IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA 46/2014

In the matter between:

JPJ SCHWARTZ **Appellant**

and

SASOL POLYMERS **First Respondent**

NATIONAL BARGAINING COUNCIL FOR THE

CHEMICAL INDUSTRY **Second Respondent**

W DE J STAPELBERG N.O. **Third Respondent**

Heard: **18 August 2015**

Delivered: **5 October 2015**

Summary: Appellant guilty of breaching employer's Code of Ethics by receiving benefits from employer's service providers. At arbitration dismissal found to be procedurally and substantively unfair and appellant reinstated with final written warning valid for 12 months. Labour Court confirmed dismissal unfair but substituted reinstatement with order of 12 months' compensation. Appeal against compensation order and cross-appeal against finding of procedural and substantive unfairness. Held: Employee's misconduct constitutes serious dishonesty which leads to a breakdown in the trust relationship. Sanction of dismissal appropriate. Finding of procedural unfairness unreasonable on material before arbitrator. Appeal dismissed with costs. Cross-appeal upheld with costs.

Coram: Waglay JP, Ndlovu JA *et* Savage AJA

JUDGMENT

SAVAGE AJA

[1] The appellant, Mr JPJ Schwartz, with the leave of the court *a quo*, appeals against the judgment of the Labour Court (Van As AJ) which upheld on review the award of the arbitrator that his dismissal for misconduct was procedurally and substantively unfair but substituted his retrospective reinstatement with an order of 12 months' compensation. The first respondent, Sasol Polymers ('Sasol'), cross-appeals against the Labour Court's finding that the dismissal was unfair and the compensation order made.

[2] At the outset of the hearing both the appeal and the cross-appeal were reinstated. This followed both applications having been deemed to have been withdrawn due to the record not having been filed within the time periods provided in rules 5(17)[1] and 5(19) of the Labour Appeal Court Rules[2] with no extension of the period within which to do so having been granted by the Judge President. A letter signed by the Registrar of this Court purportedly granting an extension of the period within which to file the record was of no force and effect given that the Rules provide that it is the Judge President that may grant such extension.

[3] The appellant, who was employed by Sasol for 20 years, was charged at a disciplinary hearing with corruption in obtaining "*personal advantage in the form of monetary sponsorships/gifts/money in connection with business activities with multiple service providers*" thereby undermining his "*objectivity in making business decisions in Sasol's best interests as a result of the*

[1] Rule 5(8) states: '*The record must be delivered within 60 days of the date of the order granting leave to appeal, unless the appeal is noted after a successful petition for leave to appeal, in which case the record must be delivered within the period fixed by the court under rule 4(9)*.'

[2] Rule 5(19) states: '*If the respondent delivers a notice of intention to prosecute a cross-appeal, the respondent is for the purposes of subrule (8) deemed to be the appellant, and the period prescribed in subrule (8) must be calculated as from the date on which the appellant withdrew the appeal or on which the appeal was deemed to have been withdrawn*.'

conflict of interest with service providers". In the alternative, he was charged with a breach of Sasol's Code of Ethics in failing to disclose monetary sponsorships, gifts or money received by him from service providers.

[4] Sasol's Code of Ethics applies to all employees and emphasises responsibility, integrity, honesty and fairness on the basis of "*zero tolerance of unethical conduct irrespective of whether the consequences for Sasol resulting from the unethical conduct are big or small*". The Code expressly prohibits bribery and corruption and provides at paragraph 4.1.1 that:

> '*Sasol will not engage in, nor tolerate, any corrupt or dishonest practices such as bribery. It is unacceptable to directly or indirectly offer, pay, solicit or accept bribes in any form. No employee shall directly or indirectly request, accept, offer or grant a personal advantage in connection with a business activity*…'

[5] Paragraph 2.1.2 concerns the giving and receiving of gifts and entertainment and states:

> '*Efficient business transactions require objectivity and decisions in the best interest of the company. Employees should accordingly not give or accept gifts, entertainment, or any other personal benefit or privilege that could in any way influence, or appear to influence, their objectivity in the execution of their duties…Gifts and entertainment exceeding a nominal value should only be given or accepted with the approval of a member of group management. The acceptance or giving of such gifts or entertainment and the value thereof shall be recorded in an official record book kept by each business unit. These records shall be available for auditing.*
>
> *The giving and receiving of gifts and entertainment of more than a nominal value may only be approved by a member of group management in exceptional circumstances if such gifts are clearly in the best interest of the company*…'

[6] Sasol's revised Gifts and Entertainment Policy defines gifts of a nominal value to be those up to R500 and provides that non-compliance with the policy "*will result in disciplinary action and could lead to dismissal*".

