**REPUBLIC OF SOUTH AFRICA**

**THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG**

**Reportable**

**C**ase no. DA7/11

In the matter between**:**

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| **SOUTH AFRICAN REVENUE SERVICE** | **APPELLANT** |
| and | |
| **THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION** | **FIRST RESPONDENT** |
| **COMMISSIONER PAUL SHABANGU *N.O.*** | **SECOND RESPONDENT** |
| **PSA obo D R CHATROOGHOON** | **THIRD RESPONDENT** |

**Heard:** **23 November 2012**

**Delivered:** **17 October 2013**

**Summary**: **Issue: Whether, by virtue of implied term of trust and confidence in employment contract, employer is vested with power to substitute its own sanction for that imposed by chairperson of disciplinary hearing, in circumstances where the collective agreement expressly confers power to impose sanction on chairperson and no provision in collective agreement permitting unilateral substitution by employer. Held: Collective agreement prohibits substitution. Appeal dismissed.**

## J U D G M E N T

NDLOVU JA

Introduction

[1] The essential issue in this appeal is whether the appellant, the South African Revenue Service (SARS), in its capacity as the employer, was entitled to

substitute a sanction short of dismissal imposed on its employee by an independent disciplinary tribunal appointed in terms of a collective agreement, with a sanction of dismissal, in circumstances where the collective agreement was silent on the issue of substitution.

[2] The appeal is against the judgment and order of the Labour Court (Cele J) handed down on 30 December 2010, in terms of which the Labour Court dismissed with costs a review application launched by SARS to set aside an arbitration award issued by the second respondent, Mr Paul Shabangu (the commissioner) whereby the commissioner found that the dismissal of Mr Dharamchand R Chatrooghoon (Chatrooghoon) was unfair. The Court *a quo* granted the appellant leave to appeal to this Court.

[3] Chatrooghoon was cited as the third respondent, duly assisted by his registered representative trade union, the Public Servants Association (the PSA). The first and second respondents, the CCMA and the commissioner respectively, were presumably cited as interested parties and no relief appeared to be sought against them.

Factual background

[4] The facts in this matter are largely common cause. On or about 12 August 1982 Chatrooghoon assumed employment with SARS as a human resources (HR) consultant at its Durban Customs offices.

[5] On 17 December 2003, a collective agreement known as the 'Disciplinary Code and Procedures' was concluded between SARS, on the one hand, and the PSA and another representative trade union, the National Education Health and Allied Workers Union (NEHAWU), on the other (the collective agreement or the disciplinary code)[1]. The collective agreement applied to SARS, as the employer, and all its employees falling within the registered scope of SARS National Bargaining Forum. It became effective from 1

[1] At pp150-174 of the indexed papers

January 2004 and replaced all previous disciplinary practices and procedures[2]. NEHAWU was not involved in the present dispute.

[6] On 18 April 2006, Chatrooghoon was charged with misconduct, it being alleged that during or about February 2006 he 'unlawfully and with [the] intention failed to comply with the basic principles underlying the Code of Conduct of SARS by abusing [his] authority as an HR Consultant and further disclosing official information to [his] nephew, Mr Chunilal, to wit, telephone records; and/or leave records of Mr Pranesh Maharaj and Ms Prelina Chunilal; and [that] by doing so [he] compromised the administration of the SARS.'

[7] Chatrooghoon's nephew, Mr Chunilal, was the husband of Ms Prelina Chunilal, who worked with Chatrooghoon, together with Mr Maharaj, albeit at different sections. Chatrooghoon had embarked on some private investigation into an alleged adulterous relationship between Ms Chunilal and Mr Maharaj. As part of his investigation Chatrooghoon used certain SARS telephone and leave records in respect of Ms Chunilal and Mr Maharaj, in order to acquire proof of clandestine communication and contact between Ms Chunilal and Mr Maharaj. He then showed these documents to his nephew who, in turn, reportedly confronted Ms Chunilal about her alleged extra-marital affair. Ms Chunilal was upset with Chatrooghoon and filed a complaint against him with the management, which then culminated in the misconduct investigation being instituted against Chatrooghoon.

