REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JR 2327/09

In the matter between:

NATIONAL UNION OF MINEWORKERS	**First Applicant**
MPHEZULU MAPHANGA	**Second Applicant**
and	
COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION	**First Respondent**
MARK HAWYES N.O.	**Second Respondent**
NKOMATI JOINT VENTURE	**Third Respondent**
Heard on:	**02 November 2011**
Delivered on:	**20 January 2012**

JUDGMENT

BOQWANA AJ

Introduction

[1] This is an application to review and set aside an arbitration award issued by the second respondent ("the commissioner") under case number MP8002-08 on 28 May 2009 in terms of section 145 of the Labour Relations Act [1]("the LRA"). The commissioner found that the dismissal was both substantively and procedurally fair.

[1] Act No. 66 of 1995.

[2] The applicants filed an application for condonation for the late filing of the review application. The third respondent opposed the condonation application.

Background facts

[3] The second applicant was employed by the third respondent as a Load Holding Dumping ("LHD") Operator at the time of his dismissal.

[4] The second applicant was a member of the first applicant ("the union") and had been elected as a shop steward employed by the third respondent.

[5] He was dismissed by the third respondent subsequent to the following charges:

'(1) Fraud and/or dishonesty in that on the 11th September 2008 you booked (8) hours overtime which you were not entitled.

(2) Intimidating/threatening behaviour and/or gross insubordination in that on the 22nd September 2008 you acted disrepectuly/threaningly towards your supervisor (George Ferns) and two other company officials.

(3) Intimidation/threatening behaviour in that on the 25 September 2008 you threatened your supervisor Patrick Sihlangu over the phone.'[2]

[6] The union referred the second applicant's dismissal to the first respondent ("the CCMA"). The commissioner dismissed the application finding the dismissal to be both substantively and procedurally fair.

[7] The third respondent alleges that on or about 09 September 2008, the second applicant asked for permission from one George Ferns ("Ferns"), a shift supervisor, not to work night shift of 10 September 2008, as he wished to attend a meeting scheduled for 11 September 2008 between the union and management of the third respondent in his capacity as a shop steward. Ferns testified that he agreed to this proposal and it was understood between him and the second applicant that the shift of 10 September 2008 to the morning of 11 September 2008 would not be overtime.

[2] See Notice to attend inquiry page 18 of the Bundle of documents

The second applicant however claimed for overtime of eight hours whereas he had not worked.

[8] The alleged overtime claimed appears in a gang register report dated 11 September 2011.[3] The practise with regard to overtime was that employees who worked overtime were required to capture their names, signature and the amount of overtime worked on the gang register report. The third respondent alleges that the second applicant affixed eight hours on the aforesaid gang register. The second applicant disputes this.

[9] A statement from one Glory Nkosi ("Nkosi") was considered at the arbitration hearing. Nkosi stated that the second applicant came asking for overtime from her when she asked him to complete the gang register report, he did not complete the section on hours worked. The following day, Nkosi asked the second applicant to complete the hour's section. Nkosi alleged that she did not see the second applicant entering the hours as she was busy doing work in her office. The gang register is kept at the conference room in order to allow the shift to have access of signing even if time keeping personnel is not in their offices.

[10] The second applicant contented that the numeral eight was affixed by someone else and not him. The said figure was apparently written with a red colour pen whereas the rest of the document was written in a blue colour pen.

[11] The third respondent employed the services of the handwriting expert, Leon Esterhuizen. Esterhuizen gave expert evidence at the arbitration hearing. Esterhuizen concluded that in his opinion the numerical figure eight in the gang register reported was inserted by the second applicant.

[12] With regard to the second charge, the third respondent contended that, when the second applicant was confronted about the allegations of claiming overtime that was not worked, he yelled and swore at Ferns and others adopting a threatening and an insolent stance towards Ferns and other officials of the third respondent. He allegedly threatened members of the third respondent with a strike if any charges were brought against him.

[3] See page 52 Bundle of documents

[13] With regard to the third charge, Patrick Sihlangu ("Sihlangu") testified that whilst he was off duty he received a phone call, which he believed to have been from the second applicant because he recognised his voice. The person told him that 'either one of us must die'. Sihlangu further testified that he later received a call from a person who identified herself as the second applicant's wife. This apparently led to Sihlangu laying a charge of intimidation against the second applicant with the police.

