

SOUTH AFRICA / JUDGMENT

Verveen Incorporated and Another v Ngoma Trading CC and Another (27041/2014) [2019] ZAGPPHC 452 (23 August 2019)

[2019] ZAGPPHC 452**COURT**

North Gauteng High Court, Pretoria

BEFORE

Tuchten

CASE / FILE NUMBER

27041/2014

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****(1)****REPORTABLE:**

YES/NO

(2)

OF

**INTEREST TO OTHER
JUDGES:**

YES/NO

CASE NO: 27041/2014

In

the matter between:

VERVEEN

INCORPORATED

First Plaintiff

MALOKA

ATTORNEYS

Second Plaintiff

and

NGOMA

TRADING CC

First Defendant

GREATER

TZANEEN

MUNICIPALITY

Second Defendant

JUDGMENT

Tuchten J:

1 The plaintiffs claim payment of the sum of R1 476 134 from the first defendant. Their claim against the second defendant was withdrawn. The plaintiffs' claim is for their professional fee for effecting the transfer of 240 erven from the second defendant to the first defendant.

2 The background to the present case is that the second defendant made the 240 erven available to the first defendant so that the first defendant could develop the erven, which were in Tzaneen and were vacant and unserviced. 239 of the erven were residential and one had business rights.. But the first defendant had no financial resources of its own. It therefore decided to take transfer of the erven into the name of the first defendant, try to raise money on the security of the erven, instal services on the erven with borrowed money and then market them for its own account.

3 The second defendant nominated the proprietor of the second plaintiff, Mr Maloka, to do the conveyancing. As between the defendants, the first defendant had to pay the conveyancing costs.

4 For this purpose, Mr Maloka approached Mr Verveen of the first plaintiff. Mr Verveen was, and is, a conveyancer practising in Pretoria, where the transfers had to be registered. The two lawyers agreed to cooperate in doing the work and to share the fee for the work

equally.

5 Mr Maloka and Mr Verveen met the managing member of the first defendant, Mr Mhlongo, at a restaurant in Polokwane. The plaintiffs' case is that during this meeting, the three of them agreed that the conveyancing fees would be paid to the plaintiffs on transfer of the 240 erven into the name of the first defendant and would be calculated in accordance with a tariff compiled by the then Law Society of the Northern Provinces.

6 The first defendant's case is that there was no discussion of fees at this meeting. During Mr Mhlongo's evidence, he said that the matter of fees for the transfers was agreed between himself and Mr Maloka during an earlier meeting between the two of them in Tzaneen. At that meeting, he said, Mr Maloka agreed that the first defendant could pay a fee for the transfers that was "very, very reasonable". On Mr Mhlongo's evidence, that was all that he ever discussed or agreed to about the fee the first defendant had to pay for the conveyancing.

7 There was no reference to such an alleged agreement in the first defendant's amended plea. The first defendant's version of the fee

agreement as set out in its amended plea was that it was agreed that the disbursements associated with the transfers would be immediately

payable and that a fair and reasonable fee for the transfers would be payable "only when the development became financially viable which it to date has not."

8 Unusually for conveyancing matters, the first defendant appointed its own attorney to supervise the conveyancing process. Mr Verveen sprang to work, which he completed by January 2012. Only the festive season and the rate at which work was done in the deeds office prevented the transfers from being registered at an earlier date. Throughout the process, Mr Verveen reported to the first defendant's attorney. Mr Verveen decided to effect the transfer by way of 240 separate deeds, rather than simply transfer the erven by one deed, and to structure the registration transactions as attracting transfer duty, rather than as a VAT transaction.

9 All this was reported routinely to the first defendant's attorney, who raised no objection to the course followed by Mr Verveen.

