REPUBLIC OF SOUTH AFRICA

Reportable

THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Case no: CA02/12

In the matter between:

MARYKA GREEF **Appellant**

and

CONSOL GLASS (PTY) LTD **Respondent**

Heard: **12 March 2013**

Delivered: **21 May 2013**

Summary: Interpretation of s158(1)(c) of the LRA - Labour Court dismissing an application to make a settlement agreement an order of court because no prior dispute relating to the settlement had been referred to the Labour Court for adjudication. Held on appeal that S158(1)(c) must be interpreted in conjunction with s158(1A). There is no requirement in s158(1)(c), read with s158(1A), that the dispute must be referred for adjudication to the Labour Court before the Labour Court may make the settlement of that dispute an order of court – the requirement in s158(1A) that a party must have a right to refer the dispute to arbitration or the Labour Court does not refer to a legal right in the strict sense capable of immediate exercise- the court should satisfy itself whether the settlement agreement which is to be made an order of Court has met the criteria stated in s158(1A) – if the agreement does not meet the criteria the

Labour Court has no discretion to make it an order of court. However, if the agreement meets the criteria, the court, should consider all the relevant facts and circumstances and exercise its discretion whether to make such an agreement an order of court.- Appeal succeeds- Matter remitted to the Labour for a rehearing.

JUDGMENT

COPPIN AJA

[1] This is an appeal, with the necessary leave, against the order of Steenkamp J in the Labour Court dismissing an application, brought by the appellant, to make an agreement, in respect of her retrenchment, which she concluded with her former employer, the respondent, an order of court.

[2] The appellant relied on s158(1)*(c)* of the Labour Relations Act 66 of 1995 ("the LRA"), which provides that the Labour Court may make any arbitration award or any settlement agreement an order of the court.

[3] With reference to the judgment of the Labour Court in *Molaba and others v Emfuleni Local Municipality,*[1] the court *a quo* preferred the interpretation of s158(1)(c) of the LRA propounded in that case, which is to the effect that the settlement agreements referred to in that section were to be limited to those agreements that were concluded after the dispute had been referred to the Labour Court for adjudication. The court *a quo* held that the appellant's case was not one in which 'the court should exercise its discretion in favour of making the settlement agreement an order of court in circumstances where no dispute has been referred to the court for adjudication', accordingly dismissed the application and made no order regarding the costs.

[1] *Molaba and others v Emfuleni Local Municipality* [2009] 7 BLLR 679 (LC).

[4] The appellant, in essence, submits, that the court *a quo* erred in adopting the narrow interpretation of s158(1)*(*c) applied by the court in *Molaba* and contends that the wider meaning given to that section by the court in *Bramley v John Wilde t /a Ellis Alan Engineering and another*[2] was more preferable and correct. The appellant, accordingly, submits that the agreement that she relied on, was indeed one of the kind envisaged in s158(1)(c) and that the Court *a quo* ought to have exercised its discretion in favour of making it a court order 'especially in circumstances where the Respondent has failed to take any action whatsoever ' to have the settlement agreement set aside by an appropriate forum or court.

[5] The facts leading to the appellant bringing the application were, briefly, the following. The appellant was employed by the respondent as an account manager in about 2010. Subsequently the respondent embarked on a retrenchment process in terms of s189 of the LRA. In the course of that process, the respondent consulted with its staff, including the appellant, regarding the restructuring of its sale and marketing department.

[6] It is apparent from a letter dated 08 October 2010, written by the respondent to the appellant, which is attached to the appellant's founding affidavit and which embodies the terms of the agreement, that the appellant had indicated to the respondent that she wished to accept the severance package proposed by the respondent and that she was agreeable to the termination of her services with the respondent on certain terms.

[7] The terms of the agreement cover, *inter alia*, the retrenchment package that was to be paid, the pension, provident fund and the employer's group risk benefit scheme issues, the finality of the settlement, the issue of the IRP5 certificate, and includes the following terms, which I quote here for ease of reference, namely:

> '1 the effective date of termination of your contract of employment will be 30 November 2010.

[2] *Bramley v John Wilde t/a Ellis Alan Engineering and another* [2003] 4 BLLR 360 (LC).

2 Subject to you being able to conclude the handover- duties assigned to you during this period, you may not be required to work the contractual one month's notice period during the month of November and your last day at the office will be 31 October 2010.Should you however not be able to finalise these duties as required, you may be required to work part of or the entirety of your notice period.'

