

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: B2149/23

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO



Date: 6 February 2024

In the matter between:

TRIDENT SOUTH AFRICA (PTY) LTD

First Applicant

BATEMAN TRIDENT (PTY) LTD

Second Applicant

and

SHAINNE JOHN TAYLOR

First Respondent

POWERTECH GROUP (PTY) LTD

Second Respondent

GAS AND TURBINE (PTY) LTD

Third Respondent

JUDGMENT

DE VOS AJ

Introduction

- [1] The applicants request the Court to confirm a *rule nisi* in terms of a settlement agreement. The respondent contends that the settlement agreement was entered into under duress, and the Court should extend the *rule nisi* to permit a challenge to the settlement agreement.
- [2] The issues to be decided is if the respondent has shown good cause to extend the rule nisi and if the Court should make the settlement agreement an order of Court.

Context

- [3] The context is that of an employment relationship between the applicant (“Trident”) and the first respondent (“Mr Taylor”) that has gone sour. Mr Taylor worked for Trident as its general manager. Trident alleges that Mr Taylor removed confidential information and trade secrets from Trident’s servers and also sent the information to his private Gmail address.
- [4] Trident’s allegation is supported by the findings of a forensic investigation. The investigation revealed that on 30 November 2022, between the hours of 9:19 and 13:49, Mr Taylor downloaded 189 folders comprising 41.8 megabytes of data; at 12:40, Mr Taylor emailed to his Gmail account 39 emails with a total of 38 attachments comprising 3.4 megabytes. Then on 14 February 2023, Mr Taylor downloaded from Trident’s servers 123 848 files comprising 152 gigabytes of data; and at 13:15, Mr Taylor emailed 35 emails with a total of 27 attachments comprising 3.6 megabytes.
- [5] To present this more digestibly, consider that 1 gigabyte contains a ballpark figure of 10,000 documents. In other words, on Valentine's Day in 2023, Mr Taylor downloaded an equivalent of 1.5 million documents.
- [6] Based on these findings, Trident launched search and seizure proceedings against Mr Taylor. Trident was successful in this application.

The *ex parte* order

- [7] On 5 May 2023, Molopa-Sethosa J granted an *ex parte* order for the search and seizure of specific items. The type of order granted is a species of the Anton Piller

order as recognised in *Gordon Lloyd Page & Associates v Rivera*¹ and *Cerebos Food Corporation Ltd v Diverse Foods SA (Pty) Ltd and Another*.²

- [8] The order contains multiple steps. The first is the search and seizure of the data, done by the Sheriff and overseen by an independent firm of attorneys. The search would be assisted by a group of independent forensic experts who would search for specific words identified in the order. The independent supervising attorneys would monitor and oversee all aspects of the execution of the order and, with the Sheriff, make a list of all items removed by the Sheriff. The independent attorneys were to file affidavits with the Court setting out the manner in which the order was executed and attaching the inventory. The order is to operate as an interim interdict pending the return date. On the return date, cause has to be shown why the items seized should not be returned to Trident.
- [9] The order also provides for an inspection meeting. At the inspection meeting, a group of identified forensic experts would comb through the information and prevent the disclosure of any information gained during the formatting of the forensic copies that did not relate to the search and seizure. The experts must file an affidavit with the Court explaining the process, and so must the independent attorneys. Thereafter, the experts and the independent attorneys ensure that only information that falls within the ambit of the order is stored. The independent attorneys are to keep this stored information safe.
- [10] The order provides for a process in terms of which Mr Taylor can dispute whether information should be part of the information stored. The process permits Mr Taylor to object to the specific information seized. The process then also allows for complaints with the process to be investigated by the independent attorneys and for the forensic experts to write a report which the parties could comment on to the independent attorneys. Only after this lengthy process will the items stored that have been verified by the experts to form part of the search and seizure, in the form of copies of the data, be handed over to Trident.

¹ 2001 (1) SA 88 (SCA) at para 10

² 1984 (4) SA 149 (T) at 164 E

[11] After the *ex parte* order of May 2023 was made, Mr Taylor opposed the relief sought and delivered an answering affidavit and a supplementary answering affidavit. Trident filed a replying affidavit. During this period, the order was amended twice, on 26 May and on 7 June 2023. The order was largely executed during June 2023.

