

Terminability of contracts of unspecified duration

 By [Kaelin Govinden](#)

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Thomas Carlyle once proclaimed, "Speech is silver, silence is golden". It means that speech is like silver, in that speech only lasts a while, but silence is golden and lasts an eternity.



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Be that as it may, the sounds of silence may prove deafening for a contracting party seeking to terminate and/or escape from an agreement which is silent in respect to its duration, particularly in light of the recent judgment delivered by the Supreme Court of Appeal (SCA) in the matter of *Plaaskem (Pty) Ltd v Nippon Africa Chemicals (Pty) Ltd* (574/13) [2014] ZASCA 73.

The dispute between the parties had its origin in a written agreement concluded on 25 February 2005. The issue before the court was whether the contract contained a tacit term to the effect that the contract was terminable by either party on reasonable notice. The Appellant in the High Court pleaded that the contract contained a tacit, alternatively implied term to the effect that the contract was terminable on reasonable notice.

Termination rejected

The written termination that the Appellant relied upon was rejected by the Respondent as being of no force and effect because, according to the Respondent, the contract did not contain a tacit term that it could be terminated on reasonable notice. The High Court held that the contract between the parties did not have a tacit, alternatively an implied, alternatively on a proper construction thereof, a term that the agreement was terminable on reasonable notice and that the purported notice of cancellation of the agreement by the Appellant was invalid and of no effect.

The SCA found that the contract contained no express term dealing with its duration and that there was no indication that the parties intended to be bound in perpetuity. The court also found that the contract required the parties to form and maintain a close working relationship with regular contact and interaction between them and that this strongly suggested an intention by the parties not to remain bound in perpetuity.

Legal principle

The legal principle: When parties bind themselves to an agreement which requires them to work closely together and to have mutual trust and confidence in each other, it is reasonable to infer that they did not intend to bind themselves indefinitely, but rather contemplated termination on reasonable notice. Where an agreement is silent as to its duration, it is terminable on reasonable notice in the absence of a conclusion that it was intended to continue indefinitely.

Silence may very well last an eternity. However, silence in respect to the duration of a written agreement simply proves that the wise words "better to be silent and be thought a fool, than to open ones mouth and remove all doubt" should not be heeded in all circumstances, as silence in the context of written agreements may not only render one a fool, but also put the parties to unnecessary legal costs. Termination of the contract should be contemplated by the parties at the time of the drafting thereof.

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