[8] This letter is signed, on behalf of the respondent, by its business manager, Peter Masson ("Masson"), and has the following as a last paragraph, 'I Maryka Greef confirm that I understand and accept the terms and conditions as set out above as reflecting full and final settlement of all benefits arising from my employment with Consol Glass (Pty) Ltd'. The appellant signed the letter on 12 October 2010.

[9] It is common cause that on 18 October 2010, Masson handed to the appellant another letter addressed to her, the material part of which reads as follows:

'**Acceptance of your Resignation**

During our discussion on Tuesday, 12 October 2010 you indicated to me that you had accepted an offer of employment with another employer and that your commencement date in terms of such employment is Monday, 18 October 2010.

You further handed to me Consol property in your possession including the petrol card and cellular phone and pointed out that you will not be returning to work and that you are tendering your resignation with immediate effect. Please be advised as follows:

1 I referred you to point 2 of your letter dated 8 October 2010 titled Retrenchment: letter of termination, which letter you have signed and accepted and which reads 'subject to you being able to conclude the hand over duties assigned to you during this period, you may not be required to work the contractual one month's notice period during the month of November and your last day at the office will be 31 October 2010. Should you however not be able to finalise these duties as required, you may be required to work part of or the entirety of your notice period';

2 The letter referred to in 1 above specifically indicates that your contract of employment with the Company terminates on 30 November and that you are required to place your services at the disposal of the Company until 31 October 2010;

3 Notwithstanding 1 and 2 above you elected to resign voluntarily from the Company's employ with immediate effect;

4 We accept you resignation from the Company with immediate effect. Your salary for the month of October 2010 together with all the statutory monies due to you as at 12 October 2010 will be paid out to you on the last working day on October 2010;

5 Please further note as you have voluntarily elected to resign from Consol's employ the Company will no longer be paying you the severance package illustrated in our letter dated 8 October 2010;

6 The payments referred to in point 4 is in full and final settlement of all or any claims that you might have against the Company, emanating either from your employment, or from the termination thereof, whether such claims are in delict, contract, or by virtue any statutory enactment.

We want to take this opportunity and wish you everything of the best in all your future endeavours...'

[10] The appellant denies that she tendered her resignation as alleged by Masson. She states that she responded to Masson's letter by letter dated 19 October 2010, in which she denied that she ever resigned, or mentioned any intention to resign. A copy of this response is attached to the appellant's founding affidavit. In this letter, the appellant relates the events that preceded the letter of 18 October 2010. She states, *inter alia*, that Masson had indicated to her, at the time she received his letter of 8 October 2010, that once he was happy with the handover she could leave immediately and that it would not be necessary for her to work out the notice period; that after she perused his letter of 8 October it became clear to her that the respondent was attempting to use the letter to prevent her from declaring a dispute regarding the legality of the retrenchment process; that to her it was, however, also clear that the

company did not want her services, but as the package offered was fair in the circumstances, she decided to sign the letter of 8 October.

[11] Regarding the events of 12 October 2010, the appellant in her response of 19 October, states, *inter alia*, that she had indicated to Masson that she had an interview and might be able to secure employment with another company, but that Masson started screaming at her and said that he would not pay her; that when she told him that she did not understand his reaction, because he had a pivotal role in her retrenchment, he told her, in effect, that she might as well leave immediately. The appellant concluded her response to Masson with a question whether she would be paid her retrenchment benefits before 20 October 2010 and threatened to take legal steps if she was not paid accordingly.

[12] The respondent, apparently, did not react favourably to the appellant's letter of 19 October 2010, as a result of which the appellant made an application to the Commission ("the CCMA") to make the agreement, embodied in the letter of 8 October 2010, an arbitration award in terms of s142A of the LRA. The award was made by the CCMA, but the respondent took the matter on review to the Labour Court. The same Judge whose judgment is on appeal before us was the reviewing judge. He set aside the award of the CCMA on the basis, *inter alia*, that as a dispute was not referred to the CCMA that body was not empowered to make the agreement an arbitration award in terms of s142A. That section provides:

> '(1) the Commission, may, by agreement between the parties or an application by a party, make any settlement agreement in respect of any dispute that has been referred to the Commission, an arbitration award.
>
> (2) For the purposes of subsection (1), the settlement agreement is a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court, excluding a dispute that a party is entitled to refer to arbitration in terms of either section 74(4) or 75(7)'.

