IN THE HIGH COURT OF SOUTH AFRICA /ES

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.

DATE 27/3/14 SIGNATURE

CASE NO: A409/2013

DATE: 27/3/2014

IN THE MATTER BETWEEN

DANIËL ADRIAAN DE BEER (CASE 3793/2010)	1ST APPELLANT
WILLEM HARMSE (CASE 3792/2010)	2ND APPELLANT
AND	
THE MINISTER OF POLICE	1ST RESPONDENT
INSPECTOR MANGANYE	2ND RESPONDENT

JUDGMENT

PRINSLOO, J

[1] This is an appeal against a judgment of 11 February 2013 by the learned magistrate in Pretoria North, Mr Ramahanelo, when he dismissed damages claims

instituted by the appellants against the two respondents flowing from alleged unlawful arrest and also malicious prosecution.

[2] Before us, Mr Bouwer appeared for the appellants and Mr Wessels appeared for the respondents.

[3] To avoid possible confusion, it should be pointed out that the two appellants instituted their respective damages claims in the Pretoria North magistrate's court under separate case numbers, no 3793/2010 (first appellant) and no 3792/2010 (second appellant).

Both the appellants were arrested as a result of the same incident which took place on 2 December 2009 and they were both released together the next day, 3 December 2009. The pleadings in the two cases, for practical purposes, can be described as identical. The two cases were never formally consolidated, but they were heard as one matter before the learned magistrate and the appeal also came before us, effectively, as one appeal under only one appeal case number. The fate of the appeal, whatever the result, will apply to both cases, , although, technically, it involves two trial actions instituted by the two appellants. Throughout the proceedings, this has been the approach of all concerned, so that nothing really turns on the issue. I add that the learned magistrate also gave his judgment, a one and a half page affair termed "reasons for judgment" under only one of the

Pretoria North case numbers, namely the one featuring the second appellant as plaintiff.

In their particulars of claim, the appellants, respectively, pleaded relief for two claims, namely one in respect of unlawful arrest (claim 1) and one in respect of malicious prosecution (claim 2).

In his "reasons for judgment" the learned magistrate also dismissed both claims of each of the appellants (plaintiffs at the time).

The appeals in respect of the claims for malicious prosecution abandoned: rule 41 application of the respondents

[4] In the heads of argument of the appellants, notice was given that they were not persisting with the appeal in respect of the claims for malicious prosecution and that these appeals were abandoned.

This inspired the respondents to file an application in terms of rule 41 for a costs order in their favour in respect of the wasted costs occasioned by the claims for malicious prosecution. They did so, because no tender to pay such costs was contained in the abandonment.

[5] We debated this issue with both counsel during the hearing, and no significant resistance was offered by Mr Bouwer for the appellants. From this it follows, that

if the appeal is successful, provision must still be made for a costs order in favour of the respondents in respect of the wasted costs flowing from the malicious prosecution claims. If the appeal fails, such an order will not be called for.

Brief synopsis of what the case is about

[6] At all relevant times, the two appellants worked for the so-called Paragon group which appears to consist of a number of branches, each, evidently, functioning as a close corporation. The first appellant ("De Beer") was the manager at Paragon North, a branch situated in Pretoria North. The second appellant ("Harmse") was the manager at Paragon Electrical Distributors CC, situated in Centurion. The owners of the Paragon group, it is evidently a family business, were not called to testify during the trial. Broadly speaking, Paragon seems to be in the business of electrical work. Harmse, at the Centurion branch, only involves himself with the purchase and resale of electrical copper cables. He only occupies an office in Centurion so that supplies bought by him are regularly stored at the Paragon North premises and also, for example, at the Gezina branch.

[7] Harmse buys cables from various suppliers and then resells them at a profit. The cables normally comes in rolls or "drums" and in different sizes, such as 120mm, and also in different lengths, for example 300m or 500m.

[8] One of the suppliers from which Harmse had been buying cable for the four years preceding the trial, is Belma Power Cables and Accessories ("Belma") which

appears to be a close corporation and is run by a somewhat shady character by the name of Ashley Myberry ("Myberry").

[9] On 2 December 2009 Mr Daniel Andries Botha ("Botha") who is attached to a risk management company contracted by the Johannesburg Metro to investigate and prevent cable theft from the Metro, or "City Power" for present purposes, received a report about an attempt to transport cables out of the Metro premises on the strength of falsified documentation.

