

S U M M O N S

CASE NO: 2723/2021

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between:

PIETER VAN AARDE FERREIRA

First Plaintiff

ENDULINI FRUIT (PTY) LTD

Second Plaintiff

ENDULINI SUNDAYS RIVER FRUIT (PTY) LTD

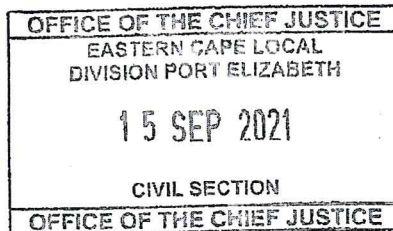
Third Plaintiff

GALACTIC DEALS 138 (PTY) LTD

Fourth Plaintiff

and

NATHAN GEFFEN



First Defendant

JOSEPH CHIRUME

Second Defendant

GROUNDUP

Third Defendant

COMMUNITY MEDIA TRUST (PTY) LTD (NPC)

Fourth Defendant

To the Sheriff or his deputy:

INFORM

NATHAN GEFFEN, a major news editor, whose further names and particulars are unknown to the Plaintiffs, c/o GroundUp, Suite 08, First Floor, South Block, Tannery Park, 21 Belmont Road, Rondebosch.

(hereinafter called the First Defendant);

And inform

JOSHEPH CHIRUME, a major freelance reporter whose further names and particulars are unknown to the Plaintiffs, c/o jchirume70@gmail.com and at c/o GroundUp, Suite 08, First Floor, South Block, Tannery Park, 21 Belmont Road, Rondebosch.

(hereinafter called the Second Defendant);

And inform

GROUNDUP, a firm operating as a news agency from suite 08, First Floor, South Block, Tannery Park, 21 Belmont Road, Rondebosch.

(hereinafter called the Third Defendant);

And inform

COMMUNITY MEDIA TRUST (PTY) LTD (NPC), a non-profit company registered as such in terms of the laws of South Africa under the registration number 1998/021731/08 with its

registered office at Suite 08, South Block, Tannery Park, 23A Belmont Road, Rondebosch.

(hereinafter called the Fourth Defendant);

THAT

PIETER VAN AARDE FERREIRA, a major farmer and businessman residing at Endulini Landgoed, Patensie.

(hereinafter called the First Plaintiff);

And

ENDULINI FRUIT (PTY) LTD, a private company incorporated as such in terms of the laws of South Africa and has its principal place of business and head office at Endulini, Patensie.

(hereinafter called the Second Plaintiff)

And

ENDULINI SUNDAYS RIVER FRUIT (PTY) LTD, a private company incorporated in terms of the laws of South Africa and has its head office at Endulini, Patensie.

(hereinafter called the Third Plaintiff)

And

GALACTIC DEALS EC 138 (PTY) LTD, a private company incorporated in terms of the laws of South Africa and has its head office at Endulini, Patensie.

(hereinafter called the Fourth Plaintiff)

The Plaintiffs hereby institute action against the Defendants in which action the Plaintiffs claim:

SEE ATTACHED PARTICULARS OF CLAIM

INFORM the First to Fourth Defendants further that if the Defendants dispute the claim and wish to defend the action, the Defendants shall:

- (i) Within **30 (Thirty)** days of service upon the First to Fourth Defendants of this summons file with the Registrar of the High Court of South Africa (Eastern Cape High Court , Port Elizabeth) situated at 2 Bird Street, Central, Port Elizabeth notice of the Defendants' intention to defend and serve a copy thereof on the attorneys of the Plaintiff which notice shall give an address (not being a post office or *poste restante*) referred to in Rule 19(3) for the service upon the Defendants of all notices and documents in the action;
- (ii) Thereafter, and within **20 (TWENTY)** days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a plea, exception, notice to strike out, with or without a counterclaim.

INFORM the Defendants further that if they fail to file and serve notice as aforesaid, judgment as claimed may be given against them without further notice to them, or if, having

filed and served such notice, Defendants fail to plead, except, make application to strike out, or counter-claim, judgment may be given against the Defendants.

