IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 34502/2010

In the matter between:

GRAND VALLEY ESTATES (PTY) LIMITED	First Plaintiff
EDGE TO EDGE 17 (PTY) LIMITED	Second Plaintiff
MONTVIEW PROPERTIES (PTY) LIMITED	Third Plaintiff
MOTIFPROPS 1021 CC	Fourth Plaintiff
CRADLE OF LIFE INVESTMENTS (PTY) LIMITED	Fifth Plaintiff
WILDERNESS CONSERVATION PROJECTS (PTY) LIMITED	Sixth Plaintiff
MOUNTAIN VIEW INVESTMENTS (PTY) LIMITED	Seventh Plaintiff
FREDERICK COENRAAD DANIEL NO	Eighth Plaintiff
HENNING WILLERS NO	Ninth Plaintiff
JOHAN VOORHOVEN NO	Tenth Plaintiff
FREDERICK COENRAAD DANIEL	Eleventh Plaintiff
SIMON HUBA	Twelfth Plaintiff*

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

and

MPUMALANGA TOURISM & PARKS AGENCY	First Defendant
DIRECTOR-GENERAL OF DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM, NATIONAL GOVERNMENT	Second Defendant*
MINISTER OF ENVIRONMENTAL AFFAIRS, NATIONAL GOVERNMENT	Third Defendant*
REGIONAL LAND CLAIMS COMMISSIONER, MPUMALANGA PROVINCE	Fourth Defendant
NATIONAL COMMISSIONER OF SA POLICE	Fifth Defendant
DIRECTOR OF DEPARTMENT OF AGRICULTURE & LAND AFFAIRS, MPUMALANGA PROVINCE	Sixth Defendant*
MEMBER OF EXECUTIVE COUNCIL: DEPARTMENT OF AGRICULTURE & LAND AFFAIRS, MPUMALANGA PROVINCE	Seventh Defendant
ALBERT LUTHULI MUNICIPALITY	Eighth Defendant
ABE SIBIYA	Ninth Defendant*
JAN MULLER	Tenth Defendant
DRIES PIENAAR	Eleventh Defendant*
DR DELANIE TIBA	Twelfth Defendant*
SOLLY MOSIDI	Thirteenth defendant
ANDRÉ COETZEE	Fourteenth Defendant*
CHARLES NGOBENI	Fifteenth defendant*
MAUREEN SITHOLE	Sixteenth Defendant*
NCEBA NQANA	Seventeenth Defendant*
HARRY MABOA	Eighteenth Defendant
LINDA MABATHA	Nineteenth Defendant*

SIBUSISO RADEBE	Twentieth Defendant*
BONGANI MWALI	Twenty-first Defendant*
PRO KHOZA	Twenty-second Defendant*
SUPERINTENDENT PHILLIPUS LOURENS KRITZINGER	Twenty-third Defendant
DR FERREIRA DU PLESSIS	Twenty-fourth Defendant*
GREATER BADPLAAS LAND CLAIMS COMMITTEE	Twenty-fifth Defendant*

JUDGMENT

Tuchten J:

1 This is an action for delictual damages. For the plaintiffs to succeed, they must prove dolus on the part of the defendants.

Introduction

2 This case has a long procedural history. As the case number shows, the plaintiffs instituted their action in 2010. The framework for the action selected by the plaintiffs, including the multiplicity of defendants cited and the nature of the allegations made by them, contributed to a lengthy lead time before the case ultimately came to court for hearing on the merits.

3 The case came before court twice before me in circumstances I shall briefly describe. At one of these hearings, on 21 October 2024, clarity was achieved on the status of certain defendants who had either died or for some reason were not represented before me on that date. After some debate, the plaintiffs withdrew, or confirmed previous withdrawals, against all such defendants. I have identified the defendants against whom the plaintiffs have withdrawn by asterisks marked against their names in the heading to this judgment. The result is that all the remaining parties to the action are represented before me by counsel.

4 In the present proceedings, Adv J Joubert appears for the first to seventh and eleventh plaintiffs and Adv Berdou for the eighth to tenth plaintiffs. Advs Rossouw SC and and De Beer appear for the 1st, 10th, 13th and 23rd defendants while Adv Mpshe and Adv Shole appear for the 4th, 7th and 18th defendants. Although there is this separate representation at a formal level, generally it will not be necessary to distinguish between the positions taken by counsel appearing for one party or another. I shall thus sometimes describe a submission as emanating from counsel for the plaintiffs or the defendants without identifying the counsel who actually made the submission.

5 In an interlocutory judgment which I handed down on 1 November 2024 (the witness regimes judgment), I summarised the case for the plaintiffs, as I saw it. At the start of the trial, counsel for the plaintiffs said in their opening address that my summary adequately reflected the nature of the plaintiffs' case. So I shall in substance repeat what I previously wrote.

6 The trial proper before me began on 20 January 2025. It ran, according to my notes, for some 67 court days. Argument was completed on 3 September 2025 and I reserved judgment.

The pleadings

7 The case for the plaintiffs is that the plaintiffs sought to utilise certain properties in the Badplaas Valley, Mpumalanga for a project which they called the Cradle of Life Nkomazi Wilderness, referred to in the particulars of claim as the Project. I shall also call it the Project or Nkomazi. These properties, the plaintiffs say, were acquired with the Project in mind. The commercial essence of the Project was the creation, on land owned or controlled by the plaintiffs, of a game reserve with associated high end tourism facilities

8 The plaintiffs say that during or about October 2007 and thereafter, a collusive corrupt, fraudulent and unlawful relationship (which the plaintiffs label the collusive agreement) came into being to force the plaintiffs "out of Nkomazi", ie the Project.

9 During the exercise of the collusive agreement, say the plaintiffs, certain of the defendants withheld the "Big Five Permits" from the plaintiffs. This, the plaintiffs say, crippled the Project. In addition, the defendants "colluded and some were manipulated" to damage the plaintiffs' reputations and all their business and commercial interests. The defendants who are not organs of state are said to have acted in a manner which rendered the organ of state defendants, in addition to their direct liabilities, vicariously liable.

10 Once the plaintiffs had been driven from the Project, the plaintiffs say, Big Five permits were then granted to a firm called Dubai World. This is said to have been an "unauthorised, and/or *mala fide,* and/or biased, and/or *ultra vires* exercise of power by the first and/or one or more of ninth to fifteenth defendants", thereby also infringing certain of the plaintiffs' constitutional rights.

11 The 1st, 4th and 9th to 25th defendants colluded, the plaintiffs say, to place the plaintiffs under duress and, ultimately, certain of the plaintiffs sold Nkomazi Wilderness to Dubai World for a much lower price than would have been realised if “the reserve” had been issued with Big Five and large predator permits. The alleged acts of duress included “[h]ijack[ing] the Msauli Village” after large sums had been spent to rehabilitate it, withholding crucial permits, procuring the destruction of a fence, victimising the 11th plaintiff (Mr Daniel) who acted as a whistle blower, presenting fictitious land claims, arranging violent public actions, bribing and misleading the press to spread false information about the 11th plaintiff to discredit him and ruin his reputation, instigating violence and intimidation against Mr Daniel, his family and his business to drive him out of the Badplaas Valley, threatening to liquidate the 1st plaintiff (Grand Valley), instigating an unlawful raid on the Cradle of Life Rehabilitation Centre, laying criminal charges against Mr Daniel, informing prospective investors in Nkomazi that the Grand Valley would be replaced by Dubai World and promising to issue to Dubai World permits which had been refused to Grand Valley.

12 All these actions, the plaintiffs say, caused them to suffer damages. In particulars of claim amended in November 2024 and dated 5 December 2024, Grand Valley alone of the plaintiffs claimed

R812 million for loss of profits and R655 million in respect of the loss of the value of vacant land, valued as at 28 February 2008, plus mora interest. The plaintiffs do not persist in the other claims for damages which had previously featured in their particulars of claim before the November 2024 amendment. To be clear, the amendment means that the claims of the plaintiffs other than those of Grand Valley have not been proceeded with. In short, they were abandoned.

13 In the end, the plaintiffs asked for judgment only against the 1st and 4th defendants.

14 I was told that the original trial judge was not required to make a finding on damages because that issue was separated for later adjudication. However, when I interrogated this question, it appeared that although the question of separation of issues concerning damages had been raised during the very lengthy, indeed tortuous, pre-trial proceedings, a separation of these issues was never finalised and no order for separation was ever made. After hearing the parties, I ruled as trial manager that there would be no separation and that all the issues would be decided at a single hearing. The parties accepted my ruling.

15 Despite the late amendment, which significantly increased the quantum of damages claimed, the defendants elected and, through counsel conveyed to me their election, to proceed with the trial on the pleadings as they stood after the November 2024 amendment.

16 In their plea, the defendants deny the alleged collusive agreement and further deny committing the individual acts which the plaintiffs say gave substance to the collusive agreement. They plead that if the plaintiffs suffered any damages as alleged, the plaintiffs could and should have mitigated them. Then there are a number of defences styled special pleas.

17 In the first special plea, the defendants plead a failure to comply with s 103(2) of the Mpumalanga Nature Conservation Act[1] (the MNCA). This special plea was however withdrawn.

18 In the second special plea, the defendants plead a written settlement agreement concluded on 15 May 2009. The defendants contend that this settlement agreement covered the subject matter of the present action.

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[1] 10 of 1998

19 In the third special plea, the defendants contend that the alleged acts of oppression of which the plaintiffs complain would have been susceptible to remedial action under PAJA[2] or the Constitution. Having not sought such remedial action, the defendants say, the plaintiffs are not entitled to claim consequential damages.

20 In the fourth special plea, the defendants contend that there has been a failure to join an essential party to the proceedings, ie Dubai World. This special plea was abandoned.

21 In the fifth special plea, the defendants plead that the plaintiffs settled their claims against Dubai World in separate legal proceedings. The defendants argue that s 2(13) of the Apportionment of Damages Act[3] (the ADA), renders it legally impossible for any party to settle against one joint wrongdoer and thereby avoid the consequences of s 2(13). The essence of the defence is that as Dubai World has settled the plaintiffs' claim in full, any liability of the present defendants has been discharged.

2 Promotion of Administrative Justice Act, 3 of 2000

3 34 of 1956

22 The sixth special plea is that to the extent that the plaintiffs' claim arises from the presentation of false land claims, such land claims fall to be dealt with under ss 22(1) and 22(2) of the Restitution of Land Rights Act[4] (the RLRA), and that the Land Claims Court established under the RLRA has exclusive jurisdiction to deal with the plaintiffs' claim to the extent that their claim is premised on matters reserved under the RLRA for the jurisdiction of the Land Claims Court.

23 The seventh special plea is *lis pendens*. The allegation is that certain of the land claims issues were indeed referred to and are presently serving before the Land Claims Court.

24 The eighth special plea is that a new cause of action was introduced by amendment on 19 May 2023 and had prescribed under s 11 of the Prescription Act.[5] This plea was not pressed in argument.

25 Both a replication to the special pleas and a rejoinder were filed but it is unnecessary to deal with the matters raised in those pleadings. Some of the special pleas were abandoned. I shall deal with those that remained toward the end of this judgment.

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4 22 of 1994

5 68 of 1968

26 The case came initially for trial before Sardiwalla J. After hearing some twenty-five days of testimony, the learned judge was removed from active service for medical reasons, which I understand were related to a cognitive defect. All of that testimony was heard by remote platform, during the Covid pandemic. The testimony before the original trial judge was that of all the plaintiffs' witnesses and, after the plaintiffs' case had been closed, some of the evidence in chief of the defendants' first witness. In addition, there was an inspection *in loco*, at which photographs were taken but no recordal was made by the original trial judge of what, if anything, was pointed out at the inspection.

27 I was appointed to hear the case after Sardiwalla J became incapacitated and I returned from retirement to do so.

Interlocutory proceedings brought before me

28 I heard an earlier application for procedural directives on 13 May 2024 (the May 2024 application). The plaintiffs, who were the applicants in the May 2024 application, as they are in this present application, sought procedural directions for the further conduct of the trial. The parties described the central issue in the May 2024 application to be whether the trial should proceed before the new trial judge where

Sardiwalla J left off, on the basis of the transcripts and video recordings of evidence, or whether the trial should start *de novo*.

29 After some argument was presented, the May 2024 application was resolved and the parties put up a draft which I made an order on 24 May 2024 (the May 2024 order). This order provided that the trial would commence *de novo* and be postponed to dates in 2025, running over the best part of the first two court terms, that a further interlocutory would be brought and heard on 21 and 22 October 2024 on the questions whether the pleadings for the trial should remain as they were as at the date of the May 2024 order, subject to any further applications for leave to amend (as contended for by the plaintiffs), or whether the pleadings for the *de novo* trial should revert to their form or status before the start of the aborted trial (as contended for by the defendants). The order further recorded that the plaintiffs intended to apply for the admission of certain evidence in terms of s 3 of the Law of Evidence Amendment Act.[6] The order stated that the contemplated interlocutory hearings and the trial itself would be regulated by para 15 of the Consolidated Practice Directive, 1 of 2024. The costs of the earlier application were made costs in the cause.

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[6] 45 of 1988

30 As foreshadowed in the May 2024 order, the plaintiffs sought orders that the transcripts of the evidence given by fourteen named witnesses at the aborted trial, together with the documents to which they made reference in their testimony, be admitted into evidence for the purposes of the *de novo* trial;[7] that the affidavits of two further witnesses be admitted into evidence;[8] that the joint minutes and photographs of an inspection *in loco* held during the aborted trial and the video recording of the inspection be admitted into evidence;[9] that it be declared that certain admissions made by the defendants remain binding;[10] and, finally, that the defendants be directed to file summaries of [the evidence of] the witnesses they intend to call.[11]

31 In a judgment handed down on 1 November 2024, I dismissed all the relief sought by the plaintiffs. In the result, the trial had to begin again, *de novo*, on 20 January 2025.

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7 Prayers 1 and 2

8 Prayer 3

9 Prayer 4

10 Prayer 5

11 Prayer 6

32 Amendments to the plaintiffs' particulars of claim were sought and were effected in November 2024. When I describe the plaintiffs' allegations, I am referring to those made in the latest iteration of the particulars of claim.

The trial begins

33 The trial accordingly began, as contemplated, on 20 January 2025. But complications relating to, and delays in, the preparation of the bundle of documents meant that evidence proper only began to be led a week later. An enormous compendium of documents was placed before me. I was also given a device on which the document being referred to in evidence was supposed to appear. The limitations of the technology were soon apparent: only the plaintiff's document expert had control over what was being displayed and for how long; there was no way in which I, or counsel, could hold a page and compare it to other documents. Eventually, a solution of sorts was devised. The expert complied a new file of documents referred to in evidence (the core bundle) and these were printed out and given to counsel and to me. All this led to further delays.

34 Mr Daniel was the first witness. He gave his evidence in chief over many days. After he had given evidence in chief over five days and had been cross-examined over a further three days, I allowed the evidence of the next witness, Mr Hutchinson, to be led. On the fifteenth day of the hearing, an application was brought by certain of the defendants for my recusal. The recusal application was brought by notice of motion supported by affidavits, the plaintiffs filed answering affidavits and the defendants replied. The recusal application was argued on 27 February 2025. I dismissed the recusal application on the same day, in an *ex tempore* judgment, with reasons. Mr Daniel's evidence then continued. In all, Mr Daniel testified ever eighteen court days, including thirteen days under cross-examination.

The geography of the dispute

35 I think it will help to understand what was at times a confusing narrative if I describe the blocks of land in the Badplaas area which are relevant in this case. Toward the west are two blocks of farms forming respectively what were called in evidence the north lands and south lands of the Nkomazi reserve, ie the Project. They are intersected by a public road running from west to east. On the southern border of the south lands, lies a farm confusingly called in

the evidence Cambalala or Paperbark, on which was constructed a house, used as an office, and a complex of camps and cages. These latter formed what was described as a rehabilitation facility, under the ultimate control of Mr Daniel. The ground on which the rehabilitation facility lay was owned by the 2nd plaintiff (Edge To Edge). Mr Daniel was not at first a director of Edge to Edge. Its director was the 12th plaintiff, Mr Huba, who died before the trial before me began. These facts, something of a technicality in the context of the cause of action (the alleged corrupt agreement to drive Mr Daniel from Nkomazi and its alleged execution), are significant because of a prosecution instituted against Mr Daniel and Grand Valley at the instance of the 1st defendant, (the MTPA).

36 To the east of the Project lies the Songimvelo Nature Reserve, a large tract of land administered by the MTPA. Within the boundaries of Songimvelo, lay several farms, the relevant rights over which were given by the South African state to a mining company, which started mining asbestos in the area in 1942. By the early 2000s, this company was called African Chrysotile Asbestos (Pty) Ltd. I shall refer to it as the Mine.

37 In a memorandum prepared by Mr Stainforth of Absa Corporate and Merchant Bank in July 2003 for submission to prospective investors in the Project, reference was made to “Nkomazi Village”, more frequently called in evidence Msauli Village. This village had been used by the Mine for accommodating its senior personnel, with 110 three- or four-bed houses, married and single quarters, a recreation club with a golf course, football field, squash court and tennis courts, a hospital, a guest house, an administrative complex in a double storey building, Eskom electricity and a developed water reticulation supply. The Msauli River ran through the Village. Its road network was well developed. The national government had approved R30 million to pave a section of a nearby road over a mountain pass for tourism.

38 To the east of and adjoining the Project lay the complex, some 2 000 ha in extent, called in the evidence Travelport, on which there was at the relevant times a filling station and shops and other commercial amenities.

39 Between Songimvelo and the Project, lay two blocks of farms called in evidence the Corridor. On the Corridor dwelt several communities who used the Corridor lands for grazing their cattle and no doubt subsistence farming and other associated uses of rural people.

THE LAND CONTESTATION

40 This case cannot be understood without an appreciation of the land contestation, which formed the context in which the many events and allegations described in evidence took place or were made.

41 The land in question is in the Badplaas area, includes the Nkomazi valley, and is rural, largely farm land. The contestation essentially set two broad communities against each other: the white, initially farmer, community who moved into the area and the black community who were settled there or entered the area for a number of reasons.

42 Of course, referring to the white and the black communities is an over-simplification. Within those broad communities, there were and are groupings such as clans, tribes and other connected families but for present purposes, the description will suffice.

43 I have drawn extensively for this analysis from a report on the history of the Nkomati Valley by Prof JWN Tempelhoff, of the School of Basic Sciences of the North-West University. The report is undated but internal evidence shows that it was written in or after 2004. Its text is in the papers before me.

44 In the 1840s, when the present history began, the Nkomazi valley was contested by a number of groups with greater or lesser political cohesion and military capacity. AmaZulu entities were beginning to expand from their heartlands in the east of South Africa. One such entity, led by Soshangane moved north into present day Mozambique, and then west and north again into present day South Africa, where they sought to dominate the xiTsonga speaking communities already settled there.

45 The amaSwazi, who occupied present day Eswatini, were pressed by the groupings I have mentioned and resisted and themselves pressed to the west, coming into contact and conflict with the BaPedi. The Boers, ancestors of today's Afrikaans speakers, started to move into the east of the then Zuid-Afrikaanse Republiek (the ZAR) and formed alliances with one or other of the contesting groups they encountered. Although there was some dissension within the Boer community, ultimately they allied with the ruling Swazi clan.

46 The Swazi ruler, King Mswati I, wished to secure his western border from incursions by the BaPedi and secure himself from similar threats from the other entities which were seeking to expand and press upon the Swazi ruler's southern and eastern boundaries. For this reason, King Mswati entered into a series of three treaties with the Voortrekkers, as the Boers were also called. The first of these treaties

was concluded in 1846. The second treaty was concluded in 1855 and the third treaty was made in 1860.

47 This broad and perhaps simplistic overview will show how the land contestation issue developed. Because under the treaties, the ZAR obtained the rights to allocate land in the Nkomazi valley to its citizens. White farmers began to establish farms there.

48 The ZAR recognised two types of farm ownership. The *eigendomsplaas* (farm owned out and out) and the *leningsplaas* (loan farm). Boer farmers would trek from the former to the latter in the summer months to graze their animals. The Nkomazi valley was largely held as *leningsplase*.

49 Particularly because the *leningsplase* were not occupied throughout the year, the Boer farmers needed labour and formed relationships with Swazis, in particular, by which the latter and their families would reside, run cattle and grow crops on the farms in exchange for their labour.

50 As first colonialism and then racial discrimination extended their sway over the area, the black settlers there were subjected to increasing coercion. The root of the problem was that while the farmers' rights to

the land were recognised and protected by the Roman-Dutch law and the statutes of the colonial and subsequent governments practising racial discrimination as a tenet of fundamental policy, the rights of the black tenants and labourers were not.

51 Minerals were found in the area and more people, black and white, entered the area to exploit the minerals. A more and more rigid system of racial discrimination developed, with whites administering the system predominantly for the benefit of the ruling class, ie the whites.

52 After the creation of the Union of South Africa in 1910, the rights to land of the black inhabitants of the area were reduced even further, radically so. Under the Natives' Land Act,[12] black persons were effectively prohibited from owning or acquiring rights in any land in South Africa outside certain scheduled native areas. This system of discriminatory restriction was extended or in its essentials maintained throughout the years that followed, until the advent of democracy in the 1990s.

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12 27 of 1913

53 To describe the rights held by the black inhabitants of the area, I draw on a memorandum submitted to the Minister of Land Affairs dated 17 February 2004 (also in the papers before me), in relation to certain communities and clans within the Badplaas Valley which, for present purposes, adequately identifies the rights of which black people were dispossessed under the former discriminatory regimes.

54 The claimants in question, it was said, had traceable history on the properties in question from the 1840s. They hunted and farmed there. These communities lost their rights in land after the arrival of white settlers and had to work for the white farmers, later coming to be called labour tenants. Those who refused to work for the white settlers were removed from their land in the period from 1913 to 1975 and resettled in scheduled areas. These communities were never compensated for the rights of which they were deprived.

55 To redress these historic wrongs, the democratic parliament of the Republic of South Africa enacted the Restitution of Land Rights Act,[13] (the Restitution Act). Section 2 gives a person the right to enforce restitution of a right in land. A right in land is defined in s 1(xi) to mean any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law

[13] 22 of 1994

interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question.

56 The right to restitution afforded by the Restitution Act was subject to a qualification which is very important in the present context: the deprivation of the right had to have occurred after 19 June 1913, the date on which the Natives' Land Act came into force. This effectively means that the right to *own* the land, which white owners in the Nkomazi Valley traced back in many cases to the 19th century, could not be impugned. What those who were deprived could assert were rights to occupy and use the land for certain purposes.[14]

57 To administer the process of restitution, the Restitution Act established the Commission on Restitution of Land Rights. The different regions have their own regional commissioners and the 4th defendant (the RLCC) is the regional and claims commissioner for the province of Mpumalanga.