[13] In response to the setting aside of the award of the CCMA, the appellant launched the application which is the subject of this appeal. The appellant

relied on s158(1)(c), because, so the appellant alleges in her founding affidavit, 'there is no requirement in the subsection for a dispute to have been referred to the CCMA before it could be made an order of the Labour Court'. The appellant averred further, in support of her application to the Court *a quo*, since the respondent has not applied to "any appropriate forum" to set aside the agreement, the Labour Court had the power to make the agreement an order of court.

[14] In her founding affidavit, in the application before the court *a quo,* the appellant says that she regarded herself at all times as bound by the settlement agreement and did not refer a dispute regarding her unfair retrenchment, firstly, because the dispute was settled in full and finally and secondly, because the terms of the settlement agreement were agreeable to her.

[15] In its answering affidavit, deposed to by Masson, the respondent denies the appellant's version, *inter alia*, that Masson screamed at her on 12 October 2010. Masson's version is that he was assertive and that he had said to the appellant that if she did not comply with the obligations imposed upon her by the agreement, the respondent would not comply with the agreement either. Masson further states that the appellant was the one who was aggressive and condescending. His version is that the appellant stated that she was leaving the respondent's premises forthwith and left accordingly. It is the respondent's case that the payment to the appellant, in terms of the agreement, was conditional upon the appellant rendering her services to the respondent until her release by the respondent and that the appellant had repudiated the agreement by her aforementioned conduct, which repudiation the respondent accepted and had, consequently, cancelled the agreement. The respondent contends that the appellant could not in those circumstances rely on the agreement. According to the respondent, the dispute relating to compliance with the agreement is one that ought to have been referred to the CCMA in terms of s41 of the Basic Conditions of Employment Act.[3] The respondent

[3]Act No. 75 of 1997.

further contends, that since the appellant had referred that dispute to the CCMA she could not, at the same time, also ventilate it in the Labour Court.

[16] The court *a quo*, in essence, refused to make the settlement agreement an order of court, because no prior dispute relating to the settlement had been referred to the Labour Court for adjudication. In *Molaba,* the court interpreted s158(1)(c) of the LRA with reference to s142A of that Act and preferred a narrow interpretation of s158(1)(c), the effect of which was to limit the application of that section to those instances where a party had validly referred a dispute to the Labour Court for adjudication and where the dispute had become settled at any time after such referral. In terms of *Molaba,* 'an interpretation to this effect would preserve the integrity of section 142A. It would also avoid all of the difficulties, conceptual and practical, that the broad interpretation presents.'[4] According to the learned judge, a broad interpretation was one in terms of which s158(1)(c) would be read in isolation and literally and would mean that the Labour Court was empowered to make any employment related settlement agreement, including a collective agreement, an order of court. In terms of *Molaba* this would blur 'the line between a constitutive and a judicial act, a line section 142A clearly draws and that the broad architecture of the LRA preserves'. Further, according to *Molaba* 'a broad interpretation would also suggest that the limitation established by section 142A could be entirely undermined – none of the conditions attached to having a settlement agreement made an arbitration award in terms of that section would apply if a party were simply permitted to approach the Labour Court to have any employment-related agreement made an order. Finally, a broad interpretation would blur the line between what are properly contractual claims to be enforced either by the civil courts, or by this Court under section 77(3) of the BCEA.'[5]

[17] In my view, the court in *Molaba,* while it correctly held that in *Harrisawak v La Farge (SA*),[6] the court was interpreting s158(1)(c) as it read before the 2002 amendments to the LRA, in particular before the introduction of s142A and the

[4] See para [10] at 683E.
[5] At 683B-D para [9].
[6] *Harrisawak v La Farge (SA)* (2001) 220 ILJ 1395 (LC); [2001] 6 BLLR 614 (LC).