[7] On 30 October 2009, the appellant was found guilty of both corruption and the alternative charge of a breach of the Code of Ethics on evidence that he had not disclosed his receipt of a number of gifts, sponsorships and money from certain Sasol service providers. The appellant was dismissed from his employment and, after his dismissal was confirmed following an internal appeal, the appellant referred an unfair dismissal dispute to the second respondent for determination.

[8] The evidence at arbitration was that the appellant had received from Sasol's service providers three cycling sponsorships of R7500, R1000 and R3000 for his wife; at least R1000 to participate in the Argus Cycle Tour; gifts given to his wife of perfume, earrings, an ice cream maker, frying pan and DVD player; a box of whisky; a BMW jacket valued at R5000; work undertaken without charge on his wife's titanium bicycle; and two BMW helmets for the price of one and various sums of money. In a telephone conversation recorded by his ex-wife, the transcript of which was placed into evidence, the appellant acknowledged that "…*waar oor die geskenke en goed gaan kan hulle my oor die vingers tik en dit is dit*" and that his failure to disclose receipt of money from service providers "…*gaan nog vir my ge-fire kry*".

[9] The arbitrator found the appellant's dismissal procedurally unfair in that he had not received sufficient details of the misconduct he had allegedly committed and the chairperson "*should have, as a fair and neutral chairman, suggested that the matter be postponed and they be given the documents that they requested*". In addition, the chairperson was found not to have understood either the *onus* or the meaning of an alternative charge, with the result that the appellant was found "*guilty on both charges with dismissal as the sanction in both instances. This clearly shows procedural unfairness*."

[10] The arbitrator also found the dismissal of the appellant substantively unfair. While the corruption charge was found not to have been proved, the appellant was nevertheless found to have failed to disclose the receipt of gifts and sponsorships from service providers. Somewhat inexplicably, this was in spite of the arbitrator's finding that: the rule requiring disclosure was not well known; had not been communicated nor was understood by the appellant; no

rule required that gifts to spouses be disclosed; and, no employees had made such disclosures between 2005 and 2007. The arbitrator found the sanction of dismissal inappropriate and the appellant was given "*a final written warning for failure to enter gifts and sponsorships into the Gift Register"*. In doing so the arbitrator noted: that reinstatement is the primary remedy for unfair dismissal; that the appellant's senior, Mr Braam Louw, had no problem working with the appellant if he was not guilty of corruption; and two employees (Mr Van Zyl and Mr Dolf Binneman) had both received sanctions short of dismissal for fraud and failing to disclose a sponsorship respectively.

[11] Aggrieved with the arbitrator's award, Sasol took the matter on review to the Labour Court. The Labour Court found no reason to disturb the arbitrator's finding that the dismissal was procedurally unfair on the basis that the appellant had not been furnished with sufficient particulars of the charge so as to allow him to properly prepare for his disciplinary hearing having regard to the fact that "…*corruption is a complex offence with specific legal requirements*."

[12] Mr *Pretorius* submitted for Sasol, correctly in my view, that the arbitrator took an overly formalistic and technical approach to the issue of procedural fairness and, in so doing, committed a reviewable irregularity. Viewed holistically, I am persuaded that the appellant received a fair hearing. He was notified in writing of the allegations against him, albeit in general terms but sufficiently clear for him to understand what the misconduct was he was being accused of. The charges were also explained by the chairperson at the outset of the hearing; additionally, the appellant had been made aware of the content of the allegations during the internal investigation. That the appellant clearly understood the misconduct charges is also evident from the fact that he had secured, at the hearing, the attendance of service providers who had been party to the wrongdoing to testify on his behalf. It followed that the appellant was sufficiently aware of the substance of the allegations of misconduct levelled against him and there is no indication that he was prejudiced in the manner in which he conducted his defence. The record indicates that he made no request for the hearing to be postponed and when asked by the