[14] There was an additional restriction. Claims had to be lodged by or before a specified date, 31 December 1998. As it is common cause that all the claims relevant to this case were lodged before the cut off date, I shall not enlarge on this topic.

58 Those claims for restitution which could not be settled must be adjudicated in the court of law established by s 22 of the Restitution Act (the Land Claims Court).

59 A vast number of restitution claims were lodged as required by law. The Restitution Act provided for a process under which the relevant claims were assessed on what might be called a prima facie basis. Those which passed muster at this level were then “gazetted”, ie the fact of the claim was published in the government gazette. If the Commission deems fit, a contested claim can be referred to mediation. Then, under certain circumstances, a claim may be referred to the Land Claims Court.

60 Many land claims were lodged, gazetted and referred to the Land Claims Court in relation to farms in the Nkomazi Valley, including farms which became Project lands. The practical problem which very quickly arose in relation to these, and other, land claims was that the matters which arose for adjudication were complex and difficult to prove. The result has been, according to the evidence, that very few of these claims have been adjudicated. All the claims over the farms in the Project are still pending more than 20 years after they were lodged.

61 An indication of the complexities which arise for adjudication in such matters emerges from the raft of special pleas filed by the respondents, ie the land owners resisting restitution, in LCC33/2007, *Mabuza Family and 8 Other Claimants v Certain* [not clearly identified] *Respondents*, which included Nkomazi Game Reserve (Pty) Ltd, Nkomazi Properties (Pty) Ltd and Dubai World Africa Services (Pty) Ltd: misjoinder in that the plaintiffs' claims are not against the same person; misjoinder against certain respondents because no relief is claimed against them; non-joinder in that numerous necessary parties have not been joined; non-compliance with the allegedly peremptory provisions of ss11 and 11 A of the Restitution Act; a challenge to the jurisdiction of the court; lack of *locus standi* to lodge claims; an alleged prior settlement of the claim. That is before one even gets to the merits, ie whether the claimant is a community recognised under the restitution legislation, what the nature of the claim is and what its merits are.

62 On the merits of the claims, the landowners' broad position was that their positions as owners of land are not assailable under the Restitution Act because none of the claimants was dispossessed of ownership after the advent of the 1913 Act but that they are, in certain instances, prepared to settle the claims by paying monetary

compensation. The broad position of the claimants is that they demand ownership.

63 The result has been huge public dissatisfaction within the area. Certain powerful politicians became involved in the disputes. These politicians, sensing or being directed by the public anger voiced by their constituents, allied themselves with the aggrieved claimants.

64 The solution devised by these politicians, working together with officials in the RLCC, was to buy the white farmers out with public money made available for this purpose by the national government. At this time, the agricultural prospects within the Nkomazi Valley were very poor. There are disputes about the reasons for this slump. But the fact of the slump itself is not in dispute. So most farmers were keen to sell.

65 Not, however, Mr Daniel. With his close to 40 000 ha in the area, he envisioned a world class nature reserve, as well as a high end tourist attraction at the Msauli Village, the former accommodation and recreation complex serving the asbestos mine in the Songimvelo nature reserve, owned by the state and operated by the MTPA.

66 But the politicians, the protestors they are alleged to have deployed or utilised and the officials of the RLCC were having none of that. Mr Daniel, they all said, must get out. And the process itself was affected by corruption on a large scale.

My approach to the evidence

67 The nature of the plaintiffs' cause of action produced a vast amount of testimony, enlarged even further by extensive and sometimes inordinate cross-examination on matters of detail. I have decided that it would be unhelpful to catalogue each item of evidence adduced with its qualifications and rebuttals. I therefore propose to examine the several broad themes in the evidence which are relevant to the claim separately and then try to knit them together to explain my conclusions. This does not mean that I have ignored any evidence adduced. On the contrary, throughout the trial I tried to evaluate all the evidence given to see where such evidence fitted into the mosaic laid before me. Of course I have also had the benefit of written and oral argument by counsel, which I have considered carefully.

Land claims and Msauli Village

68 One of Mr Daniel's concerns, when he was buying up land for the project, was restitution claims under the land restitution legislation. He was not concerned with labour tenant and other occupancy claims, which he believed, with justification, he could settle, either by allocating tracts of land, fenced off from the reserve as such or by cash payments. He was concerned with claims that could place the ownership of land the plaintiffs had bought at risk.

69 To this end he engaged Mr Spoor, an attorney, who researched the matter and reported to Grand Valley in a letter dated 15 December 2000, that Mr Daniel probably had nothing to fear on this score. This was because the land in the Badplaas district in which Mr Daniel was interested, had been owned and worked by Boer farmers and their descendants and successors well before the crucial date so that any such land claims had little prospect of success. That did not mean that there were not other types of land claims, such as those of labour tenants. But this latter class of claims did not threaten Mr Daniel's control of the lands he bought for the Project, so they were much less of a concern to him. Mr Daniel believed the claims falling within the latter class could always be settled without fundamental risk to the Project.

70 By letter dated 18 January 2001, the 17th defendant, Mr Nqana, wrote to a Mr Peacock, who had enquired whether there were any restitution claims over the farm Diepgezet 388. The 17th defendant unequivocally responded that there is "no claim lodged". His letter does include a caveat that while reasonable care had been taken in the compilation of the information given, the commission could not be held accountable if, in the process of further investigation, additional information was found that suggested a land claim.

71 On 13 September 2002, notice of a land claim was gazetted over the farm Diepgezet 388 JU. Mr Daniel was not aware of the existence of this claim until after the 17th defendant, Mr Nqana, had written to the Mine to say that a land claim had been gazetted over the farm on which the Msauli Village stood. This was one of the farms forming the Songimvelo game reserve, close by the Project. Msauli Village stood on the farm Diepgezet 388, over which the Mine held certain rights. The Mine owned the surface rights to Msauli Village, while the national government owned the land itself. Songimvelo game reserve was administered by the MTPA. Mr Daniel's hope for Msauli Village was that it could be developed into a country and golf estate similar to colonial Williamsburg in Virginia in the USA. Songimvelo itself and Msauli fall within the Barberton Mountainlands World Heritage Trans-frontier Area.

72 The Mine was reaching the end of its life and, in 1998, its owner wanted to close it down and retrieve the deposit it had paid for its mining license. To achieve this, the Mine had either to sell Msauli Village or demolish it. The sale required various governmental approvals, and a subdivision of the land on which Msauli Village stood. The most important approval, from the perspective of the present case, was a certificate of closure. If such a certificate was not obtained by the (extended) cut off date of the end of 2003, the Mine would be forced to demolish and lose the value of Msauli Village which had a replacement value of R50 million. From 1999, the Mine invited potential developers to participate in its efforts to incorporate Msauli Village and the mine area into Songimvelo. Mr Daniel was one of the developers whom the Mine approached, which it did by letter dated 25 October 1999.

73 The Mpumalanga government initially cooperated with the Mine in its efforts to save Msauli Village and realise its potential and started a process to find an investor with experience and access to funding to save Msauli Village. Numerous invitations were sent to potential investors. By letter dated 18 January 2001, the 17th defendant, Mr Nqana, as the regional land claims commissioner, wrote to investors to confirm that no land restitution claims had been lodged against the property.

74 By letter dated 15 June 2001, the RLCC, through Mr Sibiya, its then acting CEO and the 9th defendant, wrote to the Mine that the MTPA would not oppose the Mine's application to the national department of land affairs to purchase Msauli Village. The land on which Msauli Village stood was owned by the Republic of South Africa. The decision not to oppose was conditional but the conditions are of no moment in the present context.

75 No investors besides Mr Daniel showed any interest in Msauli Village. Mr Daniel saw the potential of Msauli Village within the Project and on 5 October 2001, took an option from the Mine in favour of Grand Valley to buy "the property owned by [the Mine] at Diepgezet" for R5 million. To achieve this, the land on which Msauli Village stood had to be made transferable and transferred to the Mine, and then to Mr Daniel's company. No doubt, a tripartite agreement could have been concluded by which transfer could take place directly from the State to Mr Daniel's company, but matters did not get that far.

76 Much cross-examination was directed at this document and the documents preceding and following it to give effect to the Mine's desire, on the one hand, to sell Msauli Village and Mr Daniel's desire to buy it. The cross-examination sought to show that ultimately the transaction lapsed for non-fulfilment of a suspensive condition in the

agreement of sale between the Mine and a company of which Mr Daniel was a director.

77 These contractual impediments, if such they were, are of no consequence in the case. The Mine was a willing seller. Mr Daniel was a willing buyer. Mr Daniel put up the R5 million purchase price by lodging it in trust with an attorney, so the purchase money was available. If, according to the strict tenor of the law, the agreement between the Mine and Mr Daniel's company had indeed lapsed and the parties nevertheless wished to implement the transaction, they would simply have found a mechanism to do so, eg reinstating the lapsed agreement.

78 At considerable expense to all concerned, Mr Daniel put together a consortium comprising Kerzner International, Golf Data (which developed golf courses), the Peace Parks Foundation and ABSA. The vision of the consortium was to develop Msauli Village, at that stage still fully functional, and turn it into an eco-tourism destination, linked to Songimvelo, thereby preserving the some 800 jobs of the staff employed there.

79 Mr Daniel wanted to include Msauli Village in the Project itself. Toward this end, he convened an introductory meeting at Nkomazi attended by Mr Butch Kerzner, Mr Hutchinson,[15] Prof van Riet, Mr Sibiya and Mr Daniel himself.

80 The provincial department of land affairs in Mpumalanga was also in favour of the sale to the Mine. By letter dated 12 November 2001, either written on that date or 12 November 2002, the Mpumalanga department of land affairs sent the Mine a list of conditions that department required in respect of the sale of Msauli. Those conditions were met.

81 On 14 March 2003, the Mpumalanga department of land affairs confirmed in writing that the subdivision of the land on which Msauli Village stood and the sale of Msauli Village to the Mine had been confirmed.

82 A meeting was held at the department of the environment and tourism on 11 April 2003. This meeting was attended by Mr Daniel and a prominent conservationist, Prof van Riet. It concerned a proposed trans-frontier park involving northern Swaziland, south-eastern Mpumalanga (which included the Badplaas district and thus the

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15 See below for more detail regarding Mr Hutchinson.

Project) and southern Mozambique. During the meeting, Prof van Riet asked whether Mr Daniel should be involved in the further processes of the efforts to progress this trans-frontier initiative. It was unanimously agreed that he should.

83 However, Mr Daniel learnt from an official employed by the MTPA that he would not be invited to further such meetings on the ground that “there would be an outcry if [the Project] participated and the public was not involved”. Mr Daniel promptly wrote a letter, sent on 21 August 2003, in polite terms to Mr SIbiya to argue against his exclusion. He received no answer from Mr Sibiya. No ground was put to Mr Daniel in evidence to justify the assertion of a public outcry.

84 On 6 May 2003, the Mine and Wilderness Conservation Projects (Pty) Limited (Wilco), a company controlled by Mr Daniel, agreed, in a written agreement, on the purchase of the land on which Msauli Village stood and the fixed and movable assets standing on the land for R5 million.

85 The land in question was described as:

> ... portion 1 of the farm Songimvelo 600 ... held by the Republic of South Africa under Certificate of Registered Title

> ... as an as yet unsubdivided part of the farm Diepgezet 388 ... .

86 This description gave rise to much cross-examination, the cross-examiner asserting that transfer could not take place until the subdivision itself was effected and Mr Daniel responding that, on his understanding, land held by the State under certificate of registered title could be transferred away from the state without any need for further subdivision. In my view this dispute is of no moment in the present context.

87 The sale to Wilco was made conditional on the sale by the state to Wilco of the land on which Msauli Village stood for not more than R1 million. Mr Daniel's evidence was that there was such a sale but I do not think he can be correct. That is because the evidence is quite clear that the MTPA and the RLCC, blocked the completion of the transaction.

88 This, according to Mr Daniel, was achieved in two ways. The first was by the MTPA refusing to consent to the grant of a closure certificate to the Mine by the department of mines. No basis, let alone any valid basis, for this refusal was put to Mr Daniel in evidence or advanced though any witness on behalf of the defendants.

89 Shortly after concluding the agreement of sale with the Mine, Mr Daniel, through Wilco, took physical possession of Msauli Village. This showed the level of trust which existed between Mr Daniel and the Mine because under the sale agreement, Wilco was only entitled to possession on transfer. Wilco immediately started spending money to clean and upgrade Msauli Village.

90 Mr Daniel and his consortium complied and approved a comprehensive business plan and secured all the funding needed to develop Msauli Village as a premier eco-tourism resort, with the extensive sporting, medical and administrative facilities which I have already described. The plan included access by the eco-tourists to game drives in Songimvelo.

91 On 8 July 2003, the Mpumalanga department of agriculture, conservation and environment held a meeting "to take the process of Diepgezet Village [ie Msauli Village] further". A minute was produced. Among the points to be actioned were that a community resolution was needed to get community support for the project and that the Albert Luthuli municipality and mayor should be involved. The minute says that Mr Daniel should make a presentation to the Albert Luthuli council on "the project". But the Albert Luthuli municipality has jurisdiction over the Ermelo district which has nothing to do with

Msauli Village. The minute provides that the land claims commissioner should be convinced to "give this project a high priority."

92 When Mr Daniel saw this minute some time after 8 July 2003, he concluded that the minute and the meeting which produced it were merely a smokescreen to obscure the real agenda of those involved to frustrate his involvement in the development of Msauli Village.

93 There is no suggestion in the evidence that any of the action points in the minute were ever taken any further.

94 By letter dated 18 July 2003, Mr Daniel's attorney, Mr Spoor, wrote to the Mpumalanga Premier, with copies to the MEC for public works, the MTPA, the Mayor of the Albert Luthuli local authority and the Mine to plead for the Premier's help to get the Msauli transaction between the Mine and Wilco through. Mr Spoor wrote the letter in his capacity as the legal representative of the miners in the region who had succeeded in getting compensation from the Mine for the asbestosis with which they were afflicted. Mr Spoor pointed out that the afflicted miners' trust stood to receive R2,5 million if the sale went through, but would not get this money if the sale did not go through. Mr Spoor's plea elicited a formal acknowledgement of receipt but nothing more.

95 By letter dated 13 August 2003, Mr Nqana informed the Mine that a land claim had been brought against Msauli Village.

96 The Mine had to dispose of it before the extended date for the closure of the mine, the end of 2003. If it did not meet this deadline, the Msauli Village would have to be demolished. The MTPA was aware of the deadline and the consequences of a failure by the mining company to find someone to take the Msauli Village over. Mr Daniel retained the services of Mr Spoor to negotiate a solution. Try as he might, however, Mr Spoor could not achieve a solution to the difficulties raised by the MTPA.

97 Mr Daniel testified that if he had not been obstructed by the MTPA, he would have developed the Msauli Village into a resort and would have made a success of it. I accept that this was probably true.

98 Faced by the attitude of the MTPA and the RLCC as described above, Mr Daniel and his consortium decided to withdraw from the sale of, and discontinue their efforts to acquire and develop, Msauli Village. The deposit of R5 million paid into trust by Wilco pursuant to the sale agreement was refunded to it.

99 On 14 October 2003, it was recorded in a minute of the Mpumalanga department of agriculture, environment and land affairs that the RLCC had decided to buy Msauli Village from the Mine.

100 The RLCC bought Msauli Village from the state and the Mine. Somehow, the MTPA and the RLCC consented to the issue of the closure certificate needed by the Mine to achieve this, the closure certificate was forthcoming and the land claims were no longer an impediment to the transfer of the land away from the state.

101 In 2004, Mr Nqana was suspended following a report by Ernst & Young into land claim corruption.

102 The consequence of the decision by the MTPA and the RLCC and their relevant officials was that Msauli Village descended into ruin. Songimvelo itself was routinely invaded by cattle grazers, its fences were broken and its game was poached. The 800 jobs that Mr Daniel and his consortium could have saved if their plans had come to fruition were lost, as was the opportunity to provide the Badplaas district with a world class eco-tourist destination.

103 The states to which Msauli Village descended appear clearly from an photographs taken by Mr Daniel at an inspection *in loco* on 1 February 2022. Its golf course was overgrown and its houses were stripped of whatever could be carried away.

104 There is no explanation for this remarkable conduct by the RLCC other than that advanced by Mr Daniel: that this organ of state, in alliance with others, conspired to ensure that he was excluded from the development of Msauli Village, even though this meant that a powerful group of eco-tourism developers withdrew as well and an opportunity to develop the Badplaas district in an ecologically sound manner and promote conservation was irretrievably lost, as were many jobs. Rather than see Mr Daniel and his consortium succeed, the RLCC and its relevant officials were content to forego an opportunity to uplift the poor and landless communities in the district and reinforce their powerlessness, poverty and the lack of dignity attendant on those conditions.

105 The second way the transaction was allegedly blocked was by persuading persons to lodge unmeritorious land claims against Diepgezet 388. By unmeritorious, I mean claims to the ownership of the land over which the claims had been registered. The claimants, or some of them, may possibly have had claims to certain rights of use

over relatively small areas where their forebears and families had grazed their cattle, lived and conducted subsistence farming. This latter species of claim could never have resulted in the loss of ownership in the land by the registered owners but only to rights to use or to compensation for the loss of such rights. But today, over twenty years after these claims were lodged, they remain neither adjudicated by the Land Claims Court nor settled.[16]

106 By letter dated 13 August 2003, the land claims commissioner wrote to unnamed addressees that a claim "for the restitution of land rights" had been lodged over the farm Diepgezet 388 by six named claimants, AM Vumba, MM Mkhonza, SA Makoli, FJ Phiri, NM Nyawuza and MF Mkhonto. The letter included, in what appears to be boilerplate, a caveat that it was not in the power of the commission on restitution of land rights to grant or withhold permission for the development or alienation of land claimed until such a claim had been gazetted, unless such development would constitute an obstruction to the achievement of the aims and objectives of the applicable Act.

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16 In the present case, the parties' respective experts, Profs Tempelhoff and Delius, minuted their agreement that there were no valid land restitution claims against the land on which the Msauli Village stood.

107 There was a similar caveat that while reasonable care had been taken with the accuracy of the information conveyed, the commission could not be held accountable if, through the process of further investigation, additional information were found that contradicted the information conveyed in the letter.

108 But no evidence was produced to show that there was further investigation or in any way explained how, almost three years after the cut off date, the land claim over Diepgezet 388 had emerged.

109 The evidence shows that when the Mine first began its efforts to dispose of the Msauli Village in 1998, the RLCC showed no interest in the Village. However, after the Mine had agreed in May 2003 to sell the Village to Mr Daniel's company Wilco, things changed. On 4 June 2003, senior representatives of the MTPA and the RLCC, Mr Sibiya and Mr Nqana, travelled to Randburg to meet Mr Hutchinson, an executive on the Kerzner group, to disparage Mr Daniel and discourage the Kerzner group from including Mr Daniel in the proposed development of the Village. On 13 August 2003, Mr Nqana wrote the letter announcing that land claims over the Msauli Village had been gazetted. On 14 October 2003, representatives of the RLCC and a number of Mpumalanga government departments met to plan a strategy for the purchase of the Msauli Village by the RLCC. In

December 2003 Visagé invited Mr Daniel to sell the Nkomazi Project lands to him at an inflated price, ultimately to be paid out of public funds by the RLCC.

110 Why did the MTPA and the RLCC behave like this? I shall answer my own question later in this judgment.

111 By the end of 2007, all the prey animals and infrastructure were in place to enable the Project to be completed and marketed to the public. All that was lacking was the cooperation of the Mpumalanga nature conservation authorities, in particular in relation to the permits the Project required in respect of lion and elephant. Mr Daniel had powerful investors with him in the venture. Two of these investors were the Kerzner International group of companies with which Mr Sol Kerzner, a prominent South African developer, was associated and ABSA bank. By this stage, Mr Daniel had the private cellphone number of a powerful politician in Mpumalanga, Mr Mabuza, who died on 3 July 2025. Mr Mabuza served in several capacities in the provincial government in Mpumalanga, including as its premier and MEC for agriculture and as the deputy president of the Republic of South Africa. Mr Daniel spoke to Mr Mabuza to arrange a meeting between himself and Mr Mabuza. According to Mr Daniel, he wanted to meet Mr Mabuza privately, but Mr Mabuza would only meet Mr

Daniel in the presence of the 25th defendant (the GBLCC). This was unacceptable to Mr Daniel, who feared for his physical safety.

112 Mr Daniel testified that he invested R100 million of his own money in the Project, while the Kerzner companies committed R380 million. Mr Sol Kerzner's son, Butch Kerzner, invested R35 million of his own money. The idea was that lodges would be established under the brand of One & Only (O&O). These lodges, found throughout the world, had seven star status and attracted very high prices. The idea was that such lodges would be built at Victoria Falls, in the Project and in Cape Town, which Mr Sol Kerzner called the golden triangle, as clients would, it was anticipated, book a trip to all three destinations. Three O&O lodges were planned for the Project as well as 27 other private lodges, all within the Project.

113 The Development Bank of Southern Africa put R35,7 million cash into the Project and committed a further R100 million.

114 Mr Daniel secured a BBBEE partner, the Inkaleni community. Its leader was Simon Huba, the 12th plaintiff, who died in 2021. The arrangement with the Inkaleni community was that its members would put their land into the Project, the Development Bank would fund their

participation in the Project and The Kerzner group would train them in the hotel school it ran.

The evidence of Mr Hutchinson

115 At the request of the plaintiffs, I allowed the evidence of Mr Bruce Hutchinson to be interposed during the cross-examination of Mr Daniel. When he gave evidence, Mr Hutchinson suffered from cancer and his evidence was taken by remote platform on 13 February 2025.

116 In 2003, Mr Hutchinson was a director of companies within the Kerzner International group and vice-president with responsibility for Africa, the Indian Ocean islands and the Middle East. His group was looking to expand and sought opportunities in this regard.

117 During 2003, he met Mr Daniel for the first time and became deeply impressed both by the vision which Mr Daniel presented to him and the character of Mr Daniel, both of which he described in glowing terms.

118 Mr Hutchinson visited the Project, with the approval of in particular Mr Sol and Mr Butch Kerzner. He was impressed by the wide open spaces within it but also by its mountains and valleys. He considered

that the Project could be developed into what he called something exciting, both for conservation and for tourism. One of Mr Hutchinson's responsibilities was toward luxury tourism and he saw potential in the Project in this regard. Mr Hutchinson made clear that Mr Daniel's participation in the Project was regarded by him and his group as an asset and saw a partnership with Mr Daniel as adding value to the exploration of the Project and its potential expansion going forward.