And immediately thereafter serve on the Defendants a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

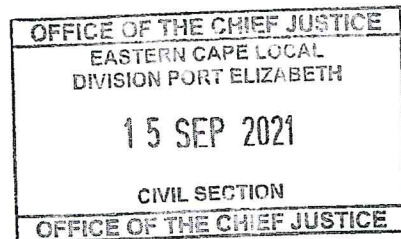
DATED at PORT ELIZABETH this 14TH day of SEPTEMBER 2021.



SCHOEMAN OOSTHUIZEN INC.
Plaintiff's Attorneys
167 Cape Road
PORT ELIZABETH
Ref. WM Nelson/ C02315
Tel: (041) 373 6878
E-mail: pas@soattorneys.co.za

T.W. Reth

REGISTER OF THE HIGH COURT



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

CASE NO: /2021

In the matter between:

PIETER VAN AARDE FERREIRA First Plaintiff

ENDULINI FRUIT (PTY) LTD Second Plaintiff

**ENDULINI SUNDAYS RIVER FRUIT (PTY)
LTD** Third Plaintiff

GALACTIC DEALS 138 (PTY) LTD Fourth Plaintiff

and

NATHAN GEFFEN First Defendant

JOSEPH CHIRUME Second Defendant

GROUNDUP

Third Defendant

COMMUNITY MEDIA TRUST (PTY) LTD

(NPC)

Fourth Defendant

PARTICULARS OF CLAIM

1. The First Plaintiff is PIETER VAN AARDE FERREIRA a major farmer and businessman residing at Endulini Landgoed, Patensie.
2. The Second Plaintiff is ENDULINI FRUIT (PTY) LTD, a private company incorporated as such in terms of the law of South Africa which is engaged in fruit farming *inter alia* on farms in the Gamtoos River Valley, has its principal place of business and head office at Endulini, Patensie and which together with the Fourth and Fifth Plaintiffs trades under the name of Endulini.

3. The Third Plaintiff is ENDULINI SUNDAYS RIVER FRUIT (PTY) LTD a private company incorporated as such in terms of the law of South Africa which is engaged in fruit farming *inter alia* on farms in the Sundays River Valley, has its head office at Endulini, Patensie and which together with the Third and Fifth Plaintiffs trades under the name of Endulini.
4. The Fourth Plaintiff is GALACTIC DEALS 138 (PTY) LTD a private company incorporated as such in terms of the law of South Africa which is engaged in fruit farming *inter alia* on farms in the Gamtoos and Sundays River Valleys, has its principal place of business and head office at Endulini, Patensie and which together with the Third and Fourth Plaintiffs trades under the name of Endulini.
5. The First Defendant is NATHAN GEFFEN, a major news editor, whose further names and particulars are unknown to the Plaintiffs, of c/o Ground Up, Suite 08, First Floor, South Block, Tannery Park, 21 Belmont Road, Rondebosch.
6. The Second Defendant is JOSEPH CHIRUME, a major freelance reporter whose further names and particulars and geographic address are unknown to the Plaintiffs. On 7

September 2021, pursuant to an application by the Plaintiff's to this Court under case number 2472/2021, the Plaintiffs were granted leave to serve the summons and particulars of claim in this action on the Second Defendant by way of electronic mail at the electronic mail address: jchirume70@gmail.com and by delivering a copy thereof to the Third Respondent (the address of which is as pleaded in the following paragraph). A copy of the order in the foregoing terms is attached hereto marked **FF1**.

7. The Third Defendant is GROUNDUP, a firm operating as a news agency from Suite 08, First Floor, South Block, Tannery Park, 21 Belmont Road, Rondebosch.
8. The Fourth Defendant is Community Media Trust (Pty) Ltd (NPC), a non-profit company registered as such in terms of the laws of South Africa under registration number 1998/021731/08 with its registered office at Suite 08, South Block, Tannery Park, 23A Belmont Road, Rondebosch.
9. The First Plaintiff, together with the estate of his father, the late Solomon Ferreira (who was alive at all times material to

the events pleaded hereunder) (collectively “the Ferreira Family”):

9.1. holds controlling interests in the Second, Third and Fourth Plaintiffs, which in turn operate:

9.1.1. a number of farms located *inter alia* in the Gamtoos River Valley and the Sundays River Valley areas, including that known as Endulini Fruit Farm, Patensie, and which produce primarily high quality citrus fruit for export;

9.1.2. a fruit packing plant;

9.1.3. a fruit cooling plant;

9.1.4. logistical and transport operations;

9.2. and the First Plaintiff is responsible for the executive management of the Second, Third and Fourth Plaintiffs.

