THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 630/11

Reportable

In the matter between:

DIANE JEAN THEART **APPELLANT**

and

HANS-PETER WOLFGANG SCHEIBERT **FIRST RESPONDENT**
JAN WILLY SUNDBY **SECOND RESPONDENT**
THE MASTER OF THE HIGH COURT **THIRD RESPONDENT**
THE REGISTRAR OF DEEDS **FOURTH RESPONDENT**

Neutral citation: *Theart v Scheibert* (630/11) [2012] ZASCA 131 (27 September 2012).

Coram: Cloete, Cachalia, Malan and Tshiqi JJA and Erasmus AJA

Heard: **5 September 2012**

Delivered: **27 September 2012**

Summary: **Wills – mutual will – interpretation – massing – presumption of destruction where original will cannot be found.**

ORDER

On appeal from: Western Cape High Court, Cape Town (Cloete AJ sitting as court of first instance):

1 The appeal succeeds, and the second respondent is ordered to pay the costs of the appellant and the first respondent, including the costs of two counsel where employed.

2 The order of the court a quo is set aside and the following order is substituted therefor:

'(a) An order is granted in terms of paragraphs 4.1, 4.2 and 4.3 of the notice of motion.

(b) The second respondent is ordered to pay the costs of the applicant and the first respondent, including the costs of the interlocutory application and the costs of two counsel where employed.'

JUDGMENT

CLOETE JA (CACHALIA, MALAN, TSHIQI JJA AND ERASMUS AJA CONCURRING):

[1] On 28 March 1983 Mr Kristian Jens Korsgaard and Mrs Isabel Louisa Wilhelmina Korsgaard executed a mutual will (the mutual will) with the appellant as a beneficiary. In what follows I shall refer to Mr Korsgaard as 'the testator', to Mrs Korsgaard as 'the testatrix' and to them jointly as 'the testators'. The principal questions on appeal are the interpretation of the mutual will and whether it was revoked. The first respondent is the executor of a will (the new will) made by the testator after the testatrix had died, and the second respondent, the testator's nephew, is the beneficiary under that will. The third respondent is the Master of the High Court, Cape Town, who did not participate in these proceedings. The fourth respondent is the Registrar of Deeds, Cape Town, who filed a report stating that the records of the Deeds

Registry reflected that immovable property (referred to below) was registered in the name of the testator and that the title was not endorsed to give effect to the mutual will.

[2] The relevant facts are these. The testator was born in Norway in 1908 and grew up in that country. He came to South Africa in the early 1940's where he worked on whaling vessels based near Cape Town. In the mid-1940's he gave up whaling, took up employment in the Cape Town harbour and rented accommodation in Green Point, where he met the testatrix.

[3] The testator purchased 19 Dysart Road, Green Point (the property) in 1946 and the property was registered in his name in February 1947. A few weeks later, in March 1947, the testator and the testatrix married each other. It was common cause on appeal that the marriage was in community of property and accordingly, that on their marriage they owned the property in equal and undivided shares. They lived at the property until their deaths.

[4] In about 1954 the appellant, who was then nine years old, and her brother began living permanently with the testators. The appellant was born in 1945. Her mother was the daughter of the testatrix by a previous marriage. The testators raised the appellant as if she were their daughter. After the appellant's brother died, the appellant was the testatrix's only living descendant and remained so until her own child was born.

[5] On 28 March 1983 and in Cape Town the testators executed the mutual will. The testatrix gave the appellant a copy of that will at about the time it was executed. The original cannot be found. It was not produced to the Master. The copy in the appellant's possession was authenticated by one of the persons that had witnessed the original and this evidence was not challenged by the respondents.

[6] The testatrix died on 11 February 1990. Two death notices were filed with the Master in terms of s 7 of the Administration of Estates Act 66 of 1955 – one by the testator, and one by Ms M M Brink who described herself in the

notice she filed as a nurse/friend and who the appellant asserts was the testator's then girlfriend. The death notices are each dated 4 December 1997, ie more than seven years after the testatrix's death. Both notices stated ─ incorrectly ─ that the testatrix was married by ante-nuptial contract and that she had died intestate. On 30 June 1998 Ms Brink filed an inventory of the testatrix's estate with the Master in terms of s 9 of the Administration of Estates Act which ─ again incorrectly ─ reflected that the testatrix owned no immovable property and that the only moveable property she owned consisted of clothes of no commercial value. On 2 July 1998 the Master wrote to the testator in the following terms:

'SIR

ESTATE LATE: I L KORSGAARD

As the Inventory reflects no assets at all the matter is regarded as finalized and will be filed off record.'