[12] The order provided for a return date of 8 August 2023, which would deal with the handover to Trident. The return date was extended to 8 November 2023; however, before this extended return date, the parties entered into a settlement agreement.

Settlement agreement

[13] The notion of settlement came from Mr Taylor. Mr Taylor was represented by a senior attorney at the time, from a large and reputable law firm. The settlement agreement was preceded by back-and-forth emails between Trident and Mr Taylor's erstwhile attorneys. Mr Taylor signed the agreement and actively took steps to implement the agreement. Mr Taylor voluntarily attended two inspection meetings, both of which were arranged, attended and conducted in terms of clauses 3.1 and 3.2 of the settlement agreement. Mr Taylor raised no objection regarding duress at the inspection meetings or at the taxation of Trident's bill of costs. For two months, Mr Taylor complied with the settlement agreement.

[14] The core terms of the agreement are -

- a) the first respondent agreed to withdraw his opposition to the application and consented to the confirmation of the *rule nisi* on the extended return day or on any earlier day that the applicants may arrange with the registrar (clause 2.1.1);
- b) the respondents warranted that they are not in possession directly or indirectly of any further copy or copies, including electronic copies in any format whatsoever, of any of the applicants' confidential and proprietary information and that the respondents have not shared or given it to any person for safekeeping, concealment or use (clause 2.1.5);
- c) the settlement agreement is in full and final settlement only of the application under the above case number (and nothing else), and the applicants' rights are fully reserved to institute any further proceedings against one or more of the respondents as they deem fit (clause 2.1.7);

[15] The terms of the settlement agreement, relevant to this leg of the litigation is that Mr Taylor agreed to “withdraw his opposition to the application and consents to confirmation of the *rule nisi* on the extended return day or on any earlier day that [Trident] may arrange with the registrar”.

[16] And so the parties decided to resolve the dispute amicably. The peace was, however, not permanent.

The urgent application

[17] About a week before the return day, Mr Taylor launched an urgent application. The urgent application sought two sets of relief aimed at both the settlement agreement and the *ex parte* order.

[18] In prayer 2, Mr Taylor attacked the *ex parte* order and sought to “rescind or discharge the *rule nisi* granted by the Honourable Judge Molopa-Sethosa”.

[19] In prayer 3, Mr Taylor attacked the settlement agreement and sought an order -

“setting aside the settlement agreement entered into between the parties on or about 8 August 2023 on the basis that it is void, alternative, setting same aside”.

[20] The basis on which Mr Taylor sought to set aside the settlement agreement was that of duress. The urgent application was dismissed by Van der Westhuizen J, with costs *de bonis propriis* on 1 November 2023. The order specifically stated, "The application is dismissed".

[21] I emphasise, Mr Taylor’s application to set aside the settlement agreement was dismissed on 1 November 2023, a week before the return day.

Return day

[22] On 8 November 2023, Trident approached the Court to confirm the *rule nisi*. As it was to be done in terms of a settlement agreement, it was set down on the unopposed roll.

[23] Mr Taylor sought the extension of the *rule nisi* granted on 5 May 2023. A substantive application was launched with an affidavit explaining the basis for the extension. The basis for seeking the extension of the *rule nisi* is that Mr Taylor wishes to launch proceedings to declare the settlement agreement void on the basis of duress.

[24] The cause of the duress, states Mr Taylor, is the emotional trauma of the search and seizure process and the economic ruin he would have been exposed to were he to

continue litigating. Mr Taylor contends that through this process, Trident placed undue pressure on Mr Taylor.

[25] In other words, the unopposed confirmation of a *rule nisi* – by an agreement between the parties – changed into an opposed application to extend the rule.

[26] The test of whether a rule should be extended is one of good cause. I turn to consider if this requirement has been met.

Good cause

[27] Mr Taylor's application, although not brought in terms of the rule, is essentially one in terms of Rule 27 of the Uniform Rules of Court. Rule 27 provides that the Court may, upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by an order of Court. The subrule requires that good cause be shown.³ This gives the Court a wide discretion⁴ which must, in principle, be exercised with regard also to the merits of the matter seen as a whole.⁵ The whole consists of parts, which I consider under separate headings.