10. The Second to Fourth Plaintiffs, their farming business and other ancillary operations are universally known as Endulini and the use of that name would be immediately recognised throughout the farming and business community in South

Africa and by their customers in South Africa, internationally and the general public, particularly in the Eastern Cape as referring to the aforesaid business and operations.

11. As the second and third generation of the Ferreira Family further to develop and run the business, Endulini, the First Plaintiff and his late father until his death, together constituted the public face of Endulini and they were widely recognised, not only in South Africa and the Eastern Cape in particular but also internationally as the farmers who run the Second to Fourth Plaintiffs under the name Endulini and the First Plaintiff continues to be recognised in that capacity.
12. The Third Defendant operates under the management of the First Defendant; employs a number of full-time reporters; is associated with a number of freelance reporters and publishes stories, articles and opinion pieces exclusively on-line on its website, which publications it makes available to all-comers for re-publication.
13. The Third Defendant was established by the Fourth Defendant and reports to its board of directors.

14. On 13 November 2018, at the instance of the First Defendant, the Third Defendant wrongfully and intentionally published a report ("the Report") written by the Second Defendant, by posting it on the Third Defendant's website where it was immediately available to be read by any person in the world with access to the Internet, including throughout the area of jurisdiction of this Court. A printed copy of the Report in the form it was published is annexed hereto marked **FF2**.
15. In particular, on 13 November 2018 the Plaintiffs' attorney, Dr Schoeman Oosthuizen, (the Plaintiffs having been informed in advance by the First Respondent that the Third Respondent would proceed to post the report on its website on that date) obtained access to the website and read the Report in his office in Port Elizabeth and the Report was thereby published within the jurisdiction of this Court.
16. The Report was published under the heading: "*Farm workers demand dividends from black empowerment scheme*" with a sub-heading reading "*They have accused Endulini Fruit Farm of fronting in order to get land rights*". A photograph is prominently displayed under the heading and above the text of the Report, below which is a caption reading: "*Farm worker,*

Buyelwa Kota, leads her fellow workers in march to Endulini Fruit Farm in Patensie on Saturday. They have accused the farm owner of failing to pay out workers expecting to benefit from the company's share scheme".

17. The Report then reads as follows:

"On Saturday, about 100 farm workers and their supporters marched to Endulini Fruit Farm in Patensie, Eastern Cape, to hand over a list of demands to managers. The farm is a leading fruit exporter.

Among their demands was a call for higher hourly wages as well as concerns with the company's profit-sharing scheme. Joined by a large police escort, workers from Kouga, Addo and Kirkwood sang and marched several kilometres through the streets of Patensie. They then handed over a petition with 14 demands.

One of the march organisers, Msingathi Mbandana said one of the main issues at Endulini started in 2000, when the farmer entered into a profit-sharing scheme with certain workers.

'This was conveniently done in order for the farmers to get land from government at a discount, purporting to be promoting black empowerment. They also got water rights and other benefits', he said.

Mbandana said the property acquired by the farm owner was developed into prime agricultural land. 'The workers whose names he used to get that land and water rights are living in poverty. They don't even know how much the dividends are because they are not allowed to see the company's financial statements,' he said.

He said some workers are given R2 000 a year but after they complained recently, trust members started receiving R3 000, he said. Mbandana said workers suspected that the scheme was being mismanaged and want to hire an independent auditor to investigate.

Freddy Grootboom worked for Endulini Farm as a driver for 14 years. He left the company in 2006 for other employment prospects. He said he was one of the original 50 shareholders in the company.

'I never got anything from the start. Some people were getting a few thousand rands but when I enquired they always told me to be patient. I left in 2006 and have since come to ask for my money on several occasions', he said.

'I would like my shares for all those years they did not pay me. The farmer should explain to us how the dividends are calculated and paid'.

James Pentse injured his leg while working at the farm in 2010. 'Endulini managers told me not to come back to the farm. I have been trying to get compensation for the injury but to no avail', he said. 'I was also a shareholder in the farm but they said my name is not in their system. How can my name vanish when in 2007 I was paid R2 000 from the same scheme?'

