IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

REPORTABLE

CASE NO: J2524/07

In the matter between:

LANGE, GERT RUDOPLH BEUKES Applicant

AND

HEADLINE ENGINEERING SOUTH AFRICA (PTY) LTD 1st Respondent

MIDMAR HOLDINGS (PTY) LTD 2nd Respondent

JUDGMENT

Molahlehi J

Introduction

[1] This is a civil claim brought by the applicant in terms of s77 of the Basic Conditions of Employment Act 75 of 1997 (the BCEA). These proceedings were initially instituted on application during 2007. That application came before the court by way of motion on the 26th September 2008.

[2] In the notice of motion which now serves as the statement of claim for the purpose of these proceedings the applicant seeks an order in the following terms:

1.

1.1 Ordering the First and Second Respondents jointly and severally to pay the Applicant an amount of R762, 077.00;

1.2 Ordering the First and Second Respondents jointly and severally to pay interest on the above amount calculated at 15.5% per annum *from 31 December 2004 to date of payment in full;*

2

2.1 Ordering the First and Second Respondents jointly and severally to pay the Applicant an amount of R4, 033,705.0

2.2 Ordering the First and Second Respondents jointly and severally to pay interest on the above amount calculated at 15.5% **per annum** *from 31 December 2005 to date of payment in full;*

3

3.1 Ordering the First and Second Respondents jointly and severally to pay the Applicant an amount of R4,590,055.00;

3.2 *Ordering the First and Second Respondents jointly and severally to pay interest on the above*

amount calculated at 15.5% **per annum** *from 31 December 2006 to date of payment in full;*

4

4.1 Ordering the First and Second Respondents jointly and severally to pay the Applicant an amount of R309, 600.00;

4.2 Ordering the First and Second Respondent jointly and severally to pay interest on the above amount calculated at 15.5% per annum *from 30 April 2007 to date of payment in full;*

5.

5.1 Ordering the First and Second Respondents jointly and severally to pay the Applicant an amount of R826, 996.92;

5.2 Ordering the First and Second Respondents jointly and severally to pay interest on the above amount calculated at 15.5% per annum *from 30 April 2007 to date of payment in full;*

6

6.1 Ordering the First Respondent to render a full account, supported by vouchers, of its gross profit for the period 1 January 2007 to 30 April 2007;

6.2 Ordering the First Respondent to debate the said account;

6.3 Ordering the First and Second Respondents jointly and s*everally to pay the Applicant*

whatever amount appears to be due to the Applicant upon debatement of the account;

Ordering the First and Second Respondents jointly and severally to pay interest on the above amount calculated at 15.5% per annum *from 30 April 2007 to date of payment in full;*

7 Ordering the First and Second Respondents jointly and severally to pay the costs of this application"

[3] The case of the applicant in essence is that subsequent to his dismissal the first respondent refused to pay him the prescribed severance pay, leave pay due to him, payment of amounts in respect of deductions made from his salary in respect of a Provident Fund and short payment in his salary. The applicant also claims payment in an amount equal to six months remuneration in respect of unpaid notice pay including annual bonuses.

The Parties

[4] The first respondent, Headline Engineering South Africa (Pty) Limited, is a company with limited liability duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its business based at, Chamdor, Krugersdorp. The first respondent came into being during November 2001, through a shelf company then named "Eglin Investments no 45 (Pty) Limited." The first respondent was purchased by Mr Mohammed Iqbal (hereinafter referred to as "Mohammed") and was later joined by his son, Faizel Iqbal (herein after referred to as Faizel), these two men are Pakistani businessmen who operated their business from the

United Arab Emirates (UAE) and jointly had control of all the shares in the first respondent.

[5] The second respondent is a company registered in terms of the company laws of South Africa. During January 2007, the respondents concluded an agreement in terms of which the second respondent took over the business of the first respondent as a going concern and in terms of s197 of the Labour Relations Act 66 of 1995 (the LRA). It is for this reason that the second respondent was joined in these proceedings.

