



AFRIKAANS HIERBO

MONTHLY NEWSLETTER MARCH 2022

This newsletter is addressed to you as a member of the Highveld Syndication Action Group (“HSAG”) on account of you having made an investment in the Highveld Syndication Companies 15-22 and/or support of the HSAG.

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The www.hsaction.co.za website is the primary place where you will find HSAG information, subject to the disclaimer contained therein (and also applicable hereto), although emails are also sent out from time to time.

The obligation to keep us up to date of any changes to your personal and/or contact details as well as to make sure that the contents of your monthly statements are correct rests on you as HSAG member.

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1. IS THE JUDICIARY STILL THE BACKBONE OF OUR SOCIETY?

From time to time, the HSAG receive enquiries from its members about how solid the legal system is and whether the courts and judges have also been captured. Tourism Minister Lindiwe Sisulu raised eyebrows in an opinion piece earlier this year by casting deep doubt on the South African courts and the judges populating the judiciary. However, without any justifiable grounds. She accused them of being intellectually colonized and also questioned what role the Constitution had so far actually played in alleviating the plight of the poor. Regardless of her political agenda, such an attack on the judiciary follows a pattern that can also be recognized in those like Mr Julius Malema and Advocate Dali Mpofu. The most recent incident involving these two gentlemen was at last month's Judicial Service Commission interviews for a new Chief Justice. Again, *their* political agenda notwithstanding, the overall effect of the individuals' actions and words is that they are accused of planting a seed of distrust and suspicion in the minds of their followers (of which there are millions). The end of the aforesaid will be that the court whose every verdict can be questioned by the public and the faith in the legal system and courts will be broken down over the years, until no verdict (even the good, Constitutionally grounded, well-researched rulings) can be enforced anymore, simply because the public will no longer believe in the rule of law.

However, the South African judiciary has repeatedly survived unwarranted attacks like these and recently reaffirmed that even people with high political affiliations will not succeed in derailing the justice system. The watershed decision in the South African law was when the Constitutional Court sentenced the former President of the Republic of South Africa, Jacob Zuma, to prison for his blatant contempt for the judiciary and system. In addition thereto, another former high-ranking politician was recently convicted on charges of perjury and facing possible imprisonment.

Just as political villains try to sow doubt in the judiciary, so the opposition in our case over years tried to sow doubt in the minds of our investors about the end and success of our case and action. The HSAG has so far not deviated in any way from its mission and

position and is confident that justice will prevail in a final verdict, whether good or bad, for the HSAG.

The HSAG received covert threats and had been warned over the years that our opponents had “contacts in very high positions” in the political order, as well as other institutions, and that this would ultimately jeopardize its cause. The above notwithstanding, we are proud to say that only one of the 23 rulings so far had not been favourable to the HSAG. The opposite has therefore been proven: Our case has so far not only enjoyed the moral high ground, but has also been consistently based on well-founded legal principles. However, we want to stress and emphasize that we can never be a judge in our own case and therefore cannot predict any outcomes or court orders, whether successful or not.

2. RESERVE YOUR SEAT ON THE BUS AGAIN!

The HSAG has previously announced in newsletters that a deadline has been set in advance for all HSAG members to be able to benefit from a class action certification in a noteworthy manner. In international class action court cases, it is not unusual for parties to settle at the stage of certification of a class, although this did not occur in the earlier CCAF court case, when the late Mr Georgiou still litigated. Since then, however, Mr Georgiou unexpectedly passed away and new litigants and legal teams are currently involved in the litigation. However, it is no guarantee that his successors in title will follow the norm, but it is our duty to point out to HSAG members that, if the general trend is followed, such possibility is not ruled out.

The HSAG always had high regard for its loyal members and it was also found by the court at the time that such members should benefit from certification because they were paid up members. During previous settlement negotiations, it was furthermore a prerequisite of Mr Georgiou that he would only negotiate with valid claimants, and the requirement was set by him that he would only settle with paid-up members. This does not mean that, even if settlement negotiations take place, the said requirement will be

applicable. It is prudent to highlight the possibility thereof. That's one of the reasons why it is important to be on the HSAG bus!

The HSAG attorneys have still not been paid in full for their services for many years. Despite this, the HSAG management still aspires to get enough support to use the best-equipped legal team (including junior and senior counsel, if possible) and expert witnesses. Currently, only a small percentage of members are unfortunately paid up, but if everyone abided by the rules, the war chest of the HSAG would be filled. Unfortunately, people who do not make their contribution to the HSAG funding model might be disappointed in the legal process, nor share in any in the successes thereof. As the case has been on-going for seven years, everyone already knows if they can or want to be part of the process.