10 Mr Verveen calculated the transfer duty on a schedule of values of the 240 erven which the first defendant had obtained from the second defendant and which Mr Mhlongo supplied to Mr Verveen at a meeting between the parties. Mr Verveen called for the disbursements, which included transfer duty of R37 000, to be paid before transfer. The first defendant paid these disbursements. No objection was raised to the request by Mr Verveen that the transfer duty be paid. Mr Verveen's request to be put in funds was not even queried. Nobody suggested to Mr Verveen that he was going about the transfers the wrong way or that there was a better way of doing the transfers that would save the first defendant money.

11 Pursuant to 240 separate deeds of transfer, the transfers were registered into the name of the first defendant on 9 February 2012. Mr Verveen calculated the fee he believed was due in a pro forma account which he sent to Mr Maloka. Mr Maloka then sent a fee note to the first defendant claiming the same sum, which the plaintiffs now claim in this action.

12 But the first defendant did not pay any part of the conveyancing fee. Mr Mhlongo prevailed upon Mr Verveen to hand over the 240 deeds of transfer because, Mr Mhlongo said, he needed the actual deeds to raise finance, from which the plaintiffs anticipated their fee would be paid. Again, not a word of complaint from Mr Mhlongo or his attorney about the way the transfer was done or the amount of the fee charged.

13 Thereafter, according to Mr Maloka, Mr Mhlongo avoided speaking to him. When finally they met, Mr Mhlongo pleaded an inability to pay. Finally, for fear that the plaintiffs would be met with a plea of prescription they instituted the present action by summons dated 3 April 2014.

14 The plaintiffs' summons elicited two letters from the first defendant's attorney setting out the first defendant's defence. The second of these letters was marked without prejudice but no point was made of that at the trial.

15 In the first letter, dated 25 June 2014, the first defendant disputed the "so-called invoice" attached to the plaintiff's

summons¹ and called for the submission of the plaintiffs' statement of account to the assessment committee of the Law Society of the Northern

Provinces for determination.

16 In the second letter, dated 16 February 2017, the first defendant denied any fee arrangement with Mr Verveen and set out the first defendant's version of the fee agreement. This was said to be that the first defendant had "mandated Mr Maloka to attend to all conveyancing matters" and that the transfers were to be effected on the most cost-effective basis for the first defendant. But, the letter proceeded, Mr Verveen levied his fees "using the future selling prices of the individual erven to the end-user as the basis for determining his transfer fee." This was the first time, more than five years after the transfers, that the suggestion was made that Mr Verveen had wrongly calculated the transfer duty.

17 And what is more, there was no complaint in the letter dated 16 February 2017 that Mr Verveen should not have caused transfer duty to be paid at all. The complaint was only that the transfer duty paid, R37 000, was higher than it should have been.

18 In addition, the first defendant said in this letter, payment "was to be made as soon as [the first defendant] was generating an income from the proceeds of the sale of the erven." This assertion was different from what was pleaded in the amended plea, where the first defendant said that payment would only be made once the development became financially viable.

19 In the same letter, the first defendant alleged that Mr Maloka held an interest in the first defendant as a "sleeping partner/member".

This fact was said by Mr Mhlongo in evidence to be the basis on which he and Mr Maloka had agreed on the very, very reasonable fee in August or September 2011.

20 But neither the alleged holding by Mr Maloka of a member's interest in the first defendant or the alleged meeting in August or September 2011 were ever put to Mr Maloka. These matters were fundamental to the first defendant's defence and the omissions to put relevant matters were raised by me with counsel for the first defendant while Mr Mhlongo was in the witness box. There was no attempt to repair the manifest damage done to the first defendant's case and to Mr Mhlongo's credibility by the omission to put these important components of the first defendant's version to the plaintiffs in cross- examination.

21 Finally, the second of these letters asserts, in the context of assessing a reasonable fee to be paid to the second plaintiff, that the fee should have been assessed "at the applicable 2012 tariffs"; a reference to the tariffs of the Law Society to which I earlier adverted.