Brief background facts

[6] This matter came before Tshabalala AJ on 26 September 2008, on application. On that day the court *inter alia* ordered payment by the respondents jointly and severally of the amount of R199, 706.04 to the applicant and referred to matter to oral evidence. The issues to be determined in terms of that oral evidence are as follows:

1 The validity and enforceability of Mr Lange's contract of employment; and

2 The balance of the amount owing to Mr Lange by the respondent.

[7] The respondents conceded that in the event of this court finding in favour on the applicant regarding the enforceability and validity of the contract of employment, the applicant is entitled to payment in the following terms:

1. R627, 290.88 for unpaid salary, leave pay, provident fund contributions and severance pay

2. R309, 600.00 for notice pay and

3. R9, 385,837.00 for unpaid bonuses.

[8] The applicant called two witnesses in support of his case. He testified on his own behalf and called Mr Frans Benade (hereinafter referred to as Benade), the former financial director of the first respondent to testify in respect of the signing of the

agreement and the minutes of 18 October 2008. Mr Cecil Greenfield (hereinafter referred to as Greenfield); an expert on hand writing was called to testify regarding the authenticity of the signatures on the agreement. The applicant called Greenfield to testify because the first respondent contended that the signatures on the contract of employment presented by the applicant were not those of Mohammed and Faizel.

[9] The first respondent on the other hand called Mohammed and Faizel to testify on its behalf. The two witnesses disputed both the conclusion of a written agreement between the applicant and the first respondent including their signatures on that agreement. They contended that the agreement presented by the applicant was a fabrication and that their signatures were fraudulently forged. The two other witnesses which the first respondent called to testify were Mr Glen Rooseboom (hereinafter referred to as Rooseboom), a practicing attorney who served as the company secretary of the respondents and Mr Kharrubi (hereinafter referred to Kharrubi). The testimony of these two witnesses focused mainly on the alleged suspicious circumstances concerning production of the agreement by the applicant.

[10] The existence of the first respondent came about largely because of the friendly relationship between the applicant and the Mohammed and Faizel. The relationship between them started during the 3 (three) years period when the applicant was based in Dubai, as a project manager employed by a South African company. The business of the South African company which employed the applicant at that stage was involved in the business of supplying steel in Dubai. It would appear that the relationship came about because Headline Engineering LLC a company owned by Iqbal did subcontracting work for Murray & Roberts, the South African company which employed the applicant. The relationship between the applicant and the Iqbals continued even after his return to South Africa. The applicant and the Iqbals, in particular Mohammed, kept contact after his return to South Africa.

[11] During April 2002, the applicant joined Steinmuller, a German company based in Chamdor- Krugersdorp. At some stage the applicant contacted Mohammed about the possibility of him investing in a factory at Germiston in the Ekhuruleni area. As a result Mohammed visited South Africa to view and inspect the facility at Germiston. During that visit the applicant contacted the person who had accompanied Mohammed to South Africa and informed him to advice Mohammed not to purchase the facility at Germiston. The advice came because the applicant had obtained information that there were plans to sell Steinmuller and he felt that that was a better investment option for his friend.
[2] Arrangements were then made for Mohammed to visit the Steinmuller facility. Mohammed was impressed with the Steinmuller facility and thus decided to invest in it. The facility was, as indicated earlier, purchased as a going concern. This resulted in the retrenchment and the retention of some of the Steinmuller employees. The

applicant was employed as a managing director of the first respondent.

[13] It would appear that the first respondent was never properly financed from its very inception by Mohammed and his son, Faizel. It encountered serious financial difficulties, resulting in the applicant having to bind himself as surety and co-principal debtor to the various creditors of the first respondent. It would also appear that the inability to finance the first respondent by the Iqbals (the father and son–owning shares on a 50/50%) was due to the financial difficulties they had in Dubai.

[14] When he commenced business in the UAE, Mohammed had borrowed money from Mr Rashid Al Bloushi (hereinafter referred to "Rashid"). Because he is a Pakistani citizen Mohammed had to be sponsored by a citizen of the UAE. It would appear he was sponsored by Rashid in Abu Dhabi. The two had a long standing business and friendly relationship.

[15] In order to secure the interests of Rashid, against some of the creditors who were pressing on him to meet his financial obligations, two documents were drawn. The one document was a power of attorney and the other was a contract of sale. Article 6 is of the contract of sale reads as follows:

> "The second Party solely has the right to revoke this contract and *refund the full price paid to the Members of the First Party if the financial status of the firm proved to be critical or should any legal claims be evoked by any body, unless the Members of the First party eliminated the causes of such claims to the satisfaction of the Second Party."*

[16] Kharrubi took over the management of the first respondent after the purchase of shares by Rashid. According to the applicant soon after Kharrubi came on board as the manager of the first respondent and the possibility of a take over became apparent, the applicant raised the issue of his contract of employment. He apparently indicated that he did not have the copy of the contract. He contended that he had informed Kharrubi that the contract was with the Iqbals. The applicant claims to have also discussed the issue of his entitlement to a bonus with Kharrubi, at approximately the same time as

the management buy-out took place.