119 Mr Hutchinson saw potential in a development which incorporated, but was greater than, the Project itself, something on the scale of Sun City and the Cape Town Waterfront. However, he saw the complexities which such a grand vision would encounter. In particular, he stressed the need to have good relations with the government which made regulatory decisions over the land required for any such development.

120 Mr Hutchinson saw a potential for linking the Project with Songimvelo, which was under the control of the MTPA. One of the complexities inherent in this concept was accommodating the needs and wishes of the local community. In this case, the corridor of land which would link the Project to Songimvelo was used by numerous herders who grazed cattle on the corridor and broke down Songimvelo's fences to use the Songimvelo land as grazing and to poach the game there.

121 Mr Hutchinson described how he held two meetings with representatives of the Mpumalanga government to explore how and on what terms the Kerzner group could benefit from the potential in the Badplaas district and beyond.

122 The first such meeting was at the Cybele Forest Lodge, most likely in 2002. The Cybele meeting was attended by Mr Hutchinson, Mr Sibiya the 9th defendant, and a senior representative of the Mpumalanga government. The latter was identified by reference to an affidavit made by Mr Hutchinson on 25 May 2011 as Mr Tiba, the then CEO of the MTPA. At the time, Mr Sibiya was the MTPA's commercialisation manager.

123 Mr Hutchinson left the Cybele meeting with a sense of discomfort - he sensed that those present had an agenda which they did not wish to disclose.

124 The second meeting was at Mr Hutchinson's office in Randburg. His evidence is unclear as to who asked for the meeting, Mr Hutchinson or Mr Sibiya. But what is clear is that Mr Sibiya told him that he did not want Mr Daniel to be present at the meeting. Mr Hutchinson accordingly reported this to Mr Daniel and the two of them agreed that the Randburg meeting should proceed without Mr Daniel.

125 When Mr Sibiya arrived for the Randburg meeting, he was accompanied by the then regional land claims commissioner, Mr Nqana, the 17th defendant. The Randburg meeting was held on 4 June 2003.

126 Mr Hutchinson was made suspicious because Mr Sibiya had brought Mr Nqana to the Randburg meeting. His view was that land claims had nothing to do with what he was discussing with the MTPA. And prominently raised at the meeting was Mr Sibiya's assertion that Mr Daniel was a scoundrel (my word) who was not to be trusted. Although Mr Nqana remained silent at the meeting, Mr Hutchinson's impression was that Mr Nqana supported everything Mr Sibiya put to him.

127 At the meeting, Mr Sibiya told Mr Hutchinson of certain land claims. Mr Hutchinson was under the impression that these land claims related to the corridor, not to Msauli Village.

128 Mr Hutchinson made it clear that Mr Daniel was the Kerzner International's trusted and valued partner and that although the group contemplated a development which included both the Msauli Village and Songimvelo, if necessary they would proceed with the Project alone.

129 Mr Hutchinson formed the strong impression that the unspoken implication of what was being put to him was that Mr Sibiya and Mr Nqana were looking for a bribe from Kerzner International to enable the problems, in the form of land claims, at which Mr Sibiya hinted, to go away. He said that this was how bribes were solicited throughout the world, never by overt speech but by insinuation.

130 Mr Hutchinson testified to a R10 million loan which the Kerzner group made to Mr Daniel at an early stage, without security, pretty much for Mr Daniel to use at his discretion, although R1,575 million was earmarked to enable Mr Daniel to acquire a farm adjacent to the Project lands as they then stood. A memorandum dated 16 September 2003 submitted by Mr Butch Kerzner to his board makes it clear that Kerzner International trusted Mr Daniel and were confident that he would move the Project forward.[17]

131 M Hutchinson is elderly and was quite visibly affected by his illness. He was aggressive and argumentative toward senior counsel and in respect of counsel for the 4th, 7th and 18th defendants, disgracefully so. I formed the impression that he actually enjoyed, at some level, taking his frustrations with his disabilities out on counsel, particularly cross-

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17 Mr Kerzner did tell his board that his company would hold a "lien" over the land to be acquired but no real right over any such land was ever registered in favour of any company in the Kerzner International group.

examining counsel. He said himself that his memory for dates and the like is not good. In all, however, I am satisfied that this witness made a huge effort to take part in the trial and to give the facts as he saw them. I saw no reason to doubt his integrity, his genuine respect for Mr Daniel, his admiration for what Mr Daniel was trying to achieve, his perception that Mr Daniel was passionate about conservation and was trying to bring the Project to fruition in an honest and open way, in the belief that it would benefit South Africa and the impoverished members of the Badplaas community.

132 When Mr Hutchinson reported this to Mr Daniel, Mr Daniel decided that he would not proceed with the acquisition of the Msauli Village for the venture. He said that if he persisted he would risk embarrassing Mr Sol Kerzner, who by this stage had lost confidence in the MTPA and did not want to put Kerzner International's brand at risk, and Mr Daniel did not want to provoke further conflict with the community.

133 At this stage, Mr Daniel said, some R318 million had been committed toward the venture. The Development Bank of SA alone put R35,7 million cash into the Project and committed some R100 million. The Kerzner group put in R10 million cash and committed another R283 million.

134 At some time in 2003, a meeting was arranged between Prof van Riet, the chairman of the Peace Park, a cross-border conservation initiative involving several game reserves in southern African countries to explain the cross-border park concept. Mr Daniel wanted to attend this meeting but was told by Prof van Riet that he was excluded from attending. Mr Daniel went to the meeting anyway. Present at the meeting were Prof van Riet, Mr Daniel, the 9th defendant Mr Sibiya and a representative of the national Department of Environmental Affairs. Those present at the meeting denied that he had been excluded. But Prof van Riet later told Mr Daniel that it would embarrass Prof van Riet if Mr Daniel went to the next meeting and Mr Daniel did not attend further meetings of this initiative.

135 In an effort to resolve the impasse between himself and the authorities, Mr Daniel arranged several meetings with Mr SIbiya. On each occasion, Mr Sibiya failed to attend the meeting which had been arranged and when they encountered each other, Mr SIbiya was rude to Mr Daniel.

The role of Pieter Visagé

136 A significant meeting took place according to Mr Daniel, between Mr Daniel and a Mr Pieter Visagé on 28 January 2004, with possibly

earlier meetings between them. The evidence of Mr Daniel was that Mr Visagé acted as a broker for the Land Claims Commission. Visagé would take options from the farmers in the district at inflated prices and then sell the options to the land claims authorities at even more inflated prices. He offered to buy the Project from Mr Daniel at three times any valuation Mr Daniel could produce. Visagé warned Mr Daniel that if he did not sell, land claims would be gazetted over the Project lands and Mr Daniel would then be forced to sell.

137 Mr Daniel refused Mr Visagé's offer. He and his attorney, Mr Spoor, then reported what they regarded as evidence of large scale corruption to the authorities. Investigations at government level followed and apparently culminated in a report identifying the corruption.

138 By letter dated 25 March 2004, on the instructions of Mr Daniel, Mr Spoor wrote to the Land Claims Commission to bring what Mr Daniel believed to be widespread corruption in the inflation of land prices bought by the Commission to its attention. The story reached the press. City Press reported on the matter in its issue of 2 September 2004. The response of the RLCC was to accuse Mr Daniel of being responsible for the corruption.

139 At some stage, land claims over portions of the farms on the boundaries of the land acquired for the Project were registered in the name of seven claimants. This was an obstacle to any potential transfer of the land and to the progress of the venture. Mr Daniel became aware of the existence of these land claims from about 2005. The land claims were gazetted on 31 May 2004.

140 By letter dated 2 September 2004, Regional Land Claims Commissioner Nqana wrote to a valuator, Mr Griffiths. From the contents of the letter, it appears that Mr Nqana thought that Mr Griffiths was representing Mr Daniel. This was incorrect. In the letter of 2 September 2004, Mr Nqana sought to force Mr Daniel to admit the validity of the land claims registered against the Project properties. The letter reads in part, under the heading REVISION OF VALUATIONS - BADPLAAS:

> We confirm that we have no problem in you investigating the valuations in respect of portion 11 Vygeboom on behalf of the owner of Nkomazi Wilderness, Grand Valley Estate in order to ascertain that the price being paid for the farm is not inflated.
>
> Our support in allowing you to undertake the said assignment on behalf of your client while still on our panel of Valuers is subject to the following conditions:
>
> 1. Furnishing us with a letter from your client addressed to the Regional Land Claims Commission, that he is not challenging the validity of the claims lodged

against his properties and that he is willing to sell to the state for the settlement of the claims over his properties,

2. That he also furnishes you with the instructions to value his gazetted properties with the view to settle the restitution claims over his properties.
3. That the values that would be obtained from your valuation of his properties would be accepted to him for the purposes of settling the claims over his properties.

We would give you our full support upon the fulfilment of the said conditions.

Should your client refuse to comply with the above conditions we request you terminate your mandate with him.

141 On 8 September 2004, the Land Claims Commission issued a press release, in which it accused Mr Daniel of various misdeeds regarding the land claims against the Project properties. Mr Daniel said that the allegations in the media release concerning him were untrue. The Commission admitted that there was corruption in the land claims process in the Badplaas district but accused Mr Daniel of causing the corruption.

142 In about October 2004, the government commissioned Ernst and Young to investigate and report on the alleged land claim abuses in the Badplaas area. Ernst and Young's report came out in February 2005. Mr Daniel managed to obtain a copy of the report in about 2010.

143 When the alleged land claim abuses were made public, the government stopped all transfers. This led to litigation by sellers, who put pressure on government to allow the transfers to go ahead.

144 However, when the RLCC was notified of the alleged fraud, its response was to fast track the transfers, so that ultimately Ernst and Young were faced with faits accomplis.

145 Ultimately, Mr Visagé and others were charged in a magistrate's court arising from the irregularities uncovered in the investigation into the alleged land claim irregularities. However the case was removed from the roll and never reinstated. Mr Daniel wrote asking the prosecutor for reasons for the removal from the roll. He did not get a reply to his letter.

146 In October 2004, Mr Nqana, the 17th defendant, and Mr Mabatha, the 19th defendant, were suspended. Mr Nqana took his suspensions very badly, blaming Mr Daniel for his suspension.

Violence directed against Mr Daniel and the Project

147 A further problem, said Mr Daniel, was that the local community were mobilised to wreck the venture by local politicians, one of whom,

mentioned by Mr Daniel by name, was Mr Mabuza. Curiously, although there were at inception 25 defendants cited, Mr Mabuza was not one of them. Mr Daniel said he was advised that he had insufficient evidence against Mr Mabuza to cite him as a defendant.

148 According to Mr Daniel, Mr Mabuza created the 25th defendant, the Greater Badplaas Land Claims Committee (the GBLCC), as a vehicle to threaten, harass and inflict physical harm upon Mr Daniel, his employees and his property. Although this was disputed in cross-examination, no evidence to contradict Mr Daniel was presented by the defendants. In the course of this campaign, Mr Daniel said, on 2 September 2005 a group of people were bussed in and assembled at a gate to the Project. Protestors (some of whom according to Mr Daniel had previously been sentenced for poaching) brandished pliers and made threats to cut the Project's fences, rioting took place on public roads with burning tyres, his employees were assaulted and he himself was threatened. Mr Daniel testified that he could not get close to the participants because of stone throwing, but took photographs. Mr Daniel observed that the acting national and Badplaas regional land claims commissioner was present, as was Visagé's farm manager.

149 The protestors' position was that the land claims over the Project lands had been gazetted and that the Project lands therefore belonged to the claimants and Mr Daniel and his staff should leave. The acting national and the regional land claims commissioners addressed the protestors and told them that the Project lands were theirs and that they would get them. Eventually the protestors climbed back into the buses which were waiting for them and they left.

150 It was quite beyond the power of the officials in question to bring the promises, which amounted to the transfer of ownership over the claimed lands to the claimants, to fruition. It was also entirely improper for officials in an organ of state to make what amounted to political promises. This was another instance where high officials in the MTPA and the RLCC exceeded their powers in their dealings affecting Mr Daniel and the Project.

151 Mr Daniel tried to get the SA Police to intervene to curb the violence directed against Mr Daniel and the Project. In May 2008, there was a community meeting outside the Badplaas police station, which Mr Daniel witnessed. This protest was attended by the 20th, 21st and 22nd defendants. The 22nd defendant addressed the crowd. Mr Daniel described how those present present held placards saying Boere Gaan Kak and Kill the Boer.

152 On 1 August 2008, Warrant Officer Vermeulen of the SA Police, Badplaas, spoke to Mr Daniel. Vermeulen told Mr Daniel that the local Badplaas detectives had been called to a meeting and told that there would be a demonstration at Travelport on 2 August 2008. The Badplaas detectives were ordered not to be present at the demonstration. Mr Daniel then contacted the Badplaas station head, Captain Molebatse, who confirmed to Mr Daniel what Vermeulen had said. The captain said that he had been told that it was a political matter and the SA Police must not get involved.

153 On 2 August 2008, there was an attack on Travelport by about 100 people bussed in from Groenplaas in the Middelburg district. The attackers said they had come to arrest Mr Daniel and demanded that he leave and give up the Project land.

154 Mr Mabuza was present and addressed the protestors, telling them that the land was now theirs and that they would get it. The protestors dispersed after Mr Mabuza addressed them.

155 Mr Daniel testified that the purpose of the violence directed at him was to drive him off the Project land. This was not disputed and is manifestly true.

156 Mr Daniel testified that thereafter sporadic incidents of violence, arson and fence cutting were perpetrated against the Project and its staff until the middle of 2009.

157 After that, Mr Daniel said, there was much cutting of his fences. He said he produced evidence to the SA Police, including photographs of the persons who cut fences but although dockets were opened, no progress was made in what should have been these investigations. Mr Daniel hired 45 security guards whom he had flown in from Upington to deal with the problem and retained investigative services.

158 After the incident on 2 August 2008, the plaintiffs took legal steps. They obtained interdicts in this court, without opposition. The named respondents in the interdict cases then refrained from cutting fences but new perpetrators cut fences and some were caught. Mr Daniel had the interdicts extended to these fresh perpetrators. Eventually, in about December 2008, the fence cutting stopped.

159 The fence cutting caused areas of the game fencing of the Project to be completely flattened and made useless. In all, some 30 km of fencing was destroyed in this manner. The cost of reinstating the fencing was R150 000 per kilometre.

160 On about 10 August 2008, Mr Daniel received a call from Victor, Mr Mabuza's PA, asking Mr Daniel to attend a meeting with Mr Mabuza and members of the GBLCC, all of whom were beneficiaries or trustees of the Ndwandwe Trust. This number, Mr Daniel found out, included the 22nd defendant, Mr Khoza, who was a member of the Badplaas town council and a beneficiary of the Ndwandwa Trust.

161 Mr Daniel refused to attend the meeting if the members of the GBLCC attended because they had threatened to arrest him. He wanted to meet Mr Mabuza without the GBLCC. After negotiations, it was agreed that the meeting would take place on about 24 August 2008 and Mr Spoor and Mr Allen would represent Mr Daniel at the meeting.

162 After an incident of fence cutting, Mr Daniel reported the incident to the SA Police at Badplaas and officers went with him to the scene. Mr Khoza arrived on the scene while the police were there. He said to Mr Daniel and the police that he had cut the fence because he was not prepared to walk through the gate. Later he and a mob of some 40 persons held the police at the Badplaas police station hostage and told the police that they were not permitted to investigate Mr Daniel's fence cutting complaints. The police had to call in reinforcements from Machadodorp to deal with this mob. Mr Khoza was arrested, charged and sentenced arising from this incident.

163 After this incident, on about 29 August 2008, Mr Daniel called Mr Mabuza on his cellphone. They had a discussion lasting just over 13 minutes. During this telephone conversation, Mr Mabuza told Mr Daniel that he had to admit the land claims over the Project lands and sell the Project lands to the Ndwandwa Trust. This, said Mr Mabuza, was the only way he could protect Mr Daniel.

164 The local radio station had a talk show to which members of the GBLCC called in. According to Mr Daniel, the thrust of the contributions was that because the land claims against the Project lands had been gazetted, they believed that the Project lands now belonged to them. The plaintiffs and Mr Daniel, they said, had become illegal occupiers and they loved animals more than the claimants. They would continue to cut fences, they said, and nobody would stop them.

165 However, after the interdicts were granted, the violence abated but Mr Daniel began to be harassed by several of the departments in the provincial government of Mpumalanga.

166 Mr Daniel described an incident in about 2009, shortly after Mr Mabuza became the premier of Mpumalanga. A representative of the Mpumalanga department of labour arrived at Travelport and served

Mr Daniel with a notice shutting the entire development down. Mr Daniel demanded from the official to tell him whether he had been deployed by Mr Mabuza. Mr Daniel threatened to bring an urgent application and cite the official personally. The official did not answer but just walked away. Unbeknown to Mr Daniel, the official then issued a further document revoking his earlier notice and handed it to Mr Daniel's manager. The manager then gave this second notice to Mr Daniel.

167 Mr Daniel testified that nearly all the departments in the Mpumalanga government tried to stop the Project. He said he had detailed these departments in the case brought in this court which came before Tolmay J. He referred to that case as the Tolmay case and, without intending any disrespect, I shall do the same.

168 In 2009, members of the SA Police told Mr Daniel that Mr Khoza had complained to Mr Mabuza that Mr Daniel was untouchable and that Mr Mabuza had ordered the police to arrest Mr Daniel on a charge, and showed him the docket in question. Mr Daniel pointed out that the docket referred to one Denel, a farmer in the district and that he, Mr Daniel, had been out of the district when the alleged crime had been committed. The police officers accepted what Mr Daniel pointed out and left without arresting him.

169 In about August 2009, officials of the Mpumalanga department of environmental affairs issued a directive which required Travelport to close down completely because it was too close to a river. Mr Daniel appointed an expert who reported that the development was compliant with law. The department took no further steps against Mr Daniel.

170 In 2019, Mr Daniel was advised that his life was in danger if he stayed living on the Project. He sold everything he had there in what he described as a fire sale and left the province on 5 May 2019. He returned only for the inspection *in loco* ordered by Sardiwalla J and found his former house in ruin.

Evidence of former SAPS Warrant Officer Vermeulen

171 Mr Vermeulen testified that he had been a warrant officer and a detective in the South African Police, stationed at Badplaas during the years 2002 to 2016. He met Mr Daniel in about 2003. Mr Daniel had been suffering at the hands of the GBLCC, a grouping that Mr Vermeulen perceived as advocating for land reform and the prosecution of land claims. The GBLCC pressured land owners, and particularly Mr Daniel, to yield up their land to those favoured by the GBLCC.

172 In 2008, Mr Vermeulen was on stand by for detectives. This meant that while he was allowed to remain at home, he should be ready to answer a call for his services. He received a telephone call informing him of a complaint of trespassing at Travelport. Mr Vermeulen and Inspector (a rank equivalent to warrant officer) van Rooyen proceeded to Travelport to investigate the complaint.

173 On arrival at Travelport, Mr Vermeulen found Mr Daniel with two teenagers. Mr Daniel reported that the alleged offenders had crossed his fence line by going under the fence, the bottom strands of which had been cut, rather than by using the adjacent gate. Mr Daniel wanted the teenagers warned, not charged.

174 At that stage Pro Khoza, the 22nd defendant, arrived on the scene. Mr Khoza was extremely aggressive, swearing and arguing with both Daniel and Vermeulen. Mr Vermeulen saw the situation was getting out of hand and asked Mr Daniel to leave the scene, which he did. Mr Khoza contacted other community members and left the scene in his vehicle, taking the two teenagers with him.

175 Mr Vermeulen and Insp van Rooyen returned to the Badplaas police station. Mr Vermeulen then went to his home, from which he could see the police station. He saw Mr Khoza arrive with the two teenagers

and begin phoning. Mr Vermeulen concluded that Mr Khoza was mobilising support. Mr Vermeulen received a call to say that the parents of the teenagers wanted to see him and returned to the station.

176 On his arrival at the police station, Mr Vermeulen was confronted by a violent and angry group, which included at least three members of the GBLCC. Mr Khoza jumped over the counter and assaulted Mr Vermeulen. The other police officers escaped through the back door and Vermeulen and Van Rooyen were kept prisoner in the station for some three hours. The situation stabilised when a task team arrived after Mr Vermeulen contacted some senior officers. It was agreed between counsel that these incidents took place on 29 June 2008.

177 Later that year, Mr Vermeulen was called to a meeting of the detectives attached to the station. He was told by the SAP member in local command of the detectives that there would be a demonstration at Travelport the next day. The local commander told the detectives that he had received an instruction that the detectives were to stay away from the demonstration and not involve themselves in policing it. Mr Vermeulen found this strange. There had been previous demonstrations in the Badplaas area, but Mr Vermeulen had never before been instructed to stay away from a demonstration that might

turn violent. The local commander said that he had been told that the demonstration would be "political".

178 The command structure at Badplaas SAP was such that the detectives and the uniformed members were under separate commanders. A similar meeting of the uniformed members was held and an identical instruction was given.

179 Mr Vermeulen called Mr Daniel and asked him if he knew about the proposed demonstration. He said he did not. Mr Vermeulen advised Mr Daniel to contact the area commissioner.

180 The next morning, at about 07h00, Mr Vermeulen got a call from Mr Daniel to report that people were gathering in front of his property, burning tyres and cutting his fences. Mr Vermeulen tried to assemble a team of police officers to go with him to the scene. But only one constable remained in the police station. Mr Vermeulen went to the scene alone, in his private vehicle. On his arrival, at about 07h20, he found a chaotic scene with about 100 to 150 persons burning tyres and cutting fences. The demonstrators had blocked access to the scene, which was at the junction of a three way stop, with rocks, thus preventing vehicles from travelling to or past the scene.

181 At about 11h00, Mr Mabuza arrived. He climbed onto the back of a bakkie and addressed the crowd in English and Swazi, both of which languages Mr Vermeulen understands. The demonstrators crowded around the bakkie. Mr Vermeulen heard Mr Mabuza tell the crowd that they should not worry, his office was dealing with the land claims that had been lodged and, using his arms to show that he was referring to a large area all around them, that he will make sure that they get the land.

182 The crowd became calm after Mr Mabuza had addressed them and they dispersed.

183 I found Mr Vermeulen to be a credible witness. Indeed the thrust of his evidence which I have summarised was not challenged or contradicted.

