INTHE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Reportable

Case no: CA12/2015

In the matter between:

COMMERCIAL STEVEDORING AGRICULTURAL

AND ALLIED WORKERS UNION (CSAAWU) OBO

ISAAK DUBE AND OTHERS **Appellants**

and

ROBERTSON ABATTOIR **Respondent**

Heard: **24 May 2016**

Delivered: **22 August 2016**

Summary: Employees alleging automatically unfair dismissal in that they refused to accede to employer's demand to increase the number of daily carcasses slaughtered – employer on the contrary alleged that employees dismissed for misconduct following a proper disciplinary hearing. Labour Court granting absolution from the instance because employees failed to adduce evidence about their automatically unfair dismissal claim. Court finding that meeting about the daily increase of the number of carcasses to be slaughtered took place giving rise to an alleged automatically unfair dismissal claim – trial court should decide on the merit of the section 187(1)(c) claim - Labour Court's judgment set aside- Appeal upheld with costs.

Coram: Davis, Musi JJA and Murphy AJA

JUDGMENT

DAVIS JA

Introduction

[1] This case turns on the scope of the concept of absolution from the instance. Its application to the present dispute fundamentally affects the lives of 39 abattoir employees ('the employees') who were dismissed from their employment with respondent in late 2010.

[2] The respondent concedes that it dismissed the employees but claims that 30 of the employees were dismissed for misconduct in the form of insubordination on 1 December 2010 and a further nine for misconduct on 23 December 2010. By contrast, the appellants claim that they were dismissed on 30 November 2010 by way of a dismissal as contemplated in s187 (1)(c) of the Labour Relations Act 66 of 1995 ("LRA").

[3] The court *a quo* found that the appellants had not presented any evidence upon which a court "could or should" find that they were dismissed on 30 November 2010 and that the dismissal thus fell within the scope of s187 (1)(c) of the LRA. Accordingly, absolution from the instance was granted in favour of the respondent.

The factual background

[4] The key facts, which are necessary in order to analyse the dispute, can be summarised thus: On 19 November 2010, a meeting was held between the appellants and the respondent with regard to the working hours, remuneration of employees as well as the slaughtering targets for the employees. Of particular relevance was the respondent's attitude that the union's members and, in

particular, the employees should consider increasing the targets for the number of sheep carcasses to be slaughtered, as set out in the respective contracts of employment; that is from 600 carcasses per day to 850 carcasses per day. In return for this commitment, it was proposed to pay an increase of R 150 per week, subject to 100% attendance from the employees.

[5] From 22 November 2010 until 30 November 2010, the employees reported for work at 07h00 and worked until 17h00. During this time, they slaughtered 600 carcasses, which was required of them in terms of their contracts of employment. On 23 November 2010, the respondent sent a letter to the appellants which read as follows:

> '1. Die vakunielede nie gehoor gee aan die dienskontrak nie, sowel as die ooreenkoms wat daar bereik is in die verband met ons gesprek was plaasgevind het op 19 November 2010.
>
> 2. Dar is ooreengekom dat daar 850 karkasse per dag geslag sal word en daaraan word ook nie gehoor gegee nie.
>
> 3. Indien u lede nie gehoor aan die dienskontrak gee nie, sal die nodige dissplinere stappe teen hul geneem word.'

[6] Appellants replied to this letter, denying respondent's contentions in the following terms:

> 'The union hereby put on record that there was never agreement reach or sign by the parties on 19 November 2010 in terms of our members' mandate.
>
> What was agreed upon was that the company will revert back to the union on all our members demands during the cause of this week. What was further agreed upon is that the company will comply with the BCEA as workers were working very excessive overtime hours as from 06h00 am till 12h00 am or even till 01h00 am. Which was in total contravention of the BCEA.'

[7] A further letter was generated by the appellants in which it was stated it is your company that has transgressed the BCEA, by forcing workers to work for 18 to 19 hours

per day which is very much inhuman and it is this type of excessive hours that our members refuse to work which are in their right (sic)". This letter elicited a response from the respondent's attorneys who advised the appellants that the respondent was now contemplating disciplinary action against the employees, which, in turn, caused a response from the appellants which denied any basis for such disciplinary action.