22 However, the plaintiffs' fee was indeed assessed by the plaintiffs, according to them, on an earlier such tariff. The earlier tariff, they said, was lower than the 2012 tariff. That evidence was not disputed. During cross-examination, the plaintiffs counsel raised the point that printouts of the tariffs were not before court. It was established that the tariffs were available online. I invited the plaintiffs counsel to take some time to obtain the tariffs if he felt he needed them for his case. Counsel said that his attorney would obtain the tariff but never did so.

23 This is a case in which there are conflicting versions. In *National Employers' General Insurance Co Ltd v Jagers*,^[2] it was held:

It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiffs allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiffs case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

24 This decision has consistently been followed. In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others*, the SCA held:[3]

On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So, too, on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions,

(v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which

will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.

25 The probabilities appear to me to be significantly in favour of the plaintiffs. Firstly, I think it inconceivable that Mr Verveen, who impressed me as a knowledgeable and competent conveyancer, would have gone into a transaction like this, once he accepted that the fee would not be paid before transfer, without establishing the basis on which his fee would be paid. The same applies to Mr Maloka. I had the benefit of observing the plaintiffs in the witness box. I find them to be honest and, in the main, reliable witnesses.

26 Secondly, if payment had been contingent on the first defendant's ability to pay, I think it unlikely that the plaintiffs would have allowed matters to drag on as they did without ever demanding access to the first defendant's records to determine whether indeed it ever received money from which the conveyancing fee could be paid.

27 In fact, as the plaintiffs discovered after they instituted action, the first defendant received financing under a mortgage bond registered on 6 March 2015 to the extent of R14,5 million. The first defendant did not tell the plaintiffs of this funding. The first defendant used it exclusively, Mr Mhlongo said, to fund the installation of services in the erven.

28 As it happened, however, the first defendant was unable to service all 240 stands which it owned because it could not raise finance to service all 240 erven. It only serviced 130 erven and has to date only managed to sell 29 erven. Mr Mhlongo admitted that the first defendant was unable to pay the plaintiffs any part of what it owes. He said that he assessed a reasonable fee for the conveyancing at R250 000, a figure which he had never even previously mentioned before he gave evidence before me, let alone offered, to the plaintiffs.

29 The third probability against the first defendant relates to the failure of Mr Mhlongo either to remind the plaintiffs of the alleged

agreement to pay only on sales commencing (or financial viability of the development.) If there had been any truth in the allegation of payment not becoming due as the plaintiffs testified, a letter to this effect would have been forthcoming from the first defendant long before summons was issued. It must be remembered that the fee claimed was substantial and the first defendant constantly had the benefit of legal advice, even before the transfers were registered.

30 The same applies to the failure to dispute the quantum of the plaintiffs' claim. In this regard, the provisions of clause 5.1 of a draft agreement sent to Mr Mhlongo are instructive. Mr Mhlongo's testimony was that he had no problem with clause 5.1. It read:[4]

The parties acknowledge that transfer of 240 ervens from the Municipality to the developer have been completed. Further that the statement of account pertaining thereto have been rendered.

However the parties agreed that such statement of account will be paid as soon as the developer generates income from the proceeds of sale of those ervens to the prospective purchasers.

31 The issue which led to the draft agreement not being signed was not the quantum of the conveyancing fee but the method of its payment.

32 My criticisms of the plaintiffs as witnesses are, firstly, that they tended to argue the case rather than reply directly and succinctly to questions. This is a shortcoming which I have often observed in lawyers who become witnesses and I do not weigh it heavily against them.

33 The second concern I have relates to the draft agreement relating to payment for the transfers which Mr Mhlongo says he received from Mr Mhlongo. It was put to Mr Maloka that Mr Maloka drafted this agreement. Mr Maloka denied that he drafted it. I think that it is possible (I put it no higher than that) that in this instance Mr Maloka's memory has let him down. But the fact of the draft agreement, and its contents, advance the plaintiffs' case not that of the first defendant.

