

SOUTH AFRICA / JUDGMENT

Vosloo v Verster and Others (Reasons) (1699/2023) [2024] ZAMPMBHC 91 (7 February 2024) [2024] ZAMPMBHC 91

COURT

Mbombela High Court, Mpumalanga

BEFORE

Greyling-Coetzer

CASE / FILE NUMBER

1699/2023

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IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)

CASE NUMBER: 1699/2023

In the matter between: -

MAURITZ HANS VOSLOO

Applicant

and

CHARL VERSTER

First Respondent

MLUNGU WAMI (PTY) LTD

Second Respondent

SI YETA (PTY) LTD

Third Respondent

REASONS

GREYLING-COETZER AJ

Order

[1] On 6 December 2023 the following order was made without providing reasons for the order at the time:

“ 1. The applicant application for the liquidation of the second and third respondents are refused;

2. The applicants application for dissolution of the partnership is refused;
 3. The applicant alternatively prayer for the termination of joint ownership of Portion 41 of the Farm Rietspruit 197, Mpumalanga is refused;
 4. Each party is ordered to pay their own costs.”
- [2] What follows are the reasons for the orders made per paragraph 1 above.

Introduction

- [3] The applicant sought the winding up of the second and third respondents on the basis of Section 81(1)(d)(ii) and (ii) of the Companies Act, 71 of 2008 (“the Act”). In the alternative, the applicant relied on the provisions of Section 81(1)(d)(iii) of the Act.
- [4] In addition, the applicant sought that an alleged partnership between the applicant and first respondent be dissolved, a liquidator be appointed for the second and third respondent as well as the partnership and for the liquidator to realise the assets, account and pay half of the net profits to the applicant. The applicant did not expressly seek a declarator that a partnership came into existence.
- [5] In the alternative, and should the court find that no partnership came to being, the applicant sought a division of the joint ownership of immovable property on the basis of the *actio communi dividundo*. and for the appointment of a receiver and liquidator. Ancillary to this he sought that payment be made to him of the net profit raised from the assets but that the first respondent debate the remaining half of the net profit.
- [6] This application is opposed by the first- and second respondents. They contend that no cause of action has been pleaded in respect of the dissolution of the alleged partnership, that a material dispute of fact exists, that no case has been made out for the winding up relief and that same constitutes an abuse of process.

Background

- [7] The applicant and first respondent are the joint owners of an immovable property namely Portion 41 of the farm Rietspruit 197, Mpumalanga (“Portion 41”). The property was acquired in 2016. The applicant and first respondent each have an 50% undivided “share” in the property having contributed equally in acquire same.

- [8] The second respondent is a private company. The second respondent own Portion 44 of the farm Rietspruit 197, Mpumalanga ("Portion 44"). The applicant and first respondent each hold 50% shares in the second respondent. The first respondent is the sole director being so appointed in 2020.
- [9] The third respondent is a private company established in 2020 for the purpose of operating a bush lodge. The applicant and first respondent each hold 50% shares in the third respondent. The applicant is the sole director being so appointed in 2020.

Parties contentions

- [10] Paraphrasing the allegations and evidence in the founding affidavit, the applicant's version is as follows:

10.1 The applicant and first respondent purchased Portion 41 in 2016. They contributed equally towards purchase price and costs. The property was registered in both their names, each having a 50% undivided half share. When they decided to purchase Portion 41, they did so without concluding a written or oral agreement to regulate their relationship. He contends that they did not have a clear vision for the "venture" other than that they would contribute equally thereto and as agree from time-to-time.

10.2 The applicant and first respondent in 2020 acquired 50% shares each in the second respondent. The first respondent was appointed as the sole director of the second respondent. In the same year they established the third respondent, for the purpose of establishing a bush lodge business. The third respondent's business would be conducted on portions 41 and 44. The applicant was appointed the sole director of the third respondent.

10.3 The applicant alleges that a deadlock ensued between the applicant and first respondent because they had different visions, and therefore could no longer work together. The applicant further did not get along with the first respondent's wife, which complicated the relationship between the applicant and the first respondent. The applicant's financial situation also changed, and he was no longer able to meet the financial demands of what he categorized to be "the first respondent's vision".

10.4 The applicant alleges a deadlock exists between him and the first respondent as contemplated in section 81(1)(d)(i) and/or (ii) alternatively, that it is just an equitable to liquidate the second and third respondents.

