THE SUPREME COURT OF APPEAL

REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case No: 3/2008

HAWKINS HAWKINS & OSBORN (SOUTH) (PTY) LTD Appellant

and

ENVIROSERVE WASTE MANAGEMENT Respondent

Neutral citation: Hawkins Hawkins & Osborn v Enviroserve Waste Management (3/2008) [2008] ZASCA 162 (27 November 2008)

Coram : MPATI P, CAMERON, MTHIYANE,
HEHER JJA and MHLANTLA AJA

Heard : 3 NOVEMBER 2008

Delivered : 27 NOVEMBER 2008

Summary : Contract – civil engineering – construction of landfill site – provisions of General Conditions of Contract for Works of Civil Engineering Construction, 6th edition (1990) – whether proper notice given entitling contractor to claim for additional work – whether engineer breached contractual obligations towards employer by failing to construe written communication as proper notice.

ORDER

On appeal from: High Court, Grahamstown Jones J (Schoeman and Dambuza JJ concurring) sitting as Full Court on appeal from a single judge (Sandi J).

The appeal is dismissed with costs, which shall include the costs of two counsel.

JUDGMENT

MPATI P (CAMERON, MTHIYANE, HEHER JJA and MHLANTLA AJA concurring):

[1] The respondent issued summons against the appellant, claiming payment of the total sum of R2 705 313.25 being damages allegedly suffered as a result of an alleged breach of contract. The matter came before the Eastern Cape Local Division (Sandi J) on a stated case, the parties having approached the court for a separation of issues in terms of Rule 33 (4). The court had to determine two issues only. The first was whether the appellant had indeed committed a breach of contract. In the event of the court finding that no breach of contract had occurred, the second issue had to be determined, which was whether, despite the finding, the particulars of claim still disclosed a valid cause of action.
If not, the respondent's action against the appellant had to be dismissed in its entirety.

[2] Sandi J found in favour of the appellant on both issues and thus dismissed the respondent's claim with costs. The learned judge, however, granted the respondent leave to appeal to the Full Court of the Eastern Cape Division. The Full Court (Jones J, Schoeman and Dambuza JJ concurring) allowed the appeal and reversed the trial court's order. This appeal is with the special leave of this court.

[3] The statement of agreed facts is fairly comprehensive. It is in my view not necessary to record it in full. A summary of the salient facts will suffice.

[4] During March 1996 the respondent, which operated a waste disposal site at an area known as Aloes in Port Elizabeth, resolved to develop the site by adding a second waste disposal pit (Aloes II) as the existing facility had a limited lifespan. It accordingly engaged the appellant, a consulting engineering company, to design Aloes II, to attend to the tender process for its construction and to administer and supervise the construction works. After tenders had been invited, a site inspection was conducted on 8 May 1997. The Schedule of Quantities, which formed part of the tender documents, provided a rate for 'intermediate excavation' and 'hard rock excavation'. For each of these two categories the Schedule provided for 23 826 cubic meters and 47 652 cubic meters of material to be removed respectively. These were, however, not final figures. Another tender document provided that '[f]inal quantities on which

payment shall be based will be measured on site'.

[5] The tender was awarded to Blasting & Excavation/Grassmaster Joint Venture (the contractor), whose contract price of R8 516 604.66 was approximately R2 million lower than the other tenderers. The contractor did not price individually for the 'intermediate' and 'hard rock' material provided for in the Schedule of Quantities. It chose to quote a total price for excavation, referred to in construction practice as a 'through rate'. The contractor agreed to a construction programme of twenty weeks ending on 15 November 1997; the understanding between the parties being that time was of the essence of the contract.

[6] A document headed 'General Conditions of Contract for Works of Civil Engineering Construction, 6th edition (1990)' (the GCC), formed part of the tender documents. It is a standard document sponsored by the Civil Engineering Advisory Council and regulates the contractual relationship between employer and employee, in this case the respondent and the contractor. Clause 50 of the GCC provides as follows:

'(1) If during the execution of the Works the Contractor shall encounter adverse physical conditions (other than weather conditions at the Site or the direct consequences of those particular weather conditions) or artificial obstructions, which conditions or obstructions could not have been reasonably foreseen by an experienced contractor at the time of submitting his tender, and the Contractor is of the opinion that additional work will be necessary which would not have been necessary if the particular physical conditions or artificial obstructions had not been encountered, he shall give notice to the Engineer in writing as soon as he becomes aware of the conditions aforesaid, stating

(a) the nature and extent of the physical conditions and artificial obstructions encountered, and

(b) the additional work which will be necessary by reason thereof.

