IN THE HIGH COURT OF SOUTH AFRICA,
KWA-ZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 7651/2007

In the matter between:

MIKE SELLICK TRUST (PTY) LTD Applicant

And

ETHEKWINI MUNICIPALITY Respondent

JUDGMENT: SPECIAL PLEA

Date of judgment delivered: 03 September 2014

CHETTY, J:

Introduction

[1] The plaintiff instituted action against the defendant for the return of certain plant and earth moving equipment, which it alleges it leased to the defendant pursuant to agreements concluded between it and an official of the defendant, the first of which was concluded in 1993. In the alternative, plaintiff claims the value of the equipment, being the sum of R889 000, together with an order directing the defendant to account for the levying of rates against certain immovable property, in respect of which the plaintiff was either the registered owner, or in which it had a proprietary interest.

[2] The plaintiff contends that part of the agreement was that instead of the defendant paying the plaintiff for the costs of hiring the equipment, the defendant would set-off whatever rates were due and payable by the plaintiff in respect of its properties, all of which were located within the jurisdiction of the defendant.

[3] The plaintiff's claims are founded on 3 agreements concluded with the plaintiff, the first of these concluded in 1993; the second in 1995 and the third on 27 May 1996. The terms of the last agreement, as set out by the plaintiff in its particulars of claim, are the following:

> '13(b) the defendant acknowledged that the remainder of the plant and earth moving equipment was still in its possession and had not been returned to the plaintiff;
>
> c) the defendant undertook to locate and return to the plaintiff the remainder of the equipment;
>
> d) the parties agreed that the defendant would calculate the rates due by the plaintiff and Barge Import, to the defendant, if any, in the context of the aforesaid lease agreements;
>
> e) the parties agreed that the payment of rates (if any) by the plaintiff and Barge Import to the defendant would be suspended until the return of the said equipment to the plaintiff and the pursuant calculation of rates (if any) payable in respect of the said properties.'

[4] The plaintiff further alleges that the defendant breached the above agreement by failing to return any of the equipment which it hired, and that it failed to "credit" or set-off the rates liability on the plaintiff's properties against the hiring costs of the machinery. Lastly, it contends that the defendant failed to honour its obligation to recalculate the rates and penalties due on its properties taking into account the "credits" which the defendant ought to have passed in favour of the plaintiff.

<u>The claim and special plea</u>

[5] According to the plaintiff, its attempts to demand the return of its equipment were unsuccessful. In October 1999 the defendant instituted action against the plaintiff for arrear rates from 1993/94. This claim arose from the plaintiff's rates liability in relation to one of its properties in the Outer West region of the municipality. This action was subsequently withdrawn in March 2000, for reasons that are not relevant to the issue before me. Similarly, the relief sought calling on the defendant to account for its claim on any rates due by the plaintiff arises out of the defendant having been paid certain monies by the purchasers of two properties, previously owned by the plaintiff, which were sold in execution. The plaintiff alleges that such payments were made to the defendant ostensibly for arrear rates on those

properties. As such, it contends that such amounts should be accounted for. In addition to the defendant being called to account for the rates, the plaintiff further seeks that the defendant be ordered to account for the hiring costs on equipment leased to it.

[6] The defendant in its plea denies having hired or taken possession of any of the equipment referred to by the plaintiff in the summons, and raised by way of a special plea two issues which are the subject matter of this judgment:

a. In as much as the plaintiff's claim is for the return of its equipment and machinery is based on agreements concluded in 1993, 1995 and May 1996, and its claim for an accounting arises from payments by third parties to it in 1995 and 1996, the defendant pleads that such claims have prescribed by virtue of section 10 of the Prescription Act No 68 of 1969, as the summons commencing action was served on the defendant only on 11 July 2007.
b. In regard to agreement reached between the plaintiff and officials acting on behalf of the defendant to set-off its rates liability against hiring charges due by the municipality, it was contended that such an agreement was unenforceable and contrary to public policy.

[7] Although the matter had been set down for trial, counsel for both parties were in agreement that a ruling on the issues raised in the special plea could be dispositive of the plaintiff's claim. On that basis, counsel argued the matter before me, relying on their written heads. I propose to deal with the second issue first, as Mr Garland, who appeared for the plaintiff, did not appear to have any authority to counter those relied on by Mr Gajoo SC, who appeared for the defendant.