Mr Taylor has had an opportunity to challenge the settlement agreement

[28] Mr Taylor seeks to avoid the terms of the settlement agreement and extend the *rule nisi* in order to set aside the settlement agreement. Mr Taylor contends that if this Court does not grant him the extension, he will be denied an opportunity to challenge the settlement agreement on the basis of duress.

[29] Mr Block, for Trident, points out that Mr Taylor has already had such an opportunity. In the urgent application, Mr Taylor expressly sought, in prayer 2, to set aside a settlement agreement. The basis was that of duress.

[30] The Court, per Van der Westhuizen J, identified the true dispute and held –

“When oral argument was addressed on behalf of the applicants, it became clear that the true purpose of the urgent application was not an application for reconsideration in the true and narrow sense, but was an attempt to have an

³ Du Plooy v Anwes Motors (Edms) Bpk 1983 (4) SA 212 (O) at 216H–217D

⁴ Smith NO v Brummer NO 1954 (3) SA 352 (O) at 358A; Du Plooy v Anwes Motors (Edms) Bpk 1983 (4) SA 212 (O) at 216H–217A

⁵ See Gumede v Road Accident Fund 2007 (6) SA 304 (C) at 307C–308A

agreement entered into between the parties settling their litigation, to have that set aside on an urgent basis”.⁶

[31] Van der Westhuizen J held that the true dispute was one to set aside a settlement agreement. Having identified the true nature of the application, the Court considered the merits of the claim. The Court held that Mr Taylor failed to set out a factual basis for seeking to set aside the settlement agreement: "no iota of fact or statement" was provided.⁷ The Court noted that the premise of the relief in prayer 2, which was to set aside the settlement agreement, "was not thoroughly explained in the respondents' affidavit. It was merely fobbed off."⁸

[32] The Court dismissed the urgent application. The Court concluded that Mr Taylor had – essentially – not made out a case for duress. The Court concludes that the parties "have agreed to settle their disputes in a particular manner and they are obliged to honour their undertakings in that regard."⁹

[33] Mr Taylor has had an opportunity to challenge the settlement agreement but was unsuccessful. Mr Taylor filed affidavits, made submissions and was given a hearing by the urgent out. The outcome was a rejection of his claim of duress. Mr Taylor has had his day in Court and has had the opportunity to raise the issue of duress. It is, therefore, not proper to characterise Mr Taylor's request for an extension for an opportunity to be permitted to raise a claim of duress. Properly characterised, extension is being sought in order to have another attempt at proving duress – having been unsuccessful on the first attempt.

Merits

[34] Trident points to the Supreme Court of Appeal judgment in *Medscheme Holdings (Pty) Ltd and Another v Bhamjee*¹⁰ in which our courts have rejected the notion of economic duress as a basis to escape a settlement agreement. The facts have to be considered. Dr Bhamjee claimed from Medscheme and would then pay back his patients the monies received from Medscheme. Dr Bhamjee overcharged, and Medscheme paid

⁶ CL 40-5, p 5, lines 8 – 14 (judgment of Van der Westhuizen J transcribed)

⁷ Id, p 9, l 14 - 17

⁸ Id p 7, l 11 - 13

⁹ Id, p 11, l 1 - 3

¹⁰ 2005 (5) SA 339 (SCA)

him more than what was owed to him. When confronted with the overcharging, Dr Bhamjee agreed he owed Medscheme money. He signed two acknowledgements of debts to pay back this money. After Dr Bhamjee signed the acknowledgements, Medscheme decided it would no longer accept claims from Dr Bhamjee on behalf of his clients. Rather, the patients would have to pay Dr Bhamjee, who would then claim from Medscheme. This change chased away Dr Bhamjee's patients, and soon his practice collapsed.