[8] On 29 November 2010, at approximately 17h00, Mr van Staden of the respondent informed the employees to report to the main office at the respondent's premises at 10h00 the following day for a disciplinary enquiry. No written notices of the enquiry were provided nor were any written charges provided. Notwithstanding these developments, the employees reported for duty at the respondent's premises at 07h00 on 30 November 2010. Upon arrival, they were locked out of the respondent's premises and not permitted to commence work.

[9] It appears to be uncontested, given the respondent's response to the appellants' amended statement of claim of 17 September 2012, that 30 employees were ultimately disciplined and found guilty of insubordination by refusing to slaughter the agreed amount of carcasses (850) and because of a refusal to work after 17h00; that is refusing to work any overtime.

[10] On 30 November 2012, the appellants wrote to Mr De Bot of the respondent as follows:

> 'Please note our members inform our offices that when they arrive at work today (30 November 2010) the gates have been locked and the company refuses to allow then to resume their normal duties. This boils down to an illegal lockout in terms of s 67 of the Act as no due process was followed. This letter also serves as an ultimatum that the company allows our members to resume their normal duties and meets with the union.

The union therefore proposes an urgent meeting today 30 November 2010 at 12h00 to resolve the matter. The union are sending a union delegation urgently from Cape Town to your factory in Robertson for such a meeting.'

[11] The disciplinary hearing took place, this letter notwithstanding. The minute of the disciplinary enquiry, significantly, dated 30 November 2010 includes the following important passages:

'6. Die werkgewer het sy saak voorgehou:

(a) dat die slagkwotas, soos in die dienskontrak, gedurende die hoogseisoen soos November/Desember verhoog word as gevolg van die verhoogde aanvraag vanaf kliënte. Die slagkwotas word daagliks aan die begin van die dag (soms reeds die vorige dag) met die werknemers bespreek. Gedurende die tyd was dit ook nie anders nie. Die werknemers het egter besluit om op te hour slag wanneer die kwota soos in die dienskontrak genoem bereik was. Dan het hulle die werkstasie skoongemaak en teen vyfuur het hulle huis toe gegaan. Daar was ook 'n dag wat die werkstasie nie skoongemaak was nie en moes ek mense inkry om dit te doen. Die werknemers het gesê dat hulle deur die Vakbond aangesê is om nie verder oortyd te werk nie ten spite van die feit dat van die werknemers skriftelik onderneem het om oortyd te werk. Werknemers het die versoek van die werkgewer geignoreer dat die slagkwotas sowel as oortyd werk met hulle bespreek en ooreengekom was.

(b) Die werknemers het ook die werkstasie vroeg verlaat en het die werkgewer se versoek om na die werkstasie terug te keer geignoreer.

7. Die aangeklaagdes was nie teenwoordig om hulle saak te stel nie.

8. Geen betoog het plaasgevind a.g.v bogenoemde.

9. Die aangeklaagdes word skuldig bevind op die aanklag.

10. Bevinding:

Die aangeklaagdes her 'n Finale Geskrewe Waarskuwing ontvang op 23 November 2010. Die bevinding is dat die beskuldigdes deur hulle versuim om

die opdrag van die werkgewer na te kom die besigheid ingevaar gestel en daarmee saam die voortgesette indienshouding van werknemers. Aangesien November/Desember piek seisoen is, word daar van die werknemers verwag om die ooreengekome kwotas te slag sowel as om oortyd te werk soos en wanneer nodig. Die oortydwerk was skriftelik ooreengekom en vorm deel van die dienskontrak.

Verder is die werkgewer en werknemer in gesprekke betrokke rakende werknemeraangeleenthede en sou dit wesenlik gewees het om voluit te werk totdat die sake aangespreek en uitgeklaar is. Die verantwoordelikhied is nie deur hulle geopenbaar nie.

11. Sanksie

Die beskuldigdes se dienste word beëindig met ingang van 1 Desember 2010 en in ooreenstemming met die kennisgewingstydperk soos deur hulle dienstermyn bepaal en soos voorgeskryf deur die Wet of Basiese Diensvoorwaardes. Hulle hoef nie weer vir diens gedurende die kennisgewing tydperk aan te meld nie. Die beskuldigdes se laaste loon sal weekliks betaal word vir die tydperk van kennisgewing soos van toepassing.'