3. EXECUTOR SUBSTITUTED IN PROCEEDINGS

The late Mr Nic Georgiou's executor agreed to his substitution to the proceedings and acknowledged receipt of all claims against the estate. The HSAG legal team submitted members' claims in an agreed manner against the estate of the deceased Nic Georgiou, inter alia in the DECA and CCAF matters.

4. DU TOIT - MATTER

In the tongue-in-cheek Peekaboo (Now you see me now you dont) case, where the HSAG legal team was initially cited as first respondent, and then again without any knowledge removed as first respondent from the court documents, we have learned that the case has in the meanwhile been postponed due to the fact that Mr Jacques Du Toit belatedly filed court documents, amounting to about 1 200 pieces, which obviously resulted in it not being heard. Upon reviewing the pieces, it appeared that Du Toit had put together a wealth of documentation that led to these extensive pieces, and the case could not be heard.

Since Du Toit has not yet formally, in terms of the court rules, withdrawn his case and offered the usual costs with the withdrawal, said attorneys are still part of the proceedings and receive their documents therein.

5. COMMUNICATION WITH MEMBERS

Apart from the newsletters and information on the website, there are also two seasoned liaison officers who are actively promoting and involved in all HSAG WhatsApp groups (Afrikaans and English). The work these ladies do for the HSAG is very important because not only do they enhance and promote the work the HSAG does, but they must also clarify certain important questions and queries of which the vast majority are relevant and had been discussed in the newsletters over years. However, all the difficult or challenging queries should be directed through them to the HSAG steering committee, who will then discuss same or take legal advice to clarify same. It is important to mention that the basic principle of litigation by way of class action is generally no different to litigation between two individuals, namely a plaintiff, cause of action, a defendant and, mostly, the amount claimed. However, there is a huge difference between litigation between individuals and a class action against one or more individuals. One of the paramount challenges of class action litigation is communication between attorney and client(s) as well as the financial health of the matter.

Time has shown that some of opponents went so far as to pay some individuals to destabilise the class action, by mainly dissuading members from supporting the matter financially. The most important form of communication between our steering committee, the attorneys and clients are via HSAG-newsletters, telephonic, electronic and in particular, WhatsApp groups. That is why we would like to warn and discourage HSAG members from becoming involved in and participating in non-HSAG WhatsApp groups in any way. Mentioned groups are not only run by certain individuals with their own unknown agendas, but are also not conducive to our cause and objectives. The likes of Helgard Hancke, Hans Klopper and Jacques Du Toit are expected once again to do everything in

their power in the run-up to our upcoming DECA case to make the HSAG suspicious and try to derail it. Should any such information (from any source) come to light, we request that you send it immediately to hsagwhistle@gmail.com, so that the nature and origin of such message can be traced.

How sustainable and successful our actions will be, will depend on our members, but despite the unfamiliar area of class action, business rescue and other complex issues, we are still positive about being successful in our multi-billion-rand applications.

6. “OPT-IN” VS “OPT-OUT”

So far, in its Notice of Motion, the HSAG requested the Court to follow the so-called opt-out method of class actions. “Opt-out” means that “members who would otherwise be considered to fall into the class would be entitled to “opt-out” of the class, by following a prescribed procedure (Du Plessis, Max, et al., eds. *Class action litigation in South Africa*. Claremont: Juta, 2017, p 12). Opposed thereto, “opt-in” means that “potential class members specifically need to indicate that they consent to be bound by the judgement and to be represented by the proposed class representatives, by in some prescribed manner indicating their intention to become class members” (Du Plessis, Max, et al., eds. *Class action litigation in South Africa*. Claremont: Juta, 2017, p 12).

Unfortunately in the HSAG case amongst other things due to various factors, eg., the long period of time, wide publication, poor financial support, as well as fairness considerations, taken into account, the HSAG with its group members' funding model can no longer carry and support the Opt-Out dispensation.

The HSAG management is accordingly is considering instructing the legal team to amend the current dispensation from opt-out to Opt-In. This dispensation was previously approved by the High Court upon certification of the CCAF case, in which a large number of facts and circumstances are exactly the same as in the DECA case.

This may mean that everyone will have the opportunity to be part of the class action but, as requested before, against payment of a registration fee and/or an amount that will be considered with amounts that paid-up members have already paid in recent years.

7. (WHEN, HOW MUCH AND) WHY?