10.5 The applicant places reliance on the financial statements of the second- and third respondents ("the companies"). It should however be noted that only financial statements of the second respondent were placed before court, in respect of the year ending 2020 and the year ending 2022.

10.6 The applicant alleges that the third respondent is solvent and has no creditors other than the members' loan, considering that it is a property-holding entity. This allegation appears factually incorrect as it has not been alleged that the third respondent owns any property.

10.7 In respect of the second respondent, the applicant alleges that its liabilities exceed its assets in terms of the financial statements. But this is qualified by the fact that the financial statements have been prepared from an income tax point of view, and that the under-valuation of assets, as well as the loan accounts of the members, are the reasons for the liabilities appearing to exceed its assets. It is alleged by the applicant that the second respondent equally has no creditors other than the members' loans.

10.8 In conclusion the applicant alleges that none of the respondents have any employees in their employ.

[11] The first- and second respondents, in summary, contend that:

11.1 The applicant failed to properly allege and prove that a partnership came into being, and in contrast specifically pleaded that "we started the venture without a written or oral agreement to regulate our relationship." Further, that as the first respondent amongst others denied that the relationship between him and the applicant constituted a partnership, material disputes of fact exist.

11.2 In respect of the winding up relief, the respondents' case is that the applicant failed to discharge the onus upon him, justifying his reliance on Section 81(d) of the Act. More particularly, that the applicant failed to prove that a deadlock

existed, as contemplated by the Act, alternatively failed to demonstrate that it would be just and equitable for the second- and

third respondents to be wound up.

[12] The relief sought will be dealt with in the same sequence as it appears in the notice of motion.

Winding up of the second- and third respondents

[13] The case relied on by the applicant is that the winding up proceedings have been instituted on the basis of Section 81 of the Act, in that a solvent company may be wound up by court if the company, one or more directors or one or more shareholders have applied to the court for an order to wind up the company on the grounds that :

"(i) the directors are deadlocked in the management of the company, and the shareholders are unable to break the deadlock; and

(aa) irreparable injury to the company is resulting or may result, from the deadlock; or

(bb) the company's business cannot be conducted to the advantage of the shareholders generally, as a result of the deadlock;

(ii) the shareholders are deadlocked in voting power, and have failed for a period that includes at least two consecutive annual general meeting dates, to elect successors to directors whose terms have expired; or

(iii) it is otherwise just and equitable for the company to be wound up.”

- [14] Although the applicant in his founding affidavit focusses exclusively on the fact that a deadlock had occurred, no specific allegations or evidence have been placed before court demonstrating a deadlock as contemplated in Section 81(1)(d) of the Act. More specifically considering section 81(1)(d)(i) of the Act, that the directors are deadlocked and the shareholders have been unable to break the deadlock in respect of the management the companies. And that irreparable harm is or may be resulting or that the companies’ business cannot be deducted to the advantage of the shareholders generally as a result of the deadlock. Similarly, no allegations or evidence have been placed before court demonstrating, as contemplated in Section 81(d)(ii) of the Act, that the shareholders are deadlocked in voting power, and have failed for a period of at least two consecutive annual general meeting dates to elect successors.
- [15] In argument and on behalf of the applicant it was submitted that the deadlock which existed can be equated to that which presented itself in *Thunder Cats Investment 92 (Pty) Ltd and Another v Nkonjane Economic Prospecting and Investment (Pty) Ltd and Others* [1]. There the Supreme Court of Appeal was dealing with Section 81(1)(d)(iii) and whether it was just and equitable to order a liquidation. This will be dealt with more fully below.
- [16] Consequentially, absent any allegation and evidence of the type of deadlock completed by sections 81(1)(d)(i) and (ii) of the Act, the applicant has failed to make out a case for liquidation.
- [17] What then remains, and which was only cursory dealt with in the introductory paragraph to the founding affidavit is whether it would be just and equitable for the companies to be wound up, as contemplated in Section 81(d)(iii) of the Act. In my view, counsel for the applicant was correct in his submission that the type of deadlock present in this matter was to some extent similar to that which presented itself in *Thunder Cats* (supra), be it not to demonstrate a deadlock in terms of Section 81(1)(i) and (ii) of the Act, but to demonstrate the just and equitability as contemplated in subsection (iii). In the present matter the applicant and first respondent are both sole directors but also equal shareholders in the respective companies. The applicant’s main contention in support of the winding up comes strongly to the fore and is that he no longer wants to be involved in the companies. In other words, he wants to resign as director of the third respondent and want to sell his shares in the companies.
- [18] As held by the Supreme Court of Appeal in *Thunder Cats* (supra), the ground “just and equitable” in Section 81(1)(d)(iii) of the Act retains its wide scope: It should not be interpreted so as to include only matters similar to the other grounds stated in Section 81(1). As in Section 344H of the 1973 Companies Act, it confers a wide judicial discretion. Therefore, the existence of a deadlock, as contemplated in Section 81(d)(i) and/or(ii) of the Act is not a pre-requisite for granting a winding up order where it would otherwise be just and equitable to do so.