[17] In the mean time Rashid, also based in Dubai, obtained the majority shareholding of the first respondent. At the beginning of October 2004 Kharrubi, introduced himself to the applicant as the representative of Rashid. Thereafter, in August 2005, Kharubi was appointed executive manager with the responsibility to manage the affairs of the first respondent. That appointment resulted in most of the functions of the applicant been taken away. The applicant was clearly not happy with this state of affairs; however his concerns, according to him, were never addressed by the first respondent.

[18] As concerning his contract of employment in relation to the take over of the business by the second respondent, the applicant testified that he had a meeting during December 2005 with Rashid where the issue of his contract of employment was discussed. The applicant testified that he made a note to the effect that the contract had been accepted. This version was disputed by Kharrubi who contended that there was only one meeting which Rashid attended with applicant alone.

[19] Turning to the issue of the entitlement to the bonus the applicant's version is that he made enquiries about this benefit during 2006, and that was soon after the appointment of new auditors who were to audit the books of accounts. This was apparently the first time that the books of accounts of the first respondent were being audited. The enquiry which the applicant made regarding the bonus was whether or not the audit would reflect his entitlement to the bonus which became payable in terms of clause 5.2 of the contract of employment in issue.

[20] The applicant addressed a further letter to the auditors on 3rd July 2006, in which the issue of the shortfall in his remuneration was raised for the purposes of inclusion in the Annual Financial Statements of the first respondent for the year 2005. Although the shortfall was not included in the year 2005, it was however, included in the financial statements for the following year being 31st December 2006. Those statements reflected a provision of R540 000, 00 in respect of *"directors' emoluments accrued."*

[21] On the 23rd April 2007, Khurubi indicated to the employees of the first respondent including applicant that the first respondent had resolved to outsource staff to a temporary employment services. The employees were apparently told to choose between retrenchment and being transferred to the second respondent. The applicant elected the retrenchment and accordingly his employment was terminated for operational reasons on the 30th April 2007.

[22] The relevant clauses of the agreement, which form the subject matter of this dispute, read as follows:

> *"5.1 The company shall pay a remuneration package on a cost to*

company basis as set out in annexure 'A', the relevant portion of which, after lawful deductions, shall be deposited directly into the employee's bank account by the last business day of each month. The company shall review this package from time to time, normally at intervals of not more than a year, and shall be within the sole and absolute discretion of the company whether or not to grant any increase upon review. The shares offered, however, shall not be subject to review.

5.2 In addition to the package referred to in clause 5.1, the company shall pay the employer an annual bonus of 25% of the gross profit of any made per year under the management of the company's managing director, which profit shall be determined by KPMG (the company's auditors). The first bonus payment shall only be made in the third year of the employee's employment and shall be in respect of the first, second and third year gross profit to be determined as stated hereinbefore. From the fourth year of employment onwards, the employee shall be paid his annual bonus in December of each and every year."

The case of respondents

[23] Briefly the case of the respondents is that they have no knowledge of the written contract of employment upon which the applicant relies on for his claim. They questioned the manner in which the contract came into the hands of the applicant and

contend that the signatures on the contract were forged. It is for these reasons that they contend that the contract is invalid and unenforceable.

Evaluation and analysis

[24] It is clear from the above background facts that there are two conflicting versions presented by the parties. The issue that has arisen in determining whether the applicants claim should succeed or fail turns on the approach to be adopted in resolving the two versions.