chairperson if he had had time to prepare on the two charges, he confirmed that he had and that his witnesses, which included Sasol's service providers, were present to testify. In all respects, the conduct of the internal disciplinary hearing therefore accorded with the guidelines for procedural fairness contained in item 4(1) of the Code of Good Practice.[3] He was informed of the allegations against him, was granted a reasonable time to prepare a detailed response to the allegations and a full opportunity to state his case at a disciplinary hearing which considered in detail the substance of the allegations against him.

[13] Given that the appellant had been made aware of the allegations against him and was able to conduct his defence appropriately, it follows that the Labour Court erred in finding that the arbitrator's conclusion of procedural unfairness was correct. As was stated in *Avril Elizabeth for the Mentally Handicapped v CCMA and Others*[4] and has been repeatedly emphasised by this Court, the balance struck by the LRA recognises not only that managers are not experienced judicial officers, but also that workplace efficiencies should not be unduly impeded by onerous procedural requirements.

[14] The Supreme Court of Appeal in *Herholdt v Nedbank Ltd* (*Congress of South African Trade Unions as Amicus Curiae*)[5] made it clear that a review of an arbitration award is permissible if the defect in the proceedings falls within one of the grounds in section 145(2)(a) of the LRA:

> *'For a defect in the conduct of the proceedings to have amounted to a gross irregularity as contemplated by Section 145(2)(a)(ii), the arbitrator must have misconceived the nature of the enquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are*

[3] Item 4, Schedule 8: Code of Good Practice on Dismissal, LRA.
[4] [2006] 9 BLLR 833 (LC).
[5] 2013 (6) SA 224 (SCA); [2013] 11 BLLR 1074 (SCA); (2013) 34 ILJ 2795 (SCA).

only of any consequence if their effect is to render the outcome unreasonable."[6]

[15] This Court in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA and Others (Gold Fields*)[7] stated that:

> *'Sidumo does not postulate a test that requires a simple evaluation of the evidence presented to the arbitrator and based on that evaluation, a determination of the reasonableness of the decision arrived at by the arbitrator. The court in Sidumo was at pains to state that arbitration awards made under the Labour Relations Act (LRA) continue to be determined in terms of section 145 of the LRA but that the constitutional standard of reasonableness is "suffused" in the application of section 145 of the LRA. This implies that an application for review sought on the grounds of misconduct, gross irregularity in the conduct of the arbitration proceedings, and/or excess of powers will not lead automatically to a setting aside of the award if any of the above grounds are found to be present. In other words, in a case such as the present, where a gross irregularity in the proceedings is alleged, the enquiry is not confined to whether the arbitrator misconceived the nature of the proceedings, but extends to whether the result was unreasonable, or put another way, whether the decision that the arbitrator arrived at is one that falls in a band of decisions to which a reasonable decision-maker could come on the available material."*[8] [Footnotes omitted]

[16] A determination as to the substantive fairness of a dismissal for misconduct requires a decision-maker to have regard to item 7 of the Code of Good Practice and to consider whether the employee was aware of the workplace rule allegedly breached or can reasonably be expected to have been aware of the rule; whether the rule has been consistently applied; whether it has been breached; and whether dismissal is an appropriate sanction to be imposed for breach of the rule. It is apparent that the Labour Court misconstrued the proper approach to such a determination when it considered the substantive

[6] At para 25.
[7] (2014) 35 ILJ 943 (LAC) with reference to *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2008 (2) SA 24 (CC) (*Sidumo*).
[8] At para 14. With reference to s145(2)(i), (ii) and (iii) of the LRA.

fairness of the appellant's dismissal as one distinct from a determination of the appropriate sanction.

