IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: **YES**
(2)	OF INTEREST TO OTHER JUDGES: **YES**
(3)	REVISED: **YES**

25 March 2026
DATE

SIGNATURE

CASE NO: 58927/21

In the matter between:

SELWYN TRAKMAN N.O. (*Nomine Officio* in his capacity as duly appointed receiver for the creditors in terms of the Scheme of Arrangement sanctioned by the court in respect of SILVER LAKE TRADING 447 (PTY) LIMITED)	**PLAINTIFF**

and

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE	**DEFENDANT**

ORDER

1. The application is dismissed.

2. The applicant is ordered to pay the costs of the respondent, including costs of two counsel on scale C.

JUDGMENT

TOLMAY, J:

Introduction

[1] The plaintiff in this matter is Mr Trakman, who acts as the receiver for creditors of Silver Lake Trading 447 (Pty) Limited (Silver Lake). The defendant is the Commissioner for the South African Revenue Service (SARS). The dispute centres on claims for diesel refunds made by Silver Lake. The parties have agreed that the principal issue to be determined, by way of a stated case, is whether the registration of a diesel user, for the purpose of obtaining diesel refunds as provided in the schedules to the Customs and Excise Act[1] (CEA), entitles a registrant to claim refunds for a period of two years preceding the date of registration.

Factual Background

[2] Silver Lake was engaged in coal mining at the Thutsi Mine Uitgevallen, Open Pit, operating under a mining right granted by the Department of Mineral Resources. In May 2016, Silver Lake entered into a mining agreement with Stefanutti Stocks Mining Services (SSMS) for the provision of mining services. Silver Lake faced financial challenges between April and September 2018, which led to the commencement of business rescue proceedings in April 2018. A written post-commencement funding agreement was concluded between Silver Lake and SSMS on 14 November 2018. Mining operations by both SSMS and Silver Lake ceased in

[1] 91 of 1964.

November 2018, and Silver Lake was placed under provisional liquidation on 19 December 2018.

[3] On 21 December 2018, Silver Lake registered for a diesel refund in terms of section 75 of the CEA and rebate item 670.04 of Part 3 to Schedule 6 (rebate item 670.04), read with the relevant provisions of Part 3 to Schedule 6 (Note 6) of the CEA. Silver Lake submitted claims totalling R29,751,201.63 for the period January 2017 to October 2018, this amount was subsequently reduced to R23,216,589.42.

[4] SARS rejected Silver Lake's refund claims, asserting that the company was not entitled to refunds for periods before its registration as a diesel refund user. SARS argued that Silver Lake failed to comply with the provisions of Note 6 of the CEA. Silver Lake appealed SARS' decision and sought an order to set aside and substitute SARS' determination, maintaining that the diesel refunds qualified under rebate item 670.04.

[5] SARS rejected Silver Lake's administrative appeal on 28 May 2021, determining that Silver Lake did not qualify for the diesel refunds claimed for January 2017 to October 2018. SARS maintained that Silver Lake was not eligible to claim refunds for periods prior to its registration as a diesel refund user on 21 December 2018, and that the diesel claimed was non-eligible due to non-compliance with Note 6 of the CEA.

[6] Silver Lake then appealed to the High Court in terms of s47(9)(e) of the CEA to set aside and substitute SARS' determination, seeking an order that its diesel refunds qualify under rebate item 670.04. Simultaneously, Silver Lake filed a review under Section 6(2)(e), Section 6(2)(e)(ii), (iii) and (iv), and Section 6(2) (f) (aa) to (dd) of the Promotion of Administrative Justice Act (PAJA)[2] and s172 of the Constitution, challenging the internal administrative appeal committee's decision to dismiss its appeal. The case was referred to trial due to material disputes of fact, with both parties submitting the necessary pleadings. The parties ultimately agreed that the issue before this Court be determined by way of a stated case.

Silver Lake's argument

[2] 3 of 2000.