[19] There is no fixed category of circumstances which would fit the mold of a winding up on the basis of just and equitability. In *Thunder Cats (supra)* the court referred to *Sweet v Finbain*[2] where it was stated as follows:

“The ground is to be widely construed; it confers a wide judicial discretion, and it is not to be interpreted so as to exclude matters

which are not ejusdem generis with the other grounds specified in section 344. The fact that the courts have evolved certain principles

as guides in particular cases, or examples of situations where the discretion to grant a winding up would be exercised, does not require or entitle the court to cut down the generality of the word ‘just and equitable’”.

[20] As held in *Moosa NO v Mavjee Bhawan (Pty) Ltd and Another*[3] a winding up on the basis of it being just and equitable to do so, “postulates not facts but only a broad conclusion of law, justice and equity, as a ground for winding up.”

[21] The grounds relied on in demonstrating a deadlock as set out in paragraph 9.21 of the founding affidavit are conclusory in nature, and do not demonstrate how the events leading up to those conclusory statements occurred. A court, where the application for a company’s liquidation is based on the failure of a relationship between the parties, ought to assess the contributions to the breakdown and determine whether it is just and equitable to liquidate a solvent company.

[22] The only clear ground as relied on by the applicant is that set out in paragraph 9.21.3, of the founding affidavit is that his financial position changed, as he states, “essentially this was the crux of our different visions that resulted in me not being able to meet the financial demands of the first respondent’s vision for the venture”.

[23] A liquidation of a solvent company in terms of Section 81(1)(d) of the Act is not an ordinary liquidation but one where the court ought to exercise its powers not only judicially but with caution, so as not to be seen as descending on relationships established by valid and binding agreements, such as and for purposes of this discourse, shareholder agreements and/or memoranda of incorporation. Aforementioned agreements are ordinarily agreements which would define the parties’ respective rights and obligations in terms of their elected juristic entity, inclusive of the manner in which they can exit from such entities.

[24] The practical effect of a liquidation as in this matter, may encroach on the common law principle of *maxim pacta sunt servanda* which common law principle was asserted by the Constitutional Court in *Barkhuizen v Napier*

[2007] ZACC 5; 2007 (5) SA 323 (CC). There is was stated that public policy as informed by the Constitution requires in general that parties should comply with contractual obligations that have been freely and voluntarily undertaken.

[25] In the matter of Thunder Cats (supra) the appellant invoked the maxim pacta sunt servanda. The Supreme Court of Appeal quoted from Lord Wilberforce's speech in *Ebrahimi v Westbourne Galleries Ltd and Others* 1973 AC 360 (HL)[4], where it was held that:

"the just and equitable principle does not ...entitle one party to disregard the obligations he assumes by entering a company, nor does the court dispense him from it. He does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations that are of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

[26] In Thunder Cats (supra) a deadlock was averred between the parties at both shareholder and director level, the result being that the business of the company

could not be conducted, nor its assets managed to the advantage of the shareholders generally. As in the present matter the second- and third respondents therein, had a desire to dispose of their shares. What led to the winding up application was the fact that the shareholders' agreement provided a mechanism for the disposal of shares by a shareholder, but required that all the other shareholders consent thereto in writing. According to the appellant, the shareholders' agreement made provision for the exit from the company, and the agreed course, considering the disposal of the shares, had to be followed. The court a quo and the Supreme Court of Appeal nevertheless found that in the circumstances it was just and equitable to order the winding up, as only a winding up would break the paralysis that haunts the company.