[17] Nevertheless, the Labour Court in my view correctly found that the arbitrator had failed to take into account the appellant's "*disturbing conduct*" in the form of -

> '*19.1 the employee's insistence that he was unaware of the Code's requirement that he record gifts and benefits in the register;*
>
> *19.2 the employee's assertion that gifts or benefits received by his ex-wife, Ms Schwartz, did not have to be recorded in the register;*
>
> *19.3 the employee's failure to display remorse or appreciation of wrongfulness during his disciplinary enquiry or the arbitration proceedings;*
>
> *19.4 the telephone conversation between the employee and Ms Schwartz whilst he was on suspension pending the finalisation of his disciplinary enquiry in which the employee warns Ms Schwartz that he may be dismissed if she disclosed monies which he received from a service provider*.'

[18] The Court noted that whilst the arbitrator had alluded to entrapment when evaluating the taped conversation between the appellant and his ex-wife, the arbitrator had correctly allowed the evidence yet "…*did not attach sufficient weight to the various damning statements which the employee made during this conversation."* Having been allowed, it was only reasonable that the evidence as a whole be considered by the arbitrator. The Court therefore correctly concluded that a reviewable irregularity had been committed. This was so in that the arbitrator failed to attach weight to the damning statements made by the appellant and the nature and impact of the misconduct which was *'…hardly the conduct of a senior employee who is guilty of no more than contravening a policy which the [appellant], in any event and to the knowledge of the employee, does not strictly enforce. This behaviour is more in keeping with an employee who has committed serious and dismissible misconduct which he is seeking to conceal from his employer*.'

[19] The Labour Court cannot be faulted for finding that the failure to take this "*serious and incriminating behaviour into account*" when awarding retrospective reinstatement resulted in the imposition of a sanction which a reasonable decision-maker could not have reached.

[20] The employment relationship obliges an employee to act honestly, in good faith,[9] and to protect the interests of the employer so as to avoid conflicts of interest that may arise which may breach this duty.[10] The appellant was employed in a senior position as an engineering manager. His calculated silence in the face of a duty to speak amounted to a fraudulent non-disclosure or concealment of the true state of affairs[11] in circumstances in which gifts and benefits earned secretly fell to be disgorged by him with "…*little room…to avoid that consequence*".[12] His conduct was by its nature dishonest in circumstances in which he was obliged to act with honesty, diligence and good faith towards his employer and not to allow his own interests to prevail over those of Sasol.

[21] Yet the Labour Court, in my view, did not properly apply the review test as enunciated most recently by this Court in *Gold Fields* in substituting the appellant's retrospective reinstatement with an order of compensation equal to 12 months remuneration. This is so in that, having correctly found that the result was unreasonable on the material before the arbitrator, the Labour Court's conclusion that the dismissal was substantively unfair was patently incorrect given its own findings as to the serious nature of the appellant's dishonesty which subverted the interests of Sasol. The appellant's dishonesty, even in his evidence on an issue such as the time employees departed their work place on Fridays, clearly had a direct and destructive effect on the trust relationship.

[22] Mr *Rhoodie* contended for the appellant that the arbitrator's decision to order reinstatement as the primary remedy in terms of s193 of the LRA was not a

[9] *Sappi Novoboard (Pty) Ltd v Bolleurs* (1998) 19 ILJ 784 (LAC) at para 7; *CSIR v Fijen* [1996] 6 BLLR 685 (AD) 691; *Murray v Minister of Defence* [2008] 3 All SA 66 (SCA); [2008] 6 BLLR 513 (SCA); 2009 (3) SA 130 (SCA); 2008 (11) BCLR 1175 (SCA); (2008) 29 ILJ 1369 (SCA) at para 6.
[10] *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168 at 177-178.
[11] *BMW (South Africa) (Pty) Ltd v Van der Walt* [2000] 2 BLLR 121 (LAC) at para 7.
[12] *Volvo (Southern Africa) (Pty) Ltd v Yssel* 2009 (6) SA 531 (SCA) at para 14.

decision that a reasonable decision-maker could not have reached. I am unable to agree. The conclusion on sanction reached by the arbitrator was manifestly inappropriate given the appellant's dishonest conduct. It did not fall within the band of reasonable decisions to which a reasonable decision-maker may have come if proper regard had been had to the nature of the appellant's misconduct.