[10] What happened thereafter, is, generally speaking, common cause between the parties, and amounts to the following: Botha confronted the occupants of the truck involved in the report and spoke to the driver, one Mr Sadiki who was employed by Belma and disclosed that his instructions were to first take the cables to a plot at Kameeldrift near Pretoria North and thereafter to President Steyn Street in Pretoria North, the premises of Paragon North. Sadiki had been doing this for the previous six months. Botha accompanied the truck and, on the way, summoned the police including Colonel Mathe ("Mathe") who was the ultimate arresting officer of the appellants and who also gave evidence. Mathe summoned some uniform police officers from Pretoria North. The information that Botha got was that the drums are first taken to the Kameeldrift plot where the markings on the outside are tampered with or deleted and which plot belongs to Myberry. Thereafter the drums are taken to Paragon North. In the event, they did not actually visit the Kameeldrift plot but went to Paragon North where they sought,

and were granted, permission to inspect the nine drums of cables delivered there the previous day by Sadiki. The drums were opened by removing the wood coverings and it turned out that the cables had the name City Power printed on them and they were manufactured for the Johannesburg Metro by a concern called African Cables. Large consumers of cables, such as the Metro's, arranged for their names to be printed on the actual cables. African Cables make these cables only for City Power and the cables are not distributed to other destinations. It is common cause that the cables were stolen. They were worth approximately R1 million and, over the previous three years, City Power had suffered losses, through cable theft, of the order of R40 million.

De Beer and Harmse were summoned to the scene and so was Myberry, who in the end did not arrive but sent his attorney to represent him.

The evidence of Botha was corroborated, by and large, by a senior corporate investigator employed by City Power, Johannesburg, one Rudi du Plessis.

Botha testified that it could clearly be observed, from inspecting the outside of the drums, that the markings thereon were tampered with. It seems that they were painted over with black paint. Photographic evidence forming part of the record is of poor quality and the observations made by Botha cannot be gleaned therefrom.

[11] The appellants were confronted with the fact that stolen cables were found on their premises. They presented some documentation in the form of invoices, delivery notes and proof of payment on the strength of which they argued that they legitimately bought the cables from Belma. They were questioned, *inter alia*, about the fact that some of the documents appeared to have been generated after the delivery of the cables which was considered to be an irregular state of affairs by the police. Mathe, in particular, who was present during all these events, said that he was not happy with the explanation given and this strange feature of the documentation was one of the considerations that persuaded him to give the order for the arrest of the appellants, subject to further investigations. In this regard, it is convenient to quote one of the exchanges which took place between the respondents' counsel and De Beer when the latter was cross-examined:

> "Nou dit is baie vreemd dat goeters afgelewer word gefaktureer word met betrekking tot 'n bestellingnommer wat eers drie dae later gegenereer word. Sal u dit vreemd vind? --- Ja soos ek netnou gesê het ek weet nie wat was die betalingsooreenkoms tussen hulle gewees nie.
>
> Nee, maar ek vra nie wat – of u weet wat die betalingsooreenkoms was nie. Ek stel vir u hier is goeters gelewer nog voordat die bestelling gegenereer is. Is dit vreemd? U het u vereenselwig met hierdie verduideliking. U het gesê hierdie verduideliking is my verduideliking. --- Dit is reg.

U verduidelik nou vir die hof dat die goed afgelewer is en gefaktureer is drie dae voordat dit bestel is. Is dit vreemd? --- Ja.

Het u 'n antwoord, is dit 'n ja? --- Dit is reg.

Ek wil u dan neem na bl 2 tot 7 van dieselfde bundel en wat net vir my vreemd is dit gaan ook oor 'n paar dokumente wat uitgeloop het op betaling maar hier is nie 'n bestelling gegenereer nie. Daar is nie vir ons 'n bestelling gegee wat sê dit is die rede hoekom hierdie fakture en bestelling gegenereer is en betaal is nie. Sal u dit vreemd vind? --- Ja as 'n mens daarna kyk ja.

So ooglopend wil dit vir 'n mens voel maar hier is iets nie lekker nie. Sal u saam met my daarmee stem? --- Ja.

Sê net weer, ek kan nie mooi hoor nie. --- Ja."