[27] The Thunder Cats (supra) is distinguishable from the present matter, particularly, but not exclusively, on the basis that there is no indication before court that the applicant had attempted to exercise any right he may have to exit from the companies as would ordinarily be found in a shareholder's agreement and/or memoranda of incorporation ("governing document"). Nor, in the unlikely event that neither of these governing documents exist, has the applicant placed said fact before this court.

[28] The applicant's desire to sell his shares and exit from the companies are common cause. Its common cause that the applicant and first respondent discussed and negotiated the sale of the applicants shares to the first respondent but that no agreement was reached. It is unknown to this court whether the first respondent is the only competent purchaser in terms of the governing documents. If that is not the position, has the applicant exercised his option in term of the governing document or has the first respondent frustrated him to do so. There are not averment or evidence placed before court in the former respect.

[29] The applicant has further failed to place the governing documents before court. The terms therein are relevant in determining whether it would be just and equitable in the circumstances to order the liquidation of the companies. This court is left to guess whether there are other reasonably achievable remedies available to the applicant to achieve his goal exiting from the companies.

[30] The applicant's case seems to be that because the first respondent can't raise funds to purchase his shares the only viable option is to liquidate the companies. This is an untenable conclusion to reach without considering content of the governing documents and why the provisions therein as in Thunder Cats (supra) are such as to enable this court to subject the exercise of legal rights to equitable considerations. The applicant has been completely

silent on the existence and or content of these governing documents vis á vis the exiting from the companies. The applicant

consequently has not proved that it would be just and equitable to liquidate the companies.

Relief pertaining to the joint ownership of Portion 41 of the farm Rietspruit 197, Mpumalanga

[31] It is trite that, in order for a partnership to come into existence, the following essentialia needs to be present. The applicant thus has to allege and prove that:

(1) every partner agreed to make a contribution, be it to bring commercial or economic value to the partnership; (2) the parties must undertake to carry on a business together and for the benefit of the partners, it is not sufficient to merely put assets together; (3) there must be an agreement that the aim of the partnership is for profit; and (5) the partnership must be lawful. Furthermore, as was argued on behalf of the applicant in the heads of argument submitted, there must be a true intention to create a partnership.

[32] In order to seek dissolution a party should first seek declaratory relief that a partnership was concluded.

[33] As highlighted herein above, the applicant alleges that a partnership came into being when he and the first respondent purchased Portion 41, jointly and in equal shares. The applicant further alleges that "we started the venture without a written or oral agreement to regulate our relationship. We did not have a clear vision for the venture, other than contributing equally in the development of the enterprise as we would agree from time to time." The applicant further states that "we did not really have a clear vision for the property and merely enclosed it with a game fence and introduced a small number of Nyala antelope".

[34] From aforementioned, Portion 41 was purchased for the purpose of joint ownership of that portion. The mere holding of joint ownership does not equate to a partnership coming into existence absent the remaining essentialia being present.

[35] It was argued on behalf of the applicant that there is no requirement for a partnership to be expressed or in writing. It was contended that the partnership come into existence by implication and through the manner of 'doing' between the parties. In developing this argument, it was submitted that the applicant and the first respondent made a conscious election to purchase Portion 41 towards

which both parties contributed funds for a common purpose. According to the applicant, the immovable property was expanded, and game was introduced on it. The improvements to the immovable property and the expansions thereon cannot be seen in any other light as for financial gain. In conclusion it was submitted by the applicant that, upon an evaluation of the probabilities, the only reasoning could be that the parties conducted the venture for mutual gain and financial benefit. The pre-requirements for a partnership, according to the argument, are evident from the conduct of the parties, although not expressly embedded in a partnership agreement.