Rates: Set-off

[8] The plaintiff in its particulars of claim avers the existence of an agreement with the defendant in terms of which the parties agreed that any payments due by the plaintiff and Barge Imports for rates on its properties would be set off by the defendant as against the amounts due and payable by the latter for hiring costs of the earth moving equipment. The defendant contends that such an agreement is

invalid and unenforceable. In *Schierhout v Union Government (Minister of Justice)* 1926 AD 286 at 291 Innes CJ noted that:

> '*Compensatio* may be pleaded against any creditor whatever, even against a ward who is suing his tutor (sec.4). But there are certain cases in which it does not operate. It cannot, for instance, be set up against a claim of the Treasury for taxes nor in respect of certain other debts due to the State... Those abovementioned were based apparently on public policy. It will be observed that though the position of the State with regard to set-off is specially considered, *Voet* nowhere indicates that its rights are curtailed, as against the claims of its servants, or of others. On the contrary, the modifications of the ordinary doctrine which he mentions are all in favour of the State or the Treasury.'

The principle that there can be no set off against a rates debt was considered in Commissioner of Taxes v First Merchant Bank of Zimbabwe Limited 1998 (1) SA 27 (ZS) where the provisions of the Zimbabwean Audit and Exchequer Act provided that a debt due to the State may be set off against any amount due by the State to the person by whom the debt is due. Gubbay CJ, writing for the Court, confirmed that a tax debt owed to the State cannot be set-off, and more importantly, relying on Voet, sets out the rationale for this conclusion at 30 C-G:

> "At common law set-off or *compensatio* is a method by which mutual debts, being liquidated and due, may be extinguished. It takes place *ipso jure*. If the debts are equal, both are extinguished; if unequal, the smaller is discharged and the larger is proportionally reduced. There are, however, two important exceptions to the operation of the rule. A debt owed by one department of the State cannot be set off against a debt owed to another department. And set-off cannot be raised against taxes due to the fiscus or where goods are sold for the benefit of the State. See *Schierhout v Union Government (Minister of Justice)* 1926 AD 286 at 291; Pentecost & Co v Cape Meat Supply Co 1933 CPD 472 at 479; Voet *Commentarius ad Pandectas* 16.2.16 (*Gane's* translation vol 3 at 166); Van Leeuwen *Censura Forensis* 1.4.36.11 and 13 (*Barber and Macfayden's* translation); Wessels *The Law of Contract in South Africa* 2nd ed, vol II at paras 2567 and 2568; *Wille's Principles of South African Law* 8th ed at 483. Both these exceptions are grounded in public policy and utility. The first is designed to avoid confusion in State accounts; the second to ensure the uninterrupted flow of tax revenues to the Treasury in the interests of good governance. In each instance it is for the State to decide whether or not set-off should apply even though the debts co-exist."

[9] Counsel for the plaintiff was unable to provide the Court with any authority that would lead to a different conclusion to the authorities referred to above. Faced with the inevitable conclusion that a rates debt due by the plaintiff could not be set-off against any amount which may have been due by the municipality, Mr Garland intimated that the point raised by the defendant was simply a red herring, and that the issue of set-off had no bearing on the plaintiff's vindicatory claim for the return of its equipment, or on its claim for the hiring charges or the 'fruits' of the assets claimed in the vindicatory claim. Those arguments have no relevance to the present issue of set-off raised by the defendant. I see no reason why the defendant should not prevail on the first leg of its argument that any agreement sought to be relied upon by the defendant alleging a set-off of its rates liability, is invalid and unenforceable in law.