[12] On 23 December 2010, a further disciplinary hearing was held in respect of the nine employees. It appears that in their case, the complaint was that the workers had been absent from work from 30 November to 07 December 2010 and again on 20 December 2010. The disciplinary hearing came to the following conclusion:

'Die feit dat die werkers nie kom werk het nie was die betwis nie. Ek moet dus slegs kyk of die redes vir hul afwesigheid geldig is of nie. Sommige van die werkers het aangedui dat hulle verbied was om te kom werk. Die werkers het briewe gekry waar hulle versoek was om te kom werk en nog steeds het hulle nie kom werk nie. Ander werkers beweer dat hulle gedreig was om nie te kom wekr nie. Dit is interessant dat sommige van die werkers gedreig was en ander nie. Werkers was ook in die lokasie bly, het kom werk. Ek vind dit dus vreemd dat slegs dié werkers gedreig was. Ek bevind dus die werkers skuldig op die klagtes. Ek het ook nie die weergawe van die ander twee werkers wat afwesig

> was vir die verhoor nie. Die verhoor is in hul afwesigheid gehou want geen redes is gegee vir hul afwesigheid nie. Ek bevind hulle ook skuldig.

[13] The dismissal of the nine employees gave rise to an interlocutory application before Steenkamp J in which the respondent challenged the *locus standi* of the employees to approach the Labour Court on the basis that the dispute about their dismissal had not been conciliated and accordingly the court had no jurisdiction to consider their dispute. At this hearing, Mr de Vos, who appeared on behalf of the employees, contended that the dismissals on 01 December and, particularly insofar as the interlocutory application was concerned, the dismissal on on 23 December, were both a "sham" and that, in substance, all of the dismissals had taken place on 30 November 2010. Steenkamp J accepted that these workers had based their claim on an automatically unfair dismissal that took place on 30 November 2010. He went on to find at para 19 of his judgment:

> 'That the claim might be a bad claim and might not pass muster under s 187(1)(c) of the LRA is beside the point. That claim can only be decided once all the evidence is in and once the parties have placed their arguments before the court. It does not deprive the nine workers from their *locus standi* at this stage.'

The judgment of the court *a quo*

[14] Steenkamp J thus approached the dispute on the basis that the appellants first had to establish that a dismissal had taken place on 30 November 2010. He found that there was no evidence to justify this contention. The employees had been paid for the day. They had then been called to a disciplinary hearing. Admittedly, the hearing was held in their absence, but the respondent had terminated their employment for misconduct. This effectively occurred for the nine employees on 23 December 2010 and on 1 December 2010 in respect of the 30 employees. Steenkamp J fortified his conclusion that the appellants had produced no evidence to justify a contrary finding by referring to the evidence of Mr Christians, who had testified on behalf of the appellants to the effect that, at a meeting on 30 November, Mr De Bot on behalf of the respondent had stated

unequivocally that the employees have not been dismissed but had to await the outcome of the disciplinary hearing. The learned judge held that the two disciplinary enquiries thus supported the conclusion that workers had not been dismissed before 1 December and 23 December 2010 respectively.

[15] It is against this finding, with the leave of this Court, that the appellant has approached the Court on appeal.

Absolution from the instance

[16] It is important to bear in mind that this appeal is based on a grant of an order of absolution from the instance. Accordingly, the test which must be determined is whether firstly there was a dismissal and secondly whether the appellant has provided evidence which raises a credible possibility that the dismissal in question fell within the scope of s187(1)(c) of the LRA. This approach has been confirmed by this Court in *Kroukamp v SA Airlink* (Pty) Ltd[1]:

> 'In my view, s 187 imposes an evidential burden upon the employees to produce evidence which is sufficient to raise a credible possibility that an automatically unfair dismissal has taken place. It then behoves the employer to prove to the contrary, that is to produce evidence to show that the reason for the dismissal did not fall within the circumstance envisaged in s 187 for constituting an automatically unfair dismissal.'[2]

[17] This *dictum,* which sets out the law insofar as unfair dismissals are concerned, should be read together with the general legal position relating to an application for absolution from the instance at the end of the plaintiff's case. In this connection, the correct approach was set out by Harms JA in *Gordon Lloyd Page and Associates v Rivera and Another*[3] as follows:

[1] 2005 (26) ILJ 2153 (LAC).
[2] At para 28.
[3] 2001 (1) SA 88 (SCA).