Harmse, who was more involved with the preparation of the documentation, testified that this is the way he used to work, whether it complies with accepted accounting practice or not.

[12] Colonel Mathe, the arresting officer, who was also the senior officer involved, gave evidence and he was cross-examined intensively and for a very lengthy period. I did not get the impression that he was in any way discredited. He also met Sadiki on the scene and heard his explanation. Testifying without an interpreter, Mathe said the following:

> "When I met them they introduced themselves to me and after that they reported to me that they are coming from (indistinct) and City Power of Johannesburg. They follow information which they get from Sadiki that he transported cable from Johannesburg to a certain farm in Kameeldrift. At the farm the cables were changed, the outside. They were repainted and then he transported them to a place in Pretoria North ..."

Mathe testified that Sadiki pointed out the nine drums of stolen cables that he said he had delivered the previous day. He dealt with the common cause facts that the cables were stolen and the property of City Power. He confirmed his personal inspection of the documentation and his concern about the discrepancy, *supra*, between the date of the paper work and the date of the delivery. Perhaps not very eloquently, he put it as follows:

> "Then just there I said how can it be that delivery came before the transaction. Then they could not explain furthermore. Then I said ok, now the people of City Power identified the cables as their property. So based on that and the proof that you are showing me now, I have got the reason of suspicion that because they say the cables were stolen in Johannesburg ... I also have suspicion that they are stolen. I identified the people of Pretoria North and told them this is your area and you are with us on the scene so now you take over the scene and arrest the managers, because they cannot explain to us how can it happen that they first received the load before the transaction took place ..."

He insisted that he asked both De Beer and Harmse for an explanation and that the explanation was not satisfactory. He could not remember the name of the officer who was instructed to effect the actual arrest. It turned out to be Constable Labuschagne, who also testified on behalf of the respondents. In cross-examination, Labuschagne was also confronted with the wording of Police Standing Order 341(3) which reads as follows:

> "There are various methods by which an accused attendance at the trial may be secured. Although arrest is one of these methods, it constitutes one of the most drastic infringements on the right of an individual and a member should therefore regard it as a last resort."

Labuschagne, even against this background, insisted that he felt that they did the right thing to arrest at the time.

[13] Towards the end of his lengthy and intensive cross-examination, Mathe again confirmed that he was the officer who gave the order for the arrest to be effected and then the following exchanges took place:

> "You knew that there was investigation outstanding. --- Yes, after the arrest.
>
> Hence the arrest. --- The arrest, yes, for further investigation to take place.
>
> So are you saying now that the plaintiffs were arrested so that further investigation can take place? --- I said when I started, they were arrested

based on the issue of reason of suspicion of possession of stolen property, failure to give satisfactory explanation.

So why was it necessary to arrest the plaintiffs, so that you can do further investigation? Why? --- Because there was no satisfactory explanation regarding the possession of the goods. And also the transaction and the delivery was questionable."

[14] During his cross-examination, Mathe also confirmed that he was well aware of the fact that he had a discretion to arrest and did not have to arrest but he felt that he acted properly in terms of his discretion.

[15] The second respondent, Silas 0upa Manganye ("Manganye") also gave evidence. He holds the rank of warrant officer. He is employed at SAPS 0rganised Crime Pretoria. He was on the scene with Colonel Mathe and took note of all the reports that came in. He was present when the information came that the cables were stolen and that the outside of the drums were obliterated with black paint at the Kameeldrift plot.

He was not the arresting officer and did not give the order to arrest. He left that to the senior officers. He does not know whether he was actually present when the order to arrest was given. He also does not recall which officer effected the actual arrest. He had the docket, and visited the appellants the same evening after the arrest at the Pretoria North police cells and again the following day when they

told him that they would help him to get the "person whom they bought the cables from" and would help with the investigation. He also negotiated with the appellants and their attorney and decided to release them in view of their promised assistance with the investigation. He also signed the so-called SAP.328 forms "release of suspect" in respect of both appellants. According to these two documents, the appellants were detained at about 18:40 on 2 December 2009. The evidence was that they were released at about midday the following day. The "brief reasons for detention" is described as "possession of suspected stolen property – copper cables" (in the case of Harmse) and "possession of stolen goods" (in the case of De Beer). The "brief reasons for release" are given as "the suspect cannot be linked with the abovementioned offence at this stage".