We have already in our previous newsletter briefly outlined the investors' questions (see January and February 2022) and from time to time we also receive enquiries about what membership fees are used for. These questions have been answered thoroughly and repeatedly, since 2015, and have even served before the High Court.

The subject has been repeatedly discussed over the years and the HSAG funding model has already been submitted to court – and approved. It's no secret that our opponents are trying to take advantage of it to undermine the HSAG funding model, but, the mutual trust between the HSAG steering committee and their legal team is still keeping the matter on track.

Curiously enough, and every time we are on our way to court, there are one or two people who want to determine once again how the funding model works. Mr Georgiou also tried to do everything in his power with the CCAF certification to fight the model, but the court eventually found in favour of the HSAG model and even provided reasons for it. From the outset, the HSAG has always been a voluntary organisation and its valued members have voluntarily contributed to making it a success. If it were not for this core group of members who not only believed in their own cause, but also supported the HSAG, its legal team and all those involved in its struggle, the matter would never have come from the ground up and progressed to where it is not now.

The HSAG has always been transparent but will obviously never trumpet our strictly confidential matters to the outside world and even disclose or discuss clients' information

on any platforms. This is one of the big unknown factors that our opponents are dealing with shortly after starting the case.

In terms of external funding, the HSAG did enquire between 2015 and 2017 to see if there were any financial institutions, or perhaps even major players, who wanted to get involved, but none were interested. The reason: that no one wants to take any risks against a private individual with a poor track record.

8. LOOSE CANNON ON DECK?

The HSAG has once again been mentioned in a newsletter that one Mr Deon Pienaar addressed to his supporters. We would like to make it very clear that the HSAG has the greatest respect and esteem for Mr Deon Pienaar's motives and objectives, who, as a layman, without any guidance from a legal practitioner or team, has his case against several respondents (including the Reserve Bank and other institutions and persons). However, he is in no way part of or affiliated with the HSAG and we distance ourselves entirely from his proceedings and statements.

Despite his absolute belief in his cause and perseverance, however, there are certain serious questions that need to be asked about the way it is driven. A lack of proper legal assistance can easily lead to an applicant with a meritorious case unknowingly firing lethal ammunition in the wrong direction, thereby harming not only himself, but also innocent parties.

In addition, a potential good cause is thwarted and eventually swept off the table by procedural red tape and thus cannot come to its rightful place. The question has been asked whether actions like these could not ultimately have the same effect as a loose cannon on the deck of a warship.

The HSAG has so far not bothered to get directly involved in these fights, but it is very clear from the court documents that the respondents in the said case do not turn a blind

eye. Statements have been made, such as, for example, that the applicant (Mr Pienaar) faces a material obstacle; that the chances of success in the court proceedings are extremely small, and that there is a real possibility that Mr Pienaar will be forced to pay all legal costs. It is well known that over the years Mr Pienaar has lost significant assets and his business due to the unfortunate incidents and he has all our sympathy for it.

In his newsletter, Mr Pienaar refers to the so-called PICKVEST saga. It should be noted that several groups and individuals have acted in matters concerning Pickvest and it is not certain from the newsletter whether he is referring to the HSAG, but rather to the CCAF and DECA matters. If he had read the CCAF court ruling, he would have noticed that the court precisely distinguished between CCAF and the HSAG, as well as the fact that there are only 1800 members in ranks of CCAF, which means that the HSAG's membership has not changed. It also appears that Mr Pienaar unfortunately has no insight into understanding the dynamics of the HSAG and that he is of the opinion that only paid-up members are represented. The court also ruled on this and ruled that, although there are significant benefits for paid-up members, it does not exclude any other persons.

We have previously reported on the well-known expression of “You cannot fight City Hall” (see August 2020), in which we refer not only to the fierce criticism of the court, but also to the disdain of the respondents in Mr Pienaar's matters.

Consequently, the HSAG can unfortunately not attach any weight to any remarks (which are in any case erroneous) made by Mr Pienaar, and we will not comment on them.

9. PROGRESS IN DECA CASE

The lapse of time in the joining of the executor as a party to the proceedings has expired and the executor has not lodged any objections to form part of the proceedings. In effect, it simply means that the case continues as if the executor is in the shoes of the late Mr

Georgiou. It is therefore clear that the executor does not apply the same procrastination tactics as his predecessor in title. We trust that the case can go its full course and be settled, as intended. After all, it will not only be in the interest of justice and the HSAG, but also the heirs and successors in title, that the case can be settled sooner rather than later.

