

REPUBLIC OF SOUTH AFRICA



IN THE SOUTH GAUTENG HIGH COURT  
JOHANNESBURG  
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 25232/2012

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	.....
DATE	SIGNATURE

In the matter between

**BARRY BRUCE HEINE**

**Plaintiff**

And

**PRESCOR 183 CC,  
REGISTRATION NUMBER: 2004/ 041291/ 23  
HAMILTON GEORGE ESTEVES VIEIRA  
TANYA ANNE VIEIRA**

**1<sup>st</sup> Defendant  
2<sup>nd</sup> Defendant  
3<sup>rd</sup> Defendant**

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**J U D G M E N T**

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**VILAKAZI, AJ:**

1. Plaintiff instituted action against the First to Third Defendants for damages he sustained when a fire which started on First to Third

Defendants property and spread over the common boundary on to the Plaintiff's property causing damage to the Plaintiff's property.

2. Plaintiff is the registered owner of Portion 100 of the farm Alewynspoort 145 in the district of Johannesburg, Gauteng. The extent of the property is 10 hectares.
  - 2.1. First Defendant is the registered owner of the Remaining Extent of Portion 52 of the farm Alewynspoort 145, which adjoins the Plaintiff's property. Second to Third Defendants are the members of the First Defendant. The extent of the property is 4,137 hectares.
3. On 19<sup>th</sup> May 2012, at about 13H30, a fire was observed on the "service road", known as Saddle road. Fanned by a strong westerly wind, the fire progressed in a north westerly direction from the service road. From there it spread rapidly from First Defendant's property and entered Plaintiff's property. The cause of the fire was not established.
4. The First Defendant's property is uncultivated, unoccupied and covered with wild grass, kakibos and weeds.
5. Plaintiff alleges that he suffered damages in the sum of R177 047.15 as a result of the fire, which he also alleges to have been due to the negligence of the Defendants.
6. In terms of the pre-trial minutes concluded by the parties on 7 October 2013, the matter is to proceed both on merits and quantum.

#### **PLAINTIFF'S CASE**

7. It is the Plaintiff's case that the damage it had suffered was caused by the negligence of the First Defendant, Second and or Third Defendant, more particularly-

- 7.1. failure of the First Defendant to prepare and maintain an adequate fire break on the First Defendant's property;
  - 7.2. failure of First Defendant to have adequate and effective fire fighting equipment, readily available to destroy the fire, that started on the First Defendant's property;
  - 7.3. failure of First Defendant to employ the necessary staff, representatives or employees, duly trained to combat and extinguish the fire;
  - 7.4. failure of the First Defendant to employ a responsible person to be present on the land, with responsibility to effectively manage and or extinguish any fire, that may occur on the First Defendant's property;
  - 7.5. failure of First Defendant to take reasonable steps to inform land owners of the adjoining properties,
  - 7.6. failure of the First Defendant to inform Plaintiff and or relevant authorities of the existence of fire;
  - 7.7. it is pleaded in the alternative that failure of the First Defendant to act with care and failure of the First Defendant to take reasonable measures to prevent the fire from spreading into Plaintiff's property and failure of the First Defendant to control and extinguish the fire burning on the First Defendant's property;
  - 7.8. failure of the Second and Third Defendants in their capacities as members of the First Defendant to prepare and maintain an adequate fire break on the First Defendant's property;
  - 7.9. failure of Second and Third Defendant to have adequate and effective fire fighting equipment readily available to destroy the fire that started on First Defendant's property;
8. In the alternative Plaintiff alleges that Second and Third Defendant jointly and severally had a legal duty acting as representatives of the First Defendant and their failure to act with due care particularly with;