- [35] After this collapse, Dr Bhamjee disputed the validity of the two acknowledgements of debt, alleging they were signed under duress. Dr Bhamjee claimed that the duress was the threat of economic hardship – as his failure to sign the acknowledgements would have put his practice at risk. The Supreme Court of Appeal held that economic pressure is not recognised as duress -

“For it is not unlawful, in general, to cause economic harm, or even to cause economic ruin, to another, nor can it generally be unconscionable to do so in a competitive economy. In commercial bargaining the exercise of free will (if that can ever exist in any pure form of the term) is always fettered to some degree by the expectation of gain or the fear of loss. I agree with Van den Heever AJ (in *Van den Berg & Kie Rekenkundige Beamptes* at 795E-796A) that hard bargaining is not the equivalent of duress, and that is so even where the bargain is the product of an imbalance in bargaining power. Something more – which is absent in this case – would need to exist for economic bargaining to be illegitimate or unconscionable and thus to constitute duress.”¹¹

- [36] The sting of this finding is that it is not duress to cause economic harm or even ruin to another. As it is not unlawful to drive a hard bargain, it cannot be the basis of duress.
- [37] Mr Taylor claims he signed the settlement agreement as he was concerned about the costs of litigation and the impact that would have on his financial position. The type of duress which Mr Taylor claims in these proceedings is not recognised in our law. To the contrary, it has been expressly rejected by the Supreme Court of Appeal. Counsel appearing for Mr Taylor, could not point the Court to authority to contradict this.
- [38] The merits of Mr Taylor's claim for duress has not only already once been rejected by the Court in terms of the judgment of Van der Westhuizen J, but is also premised on a legal foundation which the Supreme Court of Appeal has rejected.

¹¹ Id at para 18

Bona fide

[39] Rule 27 requires that an application for an extension has to be *bona fide* and not made with the intention of delaying the opposite party's claim.¹²

[40] Trident contends that any opposition based on alleged duress will be contrived, false and self-serving. The position is exacerbated by Mr Taylor's apparent full compliance with and participation in the implementation of the provisions of the settlement agreement for several months.

[41] Trident pointed out to the Court that if the relief sought was to be granted, Mr Taylor would be permitted to litigate in three forums. Mr Taylor is seeking, essentially, to avoid his settlement agreement in the urgent application, in this application and in a yet-to-be-launched action. Based on this litigation strategy employed by Mr Taylor, Trident concludes that Mr Taylor is employing Stalingrad tactics. Trident requests this Court to conclude that these are *mala fide* and abusive of the Court's process.

[42] In *Nedcor v Gcilitshana*, the Court held -

"Ordinarily, the reasons and motives of a party for instituting legal proceedings are irrelevant. However, "(w)hen . . . the Court finds an attempt made to use for ulterior purposes machinery devised for the better administration of justice, it is the duty of the Court to prevent such abuse. But it is a power which has to be exercised with great caution and only in a clear case."¹³

[43] The Court weighs its duty to prevent the abuse of the process and, at the same time, heeds the caution that demands it be careful and ensure it is a clear case before seeking to protect its process.

[44] This Court is guided by what was said in *Zuma v. Downer*¹⁴ to be such a clear case -

"The private prosecution is part of the 'Stalingrad strategy' announced by Mr Zuma's counsel to Hugo J over a decade and a half ago, when he said: 'This is not like a fight between two champ fighters. This is more like Stalingrad. It's burning house to burning house.' It is further demonstrated by the patent lack of substance to the charges; by the fact that Mr Zuma has clearly not pursued the prosecution as would someone intent on obtaining a conviction; and, by Mr Zuma's identification of

¹² *Silverthorne v Simon* 1907 TS 123 at 124; *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Junkeepsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Ingosstrakh v Global Aviation Investments (Pty) Ltd* 2021 (6) SA 352 (SCA) at paragraph [21].