[25] The general approach to adopt in resolving conflicting versions is that the Court as a trier of facts has to make a finding on credibility of witnesses, their reliability and probabilities. And the most importantly consideration in this respect is, according to *Stellenbosch Farmers Winery Group Ltd and Another v Martell and Others 2003 (1) SA 11 at paragraph 5,* to determine whether or not the *"party burdened with the onus of proof has succeeded in discharging it."*

[26] In *Medscheme Holdings (Pty) Limited and Another v Bhamiee 2005(5) SA 339 (SCA):*the court in dealing with the assessment of evidence on the basis of demeanour and credibility had the following to say:

> *"[14] It has been said by this Court before, but it bears repeating, that an assessment of evidence on the basis of demeanour - the application of what has been referred to disparagingly as the 'Pinocchio theory' - without regard for the wider probabilities, constitutes a misdirection. Without careful evaluation of the evidence that was given (as opposed to the manner in which it was delivered) against the underlying probabilities, which was absent in this case, little weight can be attached to the credibility findings of the Court a quo. Indeed, on many issues, the broad credibility findings, undifferentiated as they were in relation to the various issues,*

were clearly incorrect when viewed against the probabilities."

[27] The same or similar approach was adopted in *Stellenbosch Farmers' Winery supra* where the Court had the following to say:

> *"To come to a conclusion on the disputed issues a Court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability and (c) the probabilities. As to (a), the Court's finding on the credibility of a particular witness will depend on its impression of the veracity of the witness. That, in turn, will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness box, (ii) his bias, latent and blatant, (Hi) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf or with established fact or with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his version; (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the facts mentioned under (a)(ii), (iv) and (v) above on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c),*

this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c), the Court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it."

[28] In the present instance what this court is, called upon to determine, is whether or not the applicant has succeeded in showing on a preponderance of probabilities that his version is true and accurate and therefore acceptable. See *National Employers' General Insurance Co v Jaqers 1984 (4) SA 432 (e), 440D-G.* In this respect the credibility of witnesses plays an integral part in the assessment of which of the versions is supported by the probabilities. If the probabilities is in support of the conclusion that the version of the applicant is true, accurate and acceptable then it would goes without saying that the version of the respondents is therefore false or mistaken and should be rejected

[29] The onus in the present case rests with the applicant who has to show that there is a valid and enforceable contract of employment between him and the first respond which was transferred to the second respondent by virtue of s197 of the LRA.

[30] Mohammed confirmed that the applicant played a role in him purchasing the Chamdor factory. After purchasing the factory he appointed the applicant as the manager thereof. He testified that after agreeing on the salary to be paid to the applicant which he estimated to have been between R40 000.00 and R42 000.00 he told the applicant to write down everything they had discussed. At some point after the purchase Mohammed visited South Africa and met with the applicant. According to him the applicant never asked him about his employment contract.

[31] Thereafter and during November 2005 the applicant visited Mohammed. He was collected at the airport by his son, Faizel.

[32] Mohammed disputed the signatures on the contract of employment and those which appears on minutes of the meeting which was held at the first respondent attorney's offices. He also denied ever offering the applicant the shares in the first respondent. He however indicated that at some stage the applicant did ask him about the possibility of allocating him shares.

[33] Faizel testified that after receiving the shares in the first respondent, he together with his father met with the applicant. The issue of the salary of the applicant was according to him discussed during 2003. He denied that he was ever asked by the applicant to sign a contract of employment.

[34] Faizel testified further that during November 2005 the applicant contacted him when he was stark at the airport. The applicant never on this occasion according to him (Faizel) raised the issue of his contract. On the day he fetched the applicant at the airport he had planned to take him to the new facility of Headline Engineering but had to turn back because it was dark.

[35] During cross examination Faizel conceded that the envelop in which the contract of employment in issue was sent to South Africa from Dubai was that of Headline Engineering. He however contended that he never sent anything in an envelope to the applicant. The new facility to which Faizel had intended taking the applicant to was based in Jabulali. Faizel contended that at the time of the move of Headline Engineering to Jabulali the stationary including envelops were destroyed and the envelope in question should have reflected the address of the Headline Engineering as Jabulali and not Dubai. He further stated that if he was to send anything at that stage he would have used a blank envelop according to him he could not have used the envelope from the old facility because that is prohibited in law in Dubai. He however conceded during cross examination that that envelope was an official envelop of Headline Engineering.

[36] Kharrubi came to South Africa in 2004, to ensure that the shares from the first respondent were transferred to Rashid. He met with the applicant, but according to him the contract of employment was not discussed in any details during that meeting. He further testified that he did ask the applicant to send him the minutes together with his contract.

[37] When asked during cross examination why did he not contact Rashid when he received the contract from the applicant and request him (Rashid) to check with the Iqbal's about the validly of the contract, he said that Rashid was a busy man. As concerning the issue of shares Kharrubi stated during cross examination that the applicant did mention to him the issue when they met.