'The test for absolution to be applied by a trial court at the end of a plaintiff's case was formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409 G-H in these terms:

"…(W)hen absolution from the instance is sought at the close of plaintiff's case, the test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff. (*Gascoyne v Paul and Hunter* 1917 TPD at 173; *Rutor Flour Mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T)."

This implies that a plaintiff has to make out a prima facie case – in the sense that there is evidence relating to all the elements of the claim – to survive absolution because without such evidence no Court could find for the plaintiff (*Marine & Trade Insurance Co Ltd v Van de Schyff* 1972 (1) SA 26 (A) at 37 G – 38 A; Schmidt *Bewysreg* 4th ed at 91-2). The test has from time to time formulated in different terms, especially it has been said that the Court must consider whether there is 'evidence upon which a reasonable man might find for the plaintiff' (*Cascoyne (loc cit*)) – a test which had its origin in jury trials when the 'reasonable man' was a reasonable member of the jury (*Ruto Flour Mills*). Such a formulation tends to cloud the issue. The Court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another 'reasonable' person or Court. Having said this, absolution at the end of a plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises, a Court should order it in the interest of justice."'[4]

This appeal must be determined on the basis of this clear statement of the law as to when it is legally appropriate to grant an order of absolution.

Appellants' case

[18] Ms de Vos SC, who appeared together with Ms de Vos on behalf of the appellants, submitted that, although the respondent had conducted disciplinary hearings, to which I have already made reference, they were based on "trumped up" charges in that the employees could not be said to have refused a lawful instruction, in circumstances where there were negotiations in respect of the daily

[4] At 92-93; para 2.

slaughter targets and overtime to be worked as appears from the correspondence to which I have made reference. Furthermore, she referred to a passage of cross-examination of Mr Christians in which, contrary to the finding of the court *a quo*, the witness had insisted that the respondent, in dismissing the employees, sought to compel the employees to accept a demand in terms of s187(1)(c) of the Act which provides that a dismissal is automatically unfair if the reason for the dismissal is a refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer. The relevant passage reads thus:

> 'Mr Christians: … Die maatskappy is bereid om (onduidelik) as die werkers die 850 slag, of daai voorstel wat (onduidelik) as die werkers dit nakom (onduidelik). Dan was daar geen probleem vir die maatskappy om die werkers (onduidelik) terug te vat nie.
>
> Mr Loots: Maar dit was u mening, soos dit hier blyk.
>
> Mr Christians: Maar dit is my mening en die korrespondensie wys dit is so. Ek dink my mening is reg, is korrek…
>
> Mr Loots: Ja maar dit bly u …
>
> Mr Christians: Dat hulle sal teruggaan as hulle daai ure werk wat die maatskappy wil he hulle moet werk, daai lang ure, maar nie sal terugvat as hulle volgens hulle basiese diens - … die basic conditions werk nie, en volgens die kontrak nie, (tussenbeide)
>
> …
>
> Mr Loots: Dis u sterk opinie.
>
> Mr Christians: Dis my opinie dat die maatskappy hulle sal terugvat op daai basis, ja.'

[19] This passage of evidence was supported by an affidavit to which Mr Christians deposed in an earlier urgent application in which he stated 'I verily believe that the

company will reinstate the workers if they accede the demand of slaughtering 850 sheep per day'.

[20] Mr Dube, who testified on behalf of the appellants provided further support for appellants' case as follows:

> 'As ons soggens by die hek kom dan is daar 'n blaai met die name van almal. Teken langs hou naam jy is hierso, teken, gaan agter toe. Sit daar agter in die jaart. Julle gaan nie hier om nie. Julle werk nie. Sit agter. Daar het ons gesit vir soos twee weke. Toe dat ons net gehoor het in die laaste week die Vrydag julle hoef nie more in te kom nie, julle kan net julle geld kom haal, julle hoef nie more hier te kom sit nie. Julle kan maar net julle kom haal. En ons geld is aan ons betaal die laaste geld buitekant by die hek het ons ons geld – ons was nie binne nie.
>
> En kan ek nie teruggaan na die – in daai tyd wat u nou data gesit het, wat het nou van die slagtery geword? --- Dit het aangegaan. Die slagtery het aangegaan.
>
> Nou wie het geslag as die slagmanne daar on die hoek gesit het? --- Daar was mense van die Paarl wat ingery is want die oggend – die oggend toe ons kom wat ons om tienuur kom, toe is daai mense alreeds daar. En die company het vir hulle slaapplek gereël net langs die slagpale by die (onduidelik) daai mense her daar gebly. Daar is vir hulle kos voorsien. Daar was vir hulle beddens, hulle het daar geslaap. Ons het by die hek gestaan. Daai manne het verby ons geloop, gaan hulle in.'