- 8.1. their failure to take reasonable measures to prevent and extinguish fire from spreading onto the Plaintiff's property;
  - 8.1.1. failure to take reasonable measures to control and extinguish fire burning on the First Defendant's property;
  - 8.1.2. failure to take reasonable measures to prepare and maintain adequate fire- break on the First Defendant's property;
  - 8.1.3. failure to take reasonable measures to have adequate and effective fire fighting equipment, readily available to destroy fire that started on the First Defendant's property;
  - 8.1.4. failure to take reasonable measures to have adequate and effective fire fighting equipment readily available to destroy the fire that started on the First Defendant's property;
  - 8.1.5. failure to take reasonable measures to employ staff duly trained to combat and extinguish the fire;
  - 8.1.6. failure to take reasonable measures to employ a responsible person to be present on the property with responsibility to manage/ extinguish any fire that may occur on the First Defendant's property;
  - 8.1.7. failure to take reasonable steps to inform land owner of the adjoining properties and Plaintiff or relevant authorities of the existence of fire;
  - 8.1.8. failure to reasonably foresee Plaintiff's damages and despite foreseeability, failed or neglected to act.

### **FIRST TO THIRD DEFENDANTS CASE**

9. The Defendants denied that they were negligent. They alleged that the fire started on the Plaintiff's property, alternatively on the road reserve on the south western boundary adjoining the Plaintiff's property and Duiker road and spread therefrom to the Plaintiff's property. The cause of fire is unknown.

9.1. The Defendants pleaded in the alternative that should it be found that the fire destroyed Plaintiff's property and that they were negligent, they denied that such negligence was the cause of damage to the Plaintiff's property and that the Plaintiff's property was damaged or destroyed as a result of the negligence of the Plaintiff for :

- 9.1.1. failure to take reasonable measures to prevent the fire starting on his property;
- 9.1.2. failure to take reasonable measures to control and extinguish the fire burning on his property;
- 9.1.3. failure to prepare and maintain an adequate fire- break on the plaintiff's property to ensure that the fire did not spread from the road reserve onto the plaintiff's property;
- 9.1.4. failure to house the alleged damaged goods in proper facilities thus protecting them from the risk;
- 9.1.5. failure to have adequate and effective fire fighting equipment readily available to destroy the fire;
- 9.1.6. failure to employ necessary staff which are trained to combat and extinguish fire;
- 9.1.7. failure to employ responsible person to be present on Plaintiff's land with the responsibility to effectively manage and extinguish the fire;
- 9.1.8. failure to take reasonable steps to inform the relevant authorities of the existence of fire, alternatively the risk of fire starting and spreading from the road reserve onto Plaintiff's property;
- 9.1.9. the Defendants admitted that they are not members of the fire protection association.

10. In the alternative, the Second and Third Defendants alleged that do not in law, have a duty of care as alleged nor can they be jointly and severally liable.

11. In the course of trial, the Defendants amended their Plea and alleged that on 19 May 2012, the fire started on Plaintiff's property alternatively on the road reserve on the south western boundary adjoining Plaintiff's property and Duiker road (R550) and spread there from to Plaintiff's property.

### **THE EVIDENCE**

13. Mr Barry Bruce Heine, the Plaintiff testified that when he was notified of the fire at 13H15, he was in Frankfort which is approximately 170 kilometres drive away from his farm. Immediately thereafter he telephoned his farm manager, Mr Pretorius and informed him of a veld fire. The said Mr Pretorius responded that he was aware of this fire and had summoned Plaintiff's workers to extinguish the fire. On his arrival at the farm he discovered that the bales of grass, namely, teff, smuts finger, erogrostis, storage tanks, barbed wire, fire beaters, plastic pipes, bee hives and various farming equipments were burnt and destroyed.

14. Mr Heine further testified that all the bales of grass as claimed were stored along the tree line (approximately 15 metres wide) along the upper portion of his farm which was indicated on Exhibit "DC3" along north eastern line. The aforesaid bale of grass was stored outside along the tree line since January 2012 to date of fire.