Evidence of Mr Paul O’Sullivan

184 Mr Paul O’Sullivan testified to his background in law enforcement. Originally from Ireland, he was a police officer, working for the British government, the United Nations and the Rhodesian government, after which he went to university to study engineering. He specialised in electronic security and became a fraud examiner. He worked for the

SA police in that capacity. He worked on many fraud investigations in South Africa, some high profile. He started his own consulting firm and is a member of a body called the Associated Fraud Examiners. He came to live in this country in 1985 and he became a South African citizen in the early 1990's. he developed an interest in working on and exposing state sponsored corruption in South Africa.

185 Mr O'Sullivan was put forward by the plaintiffs as an expert witness. Rule 36 notices, including a summary of his opinions and his reasons for holding them, delivered. The alleged expert character of Mr O'Sullivan's evidence was challenged in cross-examination. I have considered the opinions he expressed. In each instance, I have come to my own conclusions, unswayed by the alleged expert character of the evidence adduced by him.

186 In about 2008 or 2009, he met with the CEO and another official of the MTPA. Mr O'Sullivan was asked to submit a proposal to investigate a problem which the MTPA was experiencing with ghost workers on its payroll. The officials suspected that moneys were being paid out of the MTPA in respect of persons, actual or fictitious, who in fact did no work for the MTPA.

187 Mr O'Sullivan's proposal was accepted and he uncovered irregularities which his investigations enabled the MTPA to correct. He was then asked to investigate a racket in which officials working in the MTPA's game reserves would poach animals and sell the bush meat at bush butcheries. The times of such sales were timed to coincide with the payment of social grants or pensions.

188 Mr O'Sullivan was at the Standard Bank carrying out his investigations into the bush meat racket when by coincidence he was alerted to a letter from the CFO of the MTPA instructing the Standard Bank's Badplaas branch to pay R3,6 million into an account at Nedbank, held under the name of Laeveldse Probleem Hervestiging, called in this trial the Problem Animal Fund (PAF). The PAF was under the control of the Wildlife Protection Services (WPS), a division of the MTPA, at the time managed by Mr Jan Muller and Mr de Beer. Mr Muller was office based and Mr de Beer was the head of the MTPA's anti-poaching unit.

189 Mr O'Sullivan extended his investigation to scrutinise the PAF and came to the conclusion that it was an account held outside the control of the MTPA, that it was never audited and that the prescripts of the Public Finance Management Act[18] and the principles of the tender

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[18] In the quotations which follow, I have omitted references to footnotes.

process mandated by the Constitution were routinely flouted. Mr O'Sullivan tried to get information from the two managers of the WPS, the CEO and the CFO and came to the conclusion that no books were held in respect of the PAF or that they were being withheld from him. He interviewed the two signatories on the account and found them to be uncooperative and profoundly ignorant of or indifferent to proper procedures for the management of such an account.

190 In relation to the request for the transfer of the R3,6 million out of the main account of the TPA into the PAF, Mr O'Sullivan found that the funds had been received from the sale of elephant tusks and were to be used exclusively for elephant management. He concluded that because many of the expenses related to elephant management were paid from the main account of the MTPA, the transfer request was unjustified. The two signatories admitted that they simply signed whatever was put before them. The CFO did not know of the existence of the PAF. As many an investigator would, when confronted with these facts, Mr O'Sullivan suspected that the PAF was a slush fund, a fund which leeched from and was outside the control of the entity from which the funds were derived and designedly used for illicit purposes.

191 Mr O'Sullivan compiled a report dated 30 September 2009 detailing his findings, which he submitted to the board of the MTPA at one of its sessions. In the report, Mr O'Sullivan concluded that the setting up and using of the PAF was not necessary, as the funds spent on elephant conservation far exceeded those received from the sale of elephant tusks; that senior executives had no idea what constituted a proper instruction as opposed to a fraudulent one; that abrogation of responsibilities was rife and that the PAF resulted in a lack of controls as the money appeared to be earmarked for special projects driven by WPS managers (ie Muller and De Beer) that bypass normal budgeting and accounting controls.

192 Mr O'Sullivan recommended in his report that the PAF should be closed forthwith and its funds transferred to the MTPA's general account; that proper accounting should be implemented in relation to the cost of elephant conservation and that all senior executives should be held accountable for their signature use.

193 The board accepted Mr O'Sullivan's report. Nobody said a word to Mr O'Sullivan to contract his findings and recommendations. His recommendations were implemented and the PAF account at Nedbank was closed.

194 But the MTPA was at the relevant time dysfunctional. The right hand did not know what the left hand was doing. Accounts of the PAF's financial transactions were kept and tender procedures were observed. The PAF 's bank account was indeed audited. The truth of the matter was that Mr Muller had engaged in the kind of turf war so often encountered in large organisations. He had trouble in getting funds for his own projects within the WPS. Getting the R3,6 million into an account which he effectively controlled meant that he would not, for some time at least, have to go through the exhaustive and frustrating process of getting funds for his projects authorised. He made a case for the exclusive right within the MTPA to make use of the R3,6 million and succeeded. That was why he initiated the request for the transfer of those funds to the PAF which had alerted Mr O'Sullivan to the existence of the PAF account with Nedbank, and the subsequent investigation and report.

195 Furthermore, the PAF did not exist merely for elephant conservation. One of its core functions was indeed the control of problem animals. Those are animals that have escaped from a reserve, been injured or present a danger to human life. Sometimes those animals have to be killed, urgently, in circumstances in which there is no time to implement a tender process.

196 To deal with this problem, the WPS devised a scheme, for which it obtained official approval, to get professional hunters to kill the problem animal concerned. Those hunters had affluent clients who were prepared to spend large sums of money to kill such an animal. The WPS charged the hunters substantial fees in accordance with a tariff, to enable these hunters to gratify their desires. This money was paid into the PAF account.

197 I find it strange that Mr Muller did not communicate all this to Mr O'Sullivan. Nor did Mr Muller confront Mr O'Sullivan with the inaccuracies in his report. Perhaps there were departures from the prescripts of the PFMA and tender processes but this case is not about that. I am satisfied that the actions of Mr Muller and Mr de Beer in this regard did not amount to the kind of grand corruption which is alleged to be at the heart of this case.

198 But at the time, nothing to contradict Mr O'Sullivan's findings had reached the outside world. And all the time Mr Daniel was engrossed in his bitter dispute with the authorities in Badplaas, represented at the official level primarily by the RLCC, the MTPA and the SA police as well as the proxies used against Mr Daniel by politicians then in power.

199 In about 2014, Mr O'Sullivan became interested in the doings of an official within the MTPA who, Mr O'Sullivan believed, was using his de facto power to delay the issue of game transport permits needed by persons who wished to transport live game. The official was said to be withholding such permits and then slyly intimating that he (the official) had a financial difficulty for which he needed a "loan" from the person who needed the game transport permit. Money would then more often than not change hands and the necessary permit would be forthcoming.

200 Mr O'Sullivan began to develop a proposal to enable him to investigate this fraud and extortion (as he saw it) on behalf of the MTPA. To this end he consulted the same Mr Muller whom he had got to know during his investigation of the PAF. There were clearly no hard feelings manifested on either side. Mr Muller did not use the opportunity to put Mr O'Sullivan right about the PAF, even though Mr Muller had been the author of a strongly worded internal memorandum in which he described Mr O'Sullivan's findings as baseless.

201 Instead, unsolicited, Mr Muller allegedly told Mr O'Sullivan about the dispute between Mr Daniel and Mr Muller, describing Mr Daniel (I summarise) as a scoundrel. Mr Muller asked Mr O'Sullivan to see

whether he could find any dirt on Mr Daniel. For this purpose, Mr Muller handed over to Mr O'Sullivan a file which the MTPA had on Mr Daniel.

202 However, the then CEO of the MTPA was suspended and nothing came of the proposed investigation of the bush meat racket.

203 By this time, if not before, Mr O'Sullivan had become wealthy through his activities in the property market. He said, unprompted, that he had, at the time he gave evidence, a property portfolio of some hundred millions in value and paid income tax of some R5 million a year. His forensic investigation activities became something of a hobby and he was able to found and largely fund a charity which investigated state corruption. It became clear during Mr O'Sullivan's evidence that he has strong feelings about state corruption, to which he is opposed, and is in a position and of a mind to investigate it, when instances of alleged state corruption are brought to his notice.

204 In about 2014, Mr O'Sullivan was asked to investigate a case of fraud involving Dubai World. The gravamen of the allegation against Dubai World was that it had cut Nkomazi in two by means of its barrier fence, the same fence that had incurred Mr Daniel's displeasure. Mr O'Sullivan was given Mr Daniel's phone number as a person who

might be able to help Mr O'Sullivan with his investigation into Dubai World. At first Mr O'Sullivan did not connect Mr Daniel with the file Mr Muller had given him several years earlier.

205 Mr O'Sullivan contacted Mr Daniel, who offered to take him on a guided tour of Nkomazi. The tour took four or five hours. Mr Daniel used the opportunity to tell Mr O'Sullivan the history of the present dispute. Mr Daniel said the whole thing had been triggered by land claims fraud, which Mr Daniel was instrumental in uncovering. During this trip, Mr O'Sullivan connected the file Mr Muller had given him to Mr Daniel and the present dispute.

206 Mr O'Sullivan decided to investigate Mr Daniel's allegation of land claims fraud. Mr Daniel told him that all farms in Badplaas bought from private white farmers had been used as a vehicle for this alleged fraud. Mr O'Sullivan identified six properties, one of which was owned by the government, not by a private farmer. He obtained copies of public documents from the land registration database kept by the Deeds Registry. He found that the five remaining farms in his sample had been granted by the government of the Zuid-Afrikaanse Republiek, to which the land had been made available, reputedly, by King Mswati of the Swazi nation during the 1860s and 1870s. The narrative was that King Mswati wished to see Boer farmers settle the

area to act as a buffer between the Swazi and the Pedi nations, whose relations at the time were not cordial.[19]

207 Mr O'Sullivan found that the same Mr Peter Visagé, who on 28 January 2004 invited Mr Daniel to sell him the Project lands at inflated prices, had taken options in the name of trusts or corporate entities he controlled at well above market prices from the farmers and then on-sold them to the land claims commission at even more inflated prices. By using the data in the public documents derived from the deeds registry, Mr O'Sullivan was able to plot a graph, showing that the prices paid for the five farms, which had remained relatively constant for at least a decade before Visage's intervention, doubled or more when Visagé took his options and then increased as much as fourfold when Visagé on-sold to the land claims commission.

208 On these five farms, Mr O'Sullivan calculated the profits which accrued to Visagé's entities at R15 million and the profits derived from the scheme as a whole, at the expense of the SA government and SA taxpayers to have been some R5 billion.

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19 Much as certain European powers did when they created the states of Belgium and Uruguay in the same century.

209 Mr O'Sullivan laid charges at the Badplaas police station against Dubai World and those he believed were involved in the land claims racket.

Conclusions on the land claims racket evidence

210 There was no evidence to suggest that Mr O'Sullivan's sample was in any way unrepresentative of the land claims racket as a whole. His evidence that there was a land claims racket is reinforced and corroborated by a number of separate pieces of evidence.

211 Firstly, there is the evidence of Visagé's interaction with Mr Daniel, in which Mr Visagé actually invited Mr Daniel to participate in the racket. Secondly, there is the evidence of the violence visited upon Mr Daniel and his property when Mr Daniel refused to participate in the racket. This violence was directed at persuading Mr Daniel to sell to the RLCC and, when that did not succeed, persuading him to leave the district. Thirdly, there is the evidence that the MTPA and the RLCC and their officials actively disparaged Mr Daniel and discouraged potential partners of Mr Daniel from going into projects with him.

212 Fourthly there is the evidence of what happened to the charges laid by Mr O'Sullivan. Both dockets were, at a later stage found to be empty of any documents, except for a statement by an investigating officer who stated that he tried to find Mr O'Sullivan both at his home and on his cellphone but was unable to do so and therefore could not reconstruct the docket. This was palpably untrue because Mr O'Sullivan has lived throughout at the same place and had not changed his cellphone number.

213 Fifthly, there is the evidence of Mr Mabuza's participation in the efforts to persuade Mr Daniel to sell to the land claims commission. Mr Mabuza was a highly influential politician in Mpumalanga during this period. The public record shows that he was on the Mpumalanga executive council for several years, rising to be the premier of Mpumalanga in 2009. He became the deputy president of the Republic in 2017, resigning in 2023.

214 I have described how the police in Badplaas were ordered not to perform their bounden duties in relation to the violence inflicted on Mr Daniel and his properties on 2 August 2008. This instruction could only have emanated from a highly placed politician or politicians. When the violence of that day was at its height, it was Mr Mabuza who came to address the mob and tell them to disperse.

215 The 100 to 150 protestors, if that is the right word, were not locals. They were bussed in from Middelburg, Mpumalanga. Middelburg is some 150 km from Travelport. This must have involved considerable expense. There is no evidence as to who paid for the buses and for food for those in question.

216 After the demonstration had been mounted for some four hours, Mr Mabuza arrived on the scene. There was no evidence as to how he learnt about the demonstration or why he chose to arrive when he did.

217 Some eight days after the demonstration, on about 10 August 2008 Mr Mabuza, through his PA, asked Mr Daniel to come to a meeting with him. I have described how Mr Daniel came to refuse to attend such a meeting. On about 29 August 2008, after the incident of alleged trespassing described by Mr Vermeulen, Mr Daniel called Mr Mabuza on his cellphone. They had a discussion lasting just over 13 minutes. During this discussion, Mr Mabuza said to Mr Daniel that he had to admit the land claims over the Project lands and sell them to the Ndwandwe Trust. This, said Mr Mabuza, was the only way he could protect Mr Daniel.

218 This is not language becoming a reputable politician. Shorn of its protective camouflage, the circumlocution was intended to show Mr Daniel that Mr Mabuza was able to withhold from Mr Daniel the protection of the SAPS, the instrument of state power provided by the Constitution for just such invasions of his rights. Mr Mabuza had already showed that he could bring down the power of the mob to thwart Mr Daniel in his perfectly lawful vision to develop a game reserve in the Badplaas area.

219 Of course Mr Mabuza could have protected Mr Daniel. He could have told the SA police to do their duty. He could have spoken against unlawful violence. What he was really saying to Mr Daniel was that he, Mr Mabuza, chose not to protect him unless Mr Daniel did what Mr Mabuza told him to do.

220 It is in my judgment no coincidence that Mr Mabuza advised Mr Daniel to sell the Project lands to the Ndwandwe Trust, one of the instruments chosen by Visagé for the execution of the land claims racket.

221 I therefore hold that a land claims racket was in progress when Mr Daniel refused to participate in the racket. I hold further that the purpose of the violence was to force Mr Daniel off his land by threats

of violence to him and his property and that the RLCC, the organ of state vehicle of the land claims racket, the SA police and at least two politicians, Pro Khoza, and Mr Mabuza, both said to have been members of the 25th defendant, the GBLCC, banded together with the common purpose of forcing Mr Daniel from the Project lands.

222 I must mention here that there was no suggestion that the defendants wanted to call Mr Mabuza as a witness but were frustrated by his death from doing so. No version of Mr Mabuza was put during cross-examination and especially toward the end of the defendants' case, I was informed regularly of the identities of the witnesses to be called and when it was anticipated these witnesses would travel to Pretoria to give their evidence. Mr Mabuza was not mentioned in this regard.

The permits saga

223 Mr Daniel came to believe, after learning of Mr O'Sullivan's roles which I have described, that his position as a conservator clashed with the goals of the WPS through the PAF in that Mr Daniel wanted to preserve wildlife while the WPS wanted to kill animals for profit and for this reason the WPS participated in the scheme to get rid of him.

224 This perception became linked, in Mr Daniel's mind, with a perception that had grown on him since the early 2000s, that Mr Muller and the WPS was making common cause with the other actors I have described to frustrate Mr Daniel's plans to develop the Project as a game reserve and high end tourist destination.

225 The evidence makes it quite plain that it was essential for the success of Mr Daniel's proposed tourism venture that he offer tourists the chance to view what are called the Big Five: lion, leopard, elephant, buffalo and rhino. To do that he had to get permits from the MTPA, through the WPS, to introduce and transport each of these species to the Project lands. To get the all important permits, an applicant had to make application for them to the WPS.

226 At all relevant times, the section in WPS directly involved in issuing permits was headed by Mr Jan Muller. By letter dated 10 August 2005 headed "Application for Big Five and confirmation of fencing specifications for Big Five" and addressed for the attention of Mr Louw Steyn, Mr Daniel made his application for the reintroduction of these five species. He also sought confirmation of the WPS's approval of his fencing specifications.

227 These permits were not sought on a prescribed form and the applications for such permits were not simply granted or refused on application. This stands to reason. Each game reserve seeking to introduce such animals would be unique and its applications for such permits would require individual scrutiny. Of great concern to conservation authorities throughout South Africa was the origins of animals sought to be introduced, particularly because of the danger and prevalence of foot and mouth disease and bovine tuberculosis, which latter disease was at the time endemic in the lowveld.

228 So a system developed by which the officials of the WPS would interact with the applicant for these permits, directed at getting their requirements particularly as to the proposed management of the species to be introduced and their confinement. In the case of a game reserve, confinement meant primarily the boundary fence to keep animals from escaping.

229 The evidence showed that particularly elephant, hippo and lion could by escaping cause grave danger to the public. So the WPS also required the submission of escape plans, showing how the reserve owner proposed to deal with escaped dangerous animals.

230 Another consideration that weighed, properly, with the WPS was the facilities such as bomas available to receive potentially dangerous animals to house them until they could be released into the reserves proper.

231 A dispute developed for reasons I need not identify in detail as to whether Mr Daniel had ever applied at all for a permit to introduce lion. This dispute arose because in earlier litigation between some of the present parties, officials of the MTPA had denied this. The denial was repeated in the aborted trial and even before me. But it became clear that the dispute was one of terminology, not of substance. There was no dispute that the WPS received the letter dated 10 August 2005 headed "Application for Big Five and confirmation of fencing specifications for Big Five". The contention of the defendants' witnesses was that the letter was so lacking in the information necessary for the adjudication of the permit applications that the letter could not properly be called an application for a lion permit.

232 Of course the letter was such an application: the letter said it was. And the system operated by the WPS contemplated that such deficient applications could and would be amplified in accordance with advice given by the officials to the applicants. Copious advice was given to Mr Daniel but not followed to the letter.

Evidence of Mr Stark and its impact on the credibility of Mr Muller

233 Mr Daniel's belief that he was not getting permits that he should get led to an intervention by Mr Athol Stark. In my view, Mr Stark's intervention was of great significance for the adjudication of the case.

234 Mr Athol Stark was the coordinator of various private sector structures in southern Mpumalanga, which included the Badplaas district. In that capacity he acted as a conduit for tourism related matters between the private sector and the provincial government.

235 The Badplaas tourism structure drew the Nkomazi Project to Mr Stark's attention and in 2002 he met Mr Daniel at Nkomazi, where he introduced himself and explained his role. Mr Stark was impressed by Mr Daniel's plan to create a game reserve where tourists could view the Big Five. Mr Stark's experience, particularly, internationally, had led him to conclude that the Big Five were a significant tourism drawcard.

236 Mr Stark's structures decided to support the Project because they believed that it could be a significant drawcard to enhance and benefit the tourism industry in the Badplaas district. The local chairman of the Badplaas tourism structure, on which the provincial government was

also represented, was tasked with reporting back regularly on the progress of Nkomazi towards becoming a tourist destination which offered the Big Five.

237 Mr Stark first heard about Mr Daniel's problems with obtaining permits at regional level. Later, Mr Daniel called Mr Stark and asked him to help to resolve these problems. Mr Stark investigated the matter, first by consulting with the chairman of the Badplaas local tourism structure and then with Mr Daniel himself.

238 Mr Stark decided that he should take the matter up with the MTPA. He accordingly called the MTPA to ask for an appointment for this purpose and was told that he should meet with Mr Sibiya, the 9th defendant, and he made an appointment to meet Mr Sibiya at the MTPA's offices in Nelspruit.

239 Mr Stark gave contradictory evidence about the date of his meeting with Mr Sibiya. He first said it was in 2002, then changed that, on some prodding by counsel for the plaintiffs during evidence in chief, to 2006. However, cross-examination proceeded on the basis that the meeting was in 2006 and no point was made, during cross-examination, of the contradiction.

240 Mr Stark described the meeting as starting off in a cordial fashion. The meeting took place in Mr Sibiya's personal office. The air conditioning was not working and the air was hot and humid. He described Mr Daniel's complaint and asked what the problem was. Mr Sibiya did not really give him an answer. He noticed during his discussion with Mr Sibiya that the latter was fiddling with his cellphone while they talked. He did not regard this as particularly untoward. At the time Mr Sibiya was the acting CEO of the MTPA.

241 After some time, Mr Sibiya excused himself and left the office, leaving the door open. In order to take advantage of the breeze outside the office, Mr Stark stepped into the corridor. There he saw Mr Sibiya talking to a white man, to whom Mr Sibiya later introduced Mr Stark as Mr Muller, the 10th defendant.

242 Mr Stark testified that he heard Mr Sibiya say to Mr Muller that Mr Muller must use land claims as a reason not to issue permits for animals.

243 Mr Stark went back into Mr Sibiya's office. Mr Sibiya later also returned to his office. Mr Stark said that Mr Sibiya's demeanour then changed. While it had been friendly before, Mr Sibiya was now

brusque with Mr Stark and the meeting came to an end a few minutes later.

244 Mr Stark decided that he should report to Mr Daniel what had transpired and in fact did so within hours. To do so, Mr Stark travelled from Nelspruit to Nkomazi where he reported what had transpired in Nelspruit earlier that day to Mr Daniel personally. He used a route he would not normally take back to his office in Ermelo because he wanted personally to report to Mr Daniel what had happened in Nelspruit.

245 At a later stage, Mr Stark encountered Mr Muller again, at the Carolina magistrate's court, where one of Mr Daniel's civil cases was due to be heard. He said he greeted Mr Muller and referred to their earlier meeting at the offices of the MTPA, which, he said, Mr Muller remembered.

246 It was put to Mr Stark that Mr Muller would deny being instructed by Mr Sibiya or anybody else to use land claims as a justification for not granting permits and further deny that he was introduced to Mr Muller on that occasion. While agreeing that Mr Stark met him at the Carolina magistrate's court, Mr Muller would also deny that Mr Stark

recalled an earlier introduction to Mr Muller. Mr Muller's testimony was consistent with the version put to Mr Stark.