The *rei vindicatio* and prescription

[10] I now turn to the second-leg of the defendant's argument, that the plaintiff's claim against the defendant is prescribed, in as much as its claim is founded upon agreements concluded in 1993, 1995 and May 1996. The sections of the Prescription Act, relevant to the contentions of the parties, are set out below:

> '10. Extinction of debts by prescription**.**
> (1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.
> …
> 11. Periods of prescription of debts**.**
> The periods of prescription of debts shall be the following:
> (a) thirty years in respect of—
> (i) any debt secured by mortgage bond;
> (ii) any judgment debt;
> (iii) any debt in respect of any taxation imposed or levied by or under any law;
> (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;
> b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);
> (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt. (my underlining)

12. When prescription begins to run**.**
(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.

[11] Summons commencing action was served on the defendant on 17 July 2007. At the very latest, the defendant contends that the plaintiff ought to have instituted its action before 26 May 1999, that is, within 3 years of the last agreement concluded with the defendant. The defendant relies in this regard on the provisions of section 11 of the Prescription Act which provides for the various periods after which a 'debt' becomes prescribed. Counsel for the defendant contended that the plaintiff's claim is a claim for a 'debt' in the context of section 10(1) of the Act, and therefore subject to a three year prescriptive period as contained in section 11(d) of the Act. The plaintiff adopted a different approach, contending that its claim is based on the *rei vindicatio* and that the prescriptive period of (30) thirty years relating to acquisitive prescription in section 1 of the Act, applies.

[12] It is clear from the wording of the Act that there is no definition of what constitutes a "debt". In Evins v Shield Insurance Co Ltd 1979 3 SA 1136 (W) at 1141F, King J held that:

> 'The word "*debt*" in the Prescription Act must be given a wide and general meaning denoting not only a debt sounding in money which is due, but also, for example, a debt for the vindication of property.'

[13] The wide meaning attributed to a 'debt' in section 10(1) of the Act has been interpreted to include an obligation to do something or to refrain therefrom. See *Electricity Supply Commission v Stewards and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) at 344F - G; and *Oertel en andere NNO v Direkteur van Plaaslike Bestuur en andere* 1983 (1) SA 354 (A) at 370B; *Desai NO v Desai and others* 1996 (1) SA 141 (A); *Bester N.O. and others v Schmidt Bou Ontwikkelings CC* 2013 (1) SA 125 (SCA) para 9.

[14] If one accepts that a claim for vindication, on the authority of *Evins* supra, is a debt as contemplated in the Act, the next enquiry is to determine when the debt

became due. Section 12 of the Act provides that "*prescription shall commence to run as soon as the debt is due".* In articulating when the prescriptive period shall commence to run Van Heerden JA in *Deloitte Haskins & Sells Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991 (1) SA 525 (A) at 532 H held:

> 'This means that there has to be a debt immediately claimable by the debtor [sc creditor] or as stated in another way, that there has to be a debt in respect of which the debtor is under an obligation to perform immediately.'

In The Master v I L Back & Co Ltd and Others 1983 (1) SA 986 (A) at 1004F the Court accepted that:

> 'A debt being due in this context involves two things, namely that the creditor is in a position to claim payment forthwith and that the debtor does not have a defence to the claim for immediate payment. In other words, that the creditor's cause of action is complete'.

[15] Counsel for the defendant submitted, and correctly in my view, that a debt will become due when the creditor acquires a 'complete cause' of action for its recovery. In *Abrahamse & Sons v SA Railways and Harbours* 1933 CPD 626 at 637, this requirement was interpreted to mean when:

> 'the entire set of facts which gives rise to an enforceable claim and includes every fact which is material to be proved to entitle a plaintiff to succeed in his claim. It includes all that a plaintiff must set out in his declaration in order to disclose a cause of action. Such a cause of action does not ''arise'' or ''accrue'' until the occurrence of the last of such facts and consequently the last of such facts is sometimes loosely spoken of as the cause of action.'

[16] It is not disputed by the plaintiff that the agreement in terms of which equipment was hired out to the defendant, was for an indefinite period. As to when the debt for the hire charges (and the return of the equipment) would have arisen, it was contended that this would be 'within a reasonable time'. As the Court in *Phasha v Southern Metropolitan Local Council of the Greater Johannesburg Metropolitan Council* 2000 (2) SA 455 (W) at 465 C - I the Court observed that:

> 'There is a distinction to be drawn between the concept of a debt 'arising' and that of a debt becoming 'due'. The distinction relates to the coming into existence or accrual of the debt as opposed to the recoverability thereof. In

Apalamah v Santam Insurance Co Ltd and Another 1975 (2) SA 229 (D) it was said at 232G;

> 'Although it is true that in many cases the date upon which a debt ''becomes due'' might also be the date upon which it ''arose'', that is obviously not true of all cases. There is a vital difference in concept between the coming into existence of the debt and the recoverability thereof. There can be little doubt, if any, that the purpose of the Legislature in enacting s 12(1) of the new Prescription Act was to crystallise that difference: henceforth prescription in terms of that Act began to run not necessarily when the debt arose but only when it became due.''