(2) Should additional or more extensive adverse physical conditions or artificial obstructions within the meaning of Sub-Clause (1) be encountered by the Contractor, he shall give further notices thereof in terms of Sub-Clause (1).

(3) Unless otherwise instructed by the Engineer, the Contractor shall carry out the additional work proposed in the notice or notices under Sub-Clauses (1) and (2) without limiting the right of the Engineer to order a suspension of work in terms of Clause 42 or a variation in terms of Clause 39.

(4) If the Contractor has duly given the notice referred to in either Sub-Clauses (1) or (2), he shall be entitled, in respect of any delay or additional Cost, to make a claim in accordance with Clause 51, provided that the cost of all work done by the Contractor prior to giving the notice or notices in terms of Sub-Clauses (1) and (2) shall be deemed to be covered by the rates and prices referred to in Clause 3(4).'

[7] During July 1997 the respondent, due to difficulty in the construction of the pit relating to steepness of the sides, instructed the appellant to issue a variation order directing the contractor to vary the gradient of the side slopes. This would result in a loss of 35 000 cubic meters of airspace. To counter the loss the variation order, which was issued on 6 August 1997, provided for an excavation of an extra three meters. (The original depth of the pit was 30 meters.) The contractor did not demand a revision of rates arising from the variation order, which it was entitled to do in terms of clause 40[1] of the GCC.

[8] On 5 September 1997 the engineer wrote to the contractor in the following terms:

'We have been monitoring progress on a regular basis and must bring to your attention our concern that production is falling behind programme.

This could have an adverse effect on the Lining Contractor and subsequent beneficial occupation by our Client.

Please report on the situation and proposals to improve matters at the Site Meeting to be held on Tuesday 9th September 1997.'

This letter was apparently prompted by the fact that although it had been reported at a technical meeting on 12 August 1997 that progress on the earthworks (load and haul) was ahead of programme by 11 days, the excavation works had started to slow down significantly due to increased hardness of the material.

[9] The contractor did not wait for the proposed site meeting of 9 September, but responded by letter dated 8 September 1997, which reads:
'We acknowledge receipt of your letter dated 5 September re the above.

Progress to date is as follows:- (As measured against the revised programme submitted on 27 August 1997).

	Situation	Comments
Load & Haul	7 days behind (7 days ahead of	3 days lost to inclement weather digging conditions have

1 Clause 40(2) reads: 'Notwithstanding the provisions of Sub-Clause (1), if the nature or amount of any variation or increase or decrease in quantity, whether ordered under Clause 39 or being the result of the quantities exceeding or being less than those stated in the Schedule of Quantities, relative to the nature or amount of the whole or the relevant part of the work specified in the Contract, shall be such that it results in a change in method or scale of operation, process of construction or source of supply which will render any rate or price (including Preliminary and General allowances) contained in the Contract for any item of work unreasonable or inapplicable, either the Engineer or the Contractor shall be entitled, in compliance with Sub-Clause (3) to require that a rate or price be fixed which, in the circumstances, is fair and reasonable.'

become

	original programme)	extremely hard due to shale encountered at the 30 m elevation.
Subsoil drain	8 days behind	This is a variable order which started late due to waiting for material.
Trim Side 1 : 1,5 slopes	2 days behind	

As indicated in our site correspondence (No 22 dated 27/8/97) at our initial meeting with the Resident Engineer it was stated that the Lining Contractor would require two occupations of approximately one week each to install the lining (as reflected in our original program). We have tried to reprogram the contract in order to give the lining contractor more time but feel that it is unfair to expect us now to accommodate him in week eleven of a twenty week contract.

In order to catch up with the load and haul we increased our dozing capacity by adding a D 85 dozer to our team as from the 2nd September and plan to start drilling and blasting a large portion of the estimated 103000m3 of hard shale as from tomorrow.'

At the site meeting the next day there was discussion concerning the delays in the excavation.