[7] Silver Lake contends that the CEA permits retrospective applications for diesel rebates within two years of the purchase date, provided the claimant is registered for VAT in terms of the Value Added Tax Act[3] (the VAT Act) and diesel refund purposes at the time of submitting the claim. They argue that the CEA does not require registration at the time of purchase or use of the fuel. Silver Lake maintains that Section 75(4A) (b)(ii)[4] of the CEA allows diesel rebate claims to be submitted within two years from the date of fuel purchase, and that their claims fall within this period. They assert that the plain grammatical meaning of the statute supports their position and that SARS' interpretation, which imposes a registration requirement at the time of purchase or use, improperly reads additional words into the statute, which is impermissible in taxation law.

[8] Furthermore, Silver Lake highlights that the diesel refund system was established to provide relief to primary sectors such as farming, forestry, fishing, and mining, thereby enhancing their profitability and competitiveness. Their interpretation, they argue, aligns with both the legislative intention and SARS' previous Diesel/Biodiesel Refund Guide. This guideline stipulated in par 7:

> "If a person registered for VAT becomes aware that he/she is entitled to register for the diesel/biodiesel refund system as well, may with retrospective effect for two (2) years from the diesel/biodiesel registration, claim back such diesel on condition that he/she complies with the conditions as set out in Note 6 to Rebate Item 670.04 of (Schedule No. 6 to the Act (i.e. diesel used in primary production. records, tax invoices, etc.) (Section 75(4A) (b)(ii) of the Act stipulates that any refund claim of such levies must be submitted within 2 years from the date of purchase of the diesel biodiesel.)"

[9] Silver Lake maintained that the later withdrawal of SARS' Diesel/Biodiesel Refund Guide did not impact their claims, since their interpretation is based on the CEA itself instead of depending only on the guideline. They noted that the guideline had explicitly allowed for retrospective claims within two years from the date of registration, provided all conditions in Note 6 to Rebate Item 670.04 were met. Silver Lake argued, citing *Commissioner, South African Revenue Service v Formalito (Pty)*

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[3] 89 of 1991.

[4] Section 75(4A) (b)(ii) reads as follows: "Any return for refund of such levies shall be submitted within two years from the date of purchase of such fuel."

Ltd[5], that the guidelines are binding. It is important to note that, in that situation, the guidelines remained in effect during the relevant period and were not withdrawn as they were in this case.

[10] Silver Lake also relied on the *contra fiscum* rule which was restated by the SCA in *Telkom SA SOC v Commissioner, South African Revenue Service.*[6] The existence of the *contra fiscum* rule is uncontroversial, but the SCA made it clear that the rule should only be invoked after an interpretational analysis results in an irresoluble ambiguity as to the meaning of the particular provision in the fiscal statute.[7]

SARS' argument

[11] SARS maintains that registration as a diesel refund user is only prospective; thus, refunds can only be claimed for purchases made after registration. SARS contends that the two-year period specified in the CEA pertains solely to the submission of claims, not to eligibility for refunds before registration. SARS further asserts that the Diesel/Biodiesel Refund Guide cited by Silver Lake was withdrawn in 2013.

[12] SARS contends that Silver Lake's registration alone does not qualify its distillate fuel purchases for refunds. It is asserted that the user must buy and use the fuel for qualifying activities related to their own primary production. Eligible purchases are defined in Note 6 Part 3 of Schedule 6, paragraph (iii), as follows: "eligible purchases means purchases of distillate fuel by a user for use and used as fuel as contemplated in paragraph (b)."[8]

[13] SARS maintains that a legitimate diesel refund claim is contingent upon three essential criteria: proper registration, verified purchase of the diesel, and compliant usage. Silver Lake must fulfil all these requirements prior to submitting a claim for the diesel refund. SARS noted:

a) that the requirement of registration was absent throughout the period of use.
b) the CEA does not provide for either the registration date or the liability date