Grounds for review

[14] The applicants allege that the commissioner committed misconduct, gross irregularities and had exceeded his powers. Applicants have listed 26 grounds for review many of which are repetitive. The list of grounds can be summed up as follows:

14.1 The first set of grounds deals with the allegation of fraud that the second applicant had inserted an eight in the gang register claiming overtime for which he did not work. In this regard, the commissioner's finding is attacked on the following grounds:

14.2 The commissioner should have found that Esterhuizen was not well qualified as an expert and that the evidence given by him was not sufficient but merely based on assumptions.

14.3 The commissioner failed to assess and compare Esterhuizen's evidence with direct evidence led on behalf of the second applicant in light of undisputed facts before him. He failed to deal with the credibility of witnesses and reliability of different versions. His findings on the probabilities of the dispute were improperly made and no sufficient reasons were given in relation to that.

14.4 The commissioner's finding that the second applicant had in fact affixed the eight for overtime in the gang register is not substantiated by evidence but based on assumption. In this regard, the commissioner failed to take into account undisputed evidence led by the second applicant.

14.5 He failed to investigate the use of two different colour pens used in a gang register. This difference should have suggested to the commissioner that two people would have written in the gang register.

14.6 The commissioner failed to caution the applicants to also bring an expert witness and to warn the applicants to put their full version to the applicants' witnesses.

14.7 The commissioner failed to determine whether the second applicant had worked on 11 September 2011 take into account that it was humanly impossible to work for 20 hours.

14.8 The second set of grounds for review deals with allegations of intimidation and threatening behaviour and/or alleged gross insubordination by the second applicant towards his supervisor George Ferns and two other officials and subsequently to Patrick Mahlangu over the telephone. In this regard, the applicants allege that the commissioner took into account irrelevant evidence of the NUM's branch attitude and this constitutes misconduct and demonstrated bias on the part of the commissioner.

14.9 The commissioner should not have drawn an inference from the second applicant raising his voice when answering questions under cross-examination.

14.10 The commissioner failed to warn the applicants' representatives against their failure to put their full version on third respondent's witnesses and on their failure to fully respond to the third respondent's case against the second applicant.

14.11 The commissioner failed to investigate the motive behind the charges.

14.12 The commissioner failed to determine the sanction and simply deferred to the decision of the employer.

14.13 The third ground for review related to the finding that the third respondent failed to consult with the NUM before charges were laid. This ground was later abandoned by the applicants.

The Arbitrator's award

[15] The commissioner found, *inter alia*, that the evidence led in relation to the first charge was circumstantial in nature and that the inference to be drawn (i.e. the second applicant was the one who affixed the eight in the gang register) must be consistent with the facts proven and that the inference must exclude all other possible inferences. The commissioner was satisfied that the expert evidence and other documentary evidence relied upon by the third respondent excluded all other inferences and found that on the balance of probabilities the eight was affixed by the second applicant in the gang register.

[16] In relation to the second and third charges, the commissioner found that the evidence led was more direct in nature. He also took into account the demeanour of the second applicant and the tone of the letter written by the NUM threatening the third respondent with a strike if they did not drop the charges against the second applicant.

[17] The commissioner found that the trust relationship had broken down and that dismissal was an appropriate sanction.

Evaluation

[18] The first issue to be determined in this matter is whether the applicants have made out a case for condonation for the late filing of the review application. If the condonation application is not successful that would be the end of the matter. If it is successful, then the court would determine whether the commissioner's arbitration award is reviewable for unreasonableness or irregularity.

[19] It is trite that the factors that must be taken into account by the court are: (a) the degree of lateness, (b) the explanation for the lateness; (c) prospects of success or *bona fide* defence; (d) the importance of the case; (e) the respondents' interest in the finality of the judgment; (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice.[4]

[4] *Foster v Stewart Scott Inc* (1997) 18 ILJ 367 (LAC) at 369C – E; and *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (AD) at 532 B - F..