[8] Chatrooghoon did not deny the charge. Instead, in response thereto, he submitted a written statement in which he made essential admissions. The statement reads as follows:

> 'I, Chats Chatrooghoon …
>
> That around 16 Feburary 2006, it was brought to my attention that my niece, Ms Prelina Chunilall stationed at Outstanding Returns Project was having an adulterous relationship with Mr Pranesh Maharaj, based at Customs.
>
> Over a period of time, many employees at SARS advised me that the allegation was very true and the situation was getting worse.
>
> I counselled Ms Chunilall and she denied any alleged affair. Considering that she was getting herself involved with a very unsavoury character, I was concerned about the safety and wellbeing of my nephew and his business.

[2] Clause 4 of the collective agreement

> With regard to the reference to 'unsavoury character' it is mentioned that Mr Pranesh Maharaj has been implicated in two murders – wherein he has shot two persons on separate incidents.
>
> Various factors led me to obtain as much information as possible to prove to my nephew that his wife was being unfaithful to him, bringing the good name of the work cluster, SARS as a whole and my reputation into disrepute.
>
> I realised that merely making an accusation about her infidelity and failing to bring forward witnesses (all SARS employees who provided me with information requested, that they remain anonymous), would be then very difficult to prove.
>
> I therefore resorted to obtaining admissible information such as SARS official telephone records and after studying and analysing both their leave records.
>
> I felt that the above was information that could distinctly indicate the nature of their relationship and activities. These were used to justify the allegation and was not intended to be given to any individual. My nephew, however, in a fit of rage, took these from me as he wanted to now deal with the matter.
>
> I feel strongly that I had a moral obligation to inform my nephew as there was sufficient [reason] to suspect that his wife and safety was in threat and that there was ground that he was being swindled financially as he was unaware that expensive transactions were taking place on his accounts.
>
> I reserve the right to continue testifying my actions, as well as calling on any witnesses should the need arise, at the next opportune juncture, should they become necessary.'

[9] In her first letter of resignation dated 3 April 2006 (which was apparently declined by SARS), Ms Chunilal stated the reason for taking that step as being the fact that she was suffering from "major depression" occasioned by "false accusations" and "malicious behaviour" towards her by certain SARS employees (presumably including Chatrooghoon) and which situation was impacting negatively on her marriage and family. However, prior to the conclusion of the disciplinary proceedings against Chatrooghoon, she made an about-turn by submitting a second letter of resignation dated 18 April 2006 in which, firstly, she withdrew her complaint against Chatrooghoon "as he has done nothing wrong instead he has helped me and my marriage"; secondly, she requested that "any [misconduct] inquiries against Chats Chatrooghoon

be stopped", and, thirdly, she sought to "sincerely apologise for any inconvenience that I have caused to SARS".

[10] The disciplinary enquiry proceeded on 15 June 2006 and was chaired by an independent dispute resolver, Mr Leslie Owen. Chatrooghoon pleaded guilty and at the conclusion of the hearing he was found guilty as charged. After considering both the aggravating and mitigating factors the chairperson, on 14 July 2006, imposed a sanction of suspension without pay for 15 days plus a final written warning.[3]

[11] Shortly thereafter, SARS business area manager submitted an internal memorandum to the general manager in which the former recommended that the sanction imposed on Chatrooghoon be altered to one of dismissal. The general manager endorsed the recommendation accordingly. On 4 August 2006 Chatrooghoon was served with a notice of termination of his service with immediate effect. The relevant part of the notice of termination reads as follows:

> 'Mr Chatrooghoon,
>
> RE: TERMINATION OF SERVICE
>
> This office's letter SP/10845020 as well as the disciplinary hearing held on 15 June 2006 refers.
>
> Please be advised that the sanction of a Final Written Warning as well as suspension without pay for 15 working days recommended by the chairperson has been declined by the Commissioner: SARS and a sanction of dismissal will be imposed.
>
> In view of the above you are terminated with immediate effect.
>
> In the event that you decide to appeal against your dismissal, ER will in terms of Clause 11.4 of the Disciplinary Code and Procedure consider whether or not to appoint a chairperson from the SARS panel of Dispute Resolvers.
>
> Your appeal should be lodged within 10 working days from the date of receipt of this letter.'