247 It became clear that Mr Stark had formed a view of the case favourable to Mr Daniel and sought to bolster his opinion by information which he said was fed to him by Mr Daniel overnight, ie before he was cross-examined and the court adjourned for the day.

248 There is strong corroboration for Mr Stark on this crucial aspect that he was disturbed by what he says he heard, legitimately so, in the fact that he travelled to Nkomazi to give the information he had to Mr Daniel himself. As was put to Mr Stark during cross-examination, it would not have been legitimate, to say the least, if wildlife conservation permits were withheld because there were land claims over the property on which the animals as the subject of such permits were being or would be held.

249 It is improbable in the extreme that Mr Stark would have concocted this evidence and then travelled to see Mr Daniel for the purpose of conveying misinformation.

250 I formed an impression favourable to Mr Stark on this point. I do not accept that he made up the evidence he gave of his meeting with Mr Sibiya, what he heard in the corridor and his introduction to Mr Muller. It is one thing to argue in favour of Mr Daniel; it is quite another deliberately to give false evidence. I do not believe that Mr Stark concocted his evidence of what he heard in the corridor outside Mr Sibiya's office in Nelspruit in 2006.

251 Mr Stark is indirectly corroborated by Mr Hutchinson's evidence. Mr Sibiya either believed that Mr Daniel should be excluded, if possible, from participation in any development in Badplaas or was instructed to say that he did. In both situations, if Mr Stark is to believed, the purpose of the crucial communication by Mr Sibiya was in conflict with the MTPA's constitutional obligation to treat each member of the public impartially and fairly and was designed to oppress Mr Daniel and ultimately frustrate Mr Daniel's legitimate aspirations.

252 The consequence of my acceptance of Mr Stark's evidence is that Mr Muller was deliberately untruthful on the issue raised by Mr Stark's evidence.

253 Mr Muller was an astute and effective public servant. He had risen to a high position in the MTPA and it is clear that he commanded the respect of his subordinates. But when he was confronted by what amounted to an instruction from his CEO, he faced a dilemma in giving evidence. It is clear that he did not seek to use the existence of land claims to frustrate Mr Daniel's permit applications. But if he admitted the instruction, even if he showed that he did not implement it, he would virtually make Mr Daniel's case against the MTPA - and the RLCC and the politicians who had decreed that Mr Daniel's development efforts must be frustrated. Astute man that he is, Mr Muller must have realised that this was so and decided to lie about the instruction in his evidence.

254 The evidence is replete with demonstrations of what happened to high officials who went against the aspirations of those in political control of the province: first rumours of their corruption, then suspension and limbo at best.

255 Mr Muller testified that his office was subjected to electronic surveillance. He even feared for his life His health suffered and he successfully applied to be boarded and discharged from his employment on medical grounds. He does not even work in South Africa at present: he is the manager of a farm in the Kalahari in

Botswana. He refused to say whom he suspected of subjecting him to this surveillance.

Evaluation of the evidence of Mr O'Sullivan relevant to the permits dispute

256 I have recounted this evidence. In my view there is no substance in the contentions that Mr Muller and the WPS campaigned to lay Mr Daniel low because of the activities of the PAF. There is no scrap of evidence that the PAF was used to misappropriate funds or that it in any way abused its public powers. There is no evidence that Mr Muller or any of his associates used their positions to enrich themselves. It is clear that Mr Muller followed procedure in relation to his dealings on behalf of the PAF. The proposition that because the PAF was in some respects in competition with the private sector in relation to the relocation of problem animals, the WPS denied Mr Daniel the all important permits he needed to make a success of the Project is just not supported by the evidence.

257 But the position in regard to the delaying of the issue of permits is more complex.

258 As the dispute between the present parties deepened, Mr Daniel made strenuous efforts to put pressure on Mr Muller to give evidence in support of Mr Daniel's case. Mr O'Sullivan testified that Mr Muller disparaged Mr Daniel on one of these occasions. Mr Muller denied having done so but because I find he was untruthful about what was said to Mr Muller by Mr Sibiya (as testified to by Mr Stark), I reject this denial and find that he did disparage Mr Daniel to Mr O'Sullivan. A further witness for the plaintiff, Mr Ndabeni, also testified that Mr Muller had disparaged Mr Daniel to him. I accept this evidence.

259 Evidence given by Mr Muller of his attitude to the request that he in effect change sides is instructive. He said in response to the suggestion that he could not change sides because he feared for his life, that

> ... to expect from me while I was in employment to become an uncooperative witness against government, against my employees, against everybody, is ridiculous.[20]

260 In my view, Mr Daniel rightly believed that Mr Muller could give evidence in support of his case and that Mr Muller was fearful of the consequences if he did so.

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20 Transcript: 13 -4744

261 But Mr Muller was too astute to try to frustrate Mr Daniel's Project head on. In my view, though, he used more subtle means to promote his superiors' agenda.

262 Mr Daniel kept struggling on in his attempts to get certain permits, particularly the lion permits. But he was issued with several other permits and his fence design, referred to in the letter dated 10 August 2005, was approved.

263 Mr Johannes (Dons) Claassens testified for the defendants. He was an impressive witness. Mr Claassens has consulted on wildlife management since 2002 under the style of Tua Conserva. He was retained by Mr Daniel in 2007 to provide specialist studies on the large predator species in respect of which Mr Daniel sought permits from the MTPA.

264 By letter dated 1 November 2007, Mr Claassens reported to Mr Daniel on his progress and gave copious advice on what was required in each application, particularly in regard to the management plans required by the WPS. Mr Claassens did not receive the necessary information to enable him to complete and submit the applications, so he handed over his uncompleted management plans to Mr Spoor, Mr Daniel's attorney at the end of 2007.

265 Under cover of a letter dated 11 January 2008, Mr Rademeyer (now deceased) handed over Grand Valley's applications, apparently as drafted by Mr Claassens, to the MTPA. The documents reached Mr Muller, who acknowledged receipt in a letter dated 11 January 2008. Mr Muller told Mr Rademeyer in a letter dated 21 January 2008 that he had forwarded the documents received to another official in the MTPA, Mr Lukhele.

266 There is no direct evidence of what Mr Rademeyer handed over on 11 January 2008. Neither side appears to have kept a copy of what was handed over.

267 In an undated letter which must have been sent round about 31 January 2008, Mr Lukhele reported to Mr Spoor and Mr Rademeyer that the application from Grand Valley had been referred to the scientific division of the WPS for further consideration and advice.

268 Mr Eksteen, who gave evidence for the defendants, was at the relevant time a scientist in the employ of the MTPA. He dealt in this capacity with the Project, which impressed him. Mr Eksteen received a memo dated 28 February 2008 from Mr Muller, asking Mr Eksteen to comment on the applications for keeping and releasing game on Nkomazi. Mr Eksteen replied to Mr Muller in a memo dated 13 March

2008. He reported that amongst other comments there was no over all management plan, confusion in the documents submitted to him regarding the area available to animals, no information was supplied on general game stocking (in other documents referred to as biomass), some applications were unsigned and undated, no indication that the owner accepted that he undertook to do what the applications stated should be done, no indication that fences were suitable and, most significantly: "Although lions are mentioned in some applications, there is no lion application."

269 Mr Eksteen was well disposed to the Project and I have no reason to doubt his evidence, where it is supported by contemporaneous documents. It seems clear, therefore, that although one of the documents compiled by Mr Claassens was a draft lion management plan, this plan either in draft or final form did not reach Mr Eksteen.

270 In summary, then, I am unable to conclude that Mr Muller or any member of his staff corruptly dealt with Mr Daniel's applications for the elephant and lion permits, all important because the big plans for the development of Nkomazi as a high end tourist destination could not succeed without the Big Five.

271 This conclusion makes it unnecessary for me to deal in detail with the evidence of the numerous witnesses called by the defendants on the permits issue.

272 That does not end the enquiry at this level. While I cannot find that any of these permit applications was corruptly withheld, the way in which Mr Daniel's permit applications were dealt with must be contrasted with the way that the Dubai World applications were dealt with after the latter took over Nkomazi.

273 Counsel for the plaintiffs submitted that because the MTPA processed and granted the Dubai World lion permit application so swiftly, it had been demonstrated that the MTPA was biassed toward Dubai World and, therefore, against Mr Daniel. I disagree. Counsel's proposition is flawed at several levels.

274 Firstly, there is no evidence that the Dubai World lion application was flawed in any way. Secondly, there is no objective basis to compare the Dubai World application with the application which Mr Rademeyer handed in on 11 January 2008 because that latter application was never produced in court. Thirdly, there is no legitimate basis on which the MTPA can be criticised for doing its work properly in relation to the

Dubai World lion application even if it moved sluggishly, as counsel for the plaintiffs argued, in relation to Mr Daniel's equivalent applications.

The rehabilitation facility; searches and seizures and the prosecution instituted against Grand Valley and Mr Daniel

275 I must now deal with a series of events parallel to the quest by Mr Daniel for his Big Five permits and the responses of the WPS. These events began with an intervention by Mr Coetser who applied to the magistrate at Carolina for a search warrant to seize animals and documents at Nkomazi. In fact the search was directed at the animals in the rehabilitation facility operated at Cambalala.[21]

276 In January 2007, Mr Daniel was introduced through Kerzner International to Mr Wilson, who had connections with Dubai World. At that stage, Mr Daniel despaired of bringing the Project to fruition while he was in charge. Dubai World consisted of a group of companies originally registered in Dubai. The corporate structure appears to be complex and the evidence mostly did not identify the individual companies within the group with precision. I do not think that matters for present purposes. Dubai World was owned by the ruler of Dubai and the Dubai government. Mr Kerzner told Mr Daniel that Dubai

21 Also called Paperbark during the trial.

World had influence and could help Mr Daniel get his Big Five permit. Mr Wilson, a representative of Dubai World agreed to help. But after Mr Wilson interviewed the officials of the MTPA in relation to an investment in Songimvelo, he reported back to Mr Daniel in an email sent on 10 October 2007, that the 13th defendant, Mr Mosidi, the then CEO of the MTPA, had stated that the MTPA would only would only give Dubai World development rights and permits for predators and elephants if Mr Daniel was not involved in that venture.[22]

277 To give a ceremonial stamp of approval to the venture between Mr Daniel and Dubai World, it was arranged that the emir of Dubai would visit Nkomazi and that he and his entourage would stay in a specially erected tented camp within Nkomazi. The date fixed for his arrival was 2 November 2007. In fact, apparently because of other commitments, the emir did not visit Nkomazi at all.

278 Although the emir did not attend, a lavish reception which had been organised in his honour went ahead and was attended by, amongst others, the 13th defendant. As part of the reception, some of the guests were shown the rehabilitation facility for wounded or sick

[22] The report by Mr Wilson to Mr Daniel is hearsay because Mr Wilson was not called as a witness. I therefore do not give any weight to this communication in my assessment of the facts.

animals from both the Project lands and those of outside game farmers, run on a 500 ha fenced off portion of the Project lands.

279 On 4 November 2007, a rhino escaped from Nkomazi. A rescue plan was activated and the rhino was found and brought back to Nkomazi. Officials from the WPS within the MTPA helped with the retrieval of the rhino. During the operation, one of those officials, Mr Röhm, observed a leopard and a hyena in the rehabilitation facility. He reported this to Mr Muller who directed the attention of his officials to the presence of animals there for which permits had to be held. One of those officials was Mr Coetser, who routinely and to the knowledge of Mr Muller would obtain a warrant to search for such animals and, if he found any, seize them under the authority of the warrant.

280 Such a warrant was granted by the magistrate at Carolina on 5 November 2007 (the first warrant") to search Mr Daniel "and/or Nkomazi Wilderness" and seize "article(s) referred to in Annexure "A" found during the search and to deal therewith in accordance with section 30 of the Criminal Procedure Act".

281 No Annexure A referred to in the warrant was put before this court. Be that as it may, the warrant was executed. The warrant authorised Mr Coetser, the head of the WPS at Ermelo, and certain other persons

as well as “any other member of the South African Police Service who may be able to assist in conducting the search and seizure” to conduct the search and seizure.

282 Mr Coetser knew about the rehabilitation facility because earlier, Mr Daniel had sought his advice on what to do about the animals in need of rehabilitation which Mr Daniel said people often brought to Nkomazi. Mr Coetser told Mr Daniel to keep a register of the animals he had taken in and send him an email to record the reception of each such animal. A temporary permit to keep the animal would then be issued pending the approval of a comprehensive application to other officials to operate the rehabilitation facility.

283 By letter dated 3 August 2007 addressed to Mr Coetser, Mr Daniel described the rehabilitation being provided to animals in need of care which were brought to Nkomazi. He wrote:

> I have kept a register of all the animals that we have successfully rehabilitated and released and those that are still at the [rehabilitation] facility. In the last few months we have received more animals.

284 But no such register was produced during this trial or in the many other applications brought in this court relevant to the issues arising

before me. Nor was there any evidence of any notices sent to the WPS to record the reception of any animal taken into the rehabilitation facility.

285 On 5 November 2007, Mr Coetser with other officials from the WPS and a member of the SAPS arrived at the rehabilitation facility with the first warrant. He told Mr Daniel that Mr Muller had instructed him to seize all the animals in the rehabilitation facility.

286 At this stage the relationship between Mr Daniel and Mr Coetser became adversarial. Mr Coetser said he asked Mr Daniel for documents relating to the animals in the rehabilitation facility and Mr Daniel said that Mr Coetser should speak to Mr Daniel’s lawyer.

287 But then Mr Coetser realised he had a problem: the MTPA did not have the capacity to house the animals. He saw that the animals were well cared for in the rehabilitation facility. He called Mr Muller, who instructed him to leave the animals where they were until the criminal case which was now to be brought regarding the animals was finalised.

288 Mr Coetser then completed a SAPS form headed Beslagleggingskwitansie (seizure receipt). He recorded that he had seized certain animals, some of which he saw himself and the particulars of others he got from Mr Rademeyer, at Nkomazi Wilderness, Carolina District

> ... en oorhandig aan bog. persoon om te bewaar as bewysstukke te bog. adres. Mag nie verwyder word nie tot verdere kennisgewing.[23]

289 The animals seized under the first warrant (the seized animals) were:

289.1 White faced duck 10

289.2 Yellow billed duck. 8

289.3 Fulvous whistling duck 6

289.4 Leopard 6

289.5 Wild dog 5

289.6 Cheetah 2

289.7 Spotted hyena 1

289.8 Brown hyena 1

289.9 Serval. 5

289.10 African wild cat. 3

289.11 Banded mongoose. 7

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[23] ... and handed to above person to preserve as exhibits at above address. May not be removed until further notice.

289.12 Ground squirrel 8

289.13 Caracal. 4

290 On 3 December 2007 the facility was visited by Dr Ndamase, a veterinarian, at the instance of the authorities. Dr Ndamase reported that the animals were in good condition and well cared for but said that certain shade areas should be provided in addition to the amenities present. Mr Daniel did not agree that further shade was needed - he said that the animals in question liked to hide below ground - but provided the shade in response to the Dr Ndamase's finding.

291 On 5 November 2007, when Coetser arrived to execute the warrant, Mr Daniel was notified of certain criminal charges that were to be brought against Grand Valley and Mr Daniel, both as director of Grand Valley and personally, in the Carolina magistrate's court. These charges related to animals which were held in the rehabilitation facility which had been erected on the farm Paperbark (Cambalala), within Nkomazi. This rehabilitation facility was by all accounts thoroughly professionally constructed and well maintained. It consisted of large enclosures fenced with diamond mesh, which, the evidence showed, minimised the risk of damages to animals which tried to escape. The enclosures were separated by lawn, which was kept mowed.

292 Mr Daniel retained Mr Spoor to defend the two accused in the criminal case and a lengthy correspondence ensued between Mr Spoor and Adv Lloyd, who was appointed to prosecute the case.

293 On 31 January 2008, officials of the MTPA and Adv Lloyd, the then prosecutor in the criminal case, held a meeting. A number of concerns were raised and debated but at that stage no decision was made to remove the animals from the custody of Mr Daniel.

294 On the following day, 1 February 2008, Adv Lloyd wrote to Mr Spoor to record that although another venue had been identified to which the seized animals could be relocated, it had been decided to leave them where they were to prevent them from being stressed too much. Adv Lloyd wrote:

> Should the situation change ie. the animals being neglected or stressed by any construction and human activity around the camps or Mr Daniel not complying to the undertaking then they would have to be removed.

295 Adv Lloyd wrote on 12 March 2008 to Mr Muller suggesting in effect that the parties try to reach an accommodation with each other in the interest of nature conservation. No mention was made of the animals being removed.

296 After complaining in writing to Adv Lloyd that the MTPA was being uncooperative, Mr Spoor wrote to Mr Muller on 1 April 2008 complaining that it had received no further communications from the MTPA in regard to its applications for permits.

297 So the seized animals were not removed from the facility. An agreement was reached, manifestly in the interests of justice and the well being of the animals themselves, that while their human custodians fought out their own battles, the animals would remain in the facility. As Adv Lloyd observed in an email he wrote to Mr Spoor on 1 February 2008, this was to “prevent them from being stressed too much”.

298 Adv Lloyd imposed certain conditions on leaving the animals where they were, in the facility. I doubt whether he was empowered by law to impose any conditions because Mr Coetser was the functionary empowered by law in this regard, but that is of little moment in the present context. Mr Spoor agreed to Adv Lloyd’s conditions, which were communicated to him in a letter from Adv Lloyd dated 14 November 2007. These conditions were:

> None of the animals may be removed from the enclosures pending the outcome and finalisation of this matter [ie the criminal case];

> Members of [the MTPA] or persons delegated by them may have access to the game at all times for inspection purposes;
> The animals must be fed and watered properly;
> In the event of any animal dying such animal must be kept in a freezer for inspection purposes;
> Mr Coetzer[24] from [the MTPA] must immediately be informed of such death and the animal kept for the mentioned inspection;
> In the event of any other eventuality that has an effect on the seizure of the game Mr Coetzer must be informed thereof immediately.
> All game must be kept in a healthy condition and if necessary receive the required attention by a veterinarian;
> All costs incurred for the above purposes will be for the account of Mr Daniel or his company.[25]

299 No condition was imposed (or even proposed) requiring Mr Daniel to give any information to the MTPA or the prosecution in relation to the criminal case.

300 A summons was issued against Mr Daniel and Grand Valley as the two accused out of the Carolina magistrate's court under case no. 39/08. It was date stamped 19 January 2008 by the regional court prosecutor and 31 January 2008 by the magistrate at Ermelo. Ten charges were to be brought against the accused, all under the MNCA, some charges in the alternative.

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24 Should read "Mr Coetser" in this quotation.

25 Certain typographical errors corrected.

301 The charges in the summons were for keeping wild animals for commercial purposes without an authorisation; purchasing or receiving donated game from a person who sells it unlawfully, without the necessary documents or failing to retain relevant documents; keeping game without a permit; keeping in captivity a live animal which was unnecessarily disturbed; trimming, severing or clipping the wings of a wild bird; importing or keeping wild animals into Mpumalanga without a permit; establishing a game park without a permit; and, finally, refusing or failing to comply forthwith with an order or the like given by a nature conservator.

302 Mr Daniel first instructed Mr Spoor to act for Grand Valley and Mr Daniel in the criminal case. Mr C Steyn, an attorney later who took over the defence from Mr Spoor, described the charges as amounting to throwing the book at Mr Daniel. I think this description is justified.

303 The charges were brought on the basis, so ran the charge, that the land on which these charges were committed was owned by Grand Valley, of which Mr Daniel was a director and by Mr Daniel personally.

304 Mr Daniel instructed Mr Spoor before the criminal summons was even issued to attend to his defence on the charges and Mr Spoor speedily made contact with the prosecutor, Adv Lloyd.

305 By letter dated 23 November 2007, Mr Lloyd wrote to Mr Spoor. He invited Mr Spoor to enter into plea bargain negotiations with him. Much correspondence on the topic of a possible plea bargain passed between Mr Spoor and Adv Lloyd. Mr Spoor proceeded in the negotiations from the assumption that the facility was on land owned by Grand Valley and that Mr Daniel was indeed in charge of the facility. Mr Spoor, on his own showing, is the kind of lawyer who would prefer to settle and establish or preserve a relationship than fight to the bitter end. Adv Lloyd said he formed the view that Mr Spoor was not particularly versed in criminal law practice. I think Adv Lloyd was correct.

306 However, Mr Daniel decided finally to refuse to enter into any plea bargain, dispensed with the services of Mr Spoor in regard to the criminal case and retained Mr C Steyn, an attorney with substantial experience in cases involving animals. Mr Daniel pointed out in his evidence that the land on which the facility stood was not owned by Grand Valley but by Edge to Edge and that he, Mr Daniel was not a director of Edge to Edge at the relevant time. He testified further that he was not in direct control of the facility - although of course as the owner of the Project, he was in ultimate control. When Mr Steyn took over as Mr Daniel’s attorney, the point that the State had charged the wrong accused began to be taken.

307 Adv Lloyd and Mr Spoor conducted a correspondence toward a plea bargain. Ultimately Mr Daniel decided not to offer a plea of guilty to any of the charges. During the course of the trial I ruled that the voluminous correspondence directed at a plea bargain would be admitted for the purpose of explaining conduct relevant to the issues before the court but not for the purpose of proving the guilt of Mr Daniel and Grand Valley on the charges.

308 Mr Steyn met Mr Daniel for the first time in late November 2007, shortly after the seizure (and leaving in place) of the animals in the rehabilitation facility. They had discussions but Mr Steyn did not immediately take over the defence in the criminal trial. As part of his brief, Mr Steyn was shown the letter from Mr Lloyd to Mr Spoor dated 23 November 2007 and grasped its essential contradiction: that the MTPA was prosecuting Mr Daniel as a criminal who trafficked unlawfully in game but was prepared to settle with him and leave him to get on with the development of the Project and issue permits for him to do so.

309 On 22 May 2008, the magistrate at Carolina granted a warrant (the second warrant) to Supt PL Kritzinger, of the organised crime unit, or any other member of the SA Police pursuant to a “reasonable suspicion” that Mr Daniel was unlawfully in possession of live game on

the farm " Grand Valley Estate, Nkomazi Wilderness", and authorised the seizure of computers, documents and "live game in respect of which no documentation could be produced for the lawful possession thereof, including lions."[26] in fact, the police were looking for caged lions.

310 On 22 May 2008, Supt Kritzinger and his men gained access into the Project. Mr Daniel found Supt Kritzinger, who showed him the second warrant. Kritzinger said he was looking for six male lions which he had been told were on the Project in small wooden cages. Supt Kritzinger searched for hours, assisted by Mr Robbie Jacobs, piloting a helicopter which traversed the Project, flying so low that it panicked a herd of buffalo, which broke out of the quarantine enclosure in which they were being held. No computers or documents were seized. No lions or wooden cages were found during the raid on 22 May 2008. The buffalo were rounded up and returned to their quarantine enclosure.