[21] Mr Dube added important evidence by claiming that there had been an encounter with Mr De Bot on 30 November 2010. The relevant passage of his testimony reads thus:

> 'En mnr De Bot het gereageer en gesê nee, mar hulle is nie ge-dismiss nie, ons sal by vieruur weet. Wat ek – soos ek gehoor het die argue van die tyd, so ek is nie seker nie, want ek het nie die tyd nie, maar dis wat hy – wat ek gehoor wat hy ook gesê het, hy wat mnr De Bot is. Nee, hulle is nie ge… - ons sal vieruur sal

ons weet wat is die outcome. So ek – sy tyd kan uit gewees het ook. Ek – maar ek het nie tyd gekyk daai tyd nie, maar dis wat hy gesê het. Of hy sy tyd gekyk het hoe laat dit was kan ek nie sê nie.'

Respondent's case

[22] Mr Loots, who appeared on behalf of the respondent together with Mr Ackerman, submitted that there was no evidence to justify appellants' argument that the dismissal had taken place on 30 November 2010. In the first place, there were disciplinary hearings, which were conducted on 1 and 23 December 2010. Employees had been paid during this period, even though they had not attended the hearing on 1 December 2010. Further, Mr Loots emphasised that a practice directive which had been issued by Steenkamp J on 09 September 2014 to the effect that "applicants must establish the existence of dismissal on 30 November 2010 in terms of s 192 of the LRA." This, in his view the appellants had not been able to do.

Evaluation

[23] Ms de Vos contended that, as the trial had not ended, it was still open to her to point to the fact that the practice directive was incorrect and that it did not relieve the Court of its obligation to consider all the evidence and determine the existence of the dismissal, that is whether it was on 30 November or 1 December 2010 and further whether the dismissal had taken place by earlier conduct of the respondent or pursuant to the two disciplinary hearings to which reference had been made. Ms de Vos also made the point that a formalistic and technical approach adopted by a court, which prefers formality over an enquiry into substantive justice and therefore constructs an obstacle course for impecunious employees should be avoided.

[24] I fully endorse this warning. It may well be that in form, the employees were dismissed on 1 or 23 December and that a formal amendment to that effect might

yet have to be brought before a trial court. But that on its own should not detract a court from a proper enquiry namely, whether there was evidence produced by the appellants upon which a court applying its mind reasonably could or might have found a sufficient credible possibility that an automatically unfair dismissal had taken place. To my mind, the evidence of Mr Christians and Mr Dube, read together with the broader context of the dispute, namely a difference as to how many carcasses the employees were required to slaughter on a daily basis justifies a conclusion that the appellants had negotiated the initial evidential hurdle and that an order of absolution from the instance could not be granted on the evidence so presented.

[25] It may be that once all of the evidence is heard, including that of the respondent, that a court might conclude that the employees were dismissed for a reason alleged by the employer and accordingly that the dismissals were justified. That of course is for another day before a different court. That is not the test, which must be applied in this appeal.

[26] Much was made of a problem facing the appellants, namely that if the version was that the dismissal on 30 November 2010 was final, than in terms of the law as set out in *NUMSA and Others v Fry's Metals (Pty) Ltd*[5] *(Fry's Metals)*, s187(1)(c) of the LRA could not apply. On the basis of this decision, the section only applies to a conditional dismissal, that is a dismissal that was conditional upon an employee agreeing to the demands of the employer. It is not strictly necessary to determine whether the approach set out in *Fry's Metals* remains good law. However, as the parties did raise this issue in some detail in their heads, it is opportune to comment thereon.

[27] In effect, this approach reflects the jurisprudence set out by Zondo JP in this Court in *Fry's Metal (Pty) Ltd v NUMSA and Others*[6] which finding was confirmed by the Supreme Court of Appeal in the *Fry's Metal* decision *supra*.