The Court in *Phasha (supra)* at 465I – 466A noted that where the contract is silent as to the time for performance,

> "…a right to claim performance under a contract ordinarily becomes due according to its terms or, if nothing is said, within a reasonable time, which, in appropriate circumstances can be immediately."

[17] Counsel for the defendant emphasised that plaintiff could easily have calculated the hiring costs of the equipment and machinery. Accordingly it was submitted that the causes of action underlying the plaintiff's claim accrued and became due in respect of the agreements by no later than 27 May 1996, and in respect of the accounting for rates on the Crestview property, by no later than 31 May 2004. As indicated earlier, summons commencing action was served on the defendant on 17 July 2007. The creditor therefore has the right to demand when performance shall be made, particularly where a debt is payable on demand. Therefore a creditor cannot indefinitely defer the running of prescription by not making a demand for payment from the debtor. If this were the case, a creditor would be able to manipulate the period of prescription applicable to his claim, accordingly to his 'whim or fancy'. See *Mahomed v Yssel and Others* 1963 (1) SA 866 (D) at 870G.

[18] In the present case, the plaintiff provides no explanation for waiting for almost 11 years before deciding to take action against the defendant. Similarly, in *Lydenburg Voorspoed Ko-operasie v Els* 1966 (3) 34 (T) Steyn J

considered the date when prescription would commence to run in the case where a party entered into an invalid hire purchase agreement regarding a motor vehicle. The Court concluded at 37E that the right of action by the plaintiff arose immediately upon the conclusion of the invalid agreement and that the plaintiff could not contend that he elected to defer the exercising of his right of action to some future date, thereby interrupting prescription. That, the Court reasoned, would be to allow a person to profit from his own default in order to interrupt prescription. The reasoning for this appears from extract at 37H of the judgment:

> '[i]t would be tantamount to leaving the determination "of the period of prescription entirely in the hands of the person against whom it would otherwise be running, which is quite contrary, in my view, to the principles of the Prescription Act."'

[19] In *Benson and another v Walters and others* 1981 (4) SA 42 (C) where the Court held that an attorney's right to recover fees from his client arises from the time of the termination of his mandate and not from the date of the taxation of the bill. As such, the provisions of the Prescription Act would apply from the date when the fee became due rather than from the date of taxation, the latter being a "procedural step within his sole control". See specifically *Benson,* supra, at 50B. In *Uitenhage Municipality v Molloy* 1998 (2) SA 735 (SCA) at 743B it was held that a party cannot simply conclude that a debt is not 'due' until certain conditions are fulfilled. Mahomed CJ cited (at 742B) with approval a passage from *Benson* supra at 49G that:

> 'Our Courts have consistently held that a creditor is not able by his own conduct to postpone the commencement of prescription.'

In the present case, counsel for the defendant, correctly pointed out that the plaintiff has advanced no explanation for the delay in instituting the present action. Is that enough to dispose of the plaintiff's claim for the return of its goods?

[20] The plaintiff argued for a contrary interpretation of the provisions of the Prescription Act in regard to a claim under the *rei vindicatio*. Contrary to the description by the defendant's counsel of the plaintiff's claim being founded on three agreements, concluded between 1993 and 1996, the plaintiff submits that its claim is

based on the *rei vindicatio* and that it seeks the return of certain machinery which it hired out to the defendant in 1993. In the alternative, as it is entitled to do, the plaintiff seeks payment of the value of the machinery should the machinery have been lost or destroyed at the time of the institution of the action. In its attempt to ward off the contention that its claim for the return of the machinery has prescribed, counsel for the plaintiff submitted that any claim against the *rei vindicatio* could only be defeated if it were instituted after a period of 30 years, on the basis of acquisitive prescription. Section 1 of the Act provides that:

> 'a person shall by prescription become the owner of a thing which he has possessed openly and as if he were the owner thereof for an uninterrupted period of thirty years' .