[10] Blasting took place on 13 and 17 September 1997. On 19 September 1997 the contractor wrote to the appellant noting, inter alia, the following in the last paragraph of the letter:

'We also wish to take this opportunity to inform you that the rock encountered at the present level was envisaged neither by yourselves or ourselves at tender stage. This situation has both cost and time implications to ourselves.'

On 22 September 1997 the contractor again wrote to the appellant. The opening paragraph of the letter reads:

'We wish to, in terms of clauses 39, 40 and 50 of the General Conditions of Contract, inform you of our intentions to claim for additional Cost and Time as a result of the unexpected rock (hard mudstone) excavated at level 30,0m in the main waste disposal pit.'

The letter then sets out the calculations for costing the additional work occasioned by the hard rock and the extra material resulting from the new depth of the pit as per the variation instructions of 6 August 1997. As a result of the hard physical conditions encountered, the contractor also requested an extension of time of six weeks for the completion of the contract works.

[11] In a letter dated 3 October 1997, written in response to the letter of 22 September, the appellant

referred to the minutes of the technical meeting held on 9 September 1997 and said, inter alia, the following:

'No mention was made of extra payment required and as the tendered rates for intermediate and hard rock excavation were inclusive it was concluded that no extra payment would be required.'[2]

The appellant also referred to clause 40(3)(a)[3] of the GCC and concluded thus:

'We believe the purpose of this sub-clause is to afford the Engineer (acting on behalf of the Client) an opportunity to consider financial implications and alternatives to obtain the desired outcome.

This opportunity was not allowed and other courses of action, such as amending floor levels or seeking permission for relaxation of Permit conditions, were not explored.

We believe the Contractor to be in breach of the sub-clause mentioned.'

[12] After further correspondence between the appellant and the contractor the dispute between the latter and the respondent was referred to arbitration. The arbitrator was asked to determine three issues, the relevant one for present purposes being –

'whether the contractor was entitled to additional payment for the work it executed in having to drill, blast and excavate the hard material that it encountered at level 30 and below'.

To answer this question, the arbitrator was required to consider whether or not the contractor's letter of 8 September constituted proper compliance with clause 50(1) of the GCC. He held that it did and ordered the respondent to pay the contractor the sum of R1 475 865, together with interest and costs. It is the amounts paid pursuant to this arbitration award that the respondent now seeks to recover from the appellant as damages for breach of contract.

[13] The answer to the question whether the appellant breached its contractual obligations towards the respondent by not construing the letter of 8 September 1997 as a notice depends on whether or not the letter constituted a notice in terms of clause 50(1) of the GCC. That was the first issue which the trial

2 In addition to other information that came out in the discussions, the minutes of the meeting record what is contained in the letter of 8 September 1997 (quoted in para 9 above) relating to the rock encountered at the 30 meter level which caused a slow down in progress and how the output was to be improved by blasting and the bringing in of a D 85 Dozer.

3 Clause 40(3)(a) reads: 'No change in terms of this Clause shall be made to the Contract Price or to any rate or price unless, as soon it is practicable, and in the case of extra or additional work before the commencement of such work, notice shall have been given in writing

(a)by the Contractor to the Engineer of his intention to claim extra payment in terms of Sub-Clause (1) or a varied rate or price in terms of Sub-Clause (2), or

(b) by the Engineer to the Contractor of his intention to vary a rate or price in terms of Sub-Clause (2).'

court was called upon to consider. Sandi J found that the letter did not constitute a notice in terms of clause 50(1) of the GCC. The Full Court held that it did.

[14] The enquiry whether or not the letter constituted a notice necessarily involves the proper construction of clause 50 of the GCC. As Jones J in the court below points out: 'The real issue is what precisely clause 50 of the contract requires in the way of notice to the engineer, and whether or not the letter of 8 September measured up to those requirements.' I did not understand counsel to suggest that in ascertaining the common intention of the parties to the contract (ie the respondent and the contractor), giving the words used in the clause their grammatical and ordinary meaning will result in some absurdity, or repugnancy, or inconsistency with the rest of the GCC.[4] In construing the words 'give notice' in clause 50 Jones J said:

'The words "give notice" in the law of contract frequently have a formal connotation, for example when used to terminate services, or to vacate premises. But not necessarily. The OED says that the words mean to intimate, to inform, to notify, to point out. In the context of clause 50 it seems to me that a legalistic definition is quite out of place. When the clause enjoins the contractor to give the engineer notice of adverse physical conditions, it requires him to advise or inform him about the adverse physical conditions. Simply put, he must tell him about them. He is not called to compose a formal legal document until he makes his claim in terms of section 51.'[5] (My underlining.)

