrisk Insurance Company v Kentz (Pty) Ltd* [2014] 1 All SA 307 (SCA) paragraph 17).

34 The principal question in cases like this is accordingly whether a demand conforms to the terms of the guarantee. If it does, then the amount demanded must be paid.

The URDG

35 In this case, that question is more complex than usual, because the guarantee incorporates the Uniform Rules for Demand Guarantees (“the URDG”). The URDG is a set of internationally-formulated rules governing the process for making and examining demands issued on demand guarantees. The URDG has no binding effect unless incorporated into the terms of a particular guarantee. The application before me was argued on the basis that the URDG is to be treated as part of the guarantee, and accordingly that

it is binding between the parties.

36 There are four articles of the URDG of particular relevance in this case. First, there is article 15 (a), which provides that “[a]

demand under the guarantee shall be supported by such other documents as the guarantee specifies, and in any event by a statement by the beneficiary, indicating in what respect the applicant is in breach of its obligations under the underlying relationship. This statement may be in the demand or in a separate signed document accompanying or identifying the demand”.

Article 15

(c) allows the parties to contract out of this requirement, but there is no suggestion of that in this case.

37 Second, there is article 17, which provides that –

- a. A demand may be made for less than the full amount available (“partial demand”).
- b. More than one demand ("multiple demands") may be made.
- c. The expression "multiple demands prohibited" or a similar expression means that only one demand covering all or part of the amount available may be made.
- d. Where the guarantee provides that only one demand may be made, and that demand is rejected, another demand can be made on or before expiry of the guarantee.
- e. A demand is a non-complying demand if:
 - i. it is for more than the amount available under the guarantee, or
 - ii. any supporting statement or other documents required by the guarantee indicate amounts that in total are less than the amount demanded.

Conversely, any supporting statement or other document indicating an amount that is more than the amount demanded does not make the demand a non-complying demand.

38 Third, there is article 18, which provides both that “[m]aking a demand that is not a complying demand or withdrawing a demand does not waive or otherwise prejudice the right to make another timely demand, whether or not the guarantee prohibits partial or multiple demands” and that “[p]ayment of a demand that is not a complying demand does not waive the requirement for other demands to be complying demands”.

39 Fourth, there is article 24, the relevant parts of which required ABSA to examine Exxaro's demand to determine whether it was "compliant", in the sense meant in article 17 (e). If ABSA determined that the demand was not compliant, then it had to say so, by issuing a notice stating that it is rejecting the demand, and setting out each discrepancy between the demand and the requirements of the guarantee forming the basis of the rejection. Article 24 (e) required that this notice be sent within five business days. If no such rejection was issued, then, under article 24 (f) of the URDG, ABSA was "precluded from claiming that the demand and any related documents do not constitute a complying demand". In those circumstances, the URDG clearly contemplates that the guarantor must honour even a non-compliant demand.

The demands issued in this case

40 It is clear to me that neither of Exxaro's demands conformed to the terms of the guarantee, for at least the reasons Lamont J gave. Neither demand made the supporting statements that the amounts demanded were "due and payable" and that the

signatory to the demand was authorised to make it. These statements are both required under the guarantee, read with 17 (e) (ii) of the URDG. In addition, neither demand was supported, as article 15 (a) requires, "by a statement by the beneficiary, indicating in what respect the applicant is in breach of its obligations under the underlying relationship". Both demands said no more than that "the Demand amount" was payable to Exxaro as a result of TDS' "failure to perform in terms of the Contract and its deemed event of default as per clause 32 of the agreement".

41 I do not know what this means. Mr. Bothma could not tell me what it means, and it seems to me that article 15 (a) required a clear and unambiguous statement of the respect or respects in which TDS was in breach of the underlying contract. None was given.

42 This is not, of course, the end of the matter, because, under articles 24 (e) and (f) of the URDG, ABSA could not rely on these defects in the demands unless it rejected each of the demands within five days of receipt. As I have already found, ABSA did reject

Exxaro's first demand within five days, substantially on the basis that it did not contain the warranty of authority the guarantee requires. Although ABSA did not use the word "reject", the URDG makes clear that equivalent language will do. It seems to me that a demand being "deemed non-compliant" is such language.

43 However, ABSA did not reject the second demand, and was accordingly precluded, under article 24 (f), from claiming that the second demand was non-compliant. At the hearing of the matter, I asked counsel whether this really mattered, since the second demand was plainly non-compliant with the guarantee, and article 24 (f) does not preclude me from considering whether, objectively speaking, the second demand conformed to the guarantee's terms.

44 Mr. Amm initially suggested that I am so precluded by virtue of ABSA's election to be bound by article 24 (f). Insofar as ABSA chooses not to argue that the demand was non-compliant, that must be correct. While article 24 (f) cannot oust my jurisdiction to consider whether, objectively, the second demand conforms to the terms of the guarantee, ABSA would have to raise that failure to conform as a defence to Exxaro's claim for payment. If it did not, considering itself contractually bound to refrain from doing so, I think that I would have to honour ABSA's election.