34 Mr Mhlongo, on the other hand, was a poor, if not thoroughly dishonest witness. In the course of his evidence in chief, Mr Mhlongo stated that payment of the conveyancing fee would become due when the first defendant started to sell. I pointed out to Mr Mhlongo that he had started to sell, so that on his version, that impediment to payment of the fee had ceased to exist.

35 Mr Mhlongo then changed his version. He asserted that the fee would only become due when the first defendant made a profit. He could not explain his earlier version.

36 From that moment on, Mr Mhlongo became a very cagey witness. His reluctance to answer questions directly was palpable. As Van den Heever J so memorably observed in *R v Haefele*:^[5]

... the word demeanour does not merely signify the appearance of a witness in the box; whether he gives his testimony with assurance, sometimes amounting to impudence, or whether he has the sheepish look which one would expect from a liar; it means much more; it signifies that which distinguishes the living word from mere written records and it includes such matters as a momentary hesitation and an intonation of the voice and a thousand considerations which one may enumerate ...

37 I found Mr Mhlongo's demeanour as a witness to be less than convincing.

38 Approached from any perspective, I believe the plaintiffs' version and reject as false the version of Mr Mhlongo where it is conflict with the plaintiffs' version. I therefore find it proved that the first defendant undertook to pay the conveyancing fee to the plaintiffs jointly against transfer, calculated on the 2009 tariff of the Law Society and that this fee, calculated in accordance with the agreement and amounting to R1 476134, was due on the date of transfer, ie 9 February 2012.

39 But even were I not to accept the plaintiffs' evidence that the mode of determining the fee was agreed and that the calculation of the fee was made in terms of an agreed mode, I would still have found for the plaintiffs. This is because the first defendant's case was that a fair and reasonable fee was payable and in the letter dated 16 February 2017, the first defendant asserted, on legal advice, that the fee should have been calculated in accordance with the very tariff, or an earlier lower version of that tariff in terms of which the fee was in fact calculated. The plaintiffs pleaded in the alternative an entitlement to a fair and reasonable fee. The fee was therefore calculated in accordance with the very mode which the first defendant said would result in the determination of a reasonable fee. On any basis, the fee was properly and fairly calculated.

40 A number of special defences raised by the first defendant remain to be dealt with. Some of these were raised in an application for absolution from the instance, which I dismissed on 16 August 2014.

41 Counsel for the first defendant submitted that the plaintiffs had not proved that, as they alleged, they held valid fidelity fund certificates throughout the relevant period. This aspect was not canvassed in the evidence at all. It was not an element of the plaintiffs' cause of action that they held such certificates. Further, they testified that they were admitted and practising lawyers. On the application of the principle *omnia presumuntur rite esse acta*, they are deemed to have complied with all necessary statutory requirements to entitle them to practise and recover fees. If I had thought there was any merit in the point, which I did not, I would have allowed the plaintiffs to reopen their case for this purpose.

42 Then counsel submitted that the plaintiffs' statement of account did not constitute a proper VAT invoice in terms of the relevant legislation. It was not an element of the plaintiffs' cause of action that their statement of account had to comply with VAT legislation before they became entitled to recover their fee.

43 Counsel further submitted that the plaintiffs were not entitled to recover their fee before it had been taxed. In this regard, the first defendant delivered a special dilatory plea of non-taxation.

44 There are two reasons why this dilatory plea cannot succeed. Firstly, the amount claimed was for an agreed fee. Secondly, contrary to the submission of counsel for the first defendant, non-litigious fees are not taxable. The taxing master's power to tax a fee^[6] arises from the provisions of rule 70(1)(a) and is expressly restricted to litigious work. There is no rule of law which provides for taxation of non-litigious work. In times past, before the advent of the Legal Practice Act,^[7] the Law Society provided a service for its members and their aggrieved clients to assess the reasonableness of the fee charged by the lawyer through a committee of the Law Society. In fact the plaintiffs' attorney sought the determination of the issue by the Law Society. But in a letter dated 22 May 2019, the Legal Practice Counsel, which by that stage had superseded the Law Society, pointed out that the Legal Practice Act made no provision for the assessment of "attorneys'" fees and declined to determine the dispute.