[20] In *NUM v Council for Mineral Technology*[5] it was stated that in considering an application for condonation a court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both parties. Among the facts usually relevant is the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. According to the court these factors are interrelated and are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and the prospects of success on the other hand may tend to compensate for a long delay. These principles referred to by the Labour Appeal Court are consistent with the approach adopted in *Melane v Santam Insurance Co Ltd* (supra).

[21] In the *NUM* case the Labour Appeal Court also pointed out that there is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.[6]

Degree of lateness

[22] The applicants filed their review application on 24 August 2009 having received the arbitration award on 03 June 2009. The six week period expired on 15 July 2009. The application was accordingly filed almost six weeks later than the prescribed period.

Explanation for the delay

[23] The explanation given by the applicants is that the late filing of the review application is due to human error by two union officials, George Ledwaba ("Ledwaba") and one Mabapa. It is alleged that on 03 June 2009, Ledwaba received the award from the first respondent and immediately sent it to Burgersfort for it to be reviewed. On 22 June 2009, Mabapa called Ledwaba to discuss the matter on the phone. The two then agreed to send the award to the head office of the NUM.

[5] [1999] 3 *BLLR* 209 (LAC*)* at para 10.
[6] Above n5 at para 211

[24] Ledwaba did not follow up thinking that Mabapa would lodge the review application based on the information given to him by Ledwaba. Nothing happened until the second applicant inquired from Ledwaba on 18 August 2009 about the progress of the case. Mabapa told Ledwaba that he had instructed Ledwaba to lodge the review application.

[25] The NUM Head office gave a go ahead for attorneys to be appointed. Attorneys were instructed on 21 August 2009 and the review application was then lodged on 24 August 2009.

[26] This explanation is clearly not satisfactory. The applicants cannot refer to their failure to lodge the application timeously as human error. In my view, this is a clear case of negligence or not just an error.

[27] Failure to follow up with the hope that the other official has lodged the matter is not an acceptable explanation. It is unfortunate that the second applicant finds himself embroiled in the failure by union officials whom he depended on to lodge the review application on his behalf. For his part, the second applicant at least seems to have followed up on 18 August 2009 to check on the progress on his case. It is not clear when the officials advised the second applicant of the decision of the commissioner, if they did, in the first place. This court has held numerous times that there is a degree beyond which a litigant cannot hide behind the remissness of his legal representative.[7]

[28] In the circumstances, however, my inclination is to excuse the actions of the second applicant in that he did take steps to check on his case, to his surprise the officials had not taken it on review and in any case they may not even have informed him about the outcome of the arbitration. In view of the second applicant's actions in following up with the union, it is clear that he had always wanted to proceed with his case but was let down by the two union officials Mabapa and Ledwaba. The degree of lateness also does not seem to be too excessive.

[7] *Saloojee and Another v Minister of Community Development* 1965 (2) SA 135 (A) 141 B-H; *Khan v Cadbury SA (Pty) Ltd* [2011] JOL 27124 (LC); *Silplat (Pty) Ltd v CCMA and Others* [2011] 8 BLLR 798 (LC) at para 54.

[29] In the matter of *South African Transport and Allied Workers Union and Others v Conree Transport (Pty) Ltd,*[8] Bhoola J held as follows:

'The degree of lateness cannot be said to substantial in the context of the explanation advanced and although the explanation for the delay is not compelling, it is in my view reasonable and acceptable. It does not have to be 'extremely cogent' as the respondent submits, but enough to persuade the court that it would be reasonable to finally determine the main matter on that basis. I must point out however, that the conduct of the applicant does reveal a somewhat dilatory approach to represent the interests of its members effectively.'

[30] Bhoola J went on further to state that:

'Finally, this matter falls outside the ambit of the dictum in *Queenstown Fuel Distributors CC v Labuschagne N.O and Others* (2002) 21 ILJ 166 (LAC) at para [24], where it was held that: *"Condonation in the case of disputes over individual dismissals will not readily be granted. The excuse for non-compliance will have to be compelling, the case for attacking the defect in the proceedings would have to be cogent and the defect would have to be of a kind which will result in a miscarriage of justice if it were allowed to stand*."'

[31] It is in my view in the interest of justice to grant condonation in this case. In light of my finding, I will not deal with other factors that need to be taken into account in considering whether good cause has been shown to grant condonation.