- [36] Although the over-arching principles relied on in said argument, are correct, what the argument fails to appreciate is the fact that the evidence before court is that when Portion 41 was purchased in 2016, it was done without any agreement to regulate the relationship between the applicant and the first respondent in the future. The applicant and first respondent shared no clear vision for Portion 41, other than contributing equally and that they would contribute equally in whatever they agree from time-to-time. Same merely demonstrates an agreement to agree in the future between two natural persons in their capacity as co-owners of Portion 41.
- [37] No facts were alleged, nor was evidence placed before court, to demonstrate that further agreement was reached between the applicant and the first respondent to conclude a partnership. If regard is had to the applicant and first respondent's conduct thereafter, as the court is implored to do, it demonstrates that the applicant and first respondent then agreed to acquire the second respondent a separate legal entity distinct from their person and thereafter agreed to set up the third respondent, also a separate legal entity for the purpose of establishing a lodge to be conducted on the property of the second respondent, and the co-owned property of the applicant and first respondent.
- [38] The founding affidavit is unfortunately lacking to sustain the relief in the notice of motion. The applicant seeks dissolution of the partnership absent declaratory relief that a partnership exists. That aside, the common cause conduct of the parties holistically considered at best demonstrates that the applicant and first respondent, as natural persons and co-owners of Portion 41, may have intended to become partners with two separate legal entities, being the two companies. This is however not the case for the applicant on the papers before court. From the facts averred by the applicant, he and the first respondent acted in the way they did, without appreciation of the separate legal status of the companies and their conduct throughout was that of natural persons.
- [39] In order to find that in doing so a partnership came into being between the applicant and first respondent founded on their conduct post purchasing of Portion 41, would mean that this court would have to find that the corporate veil has to be pierced. No case had been made out for piercing of the corporate veil.
- [40] For the reasons set out above the applicants claim for dissolution of the partnership has to fail.

Alternative relief : Actio communi dividundo

- [41] The actio communi dividundo is a remedy through which a co-owner can seek termination of the joint ownership or division of the jointly owned property. Every co-owner is entitled to use the joint property reasonably and in proportion to his or her share, and is entitled to his or her share of the profits derived from the property, such as rental received in respect of it, if applicable.
- [42] As a general rule, each co-owner is normally entitled to have co-ownership terminated with the actio communi dividundo. No co-owner is obliged to remain such against his or her will.[5]
- [43] A party claiming the termination of co-ownership must allege and prove: (1) the existence of joint ownership; (2) a refusal by the other co-owner to agree to a termination of the joint ownership, an inability to agree on the method of termination or an agreement to terminate but a refusal to comply with the terms of the agreement; (3) facts upon which the court can exercise its discretion as to how to terminate the joint ownership.
- [44] Generally, the court will follow a method that is fair and equitable to all parties.[6] A court, in considering what is fair and equitable, will take into account the particular circumstances of the matter, what is most advantageous to the parties and what they prefer.[7]
- [45] In the present matter it is common cause that the applicant and first respondent are co-owners of Portion 41. The existence of the joint ownership is thus not in dispute.
- [46] It is further common cause that the first respondent has not refused to terminate the joint ownership, and that discussions and negotiations took place in respect of the first respondent purchasing the applicant's share in Portion 41. No agreement was reached, essentially due to the first respondent's inability to raise the needed funds.
- [47] It is necessary to consider the form of co-ownership that the applicant and first respondent enjoy vis á vis Portion 41 and then to determine whether it is free co-ownership or bound co-ownership. In the matter of *Municipal Employees' Pension Fund and Others v Chrisal Investments (Pty) Ltd and Others* 2022 (1) SA 137 (SCA), the Supreme Court of Appeal dealt extensively with these two forms of co-ownership. At paragraph [20], and with reference to the work of Professor CG van der Merwe in *LAWSA*,[8] it was held as follows:

“Common ownership may either constitute the only legal relationship between the co-owners or it may result from some other legal relationship between the parties. In the former case (designated free co-ownership) the relationship between the co-owners is more individualistic in that the community

of property can be dissolved by any co-owner and in that each co-owner is allowed to use and enjoy the common thing in accordance

with his or her undivided share in it ... In the latter instance (designated bound co-ownership), which is, for example, the result of a marriage in community of property or a partnership, the relationship is more permanent in that no division of property can be requested during the course of the community of property and in that the undivided share allotted to each owner do not have real significance.

The legal relationship between the parties further largely determines the rights and duties of the co-owners.”