[23] The evidence of Mr Louw that there was 'a chance' that he could work with the appellant if he was found not guilty of corruption ('…*daar is 'n kans dat ek my mind change as al die teendele bewys word*') was not evidence that the trust relationship had not broken down given the proof of the appellant's dishonest conduct. Rather, Mr Louw's evidence that the trust relationship had been eroded as a consequence of the appellant's dishonesty stood to be accepted. Similarly, the sanctions previously imposed on Mr Van Zyl and Mr Binneman did not support a conclusion that the appellant had been treated unfairly or inconsistently. While our law requires that discipline should be neither capricious nor selective and that employees who have committed similar misconduct should not be treated differently or unequally punished,[13] this applies within reasonable bounds and subject to the proper and diligent exercise of a discretion in each individual case with fairness remaining a value judgment.[14] This Court in *Gcwensha v CCMA and Others*,[15] confirming the decision of *Irvin & Johnson,*[16] made it clear that while disciplinary consistency is the hallmark of progressive labour relations the gravity of the misconduct committed must be taken into account when considering whether the sanction imposed by the employer is fair.

[24] The extent and gravity of the appellant's misconduct permit the sanction imposed upon him fairly to differ from that imposed on other employees such as Mr Binneman who had not disclosed a once-off sponsorship which had

[13] *Chemical Energy Paper Printing Wood & Allied Workers Union and Others v Metrofile (Pty) Limited* (2004) 25 ILJ 231 (LAC) at paras 36-37; *National Union Metalworkers of SA v Haggie Rand Ltd* (1991) 12 ILJ 1022 (LAC) 1029G-H.
[14] *National Union of Metalworkers of SA and Others v Henred Fruehauf Trailers (Pty) Ltd* (1994) 15 ILJ 1257 (A) at 1264A-D; *SACCAWU and Others v Irvin & Johnson (Pty) Ltd* (1999) 20 ILJ 2302 (LAC) at para 29; *Cape Town Council v Masitho and Others* (2000) 21 ILJ 1957 (LAC) at para 14.
[15] [2006] 3 BLLR 234 (LAC) at para 36.
[16] (1999) 20 ILJ 2302 (LAC) at para 29.

been received from a service provider but who had admitted the wrongdoing (unlike the appellant). Fairness does not dictate that Sasol treat the two employees in the same manner given these distinctions. Similarly, the fact that Sasol previously gave an employee a final written warning for dishonest conduct can be of no assistance to the appellant given that the distinct nature and extent of his own misconduct.

[25] While I agree with Mr *Pretorius* that the lack of remorse shown by appellant is relevant, even if genuine remorse had been shown by him, this would only have been a factor to be considered in his favour in determining sanction and would not have barred his dismissal, remorseful or not, having regard to the seriousness of the misconduct committed.[17] In *Mutual Construction Company Tvl (Pty) Ltd v Ntombela NO and Others*[18] it was stated:

> '*…It was also significant that the third respondent elected not to own up to his misdemeanour. In other words, he showed a complete lack of remorse or contrition for what he did. Instead, he attempted to shift the blame to the site manager whom the third respondent apparently induced to signing the falsified time sheet. He had only 2½ years of service with the appellant. Even if he had a much longer service that would not (and should not) have spared him in the circumstances of this case*.'[19]

[26] Similarly, Schwartz's long period of service, while a mitigating factor, was but one of the factors to be considered. As was stated by this Court in *Toyota SA Motors (Pty) Ltd v Radebe and Others:*[20]

> '*...Although a long period of service of an employee will usually be a mitigating factor where such employee is guilty of misconduct, the point must be made that there are certain acts of misconduct which are of such a serious nature that no length of service can save an employee who is guilty of them from dismissal. To my mind one such clear act of misconduct is gross dishonesty*…'[21]

[17] *Absa Bank Limited v Naidu and Others* [2015] 1 BLLR 1 (LAC); (2015) 36 ILJ 602 (LAC).
[18] [2010] 5 BLLR 513 (LAC).
[19] At para 37.
[20] [2000] 3BLLR 243 (LAC).
[21] At para 15.

[27] A disciplinary code does not substitute an employer's discretion to impose a fair and appropriate sanction with due regard to the circumstances of a particular matter. Deviations from disciplinary sanctions provided in such a code are not only permissible but necessary where these are warranted.[22] To find differently would be to unduly limit the discretion retained to shape appropriate disciplinary responses to the circumstances of particular disciplinary infractions.