15. He further testified that he regarded the fire-break in his property to be adequate and in good condition at the time of fire. On his boundary wall, is 15 meters of blue gum trees, which provided a "natural firebreak, a sand road of approximately 5 meters in width and a disked road approximately 4 meters wide, giving a total width of approximately 24 meters of firebreak. He also maintains fire- break around his property. He has adequate fire fighting equipment kept at

his farm such as hessian bags, 20 litre containers , a 40 000 litre reservoir tank, a cannon spray and fire beaters.

16. Under cross examination, Plaintiff denied that the blue gum trees and veld grass along his boundary which was 1.2 metre high is combustible. He further denied that the tall grass and blue gum trees fuelled the fire. According to him the blue gum trees, approximately 40 trees, act as a natural firebreak. He denied that he negligent by failing to store the bales of grass in storage facilities post harvesting period, and keeping them in the open along the tree line instead. He conceded that the portion directly above his blue gum tree line (North eastern point of Exhibit DC3) did not have a firebreak. His staff members are not trained in fire fighting.
17. Ms Amy Ulyett, a neighbour, testified for the Plaintiff. Her property is situated on top, on the north eastern direction of Plaintiff's property as depicted on Exhibit "DC3" She testified that during lunch time, she was in her house in the kitchen and noticed the smoke at the back of her stables. She noticed flames approximately the height of her stables, approximately 2.8 meters. Her observation was that the fire came from the north western side of the road which is referred to as the service road, also known as Saddle road. At that stage the fire had become uncontrollable. Her weathervane showed a westerly wind. The fire spread quickly from the First Defendant's property onto her property and then across to Plaintiff's property. The fire was fanned by a strong wind blowing at a speed of 30 to 40 kilometres per hour.
18. She further testified that she saw Plaintiff's workers extinguishing the fire, by spraying water, had buckets of water and connected irrigation pipes.

19. According to her the fire was unstoppable, due to the strong wind. Within 10-15 minutes the fire had passed. There was no firebreak between her boundary adjoining the First defendant's property.
20. Mr Jan Abram Pretorius was in the Plaintiff's employ during 2012 and lives on Plaintiff's farm. He was a farm manager employed by Plaintiff. He was in the house when he received a telephone call from Plaintiff at about 13H00 who informed him that there was a fire. At that point in time he was aware of the fire.
21. He further testified that Mr Naicker and his 3 workers, Mr Da Silva and two employees of the Plaintiff used irrigation pipes, utilised 40 000 litres of the water from the reservoir and fire beaters to extinguish the fire. He tried with his workers to roll away the bales of grass to save them from the fire but due to the strong wind they could not contain the fire. He explained that the bales of grass weigh approximately 450 kilograms and 1.2 meter in diameter. It took approximately 15 minutes for the fire to spread across both portions of Amy Ulyett, First Defendant's property and Plaintiff's property, as the fire was fanned by a strong wind. He explained that nobody could have stopped the fire. He testified that he observed that the fire came from north western direction from the First Defendant's property over the property of Ms Ulyett and then across to Plaintiff's property.
22. He further testified that First Defendant did not have firebreaks on May 2012 on his boundary adjoining Plaintiff's property.
23. Under cross- examination Mr Pretorius testified that he saw the fire spread from First Defendant's property. The Second Defendant came after the fire spread. According to him, the blue gum trees on Plaintiff's property function as a "natural fire- break". He denied that they did not utilise the fire beaters to put out the fire, but were forced to abandon them due to the smoke inhalation which was unbearable.

24. The Plaintiff thereafter called Mr James Gray, who was the chairman of MidVaal Fire Protection Association. According to the guidelines of the association, a firebreak must be at least 5 metres wide` on either side of the owner's boundary. The firebreak must be maintained every year. The firebreak must be free from non- combustible material. The size of the firebreak will however depend on the nature of vegetation sought to be protected.
25. He further testified that the Plaintiff is a member of Fire Protection Association, but had not attended the training.