The review application

[32] Having granted condonation for the late filing of the review application, I now proceed to deal with merits of the case.

[33] It is now settled law that the standard to be followed in review of arbitration awards was set out by the Constitutional Court in the case of *Sidumo and Another v Rustenburg Platinum Mines Ltd* and Others.[9]

[8] JS 554/08 [2010] ZALC 31 (2 March 2010), not yet reported.
[9] (2007) 12 BLLR 1097 (CC).

[34] The first ground for review relates to the finding by the commissioner that the second applicant did indeed affix the eight in the gang register claiming overtime that he did not work for.

[35] The first attack to the commissioner's finding is levelled at the credentials and the evidence of the expert witness.

[36] The commissioner has a duty to assess expert evidence brought before him or her. In *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another,*[10] the Supreme Court of Appeal in dealing with the approach to be adopted when dealing with expert opinion held that:

'The court is not bound to absolve a defendant from liability for allegedly negligent medical treatment or diagnosis just because evidence of expert opinion, albeit genuinely held, is that the treatment or diagnosis in issue accorded with sound medical practice. The court must be satisfied that such opinion has a logical basis, in other words that the expert has considered comparative risks and benefits and has reached "a defensible conclusion."'[11]

[37] At paragraph 39 of the judgment, the SCA further said:

'A defendant can properly be held liable, despite the support of a body of professional opinion sanctioning the conduct in issue, if that body of opinion is not capable of withstanding logical analysis and is therefore not reasonable.'[12]

[38] In *Schneider NO and Others v AA and Another*,[13] the Court per Davis J held that an expert witness comes to court to give the court the benefit of his or her expertise. The commissioner was therefore enjoined to scrutinise the expert evidence taking into account all the evidence placed before him.

---

[10] 2001 (3) SA 1188 (SCA) at para 37.

[11] The same approach has been followed by the English Courts. See *Bolitho v City and Hackney Health Authority* [1998] AC 232 (HL) a case which was followed by the Supreme Court of Appeal in the *Michael and Another* supra. An example of an instance where the evidence of an expert witness was scrutinised by the Court, found to have significant problems and rejected for lack of credibility and expertise can be found in the judgment of Davis J in *Schneider v AA* 2010 (5) SA 203 (WCC) at page 213 E-F. See also *Minister van Veiligheid and Sekuriteit v Geldenhuys* 2004 (1) SA 515 (HHA) at para 38 Representative of *Lloyds v Classic Sailing Adventures* 2010 (5) SA 90 (SCA) at para 60.

[12] See *Transnet Rail Engineering Bltd v Transnet Bargaining Council and Others* case number JR 2191/09 , unreported judgement dated 1 December 2011

[13] 2010 (5) SA 203 (WCC) at 211J.

[39] The issues are whether the commissioner satisfied himself of Esterhuizen's expertise as a witness, whether he assessed Esterhuizen's evidence to be evidence that was capable of 'withstanding logical analysis' or he simply based his findings on assumptions as alleged by the applicants' and whether he ignored all other evidence led and simply accepted Esterhuizen's evidence without giving any reasons for his conclusions.

[40] The allegations that Esterhuizen was not qualified are in my view without substance. There is plenty evidence on record to substantiate the findings of the commissioner that Esterhuizen was qualified as an expert. His credentials were not challenged. Esterhuizen testified that he was a forensic document examiner, commonly known as a handwriting expert. He has a number formal qualifications and his experience in the field of forensic document examinations extends to a period of thirty years during which time he has examined approximately 10 000 cases. He testified that he has appeared 800 times as an expert witness during his career in courts of law in both the Republic of South Africa and abroad. To suggest that the commissioner should have found that Esterhuizen was not qualified in the absence of any contradicting evidence to challenge his credentials is quite bizarre to say the least.

[41] I am also satisfied that the commissioner applied his mind on the evidence led by Esterhuizen. He analysed the evidence to ascertain whether there was any logical basis to it. The record reveals that Esterhuizen took the commission into great detail in explaining the specimen figures. He referred to the uniqueness of the figures zero and the eight showing that they were connected in a certain way and a sequence of movement. The size of the zero to the eight was said to be significant. Esterhuizen was consistent and maintained his testimony in his evidence under cross-examination. The commissioner found that Esterhuizen forensic report and supporting documentation provided a lucid explanation for his findings. The commissioner took into account that his credibility was not challenged under cross-examination. The commissioner's acceptance of Esterhuizen's expert evidence cannot be said to have been one of those falling under the band of unreasonableness.