[48] As explained in *Municipal Employees Fund* (supra) that which is to be distilled from aforementioned quote, is that bound co-ownership is where there is a legal relationship

between the co-owners, going above and beyond the fact that they happen to be the co-owners of the property. There being no closed

list of instances of bound co-ownership, and whether a particular relationship was bound or free, was determined by the terms under

which it was created.[9]

[49] The importance of the distinction between free co-ownership or bound co-ownership is that no co-owner is normally obliged to remain a co-owner against his or her will. This would be the position in respect of free co-ownership. However, where the co-ownership is in the form of bound co-ownership, such a co-owner cannot rely on the *actio communi dividundo* until such time as the relationship it has with the other co-owner, which exists separately and distinctly from the co-ownership, has come to an end. The court in *Municipal Employees Fund* (supra) summarized it as follows:

“In summary therefore, I conclude, in accordance with the authorities discussed above, that the distinction between free and bound

co-ownership is that in the former the co-ownership is the sole legal relationship between the co-owners, while in the latter there is a separate and distinct legal relationship between them of which the co-ownership is but one consequence. Co-ownership is not the primary or the sole purpose of their relationship, which is governed by rules imposed by law, including statute, or determined by parties themselves by way of binding agreements. The relationship is extrinsic to the co-ownership, but is not required to be exceptional. In other words, it requires no special features for the co-ownership consequential upon the relationship to qualify as a bound co-ownership ... The mere fact that co-owners decide to exploit their co-ownership commercially will not of itself constitute the co-ownership as bound co-ownership. That will depend upon the nature and the terms of the commercial agreements between the parties and the matter such as the provision made for its termination ...

There is no closed list of instances of bound co-ownership. If the relationship gives rise to bound co-ownership the co-ownership will endure for so long as the primary extrinsic relationship endures. Once it is terminated then as in *Menzies and Robson v Theron*, it will become free co-ownership and be capable of being terminated under the actio”.

- [50] In the present matter, neither of the parties expressly dealt with this distinction, nor was any argument advanced by either against or for a finding in respect of the form of co-ownership. This might have been due to the actio communi dividundo only being relied on as alternative causa and only being addressed in passing in the interlocutory paragraph to the founding affidavit.
- [51] The applicant briefly touched on *Municipal Employees Fund (supra)* in his heads of argument to demonstrate that the actio communi dividundo was not available during the existence of the partnership until the relationship giving rise to the tie, had itself been terminated. The applicant further submitted that even where no partnership was proved, in the terms of the actio communi dividundo, the assets should on similar terms be divided. The latter ignores the important distinction of the form that the co-ownership embodies.
- [52] Neither of the parties addressed their minds to the issue and the relevance of the form of co-ownership. Accepting, as the parties do, that their relationship as co-owners of Portion 41 is intertwined,[10] with the interests of the two companies and the applicant and first respondents interests in those companies, the consequences is that the applicant is not entitled to invoke the actio communi dividundo in the circumstances where prima facie there appears to be a relationship of a kind which ousts the applicant’s entitlement to rely on an actio communi dividundo.
- [53] In the circumstances I would be hesitant, without full argument, to reach any conclusion on this point, save to find that from that before court the applicant has not alleged and proven that the co-ownership is free so as to enable the court to order termination and division based on the actio communi dividundo.

Conclusion and costs

- [54] Having found as aforesaid, the applicant is not entitled to the relief sought, on the basis that the applicant failed to make out a case for the liquidation of the second- and third respondents on a basis in terms of Section 81(1)(d)(i) and (ii) of the Act, nor that it would be just and equitable to wind up the second- and third respondent companies.
- [55] The applicant failed to make out a case for the dissolution of a partnership or for the termination of the co-ownership in terms of the actio communi dividundo.
- [56] The findings made were not substantially brought about by the version of the first and second respondent, which was essentially that of a mere denial. The defects were rooted in the case as presented by the applicant. In the circumstances, it would be just and equitable between the parties that each party pays its own cost.

[57] For the reasons set out above the order per paragraph [1] above was made.

Date of hearing: 26 October 2023

Date of order: 06 December 2023

Date of reasons: 7 February 2024

FOR THE APPLICANT: ADV FOURIE

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FOR THE FIRST AND SECOND

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[1] 2014

(5) SA 1 (SCA)

[2] 1984

(3) SA 441 (W)

[3] 1967

(3) SA 131 (T) at 136

[4] [1972] 2 All ER 492) at 379B- 380B

[5] Robson v Theron 1978 (1) SA 841 (A) at 854G-857E

[6] Pretorius v Botha 1961 (4) SA 722 (T) at 726D-E

[7] Robson (supra)

[8] 27 LAWSA, 2nd Ed Re-issue par [265]

[9] Municipal Employees Fund (supra) at par [46] – [47]

[10] Founding Affidavit par 10

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Prepared on 11 October 2026 · Esheria