45 A party who agrees to pay a specific fee is not entitled to taxation. See *Chapman Dyer Miles & Moorhead Inc v Highmark Investment Holdings CC and Others*.^[8] This view is shared by Harms, the author of *Amler's Precedents of Pleadings*.^[9] The Appellate Division case of *Benson and Another v Walters and Others*^[10] is, despite the submission of counsel for the first defendant, not authority for the contrary proposition. As far as I have been able to determine, the proposition in *Chapman Dyer*, with which I respectfully agree, has stood for more than twenty years without adverse judicial comment and remains good law.

46 I must deal with a defence which the first defendant did not plead but sought to raise in a thoroughly improper manner. The defence, as best I could determine, was that the plaintiffs ought to have treated the transaction not as one which attracted transfer duty but as one which stood to be treated as a zero-rated VAT transaction and that Mr Verveen should not have caused the 240 erven to be transferred by 240 separate deeds but by one single deed. On that basis, it was suggested, the mandate to transfer had not been properly executed, with the result that the plaintiffs were not entitled to their fee or were only entitled to a taxed fee.

47 I have pointed out that the first defendant's case, until this unpleaded defence was raised on the last day of the trial, did not

take issue with the transfer duty approach. The complaint was that too much transfer duty had been paid. Nor was it any part of the first defendant's case that the transfers should have been done in one transfer deed rather than 240 transfer deeds.

48 After Mr Verveen gave his evidence in chief, counsel for the first defendant asked for an adjournment to prepare cross-examination. The reason counsel gave the court from the bar for not being prepared to cross-examine was that he had received certain documents at a late stage.

49 Mr Verveen gave his evidence in chief on 15 August 2019. His cross-examination stood over until the following day, 16 August 2019.

50 Mr Verveen explained in evidence in chief why he had opted for the transfer duty approach. Some of the propositions pertaining to what I have characterised as the unpleaded defence were put to Mr Verveen in cross-examination. Mr Verveen cogently explained why he had elected to go the transfer duty route. His view was that SARS would never have accepted the transaction as one which was zero-rated; that the VAT route was not available because the first defendant was not at that stage trading; and that if the VAT route had been allowed, despite Mr Verveen's reservations in this regard, the costs to the first defendant would have been increased by some millions of rands.

51 In addition, Mr Verveen testified, the single deed route, as opposed to the 240 deeds route, would have been unwieldy and would have caused the first defendant significant problems and extra expense when it came to transferring the developed stands to their ultimate purchasers.

52 I allowed cross-examination on these matters initially because Mr Verveen had dealt with the topic in evidence in chief and I assumed

the cross-examination was directed at general credibility. When counsel for the first defendant persisted in pursuing the VAT line of cross-examination. I asked counsel to point me to the pleaded issue to which the cross-examination was relevant. Counsel was unable to do so and I ruled that further cross-examination on the VAT issue would be disallowed.

53 At no stage did counsel put to Mr Verveen that he had available the evidence of an expert conveyancer who would apparently contradict Mr Verveen on the VAT question.

54 After Mr Verveen's evidence was concluded, the plaintiffs' case was closed and the first defendant applied for absolution. I refused absolution and Mr Mhlongo then gave evidence and was cross-examined, all on 16 August 2019.

55 Counsel for the first defendant then asked, during the afternoon of 16 August 2019, that the case stand over further. Counsel said that he had a further witness, a conveyancer who would testify on conveyancing practice, whom he intended to call but that this witness was at that stage unavailable. I said that the case might stand until the next court day, 19 August 2019. Counsel then told me that the witness would be unavailable on that date because he had to go to Venda. I said that this would be unacceptable and that the witness must make himself available or the first defendant should obtain another witness to give this evidence. I observed that there were many conveyancers in Pretoria and suggested that the lawyers might try to agree the matters on which counsel wanted the unavailable witness to testify.