311 Mr Johannes Keede gave evidence that he was the maintenance manager at Nkomazi and had worked for Mr Daniel in the reserve from 2007. At that time he worked to combat poaching on the reserve and in the course of his duties acquired an extensive knowledge of the

[26] My translation from the Afrikaans

reserve. He was serving in that capacity when Supt Kritzinger raided the rehabilitation facility on 22 May 2008. He testified that there had never been any caged lions in the reserve. His evidence was not disputed or contradicted. He further testified that the rehabilitation facility was well constructed and the animals there were well cared for.

312 Adv Anna Venter (frequently referred to in evidence as Ansie) gave evidence for the defendants. Although she had but a vague recollection of details of many events around 2008, particularly where she did not have documents from which to refresh her memory, I found her to be an honest witness.

313 Adv Venter testified that she had been a prosecutor for 39 years and was, when she testified, on the verge of retirement but for certain cases she wished to complete. In about 2007 she became a specialised prosecutor in the unit known as the Hawks, which deals with certain aspects of crime such as syndicates, corruption, organised crime and, of importance to the present case, environmental and animal trafficking crime.

314 Shortly after her appointment to this new position, she became responsible for the prosecution of Grand Valley and Mr Daniel in the Carolina regional court. She took over the case from the previous

prosecutor, Mr Lloyd, and the case received a new investigating officer, Supt Kritzinger.

315 Adv Venter did not get as far as preparing the case for trial but satisfied herself from the dockets which were provided to her that there were prima facie cases against the two accused when viewed against the relevant legislation and the statements in the dockets.

316 She explained that Mr Coetser, who executed the first warrant which led to the seizure of the animals on 5 November 2007, was, in addition to his position as an official of the MTPA, a police reservist.

317 Fairly shortly after her appointment, she had a meeting with Kritzinger and a representative of the MTPA, who she thinks was Mr Juan de Beer. At this meeting she was told that Mr Daniel had sold Nkomazi to Dubai World. This meant, Mr de Beer concluded, that the animals in the rehabilitation facility were no longer in the possession of Mr Daniel, but in the possession of Dubai World. Adv Venter was told that Dubai World wanted the animals removed from what was now its land. She agreed with the others at the meeting that the animals at the rehabilitation facility, which had been left there pending the Carolina criminal trial, must now be physically transported away from the rehabilitation facility.

318 Rather startlingly, her view was that this could, and indeed should, lawfully be effected without notice to Mr Daniel or the other accused in the Carolina criminal case, Grand Valley, and, moreover, without judicial intervention or oversight. But, she said, something in writing must first be obtained from Dubai World to confirm that it wanted the animals removed from its land.

319 Adv Lloyd, who also gave evidence for the defendants and whom I also found to be an honest witness, testified that he was of the same view. I think both of these prosecutors were in error, for reasons I shall give later. But I accept that they both sincerely held the view that the law allowed the animals seized under the first warrant could be dealt with as if no disposition had been made by Mr Coetser or agreement reached between the state and the accused in the criminal case, without any judicial intervention and without notice to either accused.

320 A meeting of officials of the WPS was held on 3 April 2008. It was minuted that a demand or request had been received to permit the release of some of the animals affected by the seizure. The conclusion of the meeting, as minuted was that the “case is in the hands of the court and we cannot now interfere or grant them permission to release the animals.”

321 While all this was going on, Mr Daniel was negotiating to sell the Project to Dubai World. I shall deal with the sale and its implications for the case as a whole in a separate section.

322 Of immediate relevance, Mr Daniel and a director of Dubai World, Mr Dreyer, wrote a letter to the CEO of the MTPA dated 12 June 2008. It read as follows:

> Change of ownership of Nkomazi Wilderness/Game reserve
> We have pleasure in informing you that in terms of a sale agreement concluded between Mr. Fred Daniel on behalf of Grand Valley Estate (Pty) Ltd and various other entities as the one party and Dubai World Africa through its subsidiaries Business Venture Investments No. 1145 (Pty) Ltd and Business Venture Investments No. 1148 (Pty) Ltd as the other party, that the business and assets of Nkomazi Wilderness/Game Reserve is scheduled to pass onto Dubai World as of close of business on Friday 13 June 2008.
> In terms of the above agreement, Mr. Daniel and various entities are to provide vacant occupation to Dubai World Africa on the above date. However, certain assets will temporary remain on Nkomazi and in particular assets on a portion of the land known as Paperbark on the farm Cambala. These assets include personal effects, and certain animals which will be re-located to land known as Travelport and it is the intention to remove the assets and animals as soon as practically possible.

323 This letter was treated by Mr Muller as the written confirmation required by Adv Venter to the effect that Dubai World wanted the animals removed from its land. Mr Muller claimed that this letter showed that Mr Daniel was no longer in possession of the animals as stipulated in the seizure receipt and the correspondence between Adv Lloyd and Mr Spoor.

324 I find this explanation entirely implausible. A cursory reading of the letter shows that Dubai World and Mr Daniel were in agreement that the animals should for the time being remain where they were, pending their removal to Travelport "as soon as practically possible", which would obviously require permission from the WPS and the prosecutor in the criminal case, Adv Venter.

325 Mr Keede testified that a director of Dubai World told him a few days before the raid that it was going to take place and that he must keep the information secret. Nevertheless, Mr Keede reported what he had been told to Mr Daniel, who discounted the report because, Mr Daniel said, the matter was regulated by an agreement that the animals could stay where they were until the court case was concluded.

326 The evidence of WPS official Mr de Beer shows that by 25 May 2008, Mr Muller had decided to remove the animals from the rehabilitation facility and transport them, at public expense, to the Lion and Rhino Park near Lanseria airport. Mr Muller summoned Mr de Beer to a restaurant in Nelspruit where he encountered Mr Muller and two representatives of Dubai World, Mr Maine and Mr Dreyer. The representatives of Dubai World declared that they knew of the confiscated animals and did not want them to remain where they were because they did not want the responsibility or risk involved. Mr Muller said he would have the animals removed as soon as possible, but that Dubai World should put their position in writing.

327 On 31 May 2008, Mr Muller instructed Mr de Beer that no employee of the MTPA should be involved in the removal of the animals. He said it was an instruction from top management but did not say why this instruction was given or who had given it. That caused Mr de Beer certain logistical problems.

328 On 12 June 2008, Mr Muller called Mr de Beer to report that he had received the letter from Dubai World, that Mr de Beer should proceed with the removal and that the instruction that no MTPA employee could be involved in the removal had been rescinded.

329 The criminal case was set down for hearing on 18 June 2008 at 09h00, the time when proceedings usually started in that court. To get there, Mr Steyn had to travel from Hoedspruit, where he practised, and Mr Daniel had to get there from Nkomazi, where he lived. Mr Steyn encountered Mr Daniel at court. No prosecutor was present at the appointed time and nobody from that court conveyed any message to Mr Steyn from Adv Venter. Later that day, according to Mr Daniel and Mr Steyn, while they were waiting for proceedings to get under way, Mr Daniel was informed of a raid which was taking place on Nkomazi. Mr Steyn and Mr Daniel arranged with the magistrate for the criminal case to be postponed. Mr Daniel returned to Nkomazi. Mr Steyn first went home to Hoedspruit and then proceeded to Pretoria to consult senior counsel and bring an urgent application arising from what had transpired on that day.

330 Adv Venter's recollection was that she arrived at the Carolina court at about 10h00 that day and the postponement was moved in her presence. She however testified that she only learnt about the raid and removal the following day, or perhaps two days later.

331 In this respect, I prefer the clear evidence of Mr Daniel and Mr Steyn, whose recollection of these events was better than that of Adv Venter. I do not think her recollection is accurate. If she had been at court

while Mr Steyn and Mr Daniel were there, she would, as she readily agreed, have been told by them that the raid was taking place. I do not think that much turns on this.

332 Although no formal postponement had been agreed, both sides wanted the criminal case to be further postponed that day. As Mr Steyn remembers it, he would have had to negotiate a postponement. Adv Venter's recollection is that the case was not set down for trial on 18 June 2008 and a postponement would have to take place. Again, Nothing significant turns on this conflict in the evidence.

333 There was no suggestion in the evidence that Mr Daniel had breached any of the conditions for which Adv Lloyd had stipulated. Nor was there any suggestion that Mr Daniel was put on terms in regard to the arrangement under which the animals were to remain in the facility. On the contrary, although Dubai World was told some days earlier that the raid was to take place, it was kept secret from Mr Daniel and carried out at a time when all the officials must have known he was away from Nkomazi and would find it very difficult to protect his rights.

334 The raid on 18 June 2008 was led by Supt Kritzinger and was timed to coincide with Mr Daniel's appearance in the Carolina magistrate's court. During the raid, locks giving access to the enclosures housing

the animals were broken and certain of the seized animals were loaded onto trucks and transported away under the supervision of Mr Röhm, an employee then in the law enforcement section of the WPS in the MTPA. The transported animals were:

334.1 Cheetahs 2

334.2 Leopards 2

334.3 African Wild dogs 5

334.4 Servals 2

334.5 African wild cat 3

334.6 Spotted hyena 1

335 Mr Daniel began to photograph what he saw at the rehabilitation facility. Kritzinger tried to grab Mr Daniel’s camera and threatened him with arrest for obstruction. Mr Daniel then did not take further images and he was not arrested. There was evidence, however, that officials of the MTPA had arranged for a journalist to be present and that she took photographs without any resistance from the officials there present. Mr Röhm himself was in one such photograph which appeared in the Laevelder, a local newspaper.

336 One of these animals being removed, a leopard with damaged teeth, was recovering in its enclosure, when Kritzinger and his men arrived. Mr Röhm, and apparently a veterinarian Dr du Plessis, who has since died, formed the view that the leopard was so weak and lacking in muscle that it ought to be killed. Nevertheless, they darted it, loaded it into a cage in the truck brought for this purpose by Mr Röhm and started on the long journey (some 300km) from the lowveld or middleveld of Nkomazi, past the town of Machadodorp and on to the Rhino and Lion Park, a kind of private zoo on the highveld of Krugersdorp, near Lanseria airport.

337 En route Röhm stopped at Milly's, a garage, restaurant and shop complex outside Machadodorp on the national road to Gauteng. It was snowing. Röhm decided to tape up the cages holding the darted animals to conserve such warmth as was available. He saw the condition of the leopard with broken teeth and decided that it must be killed because it was in such a poor condition. A dose of a supposedly lethal drug was administered. When they reached the Rhino and Lion Park, Röhm saw that the leopard was still breathing. He despatched it with a round from his 9mm pistol through the spine and into the heart.

338 These animals were taken by officials with a statutory responsibility for promoting their well being, from their well nigh ideal conditions in Nkomazi, where they had a considerable measure of privacy and tranquillity, transported to a different biosphere and locked into makeshift cages, described by a witness for the plaintiff, Mr Pienaar, as a "spoeg en plak"[27] operation. Photographs of the Rhino and Lion Park are before me. The pejorative description is justified. These animals, which need to be able to hide from humans, were dumped in cages and enclosures where they could not hide and where they were exposed to the gaze of the public. One photograph shows a leopard in a re-purposed aviary, clearly designed for small birds. Another photograph shows water which was discoloured and green, either drinking water or water in which water birds might wade.

339 Mr Steyn came to the conclusion that Adv Venter, the SAP member in charge of the raid WO Kritzinger and the MTPA in the person of Mr Muller were "kop in een mus", as he put it (in cahoots), in a scheme to rob Mr Daniel of his animals. Mr Steyn briefed senior counsel and brought an urgent application the following Monday, 23 May 2008.

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[27] Spit and patch

340 The leopard which was shot dead had broken teeth and wasted hindquarters. According to Mr Daniel, this leopard had been brought to the centre by a farmer. Mr Daniel found a specialist in Australia who claimed he could repair the leopard's teeth and the leopard was being kept so that it could, in Mr Daniel's phrase, get a second chance. After it was killed, officials from the MTPA skinned the leopard and took its skull and skin to a taxidermist, Life Force, in White River. Documents from this firm show that the taxidermist assessed the value of the skin at R15 000. When Mr Daniels exhibited his court order,[28] Life Force retrieved the leopard skin. At the instance of Mr Daniel, the skin was stuffed and handed over to Mr Daniel.

341 Mr Daniel said that the leopard was in good condition except for its teeth. The images of the leopard produced at the trial show an animal which appears, to my layman's eye, to be in a good condition, with a skin showing no sign of mange. Dr Smuts confirmed that the skin showed no sign of mange.

342 Dr Smuts, gave evidence as an expert on leopards. His expertise was not conceded. He demonstrated that he was one of no more than about ten persons in the world with extensive knowledge of leopards, their habitats, management and related matters. He is not a veterinary

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28 See below

surgeon but has degrees in anatomy and environmental management. He is currently registered as a research associate with the University of the Western Cape. He is the co-author of numerous publications in his field I am entirely satisfied that Dr Smuts has conspicuous expertise in the matters on which he testified.

343 Dr Smuts testified that the leopard population in South Africa has dropped to about 6 000 specimens. For that reason each animal is precious and considerable effort is made to preserve and rehabilitate every such specimen. In Dr Smuts' opinion, which I accept, this leopard could have been rehabilitated. It suffered from damage to its dentition, which could have been rectified by surgery.

344 There was no reason why this leopard had to be put down with such haste. It could without any prejudice to the administration of justice or the rule of law have been left exactly where it was. Indeed, there was no reason why any of the seized animals was taken to their very poor confinement in the Rhino and Lion Park. It is extraordinary that officials charged with promoting the well being of such animals disrupted the rehabilitation efforts being undertaken at the rehabilitation facility and had the leopard in question killed. Even after the intervention of this court and the order for the return of the animals

to the rehabilitation facility, some of the animals died from the trauma of their dislocation.

345 The animals were being well looked after on 18 June 2008. If any of the officials of the WPS or Supt Kritzinger had any concerns that the new facilities at Travelport would be inadequate, they could easily have arranged for an inspection and for conditions under which the move would be sanctioned. The move to Travelport would cost the state nothing either in time or resources. What possible administrative or animal welfare concern could have precipitated this drastic and cruel action?

346 There was no legal justification either for the 18 June 2008 raid. The case for the defendants is that it was carried out under the authority of the 5 November 2007 warrant, the first warrant. There are three obvious reasons why that argument must fail, even assuming that an Annexure A was attached to the warrant.

347 The first reason is that there was an agreement between the prosecution and the MTPA as complainant, on the one hand, and Mr Daniel and Grand Valley, on the other, that pending the conclusion of the criminal case, the animals would, *for their well being*, be left in peace at the facility. The defendants were not simply at liberty to

disregard that agreement. I have pointed out that Mr Daniel was not in breach of the agreement. No warning was given that the defendants considered themselves at liberty to act in conflict with it.

348 The second reason is that Supt Kritzinger was not authorised to execute the first warrant. Counsel argued that the words “any other member of the South African Police Service ...” empowered Supt Kritzinger to act. But that lazy catchall phrase does not do so. The person empowered must be *named*. See Commentary on the Criminal Procedure Act, *Du Toit et al*, commentary on s 21 of the Criminal Procedure Act vol 1.

349 The third, and to my mind most fundamental legal reason, is that under s 25(2) of the CPA, a warrant remains in force until it is executed or cancelled. Coetser and members of the SA Police executed the warrant on 5 November 2007. Coetser then acted in terms of s 30(c) of the CPA which empowers the police official who seizes an article under a warrant, where such article is not dealt with under ss 30 (a) and (b), to “make such other arrangements with regard to the custody thereof as the circumstances may require.”

350 That is exactly what Coetser did. The circumstances required that the animals remain where they were and in the custody of Mr Daniel

because all concerned agreed that that should be so, *in the interests of the well being of the animals themselves*. Once the first warrant was executed on 5 November 2007, it ceased to be of force.

351 Why did the officials of the MTPA behave as they did in carrying out the raid and the disruption to the lives of the animals in question? Could it be that Mr Daniel, and the animals, were merely the victims of bumbling, overbearing, incompetent officials? Had the events of 18 June 2008 not taken place, I might have found that this was the case in relation to the initial seizure and the prosecution itself. But the cruelty of the removal, unjustified on any conceivable legal or moral basis, demonstrates that something much worse was at play.

352 There can really only be one explanation: they wanted to oppress and harass Mr Daniel, show him that he was powerless to resist them or interfere in the way they ran things, particularly in relation to problem animals, and ultimately drive him from the Project.

353 Moreover, all the MTPA had to do, from its perspective, to succeed in the criminal case was to let the law take its course. They had two prosecutors who were confident that they would win. They had the fact that Mr Daniel had not produced a register or any other document to justify his possession (as the MTPA and, indeed, Mr Spoor and Mr

Daniel himself, at the outset, saw it) of the animals. And, of course, they had the animals themselves.

354 I conclude that the officials in the MTPA who abetted or acquiesced in the 18 June 2008 raid acted with two motives. Those officials in contact with and subject to the influence of the politicians in power in the province wanted to get rid of Mr Daniel because he was, or had been, a threat to the way things were done in the province, particularly in relation to the efforts made to transfer farms in the Badplaas district to the land claims commission and the illicit profits generated from such transfers. Officials within the Wildlife Protection Service of the MTPA wanted to get rid of Mr Daniel because their superiors wanted it so. The raid of 18 June 2008 was designed to show Mr Daniel that in Badplaas the officials and the members of the SA Police who assisted them were not merely officers of the law: they *were* the law; they decided what the law said and they decided who would fall foul of the law. The nearest high court with jurisdiction, at that stage the Pretoria High Court, was far away and remote from the lives of the Badplaas community, unless its expensive and subtle jurisdiction was invoked in the proper, expensive, time consuming way. If Mr Daniel did not cooperate with them, and do things their way, they would show him that they could make his life on Nkomazi unbearable and his dream of a flourishing game reserve would never come about.

355 As was shown by the evidence, these officials had the power to designate any particular animal as a problem animal and then charge the farmer on whose land the animal was found for its removal, if they chose to remove it. Although the relevant legislation gave the officials the power to allow such animals to be relocated by private contractors, they made it known that they would never issue permits for the purpose to any private contractor but keep this business for themselves. Such officials within the province also had the power to order that any animal they designated as a problem animal be killed. They then gave professional hunters permission, for a substantial fee, to do the actual killing.

356 All this, in principle, was permissible under the statutes which regulated the position of the WPS. But in the way they interpreted the legislation and executed their functions, they were in effect a law unto themselves. The evidence shows that the management of the MTPA was dysfunctional. Mr Muller, for example, was careful to put up memoranda to senior management for authorisation for specific disbursements. As was shown by the proposed payment of R3,6 million, which triggered Mr O'Sullivan's investigation of the PAF, the officials who should have exercised oversight over the conduct of Mr Muller and the PAF did no such thing and just signed through what Muller wanted.

357 I am fortified in this conclusion by an analysis of the part Mr Muller played in the raid of 18 June 2008. In his evidence, he sought to distance himself from the raid. It was carried out, he said in effect, by his subordinates in the exercise of their own discretions.

358 But that is not so. He planted the idea in the mind of Mr de Beer that the raid should take place. He arranged for Röhm to provide the transport. He summoned Mr de Beer to the meeting at the restaurant in Nelspruit with the representatives of Dubai World, although he denied in his evidence that he had had contact with Mr de Beer in this regard before the raid. He communicated without comment the extraordinary instruction from the high officials in the MTPA that no MTPA official should take part in the raid. He interpreted the joint letter from Mr Daniel and Dubai World dated 12 June 2008 to Mr de Beer as meaning that Dubai World had stated that it wanted the animals off its land immediately, when manifestly that was not what the letter said.

359 When this is taken together with the fact, as I have found it, that Mr Muller had been almost in so many words instructed to manipulate the law to get Mr Daniel out of the Project, I find it proved that Mr Muller arranged for the raid of 18 June 2008 to help those who wanted Mr Daniel gone to achieve their purpose.

Consequences of the raid and removal of animals on 18 June 2008

360 Edge to Edge and Mr Daniel brought urgent applications before this court on 23 June 2008 under case nos. 29652/08 and 32267/08, dealing with specific aspects of the dispute between Mr Daniel and the Mpumalanga authorities as had emerged at that stage. On 24 July 2008, after considerable prodding by the presiding judge, who said, on the record, that he was not going to apply the letter of the law in these urgent circumstances, the parties came to terms and an order for the return of the animals to the rehabilitation facility was made.

361 Mr Daniel took pictures of the conditions in which the seized animals were being kept. Mr Daniel described these conditions as poor, with inadequate cages and shade, not suitable for such animals, let alone such animals suffering stresses which required rehabilitation, and with dirty water supplies. Mr Daniel was told by the then owner of the Rhino and Lion Park, Mr Herne, since deceased, that he paid the MTPA R750 000 for the animals. Mr Daniel's evidence, which was not disputed, was that he obtained a court order in July 2008 for the return of the transported animals but that "most" or "half" of them died from stress during the process.

Mr Daniel sells Nkomazi to Dubai World

362 By written agreement concluded on 27 May 2007 in Dubai, Mr Daniel sold the Project. The effect was to create a joint venture between Mr Daniel and Dubai World in which Dubai World would hold its stake in the venture through a company called Business Venture Investments No 1145 (Pty) Limited (BVI 1145). The purchase price to be received by Mr Daniel for the sale to Dubai World was R75 million. The transaction was subject to a number of conditions and a due diligence investigation.

363 The 27 May 2007 sale did not go through. It lapsed on 30 November 2007 as a result of the non-fulfilment of certain conditions. By written agreement concluded on 17 March 2008, Mr Daniel sold the Project out and out to Dubai World. The purchase price, expressed to be for the Sale Shares and the Sale Claims was R120 million. The Sale Shares were 50% of the shares in BVI 1145. The Sale Claims were the sum of R120 million owed by BVI 1145 to Cradle of Life Investments (Pty) Limited, a company controlled by Mr Daniel.

364 On 20 June 2008, the parties to the 17 March 2008 sale agreement concluded an addendum (the Addendum), which the parties agreed would have retrospective effect to 27 March 2008. In the Addendum,

the Dubai World companies acknowledged their awareness of the dispute regarding the rehabilitation facility and agreed that the rehabilitation facility and the various animals held there (which corresponded exactly to the animals seized by Mr Coetser on 5 November 2007) were not included in the sale and remained (thus the Addendum) under the control of Edge to Edge (which owned the farm Cambalala) and its director, the 12th plaintiff Mr Huba (now deceased).