[12] It is common cause that Chatrooghoon did lodge an internal appeal which, however, was unsuccessful. He was aggrieved by his dismissal which he felt

[3] At p264 of the indexed papers

was unfair and, thus, referred an unfair dismissal dispute to the CCMA. After an unsuccessful conciliation process, the dispute was referred to arbitration before the commissioner. The commissioner identified the issues for his determination as follows: "(1) whether the chairperson of the disciplinary hearing had [the] power to make a recommendation or a final decision; (2) whether SARS had [the] power to overturn the chairperson's decision as to sanction and (3) whether the dismissal sanction was fair or not."[4]

[13] After considering the evidence adduced, submissions made on behalf of the parties and the relevant provisions of the disciplinary code, the commissioner, on 11 May 2007, issued the award in which he made the following findings:

> 'There is therefore no provision in the Code empowering management and/or Employee Relations to interfere with the finding and the sanction meted out by the chairperson. To do so would be arbitrary and prejudicial to the employee.
>
> In sketching the historical background of the disciplinary process at SARS ,Mr Nkadimeng said that in terms of the old procedure a magistrate would be appointed to chair the hearing and that magistrate would make a recommendation that would go to the head of department who would make a decision. It would therefore appear to me that the respondent's [SARS's] contention that the chairperson had to make a recommendation and not a final decision was based on the provisions of the Disciplinary Code of practices and procedures that obtained in the past which were replaced by the current Code in terms of paragraph 4 referred to supra.
>
> The provisions of the current Code are clear and unequivocal and not pose any heuristic problems. There is therefore no room for reading in what is not provided for. I therefore come to the conclusion that there was no justification for the supervention (sic) of management which culminated in the alteration of the chairperson's decision relating to the sanction.
>
> The applicant sought reinstatement which was resisted by the respondent. No sound and cogent reasons were advanced by the respondent as to why they contended that trust relationship had irretrievably broken down. SARS is a countrywide organisation and the applicant [Chatrooghoon] may be redeployed to any station if need be.'

[4] Arbitration award, at 21 of the indexed record.

[14] Consequently, the commissioner found that the dismissal of Chatrooghoon was unfair and ordered, among other things, his reinstatement on terms and conditions not less favourable than those that governed his employment prior to his dismissal on 2 August 2006. The reinstatement was to operate with retrospective effect from 25 August 2006, being the date when Chatrooghoon would have resumed duty after serving the 15 day suspension imposed by the chairperson.

[15] On 10 July 2007, SARS referred the matter to the Labour Court for review, in terms of section 145 of the Labour Relations Act, 1965[5].

Proceedings in the Labour Court

[16] The Court *a quo* found that the facts of this case were on all fours with those in *County Fair Foods (Pty) Ltd v CCMA and Others*[6] and further relied on the decision of the Labour Court in *South African Revenue Service v CCMA and Others*[7] in which a similar factual scenario obtained. The Court further noted that Mr Bruinders's submission that the commissioner had failed to ask himself 'the fundamental question: 'Does the implied term of trust and confidence to which the collective agreement is subject, permit the re-instatement of an employee of an organ of State who is guilty of a fundamental breach of integrity, confidence and trust that strikes at the heart of his responsibility to [SARS] and to its employees?'". However, the Court found that even if the commissioner had asked himself that question "he would have found it unreasonable to interfere in a manner suggested by [SARS] or at all, in the light of the settled authorities on the matter.'

[17] In any event, the Court further found that by unilaterally substituting the chairperson's sanction with its own, SARS had thereby violated the principles of natural justice. Accordingly, the Court *a quo* dismissed the review application with costs.

[5] Act 66 of 1965
[6] (2003) 24 ILJ 355 (LAC)
[7] (2010) 31 ILJ 1238 (LC)

The appeal

[18] Although Mr Bruinders SC, for the appellant, conceded that the wording of the collective agreement appeared to confirm that the chairperson's pronouncement on penalty was indeed a final sanction and not a recommendation, he submitted that it was nevertheless the practice of SARS to treat the pronouncement as a recommendation. He further conceded that there was, however, no evidence to demonstrate that the practice as such had become a custom or that the unions had agreed to it.

[19] Be that as it may, Mr Bruinders submitted that the issue at point was whether SARS, as the employer, was entitled to substitute the sanction imposed by the chairperson, given the fact that the collective agreement was silent on that issue. He pointed out that the collective agreement contained no provision that expressly prohibited or restricted SARS from substituting its own sanction for that imposed by the chairperson.