[21] In substantiation of the above contention, counsel submitted that if the *rei vindicatio* were to be construed as a 'debt' for the purposes of the Prescription Act, this could lead to at least two anomalies:

a. After three years a possessor would be placed in the position of an owner without in turn holding any vindicatory rights. Conversely, the owner would remain the owner in name but without the benefits of ownership. One example which comes to mind (although not relied on by counsel) is where a motor vehicle is hired out to a party, who thereafter refuses to return it. If the owner only decided to institute a vindicatory action after three years, could this be met with a plea of prescription? Notwithstanding the claim for return of the item failing, ownership does not automatically pass to the possessor, and the owner would still be liable for all licencing requirements and insurance *qua* owner.
b. That it would contradict the provisions of section 1 of the Prescription Act which provides for acquisitive prescription to operate only after a period of thirty years. To hold that a vindicatory claim was limited to a period of three years before prescription arose would be to whittle away at the period of acquisitive prescription to the same as that for the enforceability of a 'debt'.

[22]. In furtherance of his argument, counsel for the plaintiff relied on the obiter

dictum of Brandt JA in *Bester N.O. and Others v Schmidt Bou Ontwikkelings CC* supra at para 15 where the Court considered that a claim for rectification of a deed of transfer did not constitute a claim for delivery of property and that such a claim did not prescribe after three years. Importantly, Brandt JA at para 15 states:

> '[15] Hence I agree with the court a quo's conclusion that Schmidt Bou's claims were not extinguished by prescription. It follows that, in my view, the liquidators' appeal cannot succeed. The conclusion thus reached renders it unnecessary to decide whether a claim based on the *rei vindicatio* is a debt which prescribes after three years. This issue arose from the liquidators' submission that a claim for rectification is to be equated with the *rei vindicatio.* For the proposition that a claim of the latter kind prescribes after three years, they relied on the judgment of this court in *Barnett v Minister of Land Affairs* 2007 (6) SA 313 (SCA) para 19. But the correctness of that judgment has since been doubted in *Staegemann v Langenhoven* 2011 (5) SA 648 (WCC) paras 14-28. Though *Barnett* has been confirmed by this court in *Grobler v Oosthuizen* 2009 (5) SA 500 (SCA) para 18; and in *Leketi v Tladi NO* [2010] JOL 25260 (SCA) paras 8 and 21, I must admit that I find the reasoning in *Staegemann* attractive and, at least on the face of it, quite convincing. I therefore have no doubt that the case will come where this court will have to reconsider the correctness of the decisions in *Barnett, Grobler* and *Leketi* that the *rei vindicatio* is extinguished by prescription after three years. But this is not that case, simply because the liquidators' prescription defence has already been held to founder on other grounds.'

[23] Although obiter, the question raised by Brandt JA in *Bester* arises squarely in the matter before me. In *Bester*, Brandt JA considered the views of Blignault J in Staegmann v Langenhoven and Others 2011 (5) SA 648 (WCC). I set out the full extract from paragraphs 21 to 26 of Blignault J's judgment as it formed the kernel of the plaintiff's argument:

> '[21] …Real rights are subject to acquisitive prescription and personal rights to extinctive prescription. There are furthermore *indicia* in the Prescription Act supporting this interpretation. Each of the chapters dealing with acquisitive and extinctive prescription contains a section headed "Judicial interruption of prescription". Section 4(1) (which is in the chapter dealing with the acquisitive prescription of ownership) reads as follows:
>
> > "4(1) The running of prescription shall … be interrupted by the service on the possessor of the thing in question of any process whereby any person claims ownership in that thing."
>
> Section 15(1) (which is in the chapter dealing with extinctive prescription) reads

as follows:

> "15(1) The running of prescription shall … be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt"

The *rei vindicatio* is clearly a claim to ownership in a thing. It cannot on any reasonable interpretation be described as a claim for payment of a debt.