56 During this exchange I specifically asked counsel whether the witness he proposed calling would give evidence of an expert nature, no notice to that effect having been given. Counsel then assured me from the bar that the witness would NOT be giving expert evidence. The case was then adjourned until 19 August 2019.

57 When the case recommenced on 19 August 2019, counsel for the first defendant presented me with an unsigned application for postponement and an unsigned supporting affidavit drawn with Mr Mhlongo as deponent. Counsel assured me that a signed application would shortly be forthcoming but none came.

58 To my concern, paragraph 2.1 of the draft affidavit of Mr Mhlongo made in support of the application for postponement read:

I was present at a consultation with Dr J. G. G. Horn on the morning of 16 August 2019 for the purpose of obtaining expert evidence on conveyancing practice.[11]

59 I was therefore told an untruth by counsel during the afternoon of 16 August 2019, when counsel asked for the matter to stand over for the presentation of evidence which would not be of an expert nature. Counsel said that he had been misinformed on the nature of the evidence proposed to be led.

60 I refused the application for postponement in a full ex tempore judgment delivered on 16 August 2019.

61 I do not intend to repeat what I said in that judgment. But I think I should say, for present purposes, that even if the evidence had been led and I was ultimately persuaded of the correctness of the allegations constituting the unpleaded defence, an eventuality I regard with the greatest skepticism, it would make no difference to the outcome of the case.

62 That is because the plaintiffs were mandated to transfer the 240 erven to the first defendant. They did so and thereby fulfilled their mandate. If the first defendant was put to extra expense by the manner in which the plaintiffs fulfilled their mandate, then the first defendant might have claims for damages against one or both the plaintiffs. In that case the first defendant would have to formulate and quantify its claims for damages. It has done neither. No such claims were made in the pleadings. No figures were put to the plaintiffs in evidence and Mr Mhlongo was unable to attempt a quantification. The proposed expert witness for the first defendant gave a summary of his evidence. No quantification appears there either. No evidential basis has therefore been established for any deductions from the plaintiffs' fee, calculated as I have found it was, in a manner which was both agreed and fair and reasonable.

63 The plaintiffs must therefore succeed in full. Interest will run from the date of transfer of the 340 erven, 9 February 2012, at the then applicable mora rate, 15,5% per annum. Costs will follow the result. I make the following order:

1 The first defendant's special plea is dismissed.

2 There will be judgment in favour of the plaintiffs jointly against the first defendant for:

2.1 R1 476 134; and

2.2 interest on the sum of R1476134 at 15,5% per annum from 9 February 2019 to date of payment.

3 The first defendant must pay the plaintiffs' costs of suit, which are to include the costs arising from the special plea, the summary

judgment

application, the costs of the application for absolution, the costs and wasted costs of all the postponements of the case, the costs of the application for postponement made on 16 August 2019, the costs of all the occasions upon which the first defendant asked for the matter to stand down and generally all reserved costs.

4 Payment of any portion of this judgment debt to either one of the plaintiffs will discharge the first defendant, pro tanto, from the obligation to pay the amount so paid to the other plaintiff.

NB Tuchten

Judge of the High Court

23 August 2019

- [1] Mr Verveen's pro forma account
 - [2] 1984 4 SA 437 E at 440D-G
 - [3] 2003 1 SA 11 SCA para 5
 - [4] Language as in original
 - [5] 1938 SWA 21 at 22
 - [6] ie determine its reasonableness - see *Benson and Another v Walters and Others* 1981 4 SA 42 C 49C-D.
 - [7] 28 of 2014
 - [8] 1998 3 SA 608 D
 - [9] 7th ed, at 56
 - [10] 19841 SA 73 A
 - [11] My emphasis
-

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