### **EVIDENCE BY FIRST TO THIRD DEFENDANTS**

26. Mr Vieira testified on behalf of the First Defendant. He is the Second Defendant in this matter. He testified that the property on which Plaintiff alleges that the fire originated on 19 May 2012 belongs to the First Defendant and was acquired in 2009. He bought the property in order to develop it. The property is unoccupied, uncultivated, has weeds, grass and kakibos.
27. He further testified that at about 14h15 he was telephonically advised by Plaintiff that his bales of grass were burnt and he wanted compensation. At that point in time he was at his home in Glenvista, which is a drive-away of approximately 20 kilometres. He immediately rushed to Plaintiff's property and arrived at 14H40. He explained that there was nothing that he could do or could have done as the fire had passed. On his arrival at the scene, which is adjoining Plaintiff's property he saw the blue gum tree line of Plaintiff engulfed in smoke. In support of his testimony, he tendered photographs and video clips depicting the scene of damage. The bale of grass of Plaintiff was stored underneath the blue gum tree line.

28. He further testified that due to saddle road being a firebreak in itself, there was no need for a firebreak between his boundary and Plaintiff's boundary (Exhibits "DP16" and "OD15").
29. Under cross-examination, Mr Vieira conceded that he did not have fire fighting equipment and personnel available on this vacant land. He did not mobilise resources to assist to extinguish the fire. He did not inform landowners of adjoining properties of the existence of the veldfire. The costs are prohibitive to keep personnel and fire fighting equipment on his land.
30. The issues to be determined in this matter are whether the fire was indeed a veldfire and whether the fire was caused by the First Defendant, spread from the First Defendant's property or started on the First Defendant's property.
- 31.** The Plaintiff's claim against the Defendants is a delictual one and for the Plaintiff to succeed in his claim he must show that the Defendants' wrongful and culpable conduct caused its damages. In other words, the Plaintiff must establish a conduct (either in the form of an act or omission), fault (either negligent or intentional) on the part of the Defendants, that it has suffered harm or loss and that there is a causal connection between the Defendants' conduct and the harm or loss suffered. **(See HL & Timber Products (Pty) Ltd v SAPPI Manufacturing (Pty) Ltd 2001(4) SA 814 (SCA) at 820E-G).**
32. In terms of section 34 of the Act, the Defendant is presumed (until the contrary is proved) to have been negligent in relating to a veldfire if the Plaintiff proves a loss suffered as a result of a veldfire, caused by the Defendant. It is common cause in this instant matter the Defendants were not members of the fire fighting association and therefore section 34 is applicable. This section provides that:

"If a person who brings civil proceedings proves that he or she suffered loss from a veld fire which-

- (a) the Defendant caused; or
- (b) started on or spread from land owned by the Defendant, the Defendant is presumed to have been negligent in relation to the veldfire until the contrary is proved, unless the Defendant is a member of a fire protection association in the area where the fire occurred".

32.1 The presumption in subsection (1) does not exempt the Plaintiff from the onus of proving that any act or omission of the Defendant was wrongful.

33. It was argued by Mr Kloek, appearing for the Plaintiff that the grammatical meaning of "veldfire" for the purposes of the Act must be determined with reference to the word "veld" That term conveys the idea of an area covered with grass of considerable extent and in its original rough state. (see *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1925 AD 245 at 253).

34. The evidence by Mr Vieira makes it clear that the First Defendant's property is uncultivated, unoccupied and covered with wild grass, kakibos and weeds. In my view the fire in question was a veld fire within the meaning of section 2 of the Act.

35. It was in dispute as to who caused the fire or where the fire did start or where did the fire spread from. This matter raises question of liability in delict for so called pure economic loss resulting from the ignition and spread of the fire to the neighbouring properties. In order to succeed the Plaintiff must establish first, that the omissions complained of were wrongful, secondly, that they were negligent and thirdly that those omissions were causally connected to the loss suffered by them. (*Local Transitional Council of Delmas v Boshoff* 2005 (5) SA 514 (SCA) para 23).