365 The 17 March 2008 sale agreement was an out and out sale by Mr Daniel of all his interests in the Project, except for the rehabilitation facility, which continued to be operated as before, and Travelport, where Mr Daniel retained certain interests. The purchase price was R120 million cash plus R125 518 713,79 for Assumed Liabilities as defined, ie the liabilities of the business conducted by the sellers (ie effectively Mr Daniel) called Nkomazi Wilderness and a loan account owed by Grand Valley to BVI 1145 (effectively Dubai World). In the sum of R53 353 768. In all, therefore, a total rounded down of R250 854 091.

366 The mechanics of these agreements, and others, which preceded the final sale of the Project to Dubai World are very complex and elicited much cross-examination. I need not, in my view, detail these complexities because they neither contribute to nor detract from the

conclusion that Mr Daniel sold the Project to Dubai World in June 2008 and received a purchase price for the Project of R250 854 091.

367 Mr Daniel's evidence was that he entered into the several transactions with Dubai World in order to neutralise the campaign that he perceived had been pursued to frustrate his efforts to develop the Project. He hoped that by being partners with (as initially contemplated) and ultimately selling out to a sovereign nation, his personal involvement in the Project would cease to be an impediment. But for the campaign which he described in evidence, he said, he would not have sold.

368 I find this evidence credible. Indeed, no alternative reason for the sale to Dubai World was suggested either in the evidence or in argument. At a factual level, therefore, the issue resolves to whether the cause of the sale was the unlawful efforts of the defendants, or some of them, acting in concert to drive Mr Daniel from the Project.

A new CEO for the MTPA and the settlement agreement; the special plea that the case was settled

369 By letter dated 13 November 2008, attorney Steyn, on behalf of Mr Daniel, his companies and Mr Huba, addressed a lengthy letter of demand to a number of organs of state, including the MTPA and the

RLCC. In the letter claims for many millions of rands were made broadly on the basis on which the present action was brought. Many of those claims were not persisted with in the present action.

370 Mr Charles Ndabeni (not to be confused with Charles Ngobeni, the 15th defendant) was the CEO of the MTPA from 8 September 2008 to August 2011. He came to the MTPA from a similar position in the North West Province. He established that Mpumalanga had considerable tourist potential but when he arrived it was the seventh least visited provincial destination for tourists. The MTPA was not financially sustainable and Mr Ndabeni set himself to promote the tourism side of the MTPA, thereby simultaneously advancing Mpumalanga economically. His goals were to grow tourism, increase biodiversity and restore proper corporate governance, functionality and leadership within the MTPA.

371 Soon after his appointment, he received the letter of demand written by attorney Steyn. He called in managers Muller and Malaza and sought from them to understand the nature of the dispute that had given rise to so large a demand. He said that he was told by Muller and Malaza that Mr Daniel was a racist and a criminal, but he learnt that there had been decisions in the courts which had gone against the MTPA. He decided to find out for himself what the background to

the dispute was. With board approval, he appointed a compliance officer and instructed her to develop a strategy to deal with the dispute.

372 Mr Ndabeni contacted attorney Steyn, who told him Mr Daniel was prepared to negotiate. He then met Mr Daniel at Nkomazi and was impressed by him. He saw no signs of racism or criminal conduct. Mr Ndabeni hoped that his experience in wild life tourism in Northwest Province could be replicated in Mpumalanga and felt that Mr Daniel shared his vision.

373 This led to the conclusion of a settlement agreement. That provided the opportunity for Mr Daniel and Mr Ndabeni to work together. Mr Ndabeni described this as a win-win situation as does the settlement agreement itself in clause 1(c). He took the concept to the MTPA's board and gained its support. He had a concept plan developed.

374 On 15 May 2009, a settlement agreement (the settlement agreement) was concluded between the MTPA on the one hand and Mr Daniel personally, Grand Valley and Edge to Edge on the other. Mr Ndabeni signed it on behalf of the MTPA and Mr Daniel signed it on behalf of the other parties.

375 The settlement agreement provided for the withdrawal of the criminal case in Carolina magistrate's court. It recorded that Mr Daniel had applied for various permits to operate his facility and provide for the animals' welfare and that the MTPA had issued a permit in this regard in terms of the NCA. The parties expressly agreed to work together to drive the economic growth of the province. On 22 May 2009, the criminal case in the Carolina magistrate's court was withdrawn in court.

376 Clause 1(d) of the settlement agreement absolved "... all the policemen, reservist and MTPA officials who were implicated in the three raids" on 7 November 2007, 15 May 2008 and 18 June 2008. The settlement declared that there would be no further claims in this regard.

377 Under clauses 1(e) and (f), the settlement aimed

> ... to put these matters behind the parties, subject to the provisions of clause 2b, and is aimed at finalizing all pending litigations and criminal cases on both sides. It is agreed that it was never Mr Daniel's intention to breed with the animals involved in the criminal proceedings but rather to rehabilitate problem animals for release back into the wild of the then Nkomazi Wilderness to roam freely, (where possible, depending on the recovery). Mr Daniel shall disclose (where known) the origin, species and subspecies of the animals

> concerned to the MTPA and such disclosure shall be kept confidential.
>
> Due to the concerns raised as to whether the animals involved in the criminal proceedings are of pure breed or not, Mr Daniel undertakes to mute these animals. ...

378 The board instructed Mr Ndabeni to put the plan to the provincial government, which he did in a meeting with a cabinet sub-committee in late September 2009. Although not present at the meeting in question, Mr Mabuza was the premier of Mpumalanga province at the time. In his own words, Mr Ndabeni hit a brick wall. The provincial government refused to support the cooperation plan and, equally significantly, refused to provide any funds for the advancement of the cooperation agreement. At that stage Mr Ndabeni needed some R2 or R3 million. The cabinet sub-committee told him that the matter would have to proceed to litigation.

379 The settlement agreement provided in clause 2(a) that its terms were

> ... in full and final settlement of any claims and disputes, which each party may have against the other party and members of the MTPA staff or the staffs of the Cradle of Life, including those arising out of or in any way connected to these cases and the prosecutions or pending prosecutions. Accordingly, Mr Daniel waives any rights in law to refer a dispute about the criminal prosecution in terms of the South African laws.

380 Clause 2(b) then reads:

> This settlement includes the damages action that Mr Daniel and his associated companies intend to launch against the MTPA subject to a development and cooperation agreement to be entered into by the parties within a period of 6 months from the date of signature by the parties of this agreement.

381 The conclusion of the settlement agreement was followed by a correspondence in which Mr Daniel's attorney warned that the six month limit on the period for concluding the cooperation agreement was shortly to expire.

382 In a letter dated 28 October 2009, Mr Ndabeni pleaded for an extension. He did not mention in the letter that the political leadership in the province had vetoed the Project and refused to provide any funds for it to proceed. This was raised in cross-examination as a point of criticism against Mr Ndabeni. I can well understand why he did not mention the brick wall placed in his path. He knew the background to the transaction. Mr Daniel would, with full justification, have regarded the refusal of the politicians to cooperate as a deal breaker. Mr Ndabeni hoped against hope that the Project could somehow be saved. His evidence on the point ties in with that of the other witnesses who testified to the determination of the provincial authorities to exclude Mr Daniel from any meaningful public-private

partnership to develop the area. On this important issue, they corroborate each other.

383 But it does not stop there. Not only was it never put to Mr Ndabeni that his evidence on the fact and the content of the meeting with the cabinet sub-committee would be disputed by a witness to be called by the defendants, but no such evidence was ever produced. Mr Ndabeni's evidence stands uncontradicted. I accept it.

384 From then on, Mr Ndabeni began to be portrayed in government circles as corrupt. He received death threats, so much so that he hired two bodyguards. He negotiated an exit from his position as CEO and resigned with a package in August 2011.

385 In cross-examination, Mr Ndabeni was given to lengthy speeches instead of answering questions directly and was aggressive toward the cross-examiner. But despite these shortcomings, I do not consider Mr Ndabeni was an untruthful witness.

386 This issue around the lapsing of the six month period arose because in one of the defendants' special pleas, they pleaded that in fact a cooperation agreement had been concluded. In a later amendment, the defendants pleaded in the alternative that the condition had been

fictionally fulfilled against the plaintiffs because Mr Daniel frustrated the fulfilment of the cooperation agreement by intentionally failing to engage in a constructive manner towards its conclusion. That being the case, thus the special plea, the settlement agreement settled the claim for damages in contention in this case.

387 There was some debate with counsel about the exact juridical nature of the provision in clause 2(b): ie whether it was a condition, suspensive or resolutive, or a time provision. Whatever the appropriate text book description of the clause, its meaning is clear: if no development and cooperation agreement were entered into within six months of the date of signature of the settlement agreement, the fact of the settlement agreement would be no bar to the proposed action in question. This is of some significance because counsel for the defendants argued at the end of the case, firstly, that it is an agreement to agree which, because of the absolute discretion vested in the parties to agree or disagree, renders the whole settlement agreement void; and, secondly and in the alternative, that it is a suspensive condition and by the doctrine of fictional fulfilment, should be deemed to have been fulfilled against the plaintiffs.

388 Both Mr Daniel and the MTPA, as at that stage under the guidance of Mr Ndabeni, wanted the cooperation agreement to be concluded and the Project to flourish. It is grossly improbable that Mr Daniel would frustrate the very thing that he had worked to achieve for more than a decade. It was never put to Mr Daniel in what respects his approach to the conclusion of a cooperation agreement fell short of some standard.

389 It follows, therefore, that the reason for the failure to conclude a cooperation agreement was the settled determination of the provincial government to have nothing to do with any development in the province with which Mr Daniel was associated.

390 Indeed, no foundation was ever laid, either in the pleadings or the evidence, for the proposition that Mr Daniel was obliged under the settlement agreement to take any specific, positive step in relation to the condition.

391 A party alleging fictional fulfilment must allege and prove that the non-fulfilment of the condition was committed in breach of a duty owed by the opposing party. The doctrine of fictional fulfilment is based on the

rule that a party cannot take advantage of his own breach of contract.[29]

392 This argument could only get off the ground if it were held that it was a term of the settlement agreement that the parties were obliged to take specific steps toward the conclusion of a cooperation agreement and were thus not entitled merely to allow time to pass, if they so wished until the period of six months expired. There is no such express term in the settlement agreement and no tacit or implied term to that effect was pleaded or put to Mr Daniel.

393 In fact, the fictional fulfilment argument rests on the proposition that Mr Daniel frustrated the fulfilment of the condition because he would not agree to an amendment to the settlement agreement. The facts do not support the argument that Mr Daniel would not negotiate with the MTPA. A refusal to agree to an amendment of an agreement can, almost by definition, not constitute frustration of that same agreement.

394 I therefore find that the settlement agreement was no bar to the present action against the MTPA. Nor was it, in its terms, a bar to the present action against the RLCC.

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29 *Scott and Another v Poupard and Another* 1971 2 SA 373 A 378F

395 And so the hopes and aspirations, the dream (as counsel for the defendants called it) of a world class game reserve, attracting high end international tourist business and enhancing both biodiversity and the economy of this impoverished backwater, all died. Nkomazi shrank from a high of almost 30 000 ha to about 5 450 ha, parts of it infested with pompom weed. Its elephant population is restricted to an area far smaller than the initial 12 77 ha which was considered proper for a population of 10 animals and the elephant population itself has grown. Msauli Village lies in ruins. Songimvelo game reserve is much reduced by cattle grazing and poaching.

Other litigation between the same or related parties

396 Mr Daniel launched a complex, compendious application in this court under case no.19108/2010 for orders directing the President of the Republic to institute a commission of enquiry into much of the conduct I have described in this judgment, declaratory orders and mandatory interdicts. The notice of motion includes prayers for some 38 declaratory orders and five interdicts. The notice of motion was over 17 pages long and the text of the founding affidavit, without annexures, some 250 pages.[30] The papers in the case ultimately numbered over four thousand pages. It came before Ms Justice

30 If memory serves me correctly.

Tolmay in this Division but was never finally adjudicated. There were several references to passages in the affidavits in this case, which was called in the evidence the Tolmay application. This application precipitated an application under case no. CCT106/12 to the Constitutional Court. Direct access was refused on 31 January 2013. An application brought by Mr Daniel under case no. CCT 34/13 to rescind the order refusing direct access on the ground that the relief sought in that court fell within the exclusive jurisdiction of the Constitutional Court was refused on 27 June 2013.

The credibility of Mr Daniel

397 I observed Mr Daniel for several days in the witness box. He was not a perfect witness in all respects. He displayed a remarkable recollection of precise dates on which events to which he testified occurred. At times he drew conclusions, which fitted the picture he had created for himself and those who advised and represented him, from scanty evidence and then built on those foundations to advance his case further. When he began his evidence, he found it difficult, despite help from counsel and the bench, to stay focussed on the question asked him and frequently went off on what proved to be a diversion. He found it difficult to acknowledge when an unequivocal proposition he had advanced needed to be qualified. He frequently

interrupted exchanges between the bench and his own counsel when he was not satisfied with how the exchange in question was proceeding. All this meant that it was initially difficult to piece together from Mr Daniel's evidence in chief a coherent narrative of what happened, when it happened and in what context it happened. However, this initially improved as the evidence in chief progressed. During, and particularly towards the end of a lengthy cross-examination by two counsel, he became testy, argumentative, discursive and in my judgment mentally tired. I frequently cajoled and even berated Mr Daniel in an effort to get him to focus on the question at hand. I accept that all the events to which Mr Daniel testified happened a long time ago, that Mr Daniel is sincerely invested in his case and the perceived justice of his case and that Mr Daniel mostly tried to tell the truth. The inordinate delay that has attended the resolution of this case must have preyed on Mr Daniel's mind. I accept that, as he portrayed himself, he has a passionate concern for conservation and a strong distaste for cruelty to animals. He did not view the Project only from the perspective of game management. He also consulted widely on the geological significance of the area in which he was developing the Project and was assured in writing by numerous experts that the area was of great geological value. He tried very hard to make the Project a success.

398 In what Mr Daniel described as the interests of transparency, Mr Daniel waived the legal advisor/client privilege attaching to a letter dated 22 October 2007, in which Mr Spoor gave certain advice and his impressions of officials in the MTPA, including Mr Muller, well knowing that the letter could be used against him with some effect in cross-examination. I accept that Mr Daniel sincerely wished for all the facts to come out, even those which could be used to his disadvantage.

399 Mr Daniel refused to compromise on his values in his dealings with those he regarded as corrupt. It was never even suggested to him that he personally offered a bribe or any other inducement to those who, as he saw it, were obstructing his vision for the Project. His response at every turn was to try to negotiate a way out of the impasse that had developed and when that failed, either to approach the courts or walk away from an aspect of the Project, eg Msauli Village, or when all else failed from the Project itself, as he did in May 2008.

400 Even then, he retained interests in and traded in Travelport until he concluded, in 2019, that his life was in danger if he remained in the Badplaas district. I do not believe that this rational businessman sold up all he possessed in the area on a whim or passing emotional delusion. He sold all he possessed at Travelport at what he called fire sale prices. He would not have done so, had he not believed that he

and his family were in physical danger or, even more significantly, if he had believed that the authorities responsible for the maintenance of law and order in the district would do their duty toward him.

401 Mr Daniel unhesitatingly identified Mr Visagé and those officials in the MTPA and other organs of state whom he regarded as having acted corruptly and gave evidence of conversations in which certain of such officials are said to have confessed their wrongdoing to him. The constant refrain was that they had been under pressure to act corruptly and did so for fear of repercussions. He did not say that all the officials with whom he came into contact acted corruptly and forthrightly identified those officials who he believed did their work honestly. Having viewed Mr Daniel over some 21 court days in the witness box, I believe that Mr Daniel told the truth when he testified to these confessions. My impression of Mr Daniel is that he was not the kind of man who would fabricate evidence of this nature just to suit his case. The possibility that he mistakenly interpreted what was told to him is so remote that it can be discounted.

402 However, there are aspects on which Mr Daniel proved himself unreliable. He testified that Mr Muller had offered him ten Songimvelo elephants at a total of R1 million. It seems that these Songimvelo elephants were not suited for the purposes of the Nkomazi Project.

Their preferred habitat was in the mountainous areas of Songimvelo and they were not habituated to humans. However, Sabi game reserve had an overpopulation of elephants and was keen to give some of their elephants away. Mr Daniel’s evidence was that Mr Muller insisted that he take the Songimvelo elephants and pay for them. Mr Muller, on the other hand, said that he had neither offered the Songimvelo elephants to Mr Daniel nor insisted that Mr Daniel pay R1 million for them. In the end, Dubai World brought in elephants from Sabi.

403 But Mr Daniel wrote a letter to a Mr Dexter, (undated but sent after Nkomazi was authorised in principle in October 2007 to keep elephants) for help in regard to the elephants in the belief that Mr Dexter had some political influence. In the letter he said that the MTPA had offered him the Songimvelo elephants “for free”. His attempt to explain this contradiction was unconvincing. The fact that Mr Daniel wrote this letter to Mr Dexter suggests strongly that there was some kind of interaction between Daniel and Muller regarding Songimvelo elephants. My impression of Mr Muller is that he was too astute to be associated with a scheme to force Mr Daniel to buy unsuitable elephants. There is no documentary evidence to support Mr Daniel’s version in this regard.

404 I therefore do not regard the allegation relating to the Songimvelo elephants as having been established.

405 I have left the most serious criticism I have of Mr Daniel's evidence until the last. His version of how it was that he came to keep the animals in the newly built rehabilitation facility at Cambalala was that he had a verbal arrangement with Mr Dries Pienaar of the MTPA that he would keep a logbook detailing the animals which he received for admission to the rehabilitation facility, pending the grant to him of a permit to keep the rehabilitation facility, for which he made application in 2007, as emerges from a letter dated 12 September 2007 written by the then CEO of the MTPA acknowledging receipt of the application. A witness for the defendants, Mr Coetser, said he also told Mr Daniel he must keep a register of animals he received into the rehabilitation facility and notify Mr Coetser each time a new animal was received. In a letter dated 3 August 2007, Mr Daniel reported to Mr Coetser that he was in fact keeping a "register of all the animals that we have successfully rehabilitated and released and those that are still at the facility."

406 There is no evidence of Mr Daniel's ever notifying the MTPA of animals received by him into the rehabilitation facility. He was asked on numerous occasions to supply this information, as well as

important information regarding the geographical location from where the animals came, which was important for the work of the MTPA. Mr Daniel never supplied any such information.

407 Even more concerning is the fact that no logbook or register was ever produced: not in this court and not in the numerous High Court applications Mr Daniel brought against the MTPA and others in this court during the period 2008 to 2010, even though in these proceedings Mr Daniel actually relied on the assertion that he kept a logbook and the assertion was directly challenged.

408 These considerations point toward a conclusion that Mr Daniel fabricated the evidence of a logbook. However, there are factors which operate in Mr Daniel's favour. Firstly, he asserted on several occasions, contemporaneously, that he was keeping a logbook. He had no reason to lie at that stage; and if he had been tardy in writing up the logbook, he could easily have rectified that. Secondly, it was never put to him that he was lying about keeping a logbook. Thirdly, in clause 1(e) of the settlement agreement which the MTPA, Mr Daniel, Grand Valley and Edge to Edge concluded on 15 May 2009, the parties recorded the following:

> It is agreed that it was never Mr Daniel's intention to breed with the animals involved in the criminal proceedings but rather to rehabilitate problem or injured animals for release back into the wild of the then Nkomazi Wilderness to roam freely, (where possible, depending on the recovery). Mr Daniel shall disclose (where known) the origin, species and sub- species of the animals concerned to the MTPA and such disclosure shall be kept confidential.

409 The circumstances under which this clause 1(e) came to be included in the settlement agreement were not ventilated in the exhaustive cross-examination to which Mr Daniel was subjected. The inference therefore is that Mr Daniel satisfied the MTPA that he was after all not, as its officials say they had suspected, been trafficking in endangered animals. This factual inference is not affected by any legal invalidity of the settlement agreement. On the contrary, the parties accepted through clause 1(e) that Mr Daniel was doing exactly what he said he was doing: providing a haven of refuge where abused, injured and homeless wild animals could be treated and rehabilitated. In the wider context of the present dispute, therefore, even if Mr Daniel has been untruthful about keeping a logbook (and I do not find he was), that would not be of much significance.

Tightening the threads

410 In evaluating the evidence, I have been guided by and sought to apply the principle regarding the proper approach to the "overall picture that emerges when the different pieces are stitched together and the seemingly disparate threads tightened".[31]

411 The court in *Qurashi* quoted with approval, as so many courts have, from *R v De Villiers*:[32]

> Not to speak of greater numbers; even two articles of circumstantial evidence – though each taken by itself weigh but as a feather – join them together, you will find them pressing on the delinquent with the weight of a milestone. It is of the utmost importance to bear in mind that, where a number of independent circumstances point to the same conclusion the probability of the justness of that conclusion is not the sum of the simple probabilities of those circumstances, but is the compound result of them.

412 The second principle which I apply in the present context is that relating to common purpose. For the purposes of the criminal law, there are two categories of common purpose: a prior agreement to

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31 *Qurashi and Others v The State* (Case no 1166/2018) [2022] ZASCA 118 (22 August 2022) para 55

32 1944 AD 493 at 508, the learned acting judge of appeal himself quoting from *Best*, 5th ed, sec 298

commit a common offence; and active association and participation in a common criminal design with the requisite intention to commit a crime.[33] Although this is of course not a criminal case, in my view the principle is a useful measure by which the evidence might be evaluated.

413 The essence of the plaintiffs' claim is the allegation of a corrupt agreement which arose during about October 2007 to force Mr Daniel out of the Project.

414 I have dealt with the evidence of the determination of the RLCC to depict Mr Daniel as the force behind the corruption in the land acquisition program, when he in fact refused Visagé's invitation to participate in the corruption; to paint Mr Daniel as racist and corrupt when there was no evidence at all to justify this accusation; to gazette land claims and then present the gazetting to an emotionally charged protest meeting at Travelport as proof that the law had awarded the Project lands to the claimants; to refuse to participate in mediation efforts to resolve the claims.

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33 *S v Thabethe and Others* (839/2023) [2025] ZASCA 88 (12 June 2025) para 53

415 I have described the conduct of politicians in the province in instructing the police to withhold their protection from Mr Daniel when he was threatened with violence and in causing officials to try to use the law to harass him by raising against him the prospect of his Project being closed down or retarded on specious grounds; and the conduct of one senior politician in telling Mr Daniel that he could not be protected unless he sold the Project lands to one of Visagé's proxy commercial vehicles.