[20] He submitted that the test of whether substitution was permitted by the collective agreement should be found in the question: Does the collective agreement preclude SARS from dismissing Chatrooghoon where there has been a breakdown of trust and confidence in the employment relationship and SARS found continued employment relationship intolerable?

[21] Mr Bruinders further submitted that the Court *a quo* ought to have taken regard of the implied term of trust and confidence applicable by operation of law in every employment contract and that the collective agreement was subject to that implied term. The collective agreement is concerned with discipline, particularly the right given by the employment contract to SARS, as the employer, to terminate the employment contract for misconduct.

[22] Mr Macgregor, for Chatrooghoon, submitted that it was indeed clear from the wording of the collective agreement that the disciplinary chairperson issued a final sanction and not a recommendation. He pointed out that Mr Owen (the chairperson) had testified and confirmed that what he issued was the final

sanction and that he was surprised to be told later that it was only a recommendation. He argued that there was no provision in the disciplinary code permitting SARS to review or appeal any decisions of its own chairperson.

Analysis and Evaluation

[23] It is common cause that after 1 January 2004, the incidence of discipline in SARS workplace was governed by the disciplinary code or the collective agreement which, at the time material to this dispute, was binding on all the parties to it, namely SARS and the two unions concerned[8].

[24] To my mind, the wording of the collective agreement is clear and unambiguous on the point that the decision of the chairperson on penalty becomes the final sanction, not a mere recommendation[9]. Therefore, Mr Bruinders correctly conceded this point.

[25] Indeed, the duty of trust and confidence is an implied term in every employment contract. The breach of that duty by an employee may result in the dismissal of the employee concerned on the ground that, in the absence of trust and confidence in the employment relationship, the employer can no longer tolerate the continued employment of that employee. However, the issue here is about whether SARS was, in terms of the collective agreement, entitled to substitute a sanction of dismissal (of Chatrooghoon) for a sanction short of dismissal imposed by the chairperson, given the fact that the collective agreement was silent on the issue of substitution. Indeed, as a matter of principle, it is in my view regardless whether the substituted sanction was higher or lesser than the one imposed by the chairperson. In other words, the issue is essentially about whether the element of implied term of trust and confidence in the collective agreement extended to include a right in favour of SARS, as the employer, to substitute any sanction imposed by the chairperson appointed in terms of the collective agreement, where SARS is of

[8] Section 23 of the LRA
[9] Clause 10.4.2 read with 10.3.3 of the disciplinary code

the view that the misconduct the employee was found guilty of has affected the trust relationship between the parties.

[26] As indicated, it is trite that the rules of contractual interpretation do allow for reading into a contract a term which is implied by law for that type of contract. However, as was stated in *Alfred McAlpine and Son (Pty) Ltd v Transvaal Provincial Administration*[10], the intention of the parties should not be totally ignored, to the extent that if the term in question is in conflict with the express provisions of the contract, the term cannot normally be implied.[11]

[27] It is apposite to refer to the relevant parts of clauses 10.3 and 10.4 of the disciplinary code, in relation to the issue of sanction:[12]

> **'**10.3 Finding
>
> 10.3.1 …
>
> 10.3.2 …
>
> 10.3.3 Before deciding on a sanction, the chair must give the employer and employee parties an opportunity to present relevant circumstances in aggravation and mitigation.
>
> 10.4 Sanctions
>
> 10.4.1 …
>
> 10.4.2 The chairperson with due consideration to the Code of Good Practice in the Labour Relations Act, the nature of the case, the seriousness of the misconduct, the employee's previous record, any relevant mitigating or aggravating circumstances and sanctions imposed in similar or comparable cases in the past may impose any of the following sanctions: (emphasis added)
>
> 10.4.2.1 Counselling;
>
> 10.4.2.2 a written warning;
>
> 10.4.2.3 a final written warning;
>
> 10.4.2.4 suspension without pay, for no longer than 15 working days;

[10] 1974 (3) SA 506 (A)
[11] Supra, at 531
[12] Clauses 10.3 and 10.4 of the disciplinary code

10.4.2.5 demotion of one grade;

10.4.2.6 a combination of the above; or

10.4.2.7 dismissal.

10.4.3 With the agreement of the employee, the chairperson may only impose the sanction of suspension without pay or demotion as an alternative to dismissal. …

10.4.4 …

10.4.5 …

10.4.6 Employee relations will be responsible for implementing the hearing outcome, and informing the employee.

10.4.7 The employee has the right to appeal the outcome of the disciplinary proceedings using the proceedings outlined in section 11 below.