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[5] *Commissioner of the South African Revenue Service v Formalito (Pty)Ltd* 2005 (5) SA 526 (SCA).
[6] *Telkom SA SOC v Commissioner, South African Revenue Service* 2020(4) SA 480 (SCA).
[7] Id at para 20.
[8] Note 6 Part 3 of Schedule 6, para (iii).

to be backdated for a period of 2 years from the date of registration as a diesel refund user.

c) section 75(1A)(b)(ii) read with Section 59A[9] of the CEA and further read with Rule 59A.01A(a)(vi) and (viB)[10] as well as Rule 75.25.03 39[11] of the rules promulgated in the CEA properly interpreted, provides that a person intending to engage in the activities regulated by the CEA must apply to register as a user first before becoming entitled to claim such refund.

[14] SARS argues that s75(4A) (b)(ii) of the CEA properly construed, provides that any return for refund of such levies shall be submitted within two years from the date of purchase of such fuel and this presupposes that a user was registered as such during the two-year period. The two-year period mentioned above, so the argument goes, only applies to the submission of the return, but it does not deal with the user's entitlement to claim a diesel refund in respect of diesel purchased and used before such user was registered as such.

[15] SARS pointed out that the diesel refund user is also required in terms of Rule 75.2.07[12] to determine its monthly diesel refund application and this can only happen after the claimant is registered as a user as envisaged in the CEA and VAT Act. It is undisputed that Silver Lake is a registered vendor in terms of s23 of the VAT Act and was registered for diesel refund purposes on 21 December 2018. It is also common cause that Silver Lake only became registered for diesel refund purposes after it had ceased its primary mining production activities.

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[9] *"59A. Registration of persons participating in activities regulated by this Act. —*
(1) (a) Notwithstanding any
registration prescribed in terms of any other provision of this Act, the Commissioner may require all persons or any class of persons participating in any activities regulated by this Act, to register in terms of this section and its rules."

[10] Rule 59A.01A of the Customs Rules provides that:
(a) Persons intending to engage in the following activities regulated by the Act must apply for registration—
(vi) utilising rebate items under Schedules No. 3, 4 and rebate - and refund items under Schedule 6;
(viB) applying for diesel refunds under the diesel refund scheme, as prescribed in rule 75.25.03

[11] Rule 75.25.03 Registration of the diesel refund user [DAR/230]
(*b*) Every person who intends to apply for diesel refunds under the diesel refund scheme on or after the date on which rules 75.25 come into operation must apply for registration in accordance with rule 59A.01A (*b*) (i) (*aa*).

[12] Rule 75.25.07 (*a*) Every diesel refund user must determine its monthly diesel refund application according to the prescriptions of Note 6 in Part 3 of Schedule No. 6 by—
(i) limiting the diesel refund application to the eligible purchases of that diesel refund user which were purchased and used in qualifying activities in the Republic by such diesel refund user;
(ii) excluding any non-eligible purchases of that diesel refund user from the diesel refund application; and
(iii) verifying the diesel refund application through the required substantiating source documentation of that diesel refund user.

Analysis

[16] Resolving the issue before this Court requires interpreting the CEA. Section 75 and item 670.04 of Schedule 6 must be understood within the framework of the CEA, applicable Schedules, Rules, and refund policy.

[17] The interpretive process must follow established rules of interpretation. In *Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd*[13], relying on *Endumeni*[14] and *Bosch*[15] the SCA explained that statutes must be interpreted in accordance with the ordinary rules of grammar and syntax, considering their context and purpose. The Court concluded by stating that this approach is equally applicable to a taxing statute.

[18] In *Commissioner for the South African Revenue Service v Glencore Operations SA (Pty) Ltd*[16] the SCA considered what the Constitutional Court said in *Cool Ideas 1186 CC v Hubbard and Another*[17] in the context of statutory interpretation .The SCA emphasized that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. It was further explained that three important interrelated riders should be applied to the above general principle, namely:

> "(a) that statutory provisions should always be interpreted purposively; (b) the relevant statutory provision must be properly contextualised; and (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)."