416 I have described the conduct of senior officials in the RLCC and the MTPA in joining forces in an attempt to exclude Mr Daniel from the developments proposed for the area, including the proposed development of Msauli Village, and of the attempts by officials of those organs to disparage Mr Daniel to his partners.

417 I have pointed to the subtle attempts by Mr Muller to undermine Mr Daniel and concluded that he did so at the behest of a senior official in the MTPA. I have concluded that the raid of 18 June 2008 was mounted with the purpose of demonstrating to Mr Daniel that his continued association with the Project and his very presence in the area was untenable.

418 Finally, I have shown that even after concluding the settlement agreement of 15 May 2009 and a reconciliation between the MTPA and Mr Daniel, the political decision makers in the province refused even to negotiate with Mr Daniel toward the conclusion of a development and cooperation agreement with him.

419 I was referred on several occasions to the stance apparently adopted by the defendants in the abortive trial: that the separate abuses to which Mr Daniel was subjected were not executive acts in furtherance of any concerted plan to force him out of the Project and the district but the product of coincidence, or happenstance, as it was put.

420 In my view there was no such coincidence. The conduct of the officials in the MTPA and the RLCC acting together at the meeting with Mr Hutchinson to disparage Mr Daniel and advocate for his exclusion from any development in the district to be undertaken by Kerzner International demonstrates their common purpose. So does the conduct of Mr Sibiya instructing Mr Muller to use the fact of land claims to block the issue of permits to Mr Daniel, or asking Mr Muller whether the issue of land claims could be used to block the issue of such permits (it matters not which). So does the conduct of the politician I have named in telling Mr Daniel that he could not protect Mr Daniel from mob violence unless he sold out of the Project.

421 I therefore find that the plaintiffs have proved the collusive agreement on which they rely and that the MTPA, the RLCC and the government of Mpumalanga as a whole, and therefore the MEC for agriculture and land affairs, the 7th defendant, were party to it.

Wrongfulness

422 It is by now trite that the intentional causing of pure economic loss to another is not inevitably actionable. In *Country Cloud Trading CC v MEC, Department of Infrastructure Development,*[34] the following was laid down:[35]

> [20] Wrongfulness is an element of delictual liability. It functions to determine whether the infliction of culpably caused harm demands the imposition of liability or, conversely, whether 'the social, economic and others costs are just too high to justify the use of the law of delict for the resolution of the particular issue'. Wrongfulness typically acts as a brake on liability, particularly in areas of the law of delict where it is undesirable or overly burdensome to impose liability.
>
> [21] Previously, it was contentious what the wrongfulness enquiry entailed, but this is no longer the case. The growing coherence in this area of our law is due in

34 2015 1 SA 1 CC

35 Paras 20-26; citations omitted

large part to decisions of the Supreme Court of Appeal over the last decade. Endorsing these developments, this court in *Loureiro* recently articulated that the wrongfulness enquiry focuses on - 'the [harm-causing] conduct and goes to whether the policy and legal convictions of the community, constitutionally understood, regard it as acceptable. It is based on the duty not to cause harm - indeed to respect rights - and questions the reasonableness of imposing liability.'

The statement that harm-causing conduct is wrongful expresses the conclusion that public or legal policy considerations require that the conduct, if paired with fault, is actionable. And if conduct is not wrongful, the intention is to convey the converse: 'that public or legal policy considerations determine that there should be no liability; that the potential defendant should not be subjected to a claim for damages', notwithstanding his or her fault.

[22] Wrongfulness is generally uncontentious in cases of positive conduct that harms the person or property of another. Conduct of this kind is prima facie wrongful. However, in cases of pure economic loss - that is to say, where financial loss is sustained by a plaintiff with no accompanying physical harm to her person or property - the criterion of wrongfulness assumes special importance. In contrast to cases of physical harm, conduct causing pure economic loss is not prima facie wrongful. Our law of delict protects rights and, in cases of non-physical invasion, the infringement of rights may not be as clearly apparent as in direct physical infringement. There is no general right not to be caused pure economic loss.

[23] So our law is generally reluctant to recognise pure economic loss claims, especially where it would constitute an extension of the law of delict. Wrongfulness must be positively established. It has thus far been established in limited categories of cases, like intentional interferences in contractual relations or negligent misstatements, where the plaintiff can show a right or legally recognised interest that the defendant infringed.

[24] In addition, if claims for pure economic loss are too freely recognised, there is the risk of 'liability in an indeterminate amount for an indeterminate time to an indeterminate class'. Pure economic losses, unlike losses resulting from physical harm to person or property -

'are not subject to the law of physics and can spread widely and unpredictably, for example, where people react to incorrect information in a news report, or where the malfunction of an electricity network causes shut-downs, expenses and loss of profits to businesses that depend on electricity'.

[25] So the element of wrongfulness provides the necessary check on liability in these circumstances. It functions in this context to curb liability and, in doing so, to ensure that unmanageably wide or indeterminate liability does not eventuate and that liability is not inappropriately allocated. But it should be noted - and this was unfortunately given little attention in argument - that the element of causation (particularly legal causation, which is itself based on policy considerations) is also a mechanism of control in pure economic loss cases that can work in tandem with wrongfulness.

> [26] This case is manifestly one of pure economic loss . Would it be reasonable to impose liability on the department in the circumstances? Although there is no 'checklist' of relevant considerations, the enquiry does not call for an 'intuitive reaction to a collection of arbitrary factors but rather a balancing against one another of identifiable norms'.

423 This was no single act by a single state actor. It was a concerted campaign over several years by members of the executive in the province, in league with high officials in at least two organs of state which, by the public powers vested in them by law, were in a unique position to intimidate Mr Daniel and frustrate the realisation of his dream. They enlisted in their scheme a criminal mob and instructed the SA Police to stand aside while the mob did its work. These state actors banded together to defeat the third great goal of the adoption of the Constitution as articulated in its preamble:

> ... to [i]mprove the quality of life of all citizens and free the potential of each person.

424 There is no other mechanism available in law to Mr Daniel to bring the injustices done to him before a court of law and achieve redress.

425 In my view, this is a case which cries out for the recognition of a delictual remedy. I hold that the conduct of the state actors whom I

have identified, in concluding or associating themselves with the collusive agreement I have found to have been concluded and in giving effect to it, was wrongful and should attract an award of damages for the economic loss suffered by Mr Daniel through Grand Valley.

Special plea that plaintiffs are precluded from recovering by provisions of Apportionment of Damages Act

426 The special plea is grounded on the assertion that “Dubai World” was a joint wrongdoer with the defendants for the purposes of the ADA. The onus is on the defendants to establish the facts alleged in this, as in any other, special plea.

427 The factual foundation for this assertion is that in an earlier iteration of the plaintiffs’ particulars of claim, the plaintiffs alleged that they issued summons against a number of companies and individuals whom they collectively called “Dubai World”, as well as other defendants . In the context of the plaintiffs’ claim I have discussed in this judgment, the actual company or individual within the concept of Dubai World was not of any importance but in the context of the present special plea it is most important to show who actually was guilty of the alleged joint wrongdoing.

428 According to the special plea, the plaintiffs alleged in their action against "Dubai World" that these parties were guilty of the "same or similar delictual deeds" as those relied upon in the action against the present defendants, including that a collusive agreement was alleged between the Dubai World defendants and the present defendants. No analysis of the pleadings was undertaken either in cross-examination or in argument to show that this is true, in the sense that the same or similar allegations were made but I shall assume for present purposes that this is correct in that the same or similar allegations were relied upon in both actions.

429 The special plea proceeds to assert that "it is alleged" that the Dubai World defendants and the present defendants "**are**" joint wrongdoers as the present defendants "in that" they jointly caused the damages suffered by the present plaintiffs.

430 The action against the Dubai World defendants was settled in terms of a written deed of settlement concluded on 20 April 2017, which I shall call the Dubai World settlement. Clause 5 of Dubai World settlement provides that the settlement was arrived at

> without any admission of liability and purely for the sake of dispensing with the need to pursue any formal litigious process and in addition to afford the Fred Daniel Parties the

opportunity exit their investment in the Cradle of Life business.

431 The Dubai World settlement contained several suspensive conditions. There was no evidence about them but I shall assume they were fulfilled.

432 In clause 4 of the Dubai World settlement, an obligation was imposed on Nkomazi Game Reserve (Pty) Limited or its nominee to buy Portion 6 of the farm Nkomazi 757 JT from Cradle of Life Lodge (Pty) Limited, one of Mr Daniel’s companies for R20 million. Again, there was no evidence in this regard but I shall assume that this transaction went through and Cradle of Life Lodge (Pty) Limited was paid the R20 million purchase price.

433 The defendants allege that the Dubai World settlement agreement was given effect to by all the parties and each party gave effect to it by payment of moneys and otherwise by performance pursuant to its terms. I shall accept that this is correct

434 The thrust of the defence advanced, as I understand it, is that the defendants are absolved by s 2(13) of the ADA which provides as follows:

> Whenever judgment is in any action given against any joint wrongdoer for the full amount of the damage suffered by the plaintiff, or whenever any joint wrongdoer has agreed to pay to the plaintiff a sum of money in full settlement of the plaintiff's claim, and the judgment debt or the said sum of money has been paid in full, every other joint wrongdoer shall thereby also be discharged from any further liability towards the plaintiff.

435 The section speaks of a "joint wrongdoer". Counsel for the defendant submitted that this must be read to mean "alleged joint wrongdoer". Counsel were driven to make this submission because there is no evidence at all that any of the Dubai World companies, or any individual for whose actions any such Dubai World company could be held vicariously liable, was complicit in the collusive agreement I have found proven by the plaintiffs.

436 Moreover, in paragraph 21A of the defendants' plea dated 19 May 2023, the defendants record that the plaintiffs had withdrawn all allegations of wrongdoing against Dubai World. In the evidence before me, there was no mention of the alleged joint wrongdoing of the Dubai World companies. So they were not even alleged joint wrongdoers at

that stage. They were, at best, previously alleged joint wrongdoers against whom such allegations had been withdrawn.

437 I find no justification in the ADA for counsel's submission that a joint wrongdoer is someone who at some stage was alleged to have been a joint wrongdoer. To my mind, a defendant who seeks to rely on s 2(13) of the ADA must prove that the person whom the defendant characterises as such is indeed a joint wrongdoer. On this ground alone the special plea cannot succeed.

438 Moreover, s 2(13) deals firstly with the situation where judgment is given against any joint wrongdoer for the full amount of the damage suffered by the plaintiff - which is not the case here - or, secondly, where any joint wrongdoer has agreed to pay the plaintiff "a sum of money" in full settlement of the plaintiff's claim.

439 The Dubai World settlement agreement does not reflect that Nkomazi Game Reserve (Pty) Limited agreed to pay the plaintiffs in the present case a sum of money in settlement of their claim. It paid the sum of money as the purchase price for Portion 6 of the farm Nkomazi 757 JT.

440 To my mind the text of s 2(13), seen in its context and in light of its purpose, does not apply to a situation like the present. On this ground too, the special plea must fail.

Special plea that no delictual action lies on the present facts: *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality*

441 It was submitted by counsel for the defendants that in the present case I should apply the principles laid down in the Constitutional Court decision of *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality*.[36]

442 In *Esorfranki,* the dishonest course of conduct of a single organ of state caused the ultimate plaintiff pure economic loss. The dishonest conduct was committed in the course of a public tender. The predecessor in the Interim Constitution to s 217 of the Constitution was thus engaged. The Constitutional Court held that on the facts of that case, the remedy of the plaintiff lay in s 8(1) of PAJA and not in delict.

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36 2023 2 SA 31 CC

443 The present case involves multiple courses of conduct by organs of state but also members of the provincial executive whose conduct cannot be characterised as administrative action, as well as members of the public, used by those members of the executive as their proxies to break the law through the threat of mob violence and actual physical injury to property.

444 In *Esorfranki*, the intensity of the defendant's fault was held to be relevant to the wrongfulness enquiry.[37] In that case the fault related to a single course of conduct related to a single tender. In the present case, the fault of the defendants cannot be restricted to their own individual wrongful actions but must properly be seen as a course of conduct which, I believe it is no exaggeration to say, weaponised numerous aspects of the law enforcement and regulatory mechanisms in the province to persecute one man and frustrate his entirely lawful and, indeed, admirable dream.

445 This is not an instance in which monetary compensation would, in the language of s 8(1)(c)(ii) of PAJA, be appropriate only in an exceptional case. Monetary compensation is, in my judgment, the only conceivable remedy which would go some way toward redressing the wrong which has been done to Mr Daniel.

[37] *Esorfranki*, para 42

446 I therefore distinguish *Esorfanki* from the present case and hold that it is no bar to the recognition of the delictual remedy which, in my judgment, the facts in this case demand. I asked counsel during argument if they knew of a comparable case in our jurisprudence. They could not point to one and I know of none. I hope there will never be another such case. Justice demands that this finding of fault on the part of the defendants be recognised by a delictual remedy and a consequent award of damages.

Special plea of lack of jurisdiction

447 Counsel for the defendants submitted that the jurisdiction of this court is ousted by s 22 of the RLRA which provides for the jurisdiction of the Land Claims Court to the exclusion of any other court to determine, in brief, rights to restitution of rights in land, compensation and the like for dispositions of land and the interpretation or application of and constitutional matters relating to the RLRA and certain matters relating to labour tenants.

448 The short answer to this submission is that none of the rights or compensations payable under the RLRA or interpretations contemplated in s 22 or, indeed any matter assigned to the exclusive

jurisdiction of the Land Claims Court, are at issue here and I do not pronounce on any such matter.

449 I have made certain broad observations and findings in this judgment on matters which are no doubt incidental to issues within the jurisdiction of the Land Claims Court but are also, in my view, incidental to the jurisdiction of this court. I find nothing in the RLRA which ousts this court's jurisdiction to have regard to matters within the jurisdiction of both courts.

450 The Land Claims Court has, under s 22(2)(c) of the RLRA, express jurisdiction to decide matters not ordinarily within its jurisdiction but incidental to an issue within its jurisdiction, where that court considers it in the interests of justice to do so. It would be absurd to interpret the RLRA to oust the jurisdiction of this court to do the same.

451 This special plea must therefore be dismissed.

Special plea of *lis pendens*

452 The defendants raised the defence of *lis pendens* in a special plea. The party raising this defence must prove that there is pending litigation between the same parties or their proxies, based on the

same cause of action as is raised in the proceedings in which the defence is raised and that the subject matter in both proceedings as set out in the respective sets of pleadings is substantially the same.[38]

453 The contention is that the case or cases in the Land Claims Court bring the present case within the ambit of the defence.

454 I disagree. The present case is between different parties to those in the Land Claims Court cases (although the two sets of cases have some parties in common), the causes of action are totally different, and the subject matter as set out in the respective sets of pleadings are totally different. The Land Claims Court cases are based on causes of action for relief arising from the Restitution Act and the present case is for delictual damages.

455 *Lis pendens* is a discretionary remedy. To the extent that *lis pendens* is remotely relevant, the cases in the Land Claims Court have dragged on for more than twenty years with no resolution anywhere in sight. This case too has dragged on but much of the delay has been caused by factors beyond the control of the plaintiffs and in this case at least the trial has been completed and this judgment will determine the rights of the present parties on the present cause of action. Had I

38 Amler's Precedents of Pleadings 7th ed 263-4

reached the question of discretion, I would have exercised it against the defendants on this issue.

456 The special plea of *lis pendens* must therefore fail.

Damages

457 The plaintiff in their particulars of claim as amended have restricted themselves to damages allegedly suffered by Grand Valley in two respects. The first of these is said to be the difference between the market value of the Grand Valley lands sold to Dubai World and the amount actually paid for those lands. In this regard, oral evidence was given by valuers called by the plaintiffs. In their evidence they accepted that the valuation placed on these lands by the defendants' expert was the correct measure. The valuation of the lands by the defendant's expert was R22 060 per hectare.

458 Counsel for the plaintiffs argue that the plaintiffs should succeed in relation to the whole extent of the Project property. However this cannot be correct because in their particulars of claim as ultimately amended, the plaintiffs restrict themselves to claiming for damages suffered by Grand Valley, the 1st plaintiff.

459 The purchase price of the land sold to Dubai World under the final sale agreement (ie the northlands and the south lands) equated to R19 000 per hectare.

460 Grand Valley only ever owned the north lands. There is a relatively minor dispute between the two sets of experts as to the extent of the north lands. The plaintiffs' experts calculated the extent as being 12 469 ha, while the defendant's expert calculated the extent at 12 454 ha. Only the plaintiffs' experts ultimately testified. The defendant's expert, Ms Falck, did not give evidence to defend her area calculation. I therefore accept the calculation of the plaintiffs' experts in regard to area.

461 The simple calculation required to quantify Grand Valley's damages under this head is therefore (R22 060 - R19 000) x 12 454 = R38 109 240. Grand Valley's loss under this head of damages is therefore **R38 109 240**.

462 The second head under which Grand Valley claims damages is for the loss of the profits it would have made if the defendants' unlawful conduct had not caused it to lose the opportunity to develop the high end tourism business it envisaged.

463 The evidence in this regard is that firstly of Mr Stainforth, an investment banker with ABSA who compiled information memoranda for the guidance of prospective investors in the Project. Mr Stainforth impressed me as a witness. While the memoranda were drawn as marketing devices, I am satisfied that the projections of likely profit advanced in them were responsible, coherent and cogent. They certainly impressed some powerful financial organisations such as the Kerzner group and other investment arms in South Africa to invest substantial sums in the Project.

464 I am guided in this regard by the proposition that

> [t]he loss of the chance is itself a loss which has actually been sustained and which is, in an appropriate case, capable of sounding in damages.[39]

465 In assessing such damages:

> Whether a plaintiff has suffered damage or not is a fact which, like any other element of his cause of action and subject to what is said below, must be established on a balance of probabilities. Once the damage or loss is

[39] Quoted with approval in *Sasfin (Pty) Ltd v Jessop and Another* 1997 1 SA 675 W at 698

established a court will do its best to quantify that loss even if this involves a degree of guesswork.[40]

466 The quantificatory evidence was given by Mr Grayling, whose expertise in this field was not disputed. Mr Grayling is an accountant of many years experience. He used a discounted cashflow model (DCF model) to determine the value of the loss of profits which accords with the best valuation practice as set out in the International Valuation Standards and International Private Equity Valuation guidelines to demonstrate and support his opinion. He used as a date for the determination of damages February 2008, which he assessed as being the last in the series of delicts which drove Mr Daniel to abandon the Project and sell the Project land and the development opportunity to Dubai World.

467 Mr Grayling used a premium of 50% to the JSE long term equity risk premium made up as follows: a risk-free interest rate of 9%; an equity risk premium of 7%; a specific risk premium of 8% to provide for the specific risks of the Project which results in a total cost of equity/total risk premium of 24%. The reasonableness of Mr Grayling's forecasts was supported by his comparative analysis of a comparable venture, Wilderness Safaris.

[40] *Jowell v Bramwell-Jones* and Others 2000 3 SA 274 SCA para 22

468 Mr Grayling built into his figures profits he concluded would probably have been made through the Msauli Village venture and the participation of Kerzner International, with its exceptional access to the high end tourism market. At my request, he re-calculated his figures to exclude the south lands, Msauli and participation by Kerzner International. At my request too, he applied a risk premium or contingency figure of 33%, which he said was exceptionally high.

469 Taking all this into account, Mr Grayling fixed the value of the loss of the opportunity suffered by Grand Valley as a result of the delicts I have found to have been committed at **R268 million**. I shall award this sum to Grand Valley under this head.

470 The defendants argue that the plaintiffs have sought a measure of damages only available in cases of breach of contract and not in delict. I disagree. The damages claimed by Grand Valley represent the diminution in its patrimony when forced to sell its land to Dubai World at under market value and the diminution in its patrimony when forced to forego an opportunity to trade as a high end tourist destination and game reserve. Both were proved to have been caused by the defendants.

Mora interest

471 In their heads of argument, counsel for the plaintiffs ask for mora interest to run from 12 November 2024, the date on which they submit the defendants would have reasonably been in a position to establish the quantum of damages suffered.

472 I accept this submission and shall direct that *mora* interest run from this date. The *mora* interest rate applicable at the time was 11,5%.

Costs

473 I have said that this case is, as far as I know, unique in our jurisprudence. The wickedness of the conduct of the MTPA and the RLCC, acting in concert with the other parties I have found to have banded together to oppress Mr Daniel and drive him from the district, is profound.

474 In *Esorfranki*, costs were awarded against a state defendant whose employees committed a single course of conduct even though the Constitutional Court found that defendant was not legally liable to the plaintiff on the cause of action pleaded. The degree of fault and moral blameworthiness in this case is profoundly greater than in *Esorfranki*.

And in this case moreover, the plaintiffs have been substantially successful.

475 True, only one plaintiff has ultimately been successful and only two of the defendants have been found liable. I do not consider that the costs have been significantly increased by the multiplicity of parties cited. It was not argued that this was the case.

476 The plaintiffs seek costs as between attorney and client. I consider this request to be eminently justified.

Order of court

1 Judgment is granted in favour of the first plaintiff against the 1st defendant, the Mpumalanga Tourism and Parks Board, and the 4th defendant, the Regional Land Claims Commissioner, Mpumalanga Province, jointly and severally, for R38 109 240 and R268 million, ie a total of **R306 109 240**.

2 The judgment in 1 above will carry mora interest from 12 November 2024 at the rate of 11,5% per annum.

3 All the special pleas of the defendants are dismissed as against the 1st and 4th defendants.

4 The 1st defendant and the 4th defendant, jointly and severally must pay the costs of the plaintiffs as between attorney and

client, including the costs of all counsel employed by the plaintiffs from time to time. Such costs will include all reserved costs, the proceedings before the various judicial case managers, the costs of the aborted trial before Sardiwalla J and the costs of transcription of the record throughout the conduct of the case.

NB Tuchten
Judge of the High Court
25 September 2025
09h44

Heard during the period 20 January to 3 September 2025
Judgment to be handed down on 30 September 2025

For the first to seventh and eleventh plaintiffs:
Adv J Joubert
Instructed by DLBM Attorneys
Pretoria

For the eighth to tenth plaintiffs:
Adv J Berdou
Instructed by DLBM Attorneys
Pretoria

For the first, tenth, thirteenth and twenty-third defendants:
Adv AB Rossouw SC and Adv LW de Beer
Instructed by the State Attorney
Pretoria

For the fourth, seventh and eighteenth defendants:
Adv H Mpshe and Adv K Shole
Instructed by the State Attorney
Pretoria

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