amendment of s158(1)*(*c), erred. The court, in *Molaba,* did not refer to the decision in *Bramley* and, seemingly, overlooked s 158(1A)[7] of the LRA. Its interpretation of s158(1)(c), without taking into account s158(1A), but with reference to, in particular s142A(1), the equivalent of which is deliberately excluded from s158, was, with respect, wrong. In *Bramley,* the parties seemed to have approached the matter on the basis that, because proceedings had been instituted before the 2002 amendments, the matter had to be decided on the basis of s158(1)(c) as it read before those amendments. But the court, *per* Farber AJ, considered the matter on the basis of the section as it read before the amendment and '*ex abundant cautela*' as it read after the amendment and, particularly, in light of s158(1A), which was introduced by the amendment. In *Bramley,* the court propounded an interpretation which was not as broad as that said to have been applied in *Harrisawak* and concluded that the words 'any settlement' in s158(1)(c), as it stood before the 2002 amendment, refer to 'a settlement concluded in respect of a dispute which is justiciable in terms of the Act, irrespective whether such dispute is settled prior to the need to invoke the dispute resolution machinery of the Act or at some point in time thereafter' and that the amendments did not alter the position.

[18] The wording of s158(1A), but for the reference to an additional section of the LRA, is in its material aspects the same as the wording of s142A(2) of the LRA[8]. Section 158(1A) provides, with reference to s158(1)(c) of the LRA, as follows: 'for the purposes of subsection (1)*(c)*, the settlement agreement is a

[7]The section was inserted into the LRA by s 36 of the Labour Relations Amendment Act 12 of 2002. Section 142A of the LRA was inserted by s 31 of that Amendment Act.

[8]Section 158(1A) refers to s 22(4), in addition to sections 74(4) and 75(7). Section 142A only refers to the latter two sections. Section 22(4) deals with the resolution of disputes concerning organisational rights. The section provides that if such a dispute remains unresolved after the CCMA has attempted to resolve it through conciliation, any party to the dispute may request that it be resolved through arbitration as soon as possible. Section 74 deals with the resolution of disputes in essential services and s 75 with the resolution of disputes in maintenance services. Section 74(4) provides that if a dispute in essential services remains unresolved after a bargaining council, or the CCMA has attempted to resolve it by conciliation, any party to the dispute may request that be resolved through arbitration by the council or the CCMA. Section 75(7) provides with regard to disputes in maintenance services, that if it is a direction from the Essential Services Committee that a dispute in the maintenance services, regarding the right to strike, be referred to arbitration, the provisions of s 74 of the LRA would apply to the arbitration and the arbitration award would be binding on the employees engaged in the maintenance services and the employer, unless its terms are varied by a collective agreement.

written agreement in settlement of an dispute the party has the right to refer to arbitration or to the Labour Court, excluding a dispute that a party is only entitled to refer to arbitration in terms of section 22(4), 74(4) or 75(7)'.

[19] It is thus clear from a reading of s158(1A) that s158 (1)(c) must be read with and subject to s158(1A).[9] Even though s158(1)(c) refers to 'any settlement agreement' this cannot be taken to mean, literally, 'any' settlement agreement. Section 158(1A) describes what settlement agreements are being referred to in s158(1)(c).[10] So properly interpreted, in terms of s158(1)(c), read with s158(1A), the Labour Court may make any arbitration award an order of court and may only make settlement agreements, which comply with the criteria stated in s158(1A), orders of court. A settlement agreement that may be made an order of court by the Labour Court in terms of s158(1)(c), must (i) be in writing, (ii) be in settlement of a dispute (i.e. it must have as its genesis a dispute); (iii) the dispute must be one that the party has a right to refer to arbitration, or to the Labour Court for adjudication, in terms of the LRA; and (iv) the dispute must not be of the kind that a party is only entitled to refer to arbitration in terms of s 22(4), or s 74(4) or s 75(7).Those kinds of dispute are excluded.

[20] It is noteworthy that s158(1)(c) does not provide that the Labour Court is obliged to make a settlement agreement an order of court. So that even if a settlement agreement complies with the criteria's stated in s 158(1A), the court may, nevertheless, in the exercise of its overarching discretion decide not to make it an order of court. Section 158(1)(c) provides that the Labour Court 'may' make it an order of court. This means that the Labour Court has a discretion in that regard, which it would have to exercise in a judicial manner, taking into account all the relevant facts and circumstances.