Manganye was also cross-examined at length and *ad nauseum* about whether or not he thought that the appellants gave an acceptable explanation for their involvement before the arrest. He insisted that he could not quite remember the details.

As Mr Wessels pointed out in his heads of argument, the question whether the arresting officer harboured a reasonable suspicion is what is relevant. This is the officer who gives the instruction that the arrest must take place. See *Minister of Justice v Ndala* 1956 2 SA 777 (T) at 780A-C and *Bhika v Minister of Justice and another* 1965 4 SA 399 (W) at 400G.

[16] It is common cause that the stolen cables were confiscated by the police.

[17] The evidence given at the trial indicated that a criminal prosecution was underway in Johannesburg against Myberry, and that the appellants would testify for the state. It is not known what the result of the prosecution was.

Some remarks about the pleadings and section 40 of the Criminal Procedure Act, no 51 of 1977

[18] As I already indicated, the pleadings in both the cases are, for practical purposes, identical.

[19] The first allegation in respect of claim 1, the claim in respect of alleged unlawful arrest, reads as follows:

> "0p 2 Desember 2009 te Paragon Elektries, Pretoria-Noord is die eiser sonder 'n lasbrief gearresteer deur die tweede verweerder wie in diens van die eerste verweerder is."

[20] The plea to this paragraph 5 of the particulars of claim reads as follows:

> "*Ad* paragraaf 5:
>
> 3.1 Buiten om te ontken dat die eiser deur die tweede verweerder gearresteer is word die balans van die beweringe erken.

3.2 Die eiser is gearresteer deur lede van die Suid-Afrikaanse Polisiediens welke lede onder die bevel van kolonel Mati (*sic*) was ten tye van die optrede.

3.3 Die eiser is gearresteer deur die lede in terme van artikel 40(1)(b) van die Strafproseswet, Wet 51 van 1977, hierna genoem 'die Wet' deurdat die arresterende lede op 'n redelike wyse vermoed het dat die eiser 'n misdryf gemeld in skedule 1 tot die Wet, te wete diefstal gepleeg het.

3.4 In die alternatief, dat die arresterende lede die eiser gearresteer het in terme van artikel 40(1)(a) van die Wet deurdat die eiser in besit gevind is van goedere wat redelike (*sic*) wys vermoed gesteelde goedere is en waarvan hy nie 'n redelike verduideliking van sy besit daarvan kon gee nie."

[21] To these paragraphs in the plea, the following replication was filed by the appellants, as plaintiffs:

"*Ad* paragraaf 3.1:

Die eiser pleit dat die arrestasie gedoen is deur die tweede verweerder alternatiewelik deur konstabel Labuschagne wie in diens van die eerste verweerder is en in opdrag van onder andere die tweede verweerder die arrestasie gedoen het.

Ad paragraaf 3.3:

2.1 Die geheel van die inhoud van hierdie paragraaf word ontken en die verweerder word tot bewys daarvan geplaas. (In other words, the plea that Mathe effected the arrest is ignored.)

2.2 Die eiser pleit dat hy gearresteer is op aanklag van besit van gesteelde eiendom.

2.3 Besit van gesteelde eiendom is nie 'n misdryf vermeld in bylae 1 van die Strafproseswet, Wet 51 van 1977 (hierna verwys na 'die Wet') nie.

2.4 Artikel 40(1)(b) van die Wet *supra* is derhalwe nie van toepassing nie."

[22] In the very comprehensive replication, it is also pleaded, *inter alia*, that the respondents did not properly take into account the rights of the appellants entrenched in paragraph 12 of the Constitution (not to be deprived of one's freedom arbitrarily or without just cause); that they did not properly consider alternative methods to ensure the presence of the appellants in court; that they did not comply with the requirements of Standing Order 341 of the South African Police Service (quoted earlier) and that they did not properly exercise their discretion to effect the arrest.

[23] Turning to section 40 of the Criminal Procedure Act, it is convenient to quote the sections relevant for present purposes, namely section 40(1)(a) and (b):

"40(1) A peace-officer may without warrant arrest any person –

(a) who commits or attempts to commit any offence in his presence;

(b) whom he reasonably suspects of having committed an offence referred to in schedule 1, other than the offence of escaping from lawful custody."