[22] The contrary interpretation, furthermore, gives rise to an anomalous situation. If the *rei vindicatio* were to be extinguished after a period of three years, the owner, *in casu* applicant, would thereafter be an owner in name only. He would never be able to exercise any of the powers that comprise ownership. The possessor of the thing, first respondent in the postulated scenario, would not be the owner of the thing but de facto he would be able to exercise all such powers except the institution of the *rei vindicatio* which, as he would not be the owner, would not be available to him.

[23] I am accordingly inclined to the view that applicant's *rei vindicatio* did not become prescribed after a period of three years. There are, however, two dicta which appear to contradict my opinion in this regard. They need to be considered.

[24] In *Road Accident Fund and Another v Mdeyide* 2011 (2) SA 26 (CC) Van der Westhuizen J made certain general remarks in regard to prescription. In para [11] of the judgment he said, *inter alia,* the following:

> "Generally under the Prescription Act, prescription applies to a debt. For the purposes of this Act, the term debt has been given a broad meaning to refer to an obligation to do something, be it payment or delivery of goods or to abstain from doing something."

[25] A footnote to this statement (fn 12) contains, inter alia*,* a reference to *Barnett and Others v Minister of Land Affairs and Others* 2007 (6) SA 313 (SCA) para 19. This paragraph reads as follows:

> "[19] In my view it is fair to say that the government was aware of the identities of the defendants and of the facts upon which its claims against them rely, more than three years before the present action was instituted. I am also prepared to accept that the vindicatory relief which the government seeks to enforce constitutes a 'debt' as contemplated by the Prescription Act. Though the Act does not define the term 'debt', it has been held that, for purposes of the Act, the term has a wide and general meaning and that it includes an obligation to do something or refrain from doing something (see eg *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) at 344F - G and *Desai NO v Desai and Others* 1996 (1) SA 141 (A) at 146H - J). Thus understood, I can see no reason why it would not include a claim for the enforcement of an owner's rights to property (see also eg *Evins v Shield Insurance Co Ltd* 1979 (3) SA 1136 (W) at 1141F-G)."

[26] On the face of it this statement in the *Barnett* judgment is to the effect that the *rei vindicatio* is a debt that becomes prescribed after a period of three years. The statement, however, requires some analysis. It is apparent from the judgment that the passage in question is obiter *as* the learned judge (Brand JA) assumed that the claim in question was a debt to which the prescription period of three years was applicable. On that assumption he held that the debt had in any event not become prescribed. For that reason it was not necessary for Brand JA to examine the prescription issue in depth.

> [27] The only authority mentioned by Brand JA in regard to the prescription of the *rei vindicatio* is *Evins v Shield Insurance Co Ltd* 1979 (3) SA 1136 (W) at 1141F - G where it was said that:
>
> "(t)he word debt in the Prescription Act must be given a wide and general meaning denoting not only a debt sounding in money which is due, but also, for example, a debt for the vindication of property."
>
> This statement, by a single judge, is also *obiter* and, on the face of it, without any analysis of the issue.
>
> [28] I am of the view, therefore, that I am not precluded by any authority from deciding the question of prescription in favour of applicant. His *rei vindicatio* for the return of the Nissan did not become prescribed."

[24] In light of the above *dicta*, I am of the view that the argument of the plaintiff must prevail. The plaintiff cannot be said to have relinquished its right of ownership merely because it may have passed over possession to the defendant, and has not instituted an action for the return of the goods after a period of three years. In the result, the special plea based on the defence of prescription must fail and the matter should proceed to trial on the merits, to the exclusion of the plaintiff's reliance on set-off of its rates debt.

Order

[25] In the result, I make the following order:

1. The special plea raised by the defendant is dismissed with costs.

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M R CHETTY

JUDGE OF THE HIGH COURT

DURBAN

Appearances:

For the Plaintiff:	Adv. R Garland
	Instructed by De Beer Attorneys, Hillcrest
For the Defendant:	Adv. V I Gajoo SC
	Instructed by Linda Mazibuko & Associates, Durban
Date of hearing:	17 June 2014
Date of judgment:	03 September 2014.