[38] I have already indicated earlier that this matter turns on the validity and enforceability of the contract of employment. The key question to answer is whether or not the signatures on the document had been forged. Related to this question is also the manner in which the agreement came to the hands of the applicant.

[39] I have also indicated earlier that there are two conflicting versions in relation to the signatures on the employment contract and the manner in which it was posted from Dubai to South Africa. In my view taking into account the totality of the evidence and circumstances of this case, the most probable and plausible version is that of the applicant.

[40] I have already indicated that the applicant called Greenfield as a hand writing expert. He testified about the signatures of both Messrs Mohammed and Faizel by comparing those signatures on the contract in question with those which were not disputed. The respondent cross examined the expert witness extensively about the theories of hand writing and some time spent on the High Court case in which the expert testimony was discredited by the Learned Judge in that case.

[41] The evidence about what was said by the High Court does not assist the respondent's case. The High Court in that case, said nothing more than that it did not believe the testimony of the expert. It did not say that he was disqualified to testify as an expert in the future.

[42] The respondents did not call any expert to contradict what Greenfield had to say and therefore his testimony remained unchallenged. I have no reason to disbelieve him when he says that the signature on the contract is that of Faizel and Mohammed.

[43] In addition to disputing the signatures on the contract of employment the respondents led evidence that sought to present a picture that the signatures were forged. An attempt was made in this respect to show that the two signatories could not have singed the document because it was not the same as the standard contract singed by other employees of the first respondent. It is clear in my view, regard being had to the unchallenged evidence of the applicant, that he was not an ordinary employee and thus signed a contract different to the other employees of the first respondent at the time. There was no convincing explanation from the respondent as to why the applicant would have put so such of his stake in the first respondent if he was just an ordinary employee. The evidence presented show very clear that the applicant placed himself at risk in seeking to sustain the profitability and survival of the first respondent. This evidence ties very well with the contract of employment and in particular that the applicant would have after three years be entitled to a profit share. It is difficult to comprehend that the applicant in all his commitments and risks taking steps on behalf of the respondent was only motivated by his friendship with the family of the share holders of the first respondent.

[44] The version of the applicant that the contract of employment was signed on behalf of the first respondent was corroborated by Benade. Although he was not certain whether he saw Mohammed signing the agreement he was confident that the agreement was indeed signed. He was also confident that the minutes of the 18 October 2002 were signed.

[45] The testimony of Mr Faizel is unsatisfactory in general but more importantly in relation to the meeting the applicant attended in Dubai during November 2005. He testified in this respect that he picked up the applicant at the airport and dropped him off again. It is highly improbable on the basis of these facts that the applicant went to

Dubai, stole or found an envelop with the logo of Headline Engineering, put it in a dispatch plastic bag and sent it to himself in South Africa. The probability in my view supports the version that says Faizel had a discussion with the applicant in Dubai about his contract of employment and as a result thereof he (Faizel) thereafter sent the contract of employment to the applicant.

[46] The strange thing about the case of the respondent is that despite the fraud they allege on the part of the applicant, they still went ahead and paid him his severance pay. The other strange thing about the case of the respondents, concern the inclusion of "*director's emoluments accrued"* in the financial statements for 2006. It was in this respect suggested in the opening statement that the inclusion was in fact a provision for a contingent liability. There is no basis for this contention in my view in particular if regard is had to the fact that the financial statement does somewhere else make provision for contingency liability.

[47] The testimony of Kharrubi in relation to the *"director's emoluments*," also did not assist the case of the respondents. He initially testified that "*director's emoluments"* were inserted in the financial statement because he did not pay attention thereto. However during cross examination he stated that it was the auditors who told him that the applicant claimed what was owed to him and apparently that is why the emoluments were included in the financial statement.

[48] In my view it does not make sense and in fact it seems illogical that the respondent would do all what they did whilst not believing that the contract in question was unenforceable.