[24] Included in the long list of offences mentioned in schedule 1, are the following:

"Theft, whether under the common law or a statutory provision.

Receiving stolen property knowing it to have been stolen.

Any offence ... the punishment wherefore may be a period of imprisonment exceeding six months without the option of a fine."

With reference to the last-mentioned "any offence" the following is stated in Hiemstra's *Criminal Procedure*, loose leaf edition 33-24:

"The offences contemplated by the words 'any offence ... the punishment whereof may be a period of imprisonment exceeding six months' which appear in the twenty-second item, only include statutory offences (*Areff v Minister van Polisie* 1977 2 SA 900 (A))."

[25] It was argued by Mr Bouwer for the appellants that, where the respondents pleaded that they relied on the provisions of section 40(1)(b) "deurdat die arresterende lede op 'n redelike wyse vermoed het dat die eiser 'n misdryf gemeld in skedule 1 tot die Wet, te wete diefstal gepleeg het" and where the

documentation, *supra*, suggests that the "brief reasons for detention" are "possession of suspected stolen property – copper cables" in the case of Harmse and "possession of stolen goods" in the case of De Beer, the respondents have limited their options and their opportunity to rely on section 40(1)(b) because they pleaded a reasonable suspicion of theft but their documents and their evidence suggest a suspicion of possession of stolen property which, according to Mr Bouwer's argument, is not listed as one of the schedule 1 offences.

Mr Wessels, in countering this argument, invited my attention to the provisions of section 264(1) of the Criminal Procedure Act, which reads as follows:

"**Theft**

264(1) If the evidence on a charge of theft does not prove the offence of theft, but –

(a) the offence of receiving stolen property knowing it to have been stolen (my note: this is also a schedule 1 offence);

(b) an offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955); or

(c) an offence under section 1 of the General Law Amendment Act 1956 (Act 50 of 1956);

(d) ...

the accused may be found guilty of the offence so proved."

[26] Mr Wessels argued, if I understood him correctly, that the plea of a reasonable suspicion of theft as a schedule 1 offence is wide enough to cover the other theft related offences in the spirit of section 264. I agree. In any event, the "twenty-second item", *supra*, contained in schedule 1, dealing with any offence the punishment wherefore may be a period of imprisonment exceeding six months without the option of a fine (which, in this particular instance, would surely be the case) which, according to *Hiemstra*, *supra*, includes only statutory offences, would, in my view, cover a contravention (or, for present purposes, a reasonable suspicion of such contravention by Colonel Mathe) of section 36 and/or section 37 of the General Law Amendment Act 62 of 1955 dealing with the possession or receipt of stolen property (the latter offence being specifically included in schedule 1).

[27] In a leading case on the subject of unlawful arrest, *Minister of Safety and Security v Sekhoto* 2011[1] SACR 315 (SCA) at 320h-321b the following is said:

> "As was held in *Duncan v Minister of Law and Order* (1986 2 SA 805 (A) at 818G-H), the jurisdictional facts for a section 40(1)(b) defence are that
>
> (i) the arrestor must be a peace-officer;
>
> (ii) the arrestor must entertain a suspicion;
>
> (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in schedule 1; and
>
> (iv) the suspicion must rest on reasonable grounds."

[28] In all the circumstances, and for the reasons mentioned, I am of the view that these jurisdictional facts were present when the appellants were arrested so that the section 40(1)(b) defence raised in the plea falls to be upheld. For the same reasons, I am of the view that the respondents discharged the *onus* resting upon them to prove that the arrest and subsequent detention of the appellants was lawful – as to this *onus*, see Amler's *Precedents of Pleadings by Harms*, 7th ed p46 and the authorities there quoted.

[29] I am not persuaded that there is any merit in the alternative defence raised by the respondents, based on the provisions of section 40(1)(a), namely that a peace-officer may without warrant arrest any person who "commits or attempts to commit any offence in his presence". I am of the view that it is not for this court of appeal to pronounce upon whether or not an offence was being committed in the presence of the police in the circumstances of this particular case.

Some conclusionary remarks

[30] During the trial, and also in their replication, the appellants relied on an argument that the police were obliged to consider whether there were no less invasive options to bring the suspects before the court than immediate detention of the persons concerned (the appellants). In *Sekhoto, supra*, this alleged requirement or jurisdictional fact was described as the "fifth jurisdictional fact" but found by the learned Judge of Appeal not to exist for purposes of a section 40(1)(b) defence – see *Sekhoto* at 325e-f.