Pentse said he was forced to hire a lawyer to get the company to pay his wife's scheme benefits after she died in 2016.

At the end of the March, the group handed their petition to Endulini general manager, Charl Defin (sic). Endulini was given seven days to respond.

GroundUp contacted the Endulini (sic) on Monday and was told to call Defin on Tuesday morning. On Tuesday, GroundUp was again told that Defin was not available and would return our call. Defin had not responded to calls or emailed questions by the time of publication."

18. At the foot of the report the following message to readers appears:

"You may republish this article, so long as you credit the authors and GroundUp and do not change the text. Please include a link back to the original article".
19. The references in the Report to the "farm owner" and "the farmer" would be understood by the ordinary reader to refer to the Ferreira Family and the references to "Endulini" and "Endulini Farm" would be understood by that reader to refer to the business operated by the Second to Fourth Plaintiffs, under the control of the Ferreira Family.
20. The Report read as a whole is substantially untrue and also *per se* defamatory of the Ferreira Family, the First Plaintiff, the Second to Fourth Plaintiffs and the business Endulini, as are a number of the individual assertions made therein read on their

own; on the plain meaning thereof and having regard to the implication thereof, by virtue of the reporting of the following false contentions:

- 20.1. that the Second to Fourth Plaintiffs, their business Endulini and the Ferreira Family have used their employees as a "*front*" to obtain discounted land, water rights and other benefits from the government;
- 20.2. that on 10 November 2018 employees of the business, Endulini, marched to Endulini Fruit Farm to hand demands to managers;
- 20.3. that in 2000, the Ferreira Family entered into a profit-sharing scheme with certain workers;
- 20.4. that this was done in order for the Ferreira Family to get land from government at a discount whilst "*purporting*" to be promoting black empowerment;
- 20.5. that the Ferreira Family has failed to pay out workers who expect to benefit from "*Endulini's share scheme*" (and by implication that the "*workers*" are employees of

the Second to Fourth Plaintiffs (i.e. Endulini) and that they are entitled to such benefits);

20.6. that the land ostensibly obtained by the Ferreira Family was developed into prime agricultural land, whilst "*the workers* [by implication, employees of the Ferreira Family and/or the First Plaintiff] *whose names he used to get that land and water rights are living in poverty*";

20.7. by one "Mbandana":

20.7.1.that the Ferreira Family prevent their employees from seeing the financial statements of the Second to Fourth Plaintiffs (trading as Endulini) and that they accordingly do not know what their "*dividends*" are (and by implication that Mbandana represents employees of the Second to Fourth Plaintiffs and that such employees are entitled to "*dividends*");

20.7.2.that some "*workers*" (by implication, employees of the Second to Fourth Plaintiffs trading as Endulini) are given R2000 per year and that only after they complained was this increased (the

implication being that employees of the Second to Fourth Plaintiffs, trading as Endulini, are not being paid money to which they are entitled;

20.7.3.that "*workers*" (by implication, employees of the Second to Fourth Plaintiffs trading as Endulini) suspected that the ostensible scheme was being mismanaged (by implication by the Ferreira Family and the Second to Fourth Plaintiffs) and required investigation;

20.8. by one Grootboom:

20.8.1.that he was one of 50 original shareholders in "*the company*" (by implication the Second to Fourth Plaintiffs trading as Endulini) and that he has never received money (and by implication, that he was entitled thereto);

20.8.2.that he would like his shares for the years he was not paid (by implication that the Ferreira Family and/or the Second to Fourth Plaintiffs, trading as Endulini) had withheld funds and shares to which he was entitled);

20.8.3.that the Ferreira Family should explain how the dividends are calculated and paid (implying thereby that he is entitled to dividends and that the Ferreira Family withheld information from him to which he was entitled);

20.9. by one Pentse:

20.9.1.that he was injured on duty whilst working at Endulini Fruit Farm;

20.9.2.that "*Endulini managers*" terminated his employment as a result;

20.9.3.that he was entitled to compensation for the injury (by implication from the Second to Fourth Plaintiffs, trading as Endulini) but has been unable to obtain it;

20.9.4.that he was "*a shareholder in the farm*" but has not been recognised as such by "*them*" (by implication the Second to Fourth Plaintiffs trading as Endulini);

20.9.5.that he was forced to seek legal assistance before "*the company*" (by implication the Second to Fourth Plaintiffs trading as Endulini) would pay his wife's "*scheme benefits*" upon her death.