[5] [2005] 3 All SA 318 (SCA).
[6] [2003] 2 BLLR 140 (LAC).

[28] The reasoning employed by Zondo JP (as he then was) in order to conclude that s187(1)(c) could only be applicable to a conditional dismissal is set out in paragraphs 27 and 28 of this judgment as follows:

> 'In my view what was said by the Industrial Court in *Game Discount World* in respect of a lock-out dismissal under the definition of a lock-out under the old Act, namely, that such a dismissal cannot be final and irrevocable, applies with equal force to the provisions of s 187 (1)(c) of the Act. In order to fall within the ambit of s 187(1)(c) a dismissal must have as its purpose the compulsion of the employees concerned to accept a demand in respect of a matter of mutual interest between employer and employee. If dismissal is not for that purpose, it falls outside the ambit of s 187(1)(c).
>
> A dismissal that is final cannot serve the purposes of compelling the dismissed employees to accept a demand in respect of a matter of mutual interest between employer and employee because, after he has been dismissed finally, no employment relationship remains between the two. An employee's acceptance of an employer's demand in respect of a matter of mutual interest can only be used or worth anything if the employee is going to continue in the employer's employ.'

[29] In arriving at this conclusion, Zondo JP referred to earlier findings of the Industrial Court which had been based on the definition of lockout as contained in the now repealed Labour Relations Act 28 of 1956, which included in the definition of a lockout, a termination by the employer of the contracts of employment of anybody or a number of persons in its employ:

> 'if the purpose of that … termination … is to induce or compel any persons, who are or have been in his employ or in the employment of other persons-
>
> (1) to agree or comply with a demands or proposals concerning terms or conditions of employment.'

[30] The definition of lockout has now been altered in the LRA to mean "the exclusion by an employer of employees from the employer's workplace for the purposes of

compelling the employees to accept a demand in respect of any matter of mutual interest between an employer and employee whether or not the employer breaches those employees contracts of employment in the course of or for the purposes of that exclusion."

[31] A so-called "termination lockout" now finds its way into s187(1)(c) of the LRA. This section must now be interpreted within the framework of two fundamental propositions:

1. The distinction is drawn in the LRA between a dispute of interest and a dispute of right. In this context, the Constitutional Court in *IN RE: Certification of the Constitution of the Republic of South Africa* 1996[7]; noted that employers "may exercise power against workers through a range of weapons, such as dismissal, the employment of alternative or replacement labour, the unilateral implementation of new terms and conditions of employment and the exclusion of workers from the workplace (the last of these generally called a lockout)". A distinction therefore must be made between these two concepts in terms of the present LRA.

2. The concept of dismissal is defined in s186(1) in the LRA to mean an employer has terminated employment with or without notice. This definition governs all dismissals including a dismissal in terms of s187(1) (c). If an employer therefore dismisses an employee in terms of s187(c) and an employee then concedes to the demand of the employer, it would appear that the employer may re-employ the employee. The use of the concept "reinstatement", as a description of what occurs if an employee concedes to the demand of an employer who is then prepared to accept the employee into the workforce is clearly at war with the idea that the concept of conditional dismissal can be made to fall within the definition of dismissal in s186(1). In the event that an employer "takes back" an employee who acquiesces to a demand of the employer, this is a fresh

[7] 1996 (10) BCLR 1253 (CC) at para 66.

decision made by the latter and not the result of a fulfilment of a condition to "reinstate" if the employee agrees to the demand of the employer.

[32] It may well be that this dispute with regard to s187(1)(c) of the LRA will require resolution in the near future but, for the purposes of making an order in this case, it is not necessary to determine definitely this interpretive dispute. The trial court may find, after an evaluation of all the evidence that the present dispute does not fall to be determined under s187(1)(c) of the LRA.

Order

[33] For all of the reasons set out:

1. The appeal is upheld with costs, including the costs of two counsel.

2. The order of the court *a quo* of 23 March 2015 is set aside.

3. The matter is remitted to the court *a quo* for a continuation of the trial.

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Davis JA

Musi JA and Murphy AJA concurred.

APPEARANCES:

FOR THE APPELLANTS:	Adv Anne Marie De Vos
	Instructed by SERI Law Clinic
FOR THE RESPONDENT:	Adv Lourens Ackerman
	Instructed by Bisset Boehmke McBlain Attorneys