Except for the underlined sentence, counsel for the appellant did not take issue with this reasoning. I agree with Jones J that clause 50 of the GCC required the contractor to advise or inform the engineer about the adverse physical conditions (the hard rock that required drilling and blasting) and the additional work which will be necessary as a result of these conditions.

[15] As to the underlined sentence, counsel for the appellant submitted that the reasoning of the court below fails to take account of clause 50(2),[6] which requires the giving of further notices if additional or more extensive physical conditions are encountered. Clause 50(2), said counsel, envisages the giving of a notice and not simply a communication in which information is imparted. He accordingly argued that while certain formalities are prescribed in certain circumstances, in order to be a notice 'the document would have to convey that the author intended to give notice in terms of a clause of the contract and not to convey that the author was responding to the query of the 5th [September]'.

4 *Cf Coopers & Lybrand and others v Bryant* 1995 (3) SA 761 (A) at 767 E-F, and cases there cited.
5 Section 51 of the GCC provides for formalities to be complied with in relation to a claim for additional payment and/or compensation or extension of time.
6 Quoted in para 6 above.

[16] I shall consider the question of the intention of the author when I deal with the issue of whether or not the letter of 8 September 1997 constituted a notice in terms of clause 50(1) of the GCC. But counsel also made reference to clause 1(2) of the GCC[7] and contended that the court a quo failed in its reasoning to take account of the distinction made in that clause between a 'letter' and 'notice'; that the contract requires notices to be given in certain circumstances and that these notices are not letters in which information may be contained in passing. I do not intend to enter into a debate on this issue. Suffice it to say that I can find no reason why a notice cannot be in the form of a letter, provided that the letter is so framed as to communicate unequivocally to the addressee that the writer is invoking, or relying upon, the provisions of the contract which provide for the giving of notice. It may do so expressly or by implication. As I shall explain, the terms of the final paragraph of the letter of 8 September were so closely related to the substance of clause 50(1) that they satisfied that standard.

[17] Did the letter of 8 September 1997 constitute a notice in terms of clause 50(1) of the GCC? The clause enjoins the contractor, upon encountering adverse physical conditions which could not have been reasonably foreseen at the time it submitted its tender, to give notice to the appellant in writing as soon as it became aware of the adverse physical conditions. The notice is required only if the contractor is of the opinion that additional work will be necessary which would otherwise not have been. The clause requires the notice, in addition to its being in writing, to state two things: (a) the nature and extent of the physical conditions encountered, and (b) the additional work which will be necessary by reason of the physical conditions. In my view, clause 50 is clearly meant for the benefit or protection of the employer (respondent) and, to a lesser extent, the contractor. It protects the employer from claims for additional cost occasioned by additional work done by the contractor without its being notified that additional work was necessary. The purpose of the notice is to afford the employer an opportunity to consider other, perhaps less costly, alternatives to deal with the adverse physical conditions encountered by the contractor. On the contractor's side, the notice enables it to claim additional cost for additional work done which could not have been considered or catered for at the time of tender due to its being unforeseen.

[18] Counsel for the appellant conceded that the comment referring to hard shale in, and the final paragraph of, the letter in question contain such detail as satisfy clause 50(1)(a) and (b), that is, the information relating to the nature and extent of the physical conditions and the additional work they will necessitate. This, however, is not enough, according to counsel. He submitted that the letter did not

7 Clause 1(2) reads: 'Any written communication, including, but without limiting the generality of the word "communication", any letter, notice, drawing, order, instruction, account, claim, determination, certification or site meeting minutes, to be delivered by the Employer or the Engineer to the Contractor, or by the Contractor to the Employer or the Engineer, shall be deemed to have been duly delivered if . . ..'

mention that the adverse physical conditions were not reasonably foreseen. I agree with the court a quo, however, that foreseeability 'is an issue that might arise in due course when the validity of the claim is considered'. The notice does not have to state that the adverse physical conditions were not reasonably foreseen. Clause 50(1) requires the notice to state only the detail in sub-paragraphs (a) and (b) and nothing else.