¹³ *Nedcor Bank Ltd v Gcilitshana and Others* 2004 (1) SA 232 (SE) (*Nedcor Bank*) at 241A-B, citing *Hudson v Hudson and Another* 1927 AD 259 (*Hudson*) at 268

¹⁴ *Zuma v Downer and Another* (788/2023) [2023] ZASCA 132 (13 October 2023)

witnesses. It was common cause in the main application that when Mr Zuma produced his prosecution docket, it showed that he had obtained no statements from any of the witnesses whom he says he will call. The only statements he has are those which already formed part of the police docket. The witnesses he lists include Mr Breitenbach SC (who as the high Court found, says that Mr Downer did not communicate Mr Zuma's medical information to Ms Maughan). Further, it is vexatious and per se an abuse of process to institute proceedings that are 'obviously unsustainable' as a certainty not merely on a balance of probability."¹⁵

[45] Counsel for Mr Taylor made the point that the facts of this case are not comparable to those in *Zuma v Downer*. The point is sound. The facts before this Court certainly are not as extreme as those in *Zuma v. Downer*. The Court accepts, as it must, that the facts before it are not akin to those in *Zuma v Downer*. However, it cannot be that only in cases of such extraordinary nature as that of *Zuma v Downer* must the Court act to protect its process. Rather, the elements present in *Zuma v Downer*, which the Court held presented proof of it being such a clear case, have been weighed with the Court. Certain elements identified in *Zuma v Downer* are present in this application, such as seeking to litigate in three forums as proof of Stalingrad tactics and the patent lack of substance to the duress claim. The Court has spent some thought on the test of instituting proceedings that are "obviously unsustainable" as a certainty. Premised on the judgment in *Medscheme v Bhamjee* and the dismissal of the attempt to set aside the settlement agreement before Van der Westhuizen J, the Court concludes that it is in the realm of litigation in which it must act to protect its process.

[46] I have spent some time thinking about the caution required in such a moment. It weighs with the Court that Mr Taylor has already approached the Court to challenge the settlement agreement but has been unsuccessful. Mr Taylor now tells the Court not to hold him to a settlement agreement, which he proposed and entered into with a senior partner at CDH at his side and which he actively took part in implementing for months, so that he can seek his relief in another avenue – premised on a legal foundation which our Courts have outright rejected. Combined with Mr Taylor's expressed intention to litigate in three forums and the lack of merits in the ultimate claim, leads the Court to the unfortunate conclusion that the application is not *bona fide*.

¹⁵ Id para 29

- [47] There is one more aspect which must be considered under this heading. Mr Taylor claims that part of the duress is the emotional state he was placed in as a result of the litigation and the implementation of the order. The highest Mr Taylor places this is that the order was executed whilst he was at work; people pounded on the doors, and drawers and cupboards were emptied. This contends Mr Taylor shows the presence of "evil", which Counsel for Mr Taylor submits he needs to prove to show Mr Taylor was under duress. It cannot be, at the level of principle and legal policy, that a litigant can escape a settlement agreement on the basis of duress if the "evil" which exerted the pressure was litigation itself or the lawful execution of a court order.
- [48] Litigation is confrontational; it is, however, also part of the exercise of a right to access courts. It cannot be that being exposed to litigation is sufficient for a claim of duress. There may be instances where the power imbalance between the two litigation parties is so severe that a court may consider the impact of that imbalance on the ability to freely and voluntarily agree. Those are not the facts of this case. Certainly not when Mr Taylor is represented, not only represented but represented by some of the best lawyers, I dare say, that money can give one access to.
- [49] Worse, Mr Taylor complains about the execution of a validly obtained court order, supervised by independent attorneys and executed by the Sheriff. In such circumstances, the Court must consider whether the normal process through which people exercise their rights of access to courts and the rule of law is enforced can be the "evil" that exerted undue pressure on Mr Taylor, particularly where the court order was crafted with such painstaking provisions permitting oversight into the process. The Court cannot but be pessimistic about the merits or motive behind such a claim.

Prejudice

- [50] An applicant for relief under Rule 27 must show good cause; the question of prejudice does not arise if it is unable to do so.¹⁶ As the Court concludes that Mr Taylor has not shown good cause, the issue of prejudice does not arise. However, the Court considers the issue as Mr Taylor has tendered costs.