10.4.8 The employer shall not implement the sanction during an appeal by the employee.'

[28] The wording of the collective agreement does not only make it abundantly clear that the chairperson's pronouncement on penalty is a final sanction, but, in my view, it also leaves no room for interpretation in favour of the parties having intended to provide in the collective agreement a term granting a right to SARS to substitute a sanction imposed by its chairperson for its own. Whilst it is trite that the duty of trust and confidence on the part of an employee is a term implied by law in an employment contract, I do not think that such implied term extends to include the right of an employer to substitute its own sanction for that of the chairperson, particularly in a situation such as the present where the parties in a collective agreement elected expressly to confer on the disciplinary chairperson the sole power to impose the final sanction.

[29] Significantly, the fact that in terms of the old disciplinary code the wording was clear that a disciplinary chairperson (a magistrate) was only entitled to issue a recommendation which SARS was empowered either to endorse or

reject[13] should, in my view, serve as sufficient demonstration that in terms of the (new) disciplinary code, SARS no longer has such power. It seems to me that the disciplinary code, to the extent that it conflicts with the old one on this particular aspect, ought to be treated on the same basis as in statutory interpretation involving amending statutes. In this regard, the learned author Kellaway makes the following submission, with which I respectfully agree:*[14]*

> 'Although the omission of certain words in a provision in an amending statute, which were there before, may well appear to be an oversight, a court should not, it is submitted, construe the provision as if the words were still there, particularly if the inclusion would clearly conflict with the intention or purpose of the amending Act.' (Emphasis added) '

[30] On the basis of this historical background, it seems to me reasonable to conclude, as a further ground, that when the parties signed the collective agreement providing for the (new) disciplinary code they also intended to move away from the previous practice where SARS had the final say on the question of sanction. That being the case, I am inclined to find that the collective agreement prohibited SARS from substituting its own sanction for the one imposed by the chairperson of the disciplinary enquiry appointed by SARS in terms of the collective agreement. Instead, SARS was obliged in terms of the collective agreement to implement and execute the sanction imposed by the chairperson, unless there was an appeal by the employee concerned[15]. Therefore, for SARS to have substituted its own sanction it acted *ultra vires* the disciplinary code and the collective agreement,[16] which had statutory authority in terms of the LRA.[17] Indeed, it was up to SARS at the time of conclusion of the collective agreement to have negotiated a clause that would include its right to substitute the disciplinary sanction in certain circumstances. This, unfortunately SARS did not do.



[13] Arbitration award, at p27 of the indexed papers
[14] Kellaway, Principles of Legal Interpretation: Statutes, Contracts and Wills, at 144.(footnote omitted)
[15] Clause 10.4.8 of the disciplinary code
[16] Compare *BMW (SA) (Pty) Ltd v Van de Walt (*2000) 21 ILJ 113 (LAC) at para 12.
[17] Section 23 of the LRA

[31] In *Country Fair Foods (Pty) Ltd v The Commission for Conciliation, Mediation and* Arbitration and Others[18] this Court noted:[19]

> 'The evidence placed before the second respondent was that Kemp was appointed by the appellant to chair the disciplinary enquiry. No evidence was presented by the appellant to contradict the conclusion reached by the second respondent 'that Kemp was clearly mandated by the company to make a final determination regarding the outcome of Alexander's disciplinary enquiry'. Second respondent found further that the company's disciplinary code and practice does not make provision for intervention or for the overruling of this sanction by a more senior manager than the one appointed to chair the disciplinary enquiry.'
>
> And, the Court concluded as follows:[20]
>
> 'In the present case appellant acted without recourse with the express provision of its disciplinary code and on the basis of no precedent. Second respondent decided that the evidence put up by the appellant did not justify interference with the Kemp enquiry. In my view, there is no basis for concluding that the decision of second respondent was unjustifiable, in terms of the evidence which was presented at the arbitration hearing. Accordingly the appeal must fail.'