[19] It was contended on behalf of the appellant that a consideration of the issue whether the letter in question constituted a notice in terms of clause 50(1) involves its (the letter's) interpretation. That being the case, so the argument ran, the rules of interpretation relating to the admissibility of evidence of background facts[8] and of the contractor's subsequent conduct[9] should apply. The court a quo held that the principles of the interpretation of contracts 'are irrelevant to whether or not the letter gave notice'. It said that it was not concerned with the interpretation of the letter, ie, it was not concerned with what the wording of the letter meant, but with whether or not the letter gave notice. That, the court said, was a question of fact, not interpretation. I agree. We are not here dealing with a notice of cancellation of a contract which needs to be clear and unequivocal for purposes of its consequences. There is in any event nothing unclear or equivocal in the contents of the letter in question. It responds to the appellant's letter of 5 September 1997 and, in addition, gives the information required by clause 50(1)(a) and (b). Indeed, as I have mentioned earlier, counsel conceded that the comment referring to the hard shale in, and the final paragraph of, the letter 'contain such detail as satisfy clauses 50 (1)(a) and (b)'. It follows that counsel's further submissions relating to the relevance of clauses 3(2), 3(3) and 40 of the GCC as constituting background information for purposes of interpretation of the letter do not require any further consideration.

[20] Although counsel made the concession just mentioned, he argued that not every communication which contains the facts referred to in the sub-clauses (50(1)(a) and (b)) will necessarily be a notice in terms of the clause. To be such a notice, he contended, the communication has to convey the intention to give a notice. He mentioned certain factors which he said point to an absence of intention on the part of the contractor to give notice in terms of clause 50(1). These are: (a) that the letter of 5 September 1997 concerned the programming of works with the result that the programming of the works became the dominant element in the contractor's reply of 8 September; also the fact that the last-mentioned letter

8 As considered in cases such as *Delmas Milling Co Ltd v Du Plessis* 1955 (3) SA 447 (A); *Coopers & Lybrand and others v Bryant*, supra, footnote 5; *Sun Packaging (Pty) Ltd v Vreulink* 1996 (4) SA 176 (A) at 184A-D and *Engelbrecht and another NNO v Senwes Ltd* 2007 (3) SA 29 (SCA) paras [6] and [7].

9 As considered in *Breed v Van den Berg & others* 1932 AD 283 at 291-292; *Telkom Suid-Afrika Bpk v Richardson* 1995 (4) SA 183 (A) at 192J-194G, and *Imatu v MEC: Environmental Affairs, etc v Northern Cape* 1999 (4) SA 267 (NC) at 279G-281D.

begins with an acknowledgment of the appellant's letter of 5 September, which means that the impetus originating the letter was not a decision to give notice in terms of clause 50; (b) that the subsequent conduct of the contractor showed that at the time the letter was written the contractor did not think that it was a notice; and (c) the fact that the letter in question was not written as soon as possible after the contractor had become aware of the adverse physical conditions.

[21] As to (a), I have already stated that there is no reason why a notice in terms of clause 50(1) could not be in the form of a letter. There is also no reason why it could not be contained in a letter that also dealt with other matters relating to the contract. It does not matter, in my view, whether, in this case, the programming of the works was the dominant element in the letter in question. If the letter complied with the requirements of clause 50(1), a notice has been given. In relation to (b) the court a quo said the following:

'Either the letter gave notice or it did not. If it did, what the parties said or did afterwards is irrelevant. Notice was still given. If it did not, nothing the parties said or did afterwards can change anything . . . . If the letter gave notice that is the end of the matter. It does not matter what the writer said he intended by writing the letter or what his motives were.'

[22] Counsel for the appellant criticized this reasoning and submitted that it flies in the face of the 'deep-seated principle in our law that the purpose of legal interpretation is to discover the intention of the parties'. He referred to the contractor's letter of 10 November 1997, which, he said, justified the claim in terms of clause 51 'not through reference to a notice in terms of clause 50(1) dated 8 September, but with reference to the letter of 22 September'. In my view, even if the reasoning of the court a quo was wrong – and I am disinclined to hold that it is – counsel's reading of the contractor's letter of 10 November is in any event erroneous. The relevant part of the letter reads:

'Clause 50 entitles us to submit a claim in terms of Clause 51, the conditions of which were complied with on our letter of 22 September 1997.'