¹⁶ *Silverthorne v Simon* 1907 TS 123 at 124; *Ford v South African Mine Workers' Union* 1925 TPD 405 at 406; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A

- [51] Mr Taylor contends that there is no prejudice to Trident if the rule is extended. To the extent that there is any prejudice, says Mr Taylor, that prejudice can be cured by an appropriate costs order, and Mr Taylor is tendering such costs.
- [52] Trident has in its possession a court order and settlement agreement signed by Mr Taylor. It also has a dismissal of Mr Taylor's urgent application in which he sought to set aside the settlement agreement. Yet, Trident remains without an effective remedy. Trident's prejudice is the absence of an effective remedy. If the rule is extended, Trident will have to wait for Mr Taylor to launch and finalise the action.
- [53] Trident is entitled to an effective remedy, which includes a timely remedy. The purpose of the search and seizure order – was ultimately for Trident to be provided with the information that was downloaded by Mr Taylor. That aspect of the relief becomes final on the return day. The entire intricate, multi-step order was to achieve that outcome – which Mr Taylor wishes to avoid.
- [54] There is, however, more at play in litigation and something else at play in the work of our courts. It is not only Trident's prejudice that must be considered but also the prevention of abuse of the court process, finality of proceedings, and duplication of litigation. This prejudice also cannot be cured with a cost order.
- [55] It is the cumulative weight of these aspects which the Court has weighed in deciding whether Mr Taylor has shown good cause. When combined, they lead the Court to conclude that no good cause has been shown.

Making the settlement agreement an order of Court

- [56] The Court is guided by the Supreme Court of Appeal's approach to settlement agreements in *Road Accident Fund v Taylor*¹⁷–

“To sum up, when the parties to litigation confirm that they have reached a compromise, a court has no power or jurisdiction to embark upon an enquiry as to whether the compromise was justified on the merits of the matter or was validly concluded. When a court is asked to make a settlement agreement an order of Court, it has the power to do so. The exercise of this power essentially requires a determination of whether it would be appropriate to incorporate the terms of the compromise into an order of Court.”¹⁸

¹⁷ (1136/2021; 1137/2021; 1138/2021; 1139/2021; 1140/2021) [2023] ZASCA 64; 2023 (5) SA 147 (SCA) (8 May 2023)

¹⁸ *Id* para 51

[57] I have considered the terms of the compromise. They largely reflect the *ex parte* order, with additional safeguards for both parties in relation to the specific information obtained. There is nothing inappropriate about these terms or seeking to incorporate them into a court order. They contain what appear to be tweaks presented by both parties after the implementation of the *ex parte* order.

Costs

[58] As to costs, I see no reason to depart from the general rule that costs should follow the result. It is an accepted legal principle that costs are at the discretion of the Court. The basic rules were stated as follows by the Constitutional Court in *Ferreira v Levin NO and Others*¹⁹ where the Court held that the award of costs unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs.

[59] I considered whether the matter ought not to be sent to the opposed roll. However, the applicant did not request an opportunity to file a reply or further submissions. The respondent contended that only if I were persuaded by the relief sought ought the matter be moved to the opposed roll. To burden another court and another Judge with reading the papers and considering the argument would be a duplication of the work already done. It would also not be the best use of court time, which has a direct impact on the public's ability to access justice timely. It is also not unheard of for the Court to consider a postponement or extension application in the unopposed Court. I also ensured that both parties had ample time to make the argument in open Court. In addition, prayer 2 of the extension application before this Court was for the matter to be referred to the opposed motion. Only if successful would such a referral have been appropriate. For all these reasons, I was willing to entertain an application – essentially for an abridgement of time – in the unopposed Court.

Order

[60] As a result, the following order is granted:

- a) The rule nisi granted by the Honourable Judge Molopa-Sethosa on 5 May 2023 (and as varied by the Honourable Judge Koooverjie on 26 May 2023) is confirmed, and

¹⁹ *Ferreira v Levin NO and others* [1996] ZACC 27; 1996 (2) SA 621 (CC) at 624B—C (par [3])

- b) The settlement agreement attached marked “X” is made an order of Court.
- c) The first respondent is ordered to pay the applicants’ costs.



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	D Block
Instructed by:	Webber Wentzel
Counsel for the applicant	M Coetsee
Instructed by:	Elliot Attorneys Incorporated
Date of the hearing:	8 November 2023
Date of judgment:	6 February 2024