36. It was Mr Vieira evidence that the portion of the First Defendant's land were both Mrs Ulyett and Mr Pretorius indicated the fire came from appeared to be unburnt ("Exhibit DE5"). This according to him suggested that the fire may have started and or spread either from the Plaintiff's property alternatively, the road reserve.
37. It was Mrs Ulyett's evidence that the fire came from the north western side, the road which is known as Saddle Street. There was westerly wind which she noticed when she looked at the weathervane. Her evidence was not attacked that the fire spread quickly from the First Defendant's property onto her property and then across to Plaintiff's property. The fire was fanned by a strong wind blowing at a speed of 30 to 40 kilometres per hour.
38. I accept the evidence of Mrs Ulyett on the fire spread as reliable and credible.
39. In the circumstances I find that the Plaintiff's version that the fire spread from the First Defendant's property onto his property.
40. The next question is whether the Defendants were negligent. In this regard it was the Plaintiff's contention that the Defendants negligence was in their failure, to prepare and maintain firebreak on its side of the common boundary between his property, to provide adequate and effective fire fighting equipment readily available to extinguish fire and to employ a responsible person to be present to effectively manage and or extinguish fire and trained personnel to extinguish fire that may occur on First Defendant's property.
41. It was common cause between the parties that the cause of the fire was not established and that the Defendants were not members of a fire protection association. In the circumstances the provisions of the Act are applicable. The relevant provisions are contained in sections 2, 12, 13, 17 and 34 of the Act. Section 12 (1) of the Act provides:

“Every owner on whose land a veldfire may start or burn or from whose land it started may spread must prepare and maintain a firebreak on his or her side of the boundary and any adjoining land”

42. In terms of s13 of the Act the firebreak must be wide enough and long enough to have a reasonable chance of preventing a veld fire from spreading to or from neighbouring land. The size of the fire breaks required to be prepared and maintained is, however not defined. Section 17 of the Act requires the owner on whose land a veld fire may start or burn from to have prescribed or reasonable equipment, protective clothing and trained personnel for extinguishing fires.

43. It was submitted by Ms Maschwitz that the evidence show that First Defendant's property is vacant, and unoccupied and that it cannot reasonably be expected of the First Defendant to employ staff for the purpose of complying with the Act. Mr Vieira testified that it is not reasonable under the circumstances to have fire fighting equipment available on the First Defendant's property. It was further submitted that the Plaintiff in failing to inform the Defendants of the existence of the fire precluded them from being able to act accordingly.

44. In my view the submission by Ms Maschwitz cannot be accepted. I found this contention untenable. It is not a correct reflection of the law regarding their liability of the landowner created by section 17 (1) and 17 (2) of the Act. It had been decided by our courts that landowner in our law is under a duty control or extinguish a fire burning on his or her land. See in this regard Minister of Forestry v Quathlamba (Pty) Ltd 1973 (3) SA 69 (A), where Ogilve Thompson CJ said the following at 81G-82A.

*"Once such an owner or occupier (hereinafter for convenience referred to as a landowner) as is mentioned in the preceding paragraph becomes aware that the fire has broken out or spread on to his property, and he foresees or ought reasonably to have foreseen, the*

*likelihood that, if not controlled or extinguished, it might spread to and cause damage to or on another's property, I am, for reasons which follow, firmly of the opinion that our law requires him, with such means as are at his disposal, to take reasonable steps to control or extinguish the fire. For, under such circumstances, "the duty to take care" mentioned in Paine's case, supra, is, in my view, established. Purely as a matter of language, it is no doubt correct to say that where the landowner bears no responsibility for the origin of a fire which is burning on his property, his failure to take steps to endeavour to control or extinguish it is an "omission" which is not "connected with prior conduct". To relive such a landowner of all legal liability, solely on that ground would, however, in my opinion, be to ignore both practical realities and what I conceive to be our law. For, in the circumstances postulated above, the law, in my opinion, imposes a duty upon the landowner to take, within the range of his capacities, reasonable steps to control or extinguish a fire liable to cause damage to another"*