[32] I am unable to appreciate any substantive distinction which Mr Bruinders submits existed between the facts of the present case and those in *County Fair Foods*. Each case concerned the issue of the employer substituting a sanction of dismissal for one short of dismissal imposed by the chairperson of the disciplinary enquiry in circumstances where the disciplinary code in each case made no provision permitting the employer to substitute any sanction imposed by the chairperson. In my view, the fact that in the present case the disciplinary code was incorporated in a collective agreement, whereas in *County Fair Foods* it was not, makes no material difference, in the light of my finding that the right of SARS to substitute the sanction is not an implied term of the collective agreement.

[18] (2003) 24 ILJ 355 (LAC)
[19] , at para 19.
[20] *County Fair Foods,* at para 23.

[33] I further note that whilst in *County Fair Foods* the chairperson was the employer's plant manager, in the present case the disciplinary enquiry was chaired by an experienced independent labour law practitioner and lecturer who held appointments as a part-time senior CCMA commissioner and bargaining council arbitrator.

[34] In any event, it was utterly wrong and unacceptable both from the legal and constitutional perspective, that SARS simply unilaterally changed the sanction without even affording Chatrooghoon or his representative trade union an opportunity to be heard on the matter. This was in gross violation of the natural justice principle of *audi alteram partem* rule and the rule of law. The fact that SARS may have similarly conducted themselves in the past without any objection from any of the trade unions involved in the collective agreement, did not render such patently unfair and unjust conduct, on the part of SARS, fair and just. I agree with the remarks of the learned Judge *a quo* that "[w]hen the applicant [SARS] interfered with the sanction imposed by Mr Owen, it literally threw the principles of natural justice [out] through the window in a clear spirit of the end justifies the means."[21] Indeed, the conduct further contravenes one of the main objectives of the disciplinary code, namely, 'to ensure that all the principles of natural justice are applied before an employee is disciplined.'[22]

[35] The disciplinary code provides that "[a]ny employee may appeal any disciplinary action taken against him/her or the outcome of a disciplinary hearing by completing form Annexure E."[23] No similar right is accorded to SARS, as the employer, in terms of the collective agreement. However, there seems to be no legal impediment on the part of SARS, as an organ of State[24], to challenge the outcome of the disciplinary hearing by way of a judicial review 'on such grounds as are permissible in law'.[25]

[21] Para 15 of the judgment of the Court a quo
[22] Clause 1 of the Disciplinary Code
[23] Clause 11.1 of the Disciplinary Code
[24] Section 239 of the Constitution of the Republic of South Africa Act 108 of 1996
[25] Section 158(1)(h) of the LRA. See also: *Ntshangase v MEC for Finance: Kwazulu-Natal and Another* (2009) 30 ILJ 2653 (SCA) at para 15.

[36] In my view, the commissioner properly applied his mind when he ordered the reinstatement of Chatrooghoon. He concluded, correctly so in my view, that 'SARS is a countrywide organisation and [Chatrooghoon] may be redeployed to any station if need be.' As an organ of State with centres all over the country, it could not plausibly be said that, in the light of the particular facts of this case, his continued employment had become intolerable at all SARS offices throughout the country.

[37] On the totality of facts in the present case, based on the evidential material presented to the commissioner, I do not find any reason to hold that the decision reached by the commissioner was one which a reasonable decision-maker could not reach.[26] Indeed, it also seems to me that in its consideration of the facts and circumstances of this case SARS completely disregarded, or at least, overlooked the apparent sincere sentiments expressed by Ms Chunilal in her final letter of resignation dated 18 April 2006, referred to above, which clearly confirmed Chatrooghoon's *bona fide* motives and thus, in my view, considerably reduced his moral blameworthiness. Therefore, the award issued by the commissioner does, to my mind, meet the constitutional standard of reasonableness as formulated in *Sidumo*.[27] The appeal must accordingly fail and costs to follow the cause.

[38] In the result, the appeal is dismissed with costs.



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Ndlovu JA

Zondi AJA and Musi AJA concur in the judgment of Ndlovu JA

[26] *Sidumo and Another v Rustenburg Platinum Mines Ltd and Othersr* (2007) 28 ILJ 2405 (CC); [2007] 12 BLLR 1097 (CC).
[27] Ibid, at par [110]

Appearances:

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|---|---|
| For the appellant: | Advocate TJ Bruinders SC |
| Instructed by: | Eversheds Attorneys, Sandton |
| For the respondent: | Mr B Macgregor |
| | c/o Macgregor Erasmus Attorneys, Glenwood |