Clearly the words 'the conditions of which were complied with' qualify 'clause 51' and not 'clause 50'. The letter of 22 September could not, and did not purport to, have complied with the requirements of clause 50(1)(a) and (b). It expressed an intention to claim 'for additional Cost and Time as a result of the unexpected rock (hard mudstone) excavated at level 30,0m'. It expressed an intention to claim for work already done. And the contractor could only express an intention to claim if it knew that it had complied with clause 50(1). That could only have been through the letter of 8 September 1997 because no other written notice had been given to the engineer. The letter of 19 September 1997 in which the contractor informed the engineer that the hard conditions were not foreseen by anyone is in my view evidence of the

fact that the contractor knew that notice of those conditions encountered and the additional work required to be done had been given. There is thus nothing in the contractor's conduct subsequent to the letter of 8 September that is inconsistent with an intention to give notice in terms of clause 50(1) by the letter in question.

[23] The third factor (mentioned in (c) of para 20 above) that allegedly points to an absence of intention to give notice in terms of clause 50(1) is that the letter in question was not written as soon as possible after the contractor had become aware of the adverse physical conditions. In this regard counsel relied on the statement of agreed facts which reveal that the excavation works started to slow down significantly in the week beginning 11 August 1997 due to increased hardness of the material, and that on 30 August 1997 the contractor 'started to rip and stockpile the mudstone material with a CAT D85 Dozer'. Counsel accordingly submitted that by 8 September 1997 it had become abundantly clear to all involved that additional work involving the use of a bulldozer as a result of unforeseen hard rock had been in progress for some time without there having been any hint of a notice in terms of clause 50(1). By 8 September, so it was contended, the engineer would therefore not have been expecting a clause 50(1) notice.

[24] First, the expectations of the engineer have no relevance in determining whether or not the letter in question constituted a notice in terms of clause 50(1). Second, a late notice does not fail to qualify as one for that reason. Clause 50(4) makes this quite clear. The proviso to that clause provides that the cost of all work done prior to giving the notice 'shall be deemed to be covered by the rates and prices referred to in Clause 3(4)'. These are the rates and prices stated in the priced Schedule of Quantities, that is, the rates and prices in the tendered price. That the notice might have been late is thus not relevant to the enquiry.

[26] I therefore conclude that the letter of 8 September 1997 complied with the provisions of clause 50(1) of the GCC and thus constituted a notice in terms of that clause. In my view, a reasonable engineer would have construed it as such. I say this because the engineer knew that the contractor had tendered a 'through rate' for excavations down to the 30 meter level. The tender did not cater for hard rock below the 30 meter level because tenderers were required to tender to the 30 meter level. It was as a result of the variation issued by the appellant that the contractor was required to go down three meters beyond the 30 meter level. And no-one had foreseen that hard rock would be encountered at the 30 meter level. The fact that the contractor did not ask for a revised rate when the variation order was issued is of no consequence. The contractor might have believed that it would be able to absorb the cost of going down an additional three meters. But alas, it encountered hard rock which necessitated additional work. The

engineer also knew that the tender documents provided for quantities of 47 652 cubic meters of hard rock and 23 826 cubic meters of intermediate excavation, whereas the final paragraph of the letter of 8 September estimated an additional 103 000 cubic meters of hard rock to be excavated. There was thus a huge difference between the volume of hard rock excavation as was reflected in the tender documents and the letter of 8 September. With the knowledge he had the engineer ought to have realised that additional cost would be incurred by reason of the additional work. The letter of 8 September 1997 informed him of the nature and extent of the adverse physical conditions encountered and of the additional work they necessitated. He ought to have construed the letter as a notice in terms of clause 50(1). The fact that the letter, in its final paragraph, stated that the contractor intended 'to start drilling and blasting a large portion of the estimated 103 000 cubic meters of hard shale as from tomorrow' did not bar him from ordering a suspension of the works so that he could consider other options which would be less costly. He had the power to do so in terms of clause 50(3) of the GCC. Accordingly, the engineer ought to have construed the letter of 8 September 1997 as a notice in terms of clause 50(1) of the GCC. This conclusion renders it unnecessary for me to consider the second issue which the trial court was required to determine.

[27] The appeal is dismissed with costs, which shall include the costs of two counsel.

MPATI P

Appearances:

For appellant : R G Buchanan SC
T J M Paterson SC

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