45. The main argument advanced on behalf of the Plaintiff was that the First Defendant to Third Defendant ought to have established and maintained adequate firebreaks on its side of the common boundary and that had it done so, the fire would not have spread. Thereafter the onus rests upon the First to Third Defendant to show that "the fire could not by reasonable means and measures have been prevented beyond the boundaries of its property, thereby occasioning harm to the Plaintiff. Mr Vieira testified that due to saddle road being a firebreak in itself, there was no need for a firebreak on that portion of the first defendant's property. This is so because the Act does not create strict liability. **(See Minister of Forestry v Quathlamba 1973 (3) SA 69 (A) at 83G)**. Mr Vieira testified that it was way beyond his resources and unreasonable under the circumstances to employ a 24 hour staff and to house fire fighting equipment, given the fact that First Defendant's property is a vacant piece of land. I now turn to consider whether there was any negligence proved on the part of the First to the Third Defendant. Ms Maschwitz submitted that First to Third Defendants did not act negligently. In the alternative she submitted that in the event that the court finds that the First to Third Defendants were negligent then in that event of damage was caused by Plaintiff's failure to prepare maintain an adequate firebreak on the

Plaintiff's property to ensure that the fire did not spread from the road reserve onto the Plaintiff's property.

46. In response Ms Maschwitz submitted that despite the fact that the Act places certain duties on the owner of the land, failure by the Defendants to comply with such duties does not render them negligent. Even with Plaintiff 24 metre firebreak the fire burnt the entire portion of the boundary of the Plaintiff's property and the bottom portion thereof ("Exhibit DC3"). She further submitted under these circumstances, a reasonable person would not have foreseen possibility of harm and a reasonable person in the Defendants position could not have done anything more.

47. I reject Ms Maschwitz's contention. The Defendants were aware that their land was uncultivated and that in the event of the fire it could create risk.

48. I disagree with the suggestion that the failure of First to Third Defendants to keep and maintain firebreaks and to provide adequate fire fighting equipment would have had no effect on the spread of the fire. The presence of the firebreak would have served an important function to prevent the fire spread. The fact that there is a road between First Defendant's property and the Plaintiff's property does not relieve the First to Third Defendants from their statutory obligation as a landowners in terms of s12(1) of the Act

49. In my view the lack of a firebreak on the First Defendant's side common boundary was a major factor in the spread of the fire across the boundary into the Plaintiff's property. The firebreak would have assisted in retarding the spread of the fire, thereby making it easier to contain it. Mrs Ulyett and Mr Pretorius were in a better position to observe the cause and extent of the fire than Mr Vieira.

50. What we do know, as Mr Kloek pointed out that the grass where the fire raged, was long and dry. No precautionary measures had been taken to prevent the fire that arose on the First Defendant's property from spreading to that of its neighbours. In all circumstances I cannot find that First to Third Defendants rebutted the presumption of negligence.

### **NEGLIGENCE OF THE PLAINTIFF**

51. I now turn to consider whether the Plaintiff was negligent in relation to the extent of its damages. Mr Vieira on behalf of the First Defendant testified that the Plaintiff was negligent in relation to the fire in that he failed to store the alleged damaged goods in proper facilities to protect the goods from the risk of fire. He also stated the Plaintiff was negligent by allowing the bale of grass stored underneath the tree line along the portion of the Plaintiff's property which had no firebreak. The test of negligence is that a reasonable person in the position of the Plaintiff would have foreseen the reasonable possibility of his conduct causing him patrimonial loss and what reasonable steps would he have taken to prevent or to guard against such loss.