[21] Accordingly, in deciding whether to make a particular settlement agreement an order of court, it would first have to be established whether the settlement agreement satisfies the criteria stated in s158(1A). If it does not, then the court does not even have a discretion. It cannot make such an agreement an

[9] See *Bramley* (above) at 363H.
[10] See *Bramley*(above)at 360 I-J.

order of court. On the other hand, if the agreement does satisfy the criteria, the court, nevertheless, would have to consider all the relevant facts and circumstances and in the exercise of its discretion, decide whether to make the agreement an order of court. There may be facts or circumstances that militate against making a settlement agreement, which otherwise meets all the criteria stated in s158(1A), an order of court.

[22] Conciliation is a jurisdictional pre-requisite before a dispute, of the kind referred to in s191 of the LRA, may be referred to a council or the CCMA for arbitration, or to the Labour Court for adjudication. The question that prominently arises in this regard is whether an employee can be said to have 'a right to refer' the matter to arbitration by the CCMA or council, or to the Labour Court for adjudication, in terms of s191, where there has been no referral of the dispute to the CCMA, or the council (as the case may be), or 30 days have not elapsed since the dispute was referred to the council or CCMA and those bodies have not certified that the dispute remains unresolved? The majority in *NUMSA v Driveline Technologies (Pty) Ltd and another*[11] held that the employee did not have a right of referral in those circumstances. However the court there was not interpreting the word 'right' or the phrase 'right to refer' in s158(1A) and was clearly referring to an employee's entitlement to refer the dispute, as contemplated in s191(5) of the LRA and construed that entitlement in the strictest sense as 'a legal right' open to immediate exercise. Does the word 'right' as it is used in s158(1A) have the same strict meaning?

[23] In *Bramley*, Faber AJ dealt with this issue, although *obiter,* and came to following conclusion:

> 'In short I am of a persuasion that the words "the right to refer" in section 158(1A) are not to be construed in a narrow, literal sense so as to equate to a right which is open to immediate exercise. In my judgment, it connotes a far wider concept, such as an entitlement which may only fall to be exercised once the prerequisites for doing so have been satisfied. Thus, provided only that the dispute is of a kind which is amenable to adjudication by the Commission or the court in terms of the structure of the Act, albeit not as a

[11] *NUMSA v Driveline Technologies (Pty) Ltd and another* [2000] 1 BLLR 20 (LAC) para [74] at 38I-39A.

> matter of immediacy, but once the prerequisites for such adjudication have been satisfied, a settlement in relation thereto maybe made an order in terms of section 158(1)(c), irrespective of the date of its conclusion.This construction does no violence to the wording of section 158(1A).As previously indicated, it has been recognised that the word "right" in the language of the law may be used in a wider and laxer sense and not in the sense that it is synonymous with the concept of a "legal right", correlating to a duty or obligation. It is in this wider sense that the word "right" is in my judgment used in section 158(1A) of the Act. It follows, in my view, that the character of the right referred to in section 158(1A) is such that it need not be open to immediate exercise, but may be invoked at sometime in the future when the pre-requisites therefore have been fulfilled. It nonetheless is something which is extant in the sense that, bar a subsequent resolution of the matter, the machinery of referral may be resorted to.'[12]

[24] Making settlement agreements orders of court may be regarded as important for the protection of the rights of the parties to the settlement. It not only facilitates and enables execution through court processes, but would enable an aggrieved party to institute contempt proceedings if the order of court is not complied with. If the word 'right' in s158(1A) were to be given a strict meaning, consequences would ensue that cannot be said to be consistent with the aims and objects of the LRA. With regard to the kinds of dispute envisaged in s191 of the LRA – the power of the Labour Court to make settlements orders of court would be limited to those settlements entered into after failed conciliation and a certificate has been issued to that effect, or in respect of which 30 days elapsed from the date the dispute was referred to the council or CCMA, but which remained unresolved. Parties would be reluctant to enter into settlement agreements before the aforementioned events have occurred, because they would not be able to make their agreements orders of court. Since the identical phrase, 'right to refer', is also found in s142A(2), the same would apply in respect of settlements which parties wish to make awards in terms of s142A of the LRA. The only settlement agreements that the CCMA would be empowered to make awards would be those concluded after failed conciliation and a certificate has been issued to that effect, or 30 days

[12]At 365 B-365F.