[31] In *Sekhoto*, at 327b-c it was pointed out that once the jurisdictional facts for an arrest, whether in terms of any paragraph of section 40(1) or in terms of section 40(3), are present, a discretion arises. In other words, once the required jurisdictional facts are present the discretion whether or not to arrest arises. The officer (as acknowledged by Colonel Mathe in his evidence) is not obliged to effect an arrest.

In this regard, the following is said in *Sekhoto* at 330d-f:

> "[39] This would mean that peace-officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection or even the optimum, judged from the vantage of hind-sight – so long as the discretion is exercised within this range, the standard is not breached."

[32] At 331h-332b the following is also said by the learned Deputy President:

> "Whether his decision on that question is rational naturally depends upon the particular facts, but it is clear that in cases of serious crime – and those listed in schedule 1 are serious, not only because the legislature thought so

> — a peace-officer could seldom be criticised for arresting a suspect for that purpose. On the other hand, there will be cases, particularly where the suspected offence is relatively trivial, where the circumstances are such that it would clearly be irrational to arrest."

In this case, the crime in question is clearly a serious one. Cable theft has become a scourge throughout the country. A large quantity of stolen cables is involved.

[33] In this case, the appellants, in their pleadings, attacked the manner in which the arresting officer exercised his discretion to order the arrest. In *Sekhoto*, at 333a-b the following is said:

> "A party who alleges that a constitutional right has been infringed bears the *onus*. The general rule is also that a party who attacks the exercise of discretion, where the jurisdictional facts are present, bears the *onus* of proof. This is the position whether or not the right to freedom is compromised. For instance, someone who wishes to attack an adverse parole decision bears the *onus* of showing that the exercise of discretion was unlawful. The same would apply when the refusal of a presidential pardon is in issue."

In this case, for all the reasons mentioned, I am not persuaded that the appellants managed to discharge this *onus*. For this reason alone, it seems to me that the appeal cannot be upheld.

[34] Another issue, but related to this last-mentioned aspect, seems to me to also militate against the success of the appeal. It is this: as appears from the brief analysis, *supra*, of the pleadings, the appellants, as plaintiffs, alleged that Manganye was the arresting officer. As also described, the respondents, in 3.1 and 3.2 of the plea, denied that Manganye was the arresting officer and pleaded that it was Mathe. In reply, the appellants persisted with their allegation that Manganye made the arrest and, in the alternative that it was done by Labuschagne.

It is clear, from the analysis of the evidence, that Mathe was the arresting officer. Labuschagne effected the physical arrest on the instruction of Mathe. In terms of the authorities quoted, the question is whether Mathe had properly exercised his discretion. The evidence of Manganye that he had nothing to do with the ordering of the arrest was undisputed during the trial. It does not appear as if the pleadings were ever amended to cover this evidence.

The learned magistrate formulated his judgment on the basis of the allegation that Manganye was the arresting officer. He said the following in his "reasons for judgment":

> "I cannot find that the second defendant acted with malice and it cannot be said that the second defendant acted without reasonable and probable cause."

The second defendant was Manganye. Mathe does not feature at all in this judgment. It is clear from the evidence that Manganye did nothing whatsoever to render the arrest unlawful, so that, to that extent, the judgement is unassailable and cannot be upset on appeal.

The costs

[35] It seems to me that there is no reason why the normal rule should not apply, namely that the costs should follow the result of the appeal. I have already dealt with the rule 41 application launched by the respondents.

The order

[36] I make the following order:

(1) The appeal is dismissed.

(2) The appellants, jointly and severally, are ordered to pay the costs.

W R C PRINSLOO
JUDGE OF THE NORTH GAUTENG DIVISION, PRETORIA

A409-2013

I agree

T A MAUMELA
JUDGE OF THE NORTH GAUTENG DIVISION, PRETORIA

HEARD ON: 25 FEBRUARY 2014
FOR THE APPELLANTS: M BOUWER
INSTRUCTED BY: DE JAGER ATTORNEYS
FOR THE RESPONDENTS: J K WESSELS
INSTRUCTED BY: STATE ATTORNEY