20.10. that a petition was handed to "*Endulini general manager*" (by implication a senior manager of the Second to Fourth Plaintiffs trading as Endulini and authorised to speak on its behalf);

20.11. that the Third Defendant afforded the Second to Fourth Plaintiffs trading as Endulini and/or a senior representative thereof opportunities (by implication, adequate opportunities) to respond to telephone calls and emailed questions which it and he failed to do.

21. Alternatively to what is pleaded in paragraph 20, and in any event, the Report as a whole and the statements as set out in 20.1 to 20.10 contain the innuendo and would be understood by the ordinary reader to convey that the Ferreira Family and/or the Second to Fourth Plaintiffs, trading as Endulini:

21.1. engaged in the criminal offence of "*fronting*";

- 21.2. fraudulently established a "*profit share scheme*" in the name of employees in order to gain benefits from the government in the form of land at a discount and water rights;
- 21.3. acted unlawfully by failing to implement the "*profit share scheme*" established for the benefit of employees:
- 21.3.1. by failing to pay dividends to employees to which they were entitled;
- 21.3.2. by failing to disclose financial information to employees as shareholders in the Third to Fifth Plaintiffs to which they were entitled;
- 21.3.3. by mismanaging the "*profit share scheme*" to their own benefit;
- 21.3.4. by failing to pay and benefits accruing to employees on their deaths;
- 21.4. developed the farm property acquired from the government in terms of the aforementioned scheme at

a discount, into "*prime agricultural land*" at the expense of their employees;

and is defamatory to the above extent and was published intentionally and wrongfully accordingly.

22. The publication of the aforesaid defamatory material undermines or has a tendency to undermine the status, good name and reputation of the Ferreira Family and its members, the First Plaintiff as also the Second to Fourth Plaintiffs trading as Endulini.

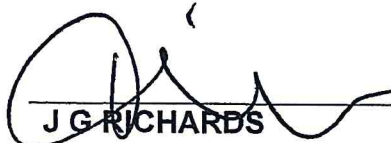
23. As a consequence, each of the Plaintiffs has suffered damage to his or its status, good name and reputation in the amount of R500 000,00 for which the Defendants are liable and which despite demand, they have failed to pay.

WHEREFORE the Plaintiffs pray for:

1. Judgement against the Defendants, jointly and severally, the one paying the others to be absolved for payment to:

1.1. the First Plaintiff in the sum of R500 000;

- 1.2. the Second Plaintiff in the sum of R500 000;
- 1.3. the Third Plaintiff in the sum of R500 000;
- 1.4. the Fourth Plaintiff in the sum of R500 000;
2. Interest on each of the amounts in 1.1 to 1.4 above at the prescribed rate from date of judgement to date of payment in full;
3. An order that the Defendants jointly and severally pay the Plaintiffs' costs;
4. Further and/or alternative relief.



J G RICHARDS
Counsel for Plaintiffs



SCHOEMAN OOSTHUIZEN INC
Plaintiffs' Attorneys
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PORT ELIZABETH
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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

PORT ELIZABETH, TUESDAY, the 07TH day of SEPTEMBER 2021

BEFORE the Honourable Madam Justice MAJIKI

Case No: 2472/2021

In the matter between:

SOLOMON PETRUS FERREIRA	1ST APPLICANT
PIETER VAN AARDE FERREIRA	2ND APPLICANT
ENDULINI FRUIT (PTY) LTD	3RD APPLICANT
ENDULINI SUNDAYS RIVER FRUIT (PTY) LTD	4TH APPLICANT
GALACTIC DEALS 138 (PTY) LTD	5TH APPLICANT
AND	
NATHAN GEFFEN	1ST RESPONDENT
JOSEPH CHIRUME	2ND RESPONDENT
GROUNDUP	3RD RESPONDENT
COMMUNITY MEDIA TRUST	4TH RESPONDENT

Having heard Advocate Ramsay, Counsel for the Respondents and having read the documents filed of record

IT IS ORDERED:

1. That leave is granted to the Applicants to serve the summons and particulars of claim in the action on the Second Respondent by way of electronic mail at the following electronic mail address: ichirume70@gmail.com and delivering a copy thereof to the Third Respondent.
2. That the Second Respondent is granted 10 (ten) days from the date of the e-mail whereby the summons and particulars of claim are served on him as contemplated in paragraph 1 above to enter an appearance to defend.
3. That the costs of this application be costs in the cause.