[19] What is meant by contextual interpretation was explained in *AfriForum and Another v University of the Free State*[18] where the Constitutional Court said:

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[13] *Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd* 82 SATC 135 (SCA) 82 SATC 135 (SCA); [2019] JOL 46353 (SCA); [2019] ZASCA 163 (SCA) at para 11.
[14] *Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13*; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) [also reported at [2012] JOL 28621] (SCA).
[15] *Commissioner, South African Revenue Services v Bosch and another* [2014] ZASCA 171; 2015 (2) SA 174 (SCA) para [9] [also reported at [2015] 1 All SA 1 (SCA); 77 SATC 61 (SCA).
[16] *Commissioner for the South African Revenue Service v Glencore Operations SA (Pty)* Ltd [2021] ZASCA 111; [2021] 4 All SA 14 (SCA) at paras 20, 21 and 22.
[17] *Cool Ideas 1186 CC v Hubbard and another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) at para 28.
[18] *AfriForum and Another v University of the Free State* [2017] ZACC 48; 2018 (2) SA 185 (CC); 2018 (4) BCLR 387 (CC).

". . . contextual interpretation requires that regard be had to the setting of the word or provision to be interpreted with particular reference to all the words, phrases or expressions around the word or words sought to be interpreted. This exercise might even require that consideration be given to other subsections, sections or the chapter in which the key word, provision or expression to be interpreted is located."[19]

[20] Silver Lake relies on section 75(4A) (b)(ii) of the CEA, but this section must not be interpreted in isolation, a contextual and purposive approach is required. In *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others*[20], the Constitutional Court outlined how to apply such an approach.

"This court has taken a broad approach to contextualising legislative provisions, having regard to both the internal and external context in statutory interpretation. A contextual approach requires that legislative provisions are interpreted in light of the text of the legislation as a whole (internal context). This court has also recognised that context includes, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this case, other legislation (external context)."[21]

[21] The context in which the CEA operates is significant, it is a taxing statute and must be interpreted in that context. A claimant seeking a diesel refund must satisfy all the requirements of Section 75 and Note 6 and must also comply with the Rules referenced above. The Constitutional Court in *Tholo Energy Services CC v CSARS*[22] confirmed that the refund of an excise duty or a fuel levy is a privilege as was held by the SCA in *Commissioner for the South African Revenue Service v Tunica Trading 59 (Pty) Ltd*[23] where the court explained:

"Third, in construing a taxing act, a court "will not presume in favour of any special privilege of exemption from taxation". On the contrary, a rebate of excise duty is a privilege and strict compliance with its conditions may be exacted from the claimant."

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[19] Id at para 43.
[20] *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others* [2019] ZACC 47.
[21] Id at para 42.
[22] *Tholo Energy Services CC v CSARS* CCT252/24 [2026] ZACC 1 at para 66.
[23] *Commissioner for the South African Revenue Service v Tunica Trading 59 (Pty) Ltd* [2024] 4 All SA 1 (SCA).

As was held by a Full Court in *BP v Secretary for Customs and Excise*, approved by this Court in Toyota South Africa:

> "[T]he rebate of excise duty is a privilege enjoyed by those who receive it. It has been stated that it is neither unjust nor inconvenient to exact a rigorous observance of the conditions as essential to the acquisition of the privilege conferred and that it is probable that this was the intention of the Legislature . . . Moreover, the provision is obviously designed to prevent abuse of the privilege and evasion of the conditions giving rise to such privilege and again this supports the view that a strict compliance with the requirements laid down is necessary."[24]

[22] The appropriate starting point is to determine the intended purpose of the diesel rebate scheme in the context of the CEA. In *Glencore*, this was explained as follows:

> "In order to promote international competitiveness of, amongst others, businesses engaged in mining, the government introduced a diesel fuel concession for own primary production in various sectors, including mining (this is Part 3 of Schedule 6) subject to strict compliance with an administrative regime aimed at minimising the risk of fraud whilst, at the same time, ensuring that the scheme was affordable from the perspective of the fiscus within its broader fiscal objectives and framework. To be eligible for this concession, the enterprise concerned is required to be registered as a vendor for value-added tax under the Value-Added Tax Act 89 of 1991 (the "VAT Act"). In addition, the claimant of a diesel levy refund must comply with the requirements as determined by the Commissioner."[25]

[23] The registration as a vendor for VAT is not a stand-alone requirement. The fiscal objectives and framework demand strict compliance with the requirements set by the Commissioner which can be gleaned from the applicable Schedules, Notes thereto and Rules, read with the CEA.

[24] Section 75(1)(d)[26] of the CEA provides for refunds of the fuel levy and Road Accident Fund levy on distillate fuel, including diesel, subject to compliance with the

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[24] Id at para 53.
[25] Id at para 7.
[26] The section reads as follows: (1) Subject to the provisions of this Act and to any conditions which the Commissioner may impose-
(d) in respect of any excisable goods or fuel levy goods manufactured in the Republic described in Schedule 6, a rebate of the excise duty specified in Part 2 of Schedule 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in Part 5A and Part 5B of Schedule 1 in respect of such goods at the time of entry for

conditions set out in item 670.04. To qualify for such refunds, the user must be registered for diesel refund purposes and must have purchased and used the diesel for eligible activities, such as primary production in agriculture, mining, or forestry.

[25] Section 75(1A) specifies when refunds on levies for distillate fuel may be approved. Section 75(1C) (b) defines 'user' as:

> "For the purposes of this section and the said item of Schedule No. 6—
>
> a. **"user"** shall mean, according to the context and subject to any note in the said Schedule No. 6, the person registered for a diesel refund as contemplated in subsection (1A)"

[26] Section 75(4A) (b)(ii) of the CEA, when correctly construed, provides that any application for a refund of levies must be submitted within two years from the date of fuel purchase. This requirement assumes that the claimant was registered as a diesel refund user during that two-year period. Importantly, the two-year timeframe relates solely to the submission of the refund return. It does not address whether a user may claim a diesel refund for diesel bought and used before registration as a diesel refund user.

[27] Note 6(a)(vii) defines a 'user' - as referenced in section 75(1C)(b)(i) - to mean, depending on the context and subject to any notes to item 670.04: a person who is registered for value-added tax under the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and who is also registered for diesel refund purposes as contemplated in section 75(1A) and (4A), which pertain to the eligibility criteria for diesel refunds. This indicates that, beyond simply registering as a VAT vendor and submitting your claim within two years of purchase, additional requirements must be met to qualify for a refund.

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home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty, fuel levy or Road Accident Fund levy actually paid at the time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule 6:
Provided that any rebate, drawback or refund of Road Accident Fund levy as contemplated in paragraph *(b)*, *(c)* or *(d)*, shall only be granted as expressly provided in Schedule 4, 5 or 6 in respect of any item of such Schedule.

[28] In *Glencore*[27] it was explained that a refund is a special concession for own primary production activities in certain sectors. The Rules require users to register before participating in the diesel refund scheme. Applications for diesel refunds must be made monthly, and registration for diesel refund purposes cannot be retroactively applied, as the CEA does not contain any provision allowing backdating. To qualify for a refund of fuel levies there must be compliance with both procedural and substantive requirements of the CEA, including applicable Regulations and Rules. Item 670.04 inter alia require record-keeping and reporting requirements. The refund is a privilege within ringfenced sectors and subject to strict compliance with the requirements. It follows that a narrow and strict interpretation is justified.[28]

[29] Silver Lake registered for diesel refund purposes on December 21, 2018, effective from January 1, 2017. According to section 75(1A) (b)(ii), s59A, Rule 59A.01A(a)(vi) (viB), and Rule 75.25.03, registration is required before claiming a diesel refund. This interpretation relies on a contextual reading of the statute, not an impermissible reading in as suggested by Silver Lake.