45 However, having taken an instruction from his attorney, Mr. Amm confirmed that ABSA did in fact seek to rely on the second demand's failure to conform to the terms of the guarantee, but only in the event that I rejected ABSA's primary argument that the first and the second demand were really one continuous demand. I reserved judgment on that basis, and invited the parties to make

post-hearing submissions on, amongst other things, the meaning and application of article 24 (f), and the question of whether the first and second demands were to be treated as separate or as one continuous demand.

46 In those supplementary submissions, delivered on 16 May 2025, ABSA changed tack again. It reverted to its initial position that I

am precluded from considering whether the second demand conforms to the terms of the guarantee because ABSA considered itself bound by article 24 (f). At paragraph 3 of the submissions, counsel stated that ABSA "does not endorse nor pursue an argument that Absa's failure to reject the 19 June 2020 "demand" does not preclude the Court from declining to enforce the demand by reason of its failure to conform to the terms of the Guarantee".

47 The concession is wordy but clear. ABSA disavows any right to argue that I can ignore article 24 (f) if the second demand objectively failed to conform to the guarantee. ABSA was content to rest instead on the argument – which I have rejected – that the first and second demands cannot be separated, and that the rejection of the first demand was necessarily a rejection of the second demand.

48 The nett result of all of this is that ABSA must honour the second demand, notwithstanding the demand's obvious failure to

conform to the terms of the guarantee, because ABSA failed to reject it.

The guarantee's expiration date

49 This renders it necessary to deal, briefly, with the argument that the second demand was ineffective because it was made after the

guarantee expired. This argument was built on the text of the guarantee, the relevant part of which says that "[t]his

guarantee shall expire on 19 June 2020 ("Expiry Date"). Any claim and statement received hereunder must be received at this office before the Expiry Date. After the Expiry Date, this guarantee shall lapse, whether returned to the Bank for cancellation or not and any claim or statement received after the Expiry Date shall be ineffective".

50 Mr. Amm argued that the words "must be received at this office before the Expiry Date" mean that the second demand had

to be made by 18 June 2020 – i.e. "before the Expiry Date". This hyper-literal interpretation does not bear the

merest scrutiny. Read sensibly as a whole, the text I have quoted specifies that the guarantee expires on 19 June 2020, and that a demand must reach ABSA before the guarantee expires. The interpretation for which Mr. Amm contended would have the bizarre consequence that the guarantee would still be effective on 19 June 2020, but for 24 hours before it expired, Exxaro would be precluded, for no good reason at all, from making a demand on the guarantee.

51 If more were needed (it is not), I would point out that in *Dormell Properties 282 CC v Renasa Insurance Co Ltd* 2011 (1) SA 70 (SCA) 2011 (1) SA 70 (SCA), at paragraph 59, it was said that "where a contract does not require a period of time to be calculated, but provides that the entitlement to exercise a right or the obligation to perform a duty ends on a specific day" then "the right may be exercised, or the obligation performed, on that day". Although this quote is culled from the minority decision, the majority decision in *Dormell* was later found to have been clearly wrong (see *Coface*, paragraph 25). That, in my view, renders the minority decision good authority. The guarantee expired on 19 June 2020. The second demand reached ABSA on 19 June 2020. The matter ends there.

Unconscionability

52 It remains to deal with ABSA's argument that the demand on the guarantee was unconscionable. In truth, the argument never really got off the ground. I asked Mr. Amm what "unconscionable" means in this context. He could do no better than to point to Exxaro's conduct in this case.

53 However, I see nothing unconscionable, in the sense of unreasonable or excessive, about what Exxaro did in this case. Its first demand on the guarantee was made in the belief that TDS was in breach of contract. Nobody has argued that Exxaro did not honestly believe this to be so, or that the demand was excessive in light of the breach alleged. Mr. Amm suggested that the discrepancy between the two demands implied unconscionable conduct. I do not see how. Exxaro's second demand moderated the first after engagement with TDS. There is no suggestion that the moderated demand was excessive or unreasonable, and Exxaro's willingness to moderate its demand suggests that its conduct was far from unconscionable.

54 To accept ABSA's argument based on unconscionability, I would have to develop the common law. But without some identifiably unconscionable feature of Exxaro's conduct in this case, there is nothing to trigger such an exercise.

Order

55 It follows that Exxaro is entitled to payment on its second demand. There will be an order in those terms. Costs will follow the result. The factual complexity of this case is such that a costs order on the "C" scale is appropriate.

56 For all these reasons –

56.1 The respondent is directed to pay the applicant the sum of R22 165 055.66 (twenty-two million, one hundred and sixty-five thousand and fifty-five rand and sixty-six cents) within fifteen days of the date of this order.

56.2 The respondent is directed to pay interest on that amount at the prescribed rate of interest, calculated from 27 June 2020 to the date of final payment.

56.3 The respondent will pay the costs of the application, including the costs of one senior counsel, whose fees may be taxed on scale "C".

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 27 May 2025.

HEARD ON:

29 April 2025

FURTHER SUBMISSIONS: 16 May 2025

DECIDED ON:

27 May 2025

For the Applicant:

C Bothma SC

Instructed by DLA Piper

For the Respondent: G Amm SC

L Peter

Instructed by Lowndes Dlamini

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