[28] In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*, it was emphasised that –

> '*In terms of the LRA, a commissioner has to determine whether a dismissal is fair or not. A commissioner is not given the power to consider afresh what he or she would do, but simply to decide whether what the employer did was fair. In arriving at a decision a commissioner is not required to defer to the decision of the employer. What is required is that he or she must consider all relevant circumstances.*'[23]

[29] The Constitutional Court noted that the commissioner in *Sidumo* found the absence of dishonesty and the absence of losses to be significant factors in favour of the application of progressive discipline rather than dismissal and while -

> '*…Mr Sidumo did not own up to his misconduct and his denial that he received training are factors that count against him. His years of clean and lengthy service were certainly a significant factor. There is no indication that the principle of progressive discipline will not assist to adjust Mr Sidumo's attitude and efficiency. In my view, the Commissioner carefully and thoroughly considered the different elements of the Code and properly applied his mind to the question of the appropriateness of the sanction*.'[24]

[30] In the current matter, the dishonest nature of the appellant's misconduct which was of such a nature as to make continued employment intolerable and

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[22] *Solidarity obo S W Parkinson v Damelin (Pty) Ltd and Others* [2014] ZALCJHB 480 (4 December 2014).
[23] [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405 (CC); 2008 (2) BCLR 158 (CC) at para 79.
[24] At para 117.

dismissal "*a sensible operational response to risk management"*.[25] It would be fundamentally unfair and unjust to expect an employer to retain in its workplace a senior employee who has shown himself guilty of dishonesty in the manner of the appellant.[26] The high premium on honesty in the workplace and the presence of dishonesty makes the restoration of trust, which is at the core of the employment relationship, unlikely.[27]

[31] It follows that the arbitration award was not justifiable in relation to the reasons given for it and fell outside of the range of decisions which a reasonable decision-maker could have made on the material before him. In the circumstances, the award falls to be set aside and replaced with an order that the appellant's dismissal of Schwartz was both substantively and procedurally fair.

[32] There is no reason in law or fairness as to why costs should not follow the result and as much was conceded by Mr *Rhoodie* for the appellant in argument.

Order

[33] In the result, the following order is made:

1. The appeal is dismissed with costs.

2. The cross-appeal is upheld with costs.

3. The order of the Court *a quo* is set aside and replaced with the following order:

[25] *De Beers Consolidated Mines Ltd v CCMA and Others* [2000] 9 BLLR 995 (LAC) at para 22.
[26] *Standard Bank SA Limited v CCMA and Others* [1998] 6 BLLR 622 (LC) at paras 38-41; *Shoprite Checkers (Pty) Ltd v CCMA and Others* [2008] 9 BLLR 838 (LAC) at para 16; *Lahee Park Club v Garratt* [1997] 9 BLLR 1137 (LAC) at 1139; *Leonard Dingler (Pty) Ltd v Ngwenya* (1999) 20 ILJ 1171 (LAC) at para 78; *De Beers Consolidated Mines (supra)* at para 22; *Rustenburg Platinum Mines Ltd (Rustenburg Section) v NUM and Others* (2001) 22 ILJ 658 (LAC) at para 22; *Matsekoleng v Shoprite Checkers (Pty) Ltd* [2013] 2 BLLR 130 (LAC) at para 48.
[27] *Miyambo v CCMA and Others* [2010] 10 BLLR 1017 (LAC); (2010) 31 ILJ 2031 (LAC) at para 16*; Toyota SA (Pty) Ltd v Radebe supra;* and *Hulett Alliminium (Pty) Ltd v Bargaining Council for the Metal Industry* [2008] 3 BLLR 241 (LC) at para 42.

'(1) The arbitration award issued by the second respondent is reviewed and set aside; and replaced with the order that the dismissal of the applicant was both substantively and procedurally fair.

(2) There is no order as to costs.'

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Savage AJA

I agree

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Waglay JP

I agree

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Ndlovu JA

APPEARANCES:

FOR THE APPELLANT:	Mr J Rhoodie of Bester & Rhoodie Attorneys
FOR THE FIRST RESPONDENT:	Mr D O Pretorius of Fluxmans Inc.