[30] The requirements demand of the user to register if it intends to participate in the diesel refund scheme. The application for diesel refund must be determined monthly and registration as a user for diesel refund cannot be backdated in terms of the CEA. Silver Lake cannot claim diesel refunds for periods before it was registered as a user. Even though it was registered later, that does not change the fact that it was not registered as a user when it bought and used the fuel. Section 74(4A) (b)(ii)'s significance is merely that it requires a diesel refund to be submitted within two years of purchase by a user. The purpose of the section is to regulate the period within which a diesel rebate user can claim a diesel refund.

[31] Silver Lake's reliance on the withdrawn Diesel/Biodiesel Guideline is equally unsustainable. The guideline was withdrawn in 2013, long before the present dispute or any claim for a refund arose. Granting indefinite applicability to a guideline that no longer exists and is now only of historical significance is not legally justifiable.

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[27] Id at para 7.
[28] See also *Umbhaba Estates (Pty) Ltd v Commissioner for South African Revenue Service* 84 SATC 172 at para 65 and *Kepu Trading (Pty) Ltd v CSARS* (3516/18) [2022] ZAGPPHC 1026 (28 December 2022).

[32] The *contra fiscum* rule does not apply to this case, as clarified in *Glencore*, which made the following statement regarding the rule:

> "..... The effect of this is that the fact that we are here dealing with a fiscal provision matters not except to the limited extent that there may be ambiguity in which event the contra fiscum rule would be triggered. In this regard, what this Court said in *NST Ferrochrome (Pty) Ltd v Commissioner for Inland Revenue* 2000 (3) SA 1040 (SCA) [also reported at [2000] JOL 7036 (A) – Ed] ("NST Ferrochrome") bears repeating. It was there said (at paragraph [17]):
> ". . . Where there is doubt as to the meaning of a statutory provision which imposes a burden, it is well established that the doubt is to be resolved by construing the provision in a way which is more favourable to the subject, provided of course the provision is reasonably capable of that construction. (See for e.g. *Fundstrust (Pty) Ltd (In Liquidation) v Van Deventer* 1997 (1) SA 710 (A) at 735G–H; *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue and Another* [1991] ZASCA 163; 1992 (4) SA 202 (A) at 216C.) But where any uncertainty in a statutory provision can be resolved by an examination of the language used in its context, there is no rule of interpretation which requires that effect be given to a construction which is found not to be the correct one merely because that construction would be less onerous on the subject . . ."[29]

And also:

> "Most recently, in *Telkom SA SOC Ltd v Commissioner for the South African Revenue Service [2020] ZASCA 19, 2020 (4) SA 480 (SCA)* [also reported at [2020] JOL 46811 (SCA), [2020] 2 All SA 763 (SCA) – Ed] this Court affirmed its earlier decision in NST Ferrochrome and reiterated that resort can be had to the contra fiscum rule to resolve an "irresoluble ambiguity" only if all other conventional methods of contextual and purposive construction still yield two equally plausible interpretations. Differently put, one only invokes the rule when, despite all other ordinary approach to interpretation, one is still left with "irresoluble ambiguity".[30]

Here, there is no ambiguity if the legislation is properly interpreted and the *contra fiscum* rule does not apply. The application stands to be dismissed.

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[29] Id at para 17.
[30] Id at para 18.

The following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the respondent, including costs for two counsel on scale C.

RG TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 25 March 2026.

APPEARANCES:

For the Plaintiff	:	Adv AP Joubert SC with Adv L Franck
Instructed by	:	Webber Wentzel Attorneys
For the Respondent	:	Adv P Ellis SC with Adv L Kalipa
Instructed by	:	Maponya Attorneys
Matter heard on	:	24 November 2025
Judgment date	:	25 March 2026