[49] The case of the respondents was also based on seeking to have an inference drawn from that fact that the applicant presented his contract after a long period from the time he commenced his employment with the first respondent. This argument is unsustainable because the applicant does indeed provide a reasonable and satisfactory explanation in both his founding and replying affidavits. He states in his founding affidavit that he negotiated the terms of his employment contract with Mohammed on the 18th October 2002. He further states that his contract was reduced to writing and signed on the 21st October 2002 at Chamdor. He further states in the replying affidavit that because the terms of the contract gave rise to certain obligations on the part of the other shareholders it needed to be singed by Faizel who was the holder of the other 50 % of the shares in the first respondent. It was for this reason that after the contract was singed by the applicant and Mohammed and witnessed by Benade, it had to be taken to Dubai to be signed by Faizel the owner of the other 50% shares in the first respondent. The contract was taken by Mohammed to Dubai for signature by the other share holder.

[50] The suggestion that the applicant posted the contract to himself when he was on transit at the Dubai Airport is not supported by direct evidence. The respondents sought to have an inference drawn from these facts that the applicant posted the document himself as stated earlier from Dubai to South Africa. In my view there are no

objective facts to support this allegation and the respondents have failed in law to show that the contract could have been sent by the applicant whilst on transit in Dubai.

[51] Turning to the issue of credibility of applicant and his witnesses, I have already indicated earlier in this judgment what the contention of the respondent is in relation to the credibility of the applicant and his witnesses. There is no doubt that the applicant was nervous whilst in the witness box. I however did not get the impression that this was due to the fact that he may have been in conflict with his conscious about the version he was presenting. He was nervous like any other witness would be and not because he had difficulty in telling the truth. I further do not agree with the respondents' submission that there was an inherent conflict between the oral evidence of the applicant and what he had stated in his affidavits.

[52] Benade came out as the most honest and reliable witness. He had a good recollection of what happened and confirmed the version of the applicant to the extent of his involvement with the issue raised. Whilst as indicated above the respondents' contended that he was a biased witness, no convincing basis was set out in this regard. There is no suggestion from the objective facts that Banade testified for the applicant because of some ulterior motive of, for instance, getting back at the respondents in particular the first respondent. There is also no evidence suggesting conspiracy between him and the applicant with regard to these proceedings.
[53] In the light of the above discussion, I am of the view that the applicant has on the balance of probabilities discharged his onus of proving the authenticity of the signatures on the contract of employment and its enforceability.

[54] I accordingly find that the first respondent and the applicant concluded a valid and enforceable contract of employment contract. The contract which was initially signed by the applicant, Mohammed and witnessed by Benade was latter singed by Faizel. In the credibility of the version of the respondent is questionable and should for that reason be rejected.

[55] In the premises of I make the following order:

1. **In respect of severance pay, unpaid salary and deductions from salary:**

1.1. The Second Respondent is to pay the Applicant an amount of R 627 290, 88.

1.2. The Second Respondent is to pay interest on the above amount calculated at

15.5% per annum from 30 April 2007 to date of payment in full.

2. **In respect of notice of pay:**

2.1. The Second Respondent is ordered to pay the Applicant an amount of R 309 600, 00.

2.2. The Second Respondent is ordered to pay interest on the above amount calculated at *15.5% per annum* from 30 April 2007 to date of payment in full.

3. In respect of annual bonus for the years 2003 and 2004:

3.1. The Second Respondent is ordered to pay the Applicant an amount of R 762 077, 00.

3.2. The Second Respondent is ordered to pay interest on the above amount calculated at *15.5% per annum* from 31 December 2005 to date of payment in full.

4. In respect of annual bonus for the year 2005:

4.1. The Second Respondent is ordered to pay the Applicant an amount of R 4033 705, 00.

4.2. The Second Respondent is ordered to pay interest on the above calculated at *15.5% per annum* from December 2005 to date of payment in full.

5. In respect of annual bonus for the year 2006:

5.1. The Second Respondent is ordered to pay the applicant an amount of R 4 590 055, 00.

5.2. The Second Respondent is ordered to pay interest on the above amount calculated at *15.5% per annum* from December 2006 to date of payment in full.

6. In respect of annual bonus for year 2007:

6.1. The company shall determine the gross profit for he period 1 January 2007 to 30 April 2007, and whatever is determined by the auditors shall be the amount due

and payable to the applicant in terms of the provisions of clause 5.2 of the agreement.

7. The Second Respondent is to pay costs of suit including the costs of two counsel.

Molahlehi J

Date of Hearing : 7th November 2008
Date of Judgment : 19th May 2010

Appearances

For the Applicant : Adv M M Posemann
Instructed by : BJ Kruger Incorporated
For the Respondent : Mr Jafter of Jafta Incorporated