[42] I am also satisfied that the commissioner did not only take into account the evidence of the expert witness. Not all the factors he would have taken into account appear from the award although this *per se* does not render it unreasonable.[14] He did outline all the material evidence. In his analysis he referred to the evidence relating to the use of a different pen by stating that there was a distinct possibility that a different pen was used to affix the figure eight when the second applicant inserted the eight the following day. To suggest that the commissioner did not investigate the possibility that someone else might have affixed the eight because of the use of different colour pen is not correct.

[43] The commissioner also found that it was highly improbable that anyone else may be motivated to complete the timesheet on behalf of the second applicant. This is supported by the fact that expert evidence established that the writer of the figure eight was the second applicant. This could not be said to have been said to be an assumption.

[44] The submission that the commissioner should have found that it was humanly impossible to work 20 hours is irrelevant in my view. The commissioner found that the second applicant might have misrepresented the facts to the third respondent with the hope that his actions would go undetected. The arbitration award details evidence of Ferns and the second applicant relating to whether the second applicant was allowed to take overtime, whether he did work and ultimately whether he affixed the eight in the gang register. The statement made by Nkosi is also quite significant. The commissioner, having been faced with the two versions, the forensic expert evidence seems to have provided answers to the crux of the question which is whether the second applicant was the person who wrote the figure eight on the gang register.

[45] All of the above indicate that the commissioner did not ignore other evidence presented before him and merely confined himself to the expert evidence. The commissioner's finding that he was satisfied on the balance of probabilities that the numerical 8 found on the aforementioned gang register report was written by the second applicant was in my view supported by evidence.

[14] See in this regard *County Fair Foods (Pty) Ltd v CCMA and Others* [1999] 11 BLLR 1117 (LAC).

[46] The applicants also submit that the commissioner should have warned the applicants that they should also have called an expert and put their version to the applicants' witnesses. Both applicants and the third respondent were represented at the hearing. I accept that the representatives were not lawyers; however, as the representatives of the applicants it was their duty to put their version on the witnesses of the third respondent and cannot blame the commissioner for the failure to do so.

[47] Further to that, the applicants had known since the disciplinary hearing stage that an expert had been called by the third respondent to verify the handwriting. It was their duty to ensure that an expert was called if they wished to rebut Esterhuizen's evidence by way of another expert. They cannot blame the commissioner for their failure to call an expert. Parties need to go to arbitration proceedings prepared with all their witnesses. I would understand that more would be expected from commissioners in instances of applicants that are not represented. In this instance, the second applicant was represented by a reputable union who conducts arbitrations fairly regularly. Even if the commissioner should have warned the applicants to call an expert, my view is that his failure to do so would not render his award reviewable in the circumstances. This is because the commissioner is enjoined to scrutinise the evidence of the expert and not simply accept it as reliable without applying his mind to it. As I have already found, the commissioner did that. He did not abrogate his duty by simply accepting what the expert led without applying his mind to it and made the necessary finding thereto. This is clearly borne out by the arbitration award. Further the commissioner in my view applied his mind to other factors leading to his finding on probabilities.

[48] The allegation that the third respondent failed to provide the original documents to the applicants' attorneys in order to obtain an expert view, 'in preparation for the review' does not take the case of the applicants any further as the applicant would not have been permitted to bring new evidence at this late stage.

[49] With regard to the other charges, the commissioner found that the evidence was more direct. He also took into account the demeanour of the witnesses at the arbitration hearing. The letter written by the NUM Nkomati Branch was not a

determining factor. It was one of the factors that influenced the finding of the commissioner. The letter was directly relevant to the case of the second applicant as it threatened the third respondent with a strike if charges against the second applicant were not dropped. The commissioner did not attribute the actions of the union to the second applicant he merely commented that the tone of the letter demonstrates an aggressive and an arrogant attitude by the branch that has permeated down to the structures. Mafokate led direct evidence to the effect that the second applicant threatened him with the following words:

'Chief you must be careful with what you are busy with or else you must ask Derrik Manyisa what happened to him.'