### **52. According to Holmes JA in Kruger v Coetzee 1966 (2) SA 428 (AD) at 430E:**

*"For the purposes of liability culpa arises if—*

- a) a diligens paterfamilias in the position of the Defendant—*
  - i. would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and*
  - ii. would take reasonable steps to guard against such occurrence....*
- b) The Defendant failed to take such steps"*

53. It was Plaintiff's evidence that he stacked the bales of the grass under or along the boundary fence of his property which had no firebreaks in January 2012. Mr Pretorius confirmed that the grass along the Plaintiff's tree line had dry leaves, twigs and wild grass

which were 1.2 metre long. The Plaintiff proffered no plausible explanation as to why he did not store these valuable assets in proper storage facilities which were in any event available.

54. It was contended that the Plaintiff's standard was not that of a reasonable farmer and in circumstances he was negligent in failing to keep the alleged goods in proper facilities.

55. I agree the Plaintiff has not behaved in accordance with the test as laid out in *Kruger v Coetzee* (supra). Stacking of the bales of grass along the tree line was worst risk imaginable. Stacking bales of grass which weighed 4.5 kilogram was not just ill-advised but plain reckless.

### **QUANTUM**

56. It is trite that the Plaintiff bore the onus to prove his damages. The Plaintiff called as an expert, Mr Aubrey Delpport, a branch manager in the employ of Senwes village, Vereeniging branch. He expressed the view that prices quoted by Mr Steyn, his subordinate on 6 June 2012 were fair and reasonable (Annexure X2). According to Mr Delpport, he is opinion that the prices quoted are market related and that general selling price is determined by the public market and the general prices throughout the district among people who deal in the particular commodity.

57. It is common cause that jakkals draad, (27 in quantity) creosout hout droppers (351 in quantity) 2 vertical water storage tank and 6 plastic pipes (in total of 300 in quantity) the replacement value thereof is R29 984.35. These goods were destroyed and rendered useless. The Plaintiff in cross-examination confirmed that the areforementioned items were destroyed and had no residual value.

58. It was submitted on behalf of the Defendants that should Honourable court find that the Plaintiff proved the alleged damages as presented in the quote, then it is submitted that the quote represents a replacement value as at the time of damage (new item quoted) as opposed to what the actual value of the goods were at the time of damage.

59. I am satisfied that Plaintiff has presented reliable and acceptable evidence and consequently he has proven his damages.

60. The Plaintiff testified that the bauer hose was destroyed by the fire and in support of his damages he presented a quotation from Senwes Village. It was submitted on behalf of the Defendants that Plaintiff has failed to prove his damages in relation to the bauer hose and neither can the Plaintiff justify or prove the quantum thereof. I am of the view that this quotation furnished by the Plaintiff in Annexure "X1" is hearsay and non-existent.

61. The claim of damages in the amount of R10 098.00 in respect of the beehives was however abandoned during trial.

62. In the circumstances I shall give judgement against the Defendants jointly and severally, the one paying the other to be absolved as claimed by the Plaintiff.

### **ORDER**

63. I make the following order:

63.1 The Defendants are ordered to pay the Plaintiff damages in the sum of R29 984.35 (twenty nine thousand nine hundred and eighty four rand and thirty five cents)

63.2 The Defendants must pay the Plaintiff's cost of suit, taxed on the appropriate magistrate court scale including the cost of counsel.

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**T. D. VILAKAZI  
ACTING JUDGE OF THE SOUTH GAUTENG  
HIGH COURT, JOHANNESBURG**

**APPEARANCES :  
FOR PLAINTIFF : ADV J W KLOEK  
INSTRUCTED BY : CCM ATTORNEYS INC  
FOR DEFENDANTS : ADV M MASCHWITZ  
INSTRUCTED BY : TIEFENTHALER ATTORNEYS  
DATE OF HEARING : 29, 30, 31 OCTOBER 2013 AND 5  
NOVEMBER 2013  
DATE OF JUDGMENT : 8 JULY 2014**