elapsed since the dispute had been referred to the CCMA and the dispute remains unresolved. Giving a strict meaning to the word 'right' in s158(1A) would have the effect of differentiating between those settlements concluded before and those concluded after the statutory events pertaining to conciliation had occurred. Other than purporting to limit the potential number of applications to make settlements orders of court, there appears to be no rational basis for such differentiation. Moreover, any retardation, or discouragement of the early settlement of disputes is not consistent with the objects of the LRA, namely, the resolution of disputes as speedily as possible, in an efficient and cost effective manner. Lingering, unsettled disputes are not conducive to stability in the workplace and militate against the principle aims of the LRA in that respect.[13]

[25] Accordingly, I am in agreement with the conclusion of the court in *Bramley* regarding the meaning of the phrase 'right to refer' in s158(1A). It needs only to be established, for the purposes of compliance with that section, that the dispute is of a kind, if unresolved and once all the procedural requirements have been met, which may be referred to arbitration, or to the Labour Court for adjudication. It does not have to be established that there is a 'right of referral', in the strict sense of a legal right capable of immediate exercise.

[26] Turning to the facts of the present case. The letter of 8 October 2010 contains a written settlement agreement of the kind that is envisaged in s158(1A), read with s158(1)(c) of the LRA, and meets the stated criteria. It is not in issue that it was in settlement of a dispute relating to the appellant's retrenchment from her employment with the respondent. It is the kind of dispute that the appellant would have been entitled to refer to arbitration, or to the Labour Court if it was unresolved and once all the procedural steps had been taken. In my view, the only issue which ought to have detained the court *a quo* was whether it should, in the exercise of its discretion, make the settlement an order of court, given the facts and circumstances described in the papers.

[27] The court *a quo,* seemingly, conflated the enquiry whether the settlement was of the kind envisaged in s158(1)(c), with the next step in the adjudication

[13] See also *Bramley* (above) at 362 – 363.

process, in terms of which the court decides whether to make a settlement agreement, which complies with the criteria in s158(1A), an order of court in the light of the facts and circumstances of the particular case. I am of the view that the court *a quo* erred in its approach and in concluding that the agreement could not be made an order of court, because the dispute had not been referred to the Labour Court for adjudication. There is no requirement in s158(1)(c), read with s158(1A), that the dispute must have been referred for adjudication to the Labour Court before the Court may make the settlement of that dispute an order of court. A section similar to s142A(1) of the LRA seems to have been deliberately omitted from s158(1)(c) and s158(1A). The latter sections merely require that it be shown that a party has a right to refer the dispute for arbitration, or to the Labour Court. Insofar as the court in *Molaba* held, or implied, the contrary, it erred. The importation, in effect, into s158(1)(c) of a requirement similar to the one to be found in s 142A(1), was wrong.

[28] In my view the court *a quo* erred in dismissing the application for the reason(s) it did and without exercising its discretion correctly and on the basis of the facts and circumstances of the case. The court *a quo* ought to have found that the settlement met the criteria stipulated in s158(1A) and should then have considered all the other facts in order to decide whether, in the exercise of its discretion, the settlement agreement, which otherwise met all the criteria stipulated in s158(1A), should be made a court order. Even though the settlement followed upon a dispute of the kind envisaged in s158(1A), the court *a quo* could not, in the circumstances of the matter, make it an order of court without having first resolved (in the appellant's favour) the substantial dispute of fact on the papers, namely, whether the settlement agreement had been repudiated by the appellant and had, subsequently, been validly cancelled by the respondent. It does not appear from the judgment of the court a *quo* that these aspects were considered.

[29] In my view, the judgment and order of the court *a quo* should be set aside and the matter remitted to the Labour Court for rehearing and reconsideration in light of this judgment. The consequent delay is unfortunate, but since this is a matter that requires a decision on facts that are in dispute and in respect of

which oral evidence may, or may not be allowed, the remittance is inevitable. There is no reason why costs of the appeal should not be awarded to the appellant.

[30] In the result, the following is ordered:

i. The appeal is upheld;

ii. the judgment and order of the court *a quo* is set aside;

iii. the matter is remitted to the Labour Court, for rehearing and reconsideration in the light of this judgment;

iv. the respondent is to pay the costs of the appeal.

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Coppin AJA

I agree

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Waglay JP

I agree.

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Tlaletsi JA

APPEARANCES:

FOR THE APPELLANT: Mr.Stelzner S.C

Ms. Marks

Instructed by Fluxmans Inc.

FOR THE RESPONDENT: Mr.C. De Cock

Instructed by Carelse Khan Attorneys