[50] Direct evidence was also led by Mafokate and Ferns to the effect that during an impromptu meeting that took place between Mafokate, Ferns and other two officials of the third respondent, the second applicant became confrontational and started shouting when the issue of overtime booked was broached by Mafokate. It was quite permissible for the commissioner to take into account the demeanour of the witnesses at the arbitration as this goes to the credibility of the witnesses. The commissioner observed that the applicant raised his voice a couple of times at the hearing. This behaviour could not be reduced to the second applicant speaking out loud so that everyone could hear his voice during the proceedings as it was submitted on the applicants' behalf by Mr Makinta.

[51] Further, Sihlangu led direct evidence that he received a call and could recognise the voice as that of the second applicant saying that 'either of us must die'. This was later followed up by a telephone call from a woman who told him that her husband was very angry with Sihlangu. Sihlangu received a further telephone call on the same day from the second applicant who said he believed that Sihlangu was involved in the overtime issue and he was very angry with him. It is clear from the award that the commissioner took all that evidence into account before making his finding. His findings were clearly not based on assumption as alleged by the applicants.

[52] In *Sidumo* Navsa J held :

'In approaching the dismissal dispute impartially a commissioner will take into account the totality of circumstances. He or she will necessarily take into account the importance of the rule that has been breached. The commissioner must of course consider the reason the employer imposed the sanction of dismissal…'[15]

[53] In applying this test, Zondo JP set out a list of what is expected of commissioners and held that:

'Once the commissioner has considered all the above factors and others not mentioned herein, he or she would then have to answer the question whether dismissal was, in all the circumstances, a fair sanction in such a case. In answering that question, he or she would have to use his or her own sense of fairness. That the commissioner is required to use his or her own sense of justice or fairness to decide the fairness or otherwise of the dismissal does not mean that he or she is at liberty to act arbitrarily or capriciously or to be *mala fide*. He or she is required to make a decision or finding that is reasonable'.[16]

[54] The commissioner clearly determined whether or not dismissal was an appropriate sanction. He found that:

'All accounts constitute serious misconduct. Respondent's disciplinary code makes provision for dismissal should an employee be found guilty of these categories of misconduct. Given the high degree of dishonesty without remorse demonstrated by the Applicant, compounded by threats of intimidation I have no hesitation finding that the trust relationship had been irrevocably damaged. In my view dismissal is the only appropriate sanction.'

[55] This accords with the judgment of Molahlehi J in the case of *Hulett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry and Others*[17] where the learned judge held that:

'...the presence of dishonesty tilts the scales to an extent that even the strongest mitigating factors, like long service and a clean record of discipline are likely to have minimal impact on the sanction to be imposed. In other words whatever the amount of mitigation, the relationship is unlikely to be restored once dishonesty has been established in particular in a case where the employee shows no remorse. The reason for this is that there is a high

[15] *Sidumo* supra at para 78.

[16] *Fidelity Cash Management Service v CCMA and Others* [2008] 3 BLLR 197 (LAC) at para 95.

[17] [2008] 3 BLLR 241 (LC) at para 42.

premium placed on honesty because conduct that involves corruption by the employees damages the trust relationship which underpins the essence of the employment relationship.'

[56] It is clear that each of the charges against the second applicant is very serious. It makes complete sense why they would attract a severe sanction such as a dismissal. I therefore find no reason to interfere with the decision of the commissioner as it falls within the band of reasonable decisions. I therefore cannot see any grounds that necessitate the review and setting aside of the arbitration award.

[57] In the circumstances I make the following the order:

1. Condonation for late filing of the review application is granted.

2. The review application is dismissed

3. No order as to costs.

_____

BOQWANA AJ

ACTING JUDGE OF THE LABOUR COURT

APPEARANCES

FOR THE APPLICANTS: Adv M E S Makinta

Instructed by: Makinta Attorneys, Johannesburg

FOR THE THIRD RESPONDENT: Adv M Van As

Instructed by: Cliffe Dekker Hofmeyr Inc., Sandton