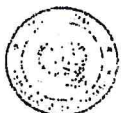
BY ORDER OF COURT



R ABRAHAMS (MS)

REGISTRAR

SCHOEMAN OOSTHUIZEN

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION PORT ELIZABETH		
Private Bag X1, Port Elizabeth 6000		
	2021 -09- 07	
ECLD-PE-005		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION PORT ELIZABETH		

Farm workers demand dividends from black empowerment scheme

13 November 2018 By Joseph Chirume

They have accused Endulini Fruit Farm of fronting in order to get land rights



Farm worker, Buyelwa Kota, leads her fellow workers in a march to Endulini Fruit Farm in Patensie on Saturday. They have accused the farm owner of failing to pay out workers who expect to benefit from the company's share scheme. Photo: Joseph Chirume

On Saturday, about 100 farm workers and their supporters marched to Endulini Fruit Farm in Patensie, Eastern Cape, to hand over a list of demands to managers. The farm is a leading fruit exporter.

Among their demands was a call for higher hourly wages (our company already pays more than the minimum wage – None of the marchers was endulini employees) as well as concerns with the company's profit sharing scheme. Joined by a large police escort, workers from Kouga, Addo and Kirkwood sang and marched several kilometres through the streets of Patensie. They then handed over a petition with 14 demands.

One of the march organisers, Msingathi Mbandana, said one of the main issues at Endulini started in 2000, when the farmer entered into a profit sharing scheme with certain workers.

"This was conveniently done in order for the farmers to get land from government at a discount, purporting to be promoting black empowerment. They also got water rights and other benefits," he said. (This is not true, we have not received land, or water to benefit)

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Mbandana said the property acquired by the farm owner was developed into prime agricultural land. "The workers whose names he used to get that land and water rights are living in poverty. They don't even know how much their dividends are because they are not allowed to see the company's financial statements," he said. (This is not true. Trust run independently and financial meeting and yearly meeting are held)

He said some workers are given R2,000 a year but after they complained recently, trust members started receiving R3,000, he said. Mbandana said workers suspected that the scheme was being mismanaged and want to hire an independent auditor to investigate.

(This is not true, the trust paid out this year 35000 per beneficiary)

Freddy Grootboom worked for Endulini Farm as a driver for 14 years. He left the company in 2006 for other employment prospects. He said he was one of the original 50 shareholders in the company. (Trust manage the beneficiary and main thing is beneficiary need to help built on the business to receive the reward. The trust clearly state if you leave you are out)

"I never got anything from the start. Some people were getting a few thousand rands but when I enquired they always told me to be patient. I left in 2006 and have since come to ask for my money on several occasions," he said.

"I would like my shares for all those years they did not pay me. The farmer should explain to us how the dividends are calculated and paid."

James Pentse injured his leg while working at the farm in 2010. "Endulini managers told me not to come back to the farm. I have been trying to get compensation for the injury but to no avail," he said. "I was also a shareholder in the farm but they said my name is not in their system. How can my name vanish when in 2007 I was paid R2,000 as dividends from the same scheme?" (He has never been a beneficiary. His leg was injured over a weekend at home. He when to doctor on the Monday. He then wanted Endulini to claim from the Compensation commissioner, that in effect would have been seen as fraud. He has not been injured at work. We had the labour department investigating us, so also an inter-ministerial team. They found with us that it is wrong and he wanted to defraud the fund.

Pentse said he was forced to hire a lawyer to get the company to pay his wife's scheme benefits after she died in 2016. (This is not true)

At the end of the march, the group handed their petition to Endulini general manager, Charl Defin. Endulini was given seven days to respond. He is not our general manager.

GroundUp contacted the Endulini on Monday and was told to call Defin on Tuesday morning. On Tuesday, GroundUp was again told that Defin was not available and would return our call. Defin had not responded to calls or emailed questions by the time of publication.