Inquiries were made to the executor during mid-March regarding his previous request to first be given time to meet with the legal team and family. The executor replied that he would only meet with his legal representative, Mr Tintinger, on Friday 19 March and we look forward to being informed of proceedings in the future. To date, we have not received any such feedback and a follow-up letter has been sent.

We are still confident that the case will be heard on 30 May 2022. One of the respondents indicated that he would like to have clarity about some aspects regarding the HS21-B shareholders earlier during a case management meeting, and two dates have already been arranged for this. Unfortunately, the date did not suit everyone and we look forward to the requested case management meeting taking place soon.

10. PROGRESS IN THE CCAF CASE

The CCAF legal team had a busy and productive month in respect of the procedural matters involving the estate late of Mr Nicolas Georgiou. Because Mr Georgiou passed away, the litigation proceedings will continue against Mr Georgiou's estate. The CCAF legal team has been in continuous contact with the Executor's Agent, and we confirm that the Claims in the CCAF matter have been formally lodged against the Estate.

The CCAF legal team also served a Notice in terms of Rule 15(2) on the Executor of the estate late Mr Nicolas Georgiou in order to substitute the Executor of the estate, Mr Joseph Victor Chemaly N.O., as the new First Respondent in the matter. The Executor appointed in respect of the estate late of Mr Nicolas Georgiou is Mr Victor Joseph Chemaly. The time has now lapsed in terms of the Court Rules for the relevant parties to

object to the Notice and thus Mr Victor Joseph Chemaly N.O. is formally the (new) first respondent in the matter. The matter will continue against the estate of the late Mr Nicolas Georgiou and all parties that currently form part of the proceedings. The Executor will thus be included and logged into the CaseLines system of the Gauteng High Courts.

Furthermore, please note that the list of Claims has been formally lodged against the estate of late Mr Nicolas Georgiou. The CCAF legal team formally lodged the Claims and the Executor's Agent, Mr Luke Saffy, confirmed receipt of the Claims that were lodged and confirmed that they will pursue the Claims and revert to us in due course.

In light of the fact that the Claims have been formally lodged against the Estate, we wish to emphasise the importance of members contributing to their own matter in order to strengthen their case and their chances of success. During the negotiations with the late Mr Nicolas Georgiou, he made it patently clear that he was only prepared to talk negotiations with paid-up members of the HSAG, and we expect this stance will also be followed by his successors in title relating to negotiations of Claims lodged against the Estate. The rationale behind this approach by the Executor will be simple in that they will only entertain bona fide HSAG claims that have not prescribed.

Now that the Executor formally forms part of the proceedings, the CCAF legal team will in due course arrange a case management meeting with all the parties to the proceedings, now including the Executor of the Estate.

11. GENERAL ENQUIRIES

A query we often receive is regarding the transfer of the shares, after the death of a loved one. We would like to remind you that this is done by Orthotouch. They are the company that handles the transfer of the shares and it is only after we have received a document from them indicating that the shares have been transferred to a new name that we can change them on our system. We are also aware of the fact that they are in Business

Rescue - however, this should have no impact on their work performance and we ask that everyone contact them on this email:

admin@orthotouch.co.za

12. IMPORTANT: USE OF THE CORRECT EMAIL ADDRESSES!

The correct use of e-mail addresses (as stipulated on our website and e-mails) as well as HSAG members' initials and surnames, syndication numbers and reference numbers (e.g. identity number, etc.) for all communications are essential and obligatory. Failure to comply herewith may lead to unnecessary delays or any reply at all.

The official and existing e-mail addresses for the HSAG are as follows:

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member etc.);
- **hsagenquiries@gmail.com** for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member);
- **hsagregister@gmail.com** for the registration and deregistration of HSAG members;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagstates@gmail.com** for all estate related questions.

The official and existing e-mail addresses for CCAF (HS 21 & 22 certified class action) are as follows:

- accounts@ccaf.co.za for proof of payments

- admin@ccaf.co.za for the official request to pay registration fees over 6 months form
- enquiries@ccaf.co.za for all other CCAF questions and enquiries

If an investor or any person sends an email to the wrong address, it will result in the email not receiving the speedy or necessary attention, if any. If you do not wish to receive any further emails, please inform us thereof in writing.

13. IMPORTANT GENERAL TERMS AND CONDITIONS

The general and repetitive terms, conditions and other general information that was previously contained in the Newsletter, is now available on the HSAG website at www.hsaction.co.za and can directly be accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

The HSAG Steering Committee wishes prosperity and success to each and every member for the foreseeable future.

Kind regards

HSAG Steering Committee

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