[7] After the testatrix's death, the relationship between the appellant and the testator deteriorated. (I shall deal with this aspect in more detail later in the judgment.) The testator then executed at least three wills in which the appellant was not a beneficiary: one on 5 October 2005, one on 6 December 2006 and the last, the new will, on 15 March 2008. The sole heir in all of these wills was the second respondent. It was common cause that in each will the testator intended to bequeath the property in its entirety to him.

[8] The testator died on 6 May 2008. The first respondent, his executor, drew up a liquidation and distribution account reflecting the terms of the new will and awarded the property to the second respondent. The appellant lodged objections with the Master asserting the validity and enforceability of the mutual will. The Master required the dispute to be resolved by the high court, and the application which culminated in this appeal was launched in the Western Cape High Court, Cape Town, by the appellant. In her founding affidavit, the appellant contended that the mutual will effected a massing of the estates of the testator and testatrix; and in the notice of motion, the appellant made claims in the alternative depending on whether the court found that the testator had adiated under the mutual will.

[9] The main relief, sought on the basis that the testator had adiated, was:

‘1. That it is declared that the will of the late Kristian Jens Korsgaard dated 15 March 2008 (“the new will”), a copy of which is annexed to the founding affidavit, marked “C”, to the extent that it purports to dispose of assets which constituted a part of the erstwhile matrimonial estate of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, including certain immovable property situated at 19 Dysart Road, Green Point, is invalid and unenforceable.

2. That it is declared that the joint will of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, dated 28 March 1983 (“the joint will”), a copy of which is annexed to the founding affidavit, marked “A”, is the will in terms of which assets which constituted a part of the erstwhile matrimonial estate of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, including certain immovable property situated at 19 Dysart Road, Green Point, must devolve.

3. That the third respondent is directed to accept the joint will as the will in terms of which assets which constituted a part of the erstwhile matrimonial estate of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, including certain immovable property situated at 19 Dysart Road, Green Point, must devolve.’

The alternative relief sought was:

‘4.1 That it is declared that the new will, to the extent that it purports to dispose of one half of the assets which constituted a part of the erstwhile matrimonial estate of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, including and undivided half share in certain immovable property situated at 19 Dysart Road, Green Point, is invalid and unenforceable.

4.2 That it is declared that the joint will is the will in terms of which one half of the assets which constituted a part of the erstwhile matrimonial estate of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, including an undivided half share in certain immoveable property situated at 19 Dysart Road, Green Point, must devolve.

4.3 That the third respondent is directed to accept the joint will as the will in terms of which one half of assets which constituted a part of the erstwhile matrimonial estate of the late Kristian Jens Korsgaard and the late Isabel Louisa Wilhelmina Korsgaard, including an undivided half share in certain immovable property situated at 19 Dysart Road, Green Point, must devolve.’

[10] The high court (Cloete AJ) non-suited the appellant and refused leave to appeal. The appeal is accordingly with the leave of this court.

[11] The high court came to the conclusion that 'the joint will did not establish a massing of estates' and went on to find that even if it did, the testator had not adiated. Both massing and adiation are issues on appeal. The high court did not make a finding that the joint will had been revoked, as the second respondent contends, but did conclude that the appellant had probably not rebutted the presumption that 'when a will which was last known to have been in the possession of the testator cannot be found upon his death, he is presumed to have destroyed it with the intention to revoke it'. Revocation remains an issue in the appeal. Then finally, the high court concluded that the alternative relief sought in paragraph 4 of the notice of motion could not competently be sought against the estate of the testator. This finding is also challenged on appeal.

[12] It would be convenient to commence with the question whether the mutual will effected a massing. The relevant clauses in the will are the following:

'2. We appoint the survivor of us to be the Executor/Executrix of this our Will and Administrator/Administratrix of our Estate, granting unto each other all the powers allowed in Law and particularly the power of assumption.

3. We appoint the survivor of us to be the sole and universal heir/heiress to the whole of our Estate and Effects whether movable or immovable and wherever situate and whether in possession, reversion, expectancy or contingency.

4. In the event of our dying simultaneously or in circumstances where it is difficult or impossible to determine the first dying of us or on the death of the survivor of us, then and in that event we declare our Last Will and Testament to be as follows:

4.1 We appoint as Executrix of this our Will, Administratrix of our Estate and Trustee hereunder, DIANE JEAN CHESTER (born Kells), presently of Cape Town, hereby granting unto her all such powers and authorities as are required or allowed in Law, especially the powers of assumption.

. . .

5. We give and bequeth the whole of our Estate and Effects movable and immovable, of every description and wheresoever situate, whether same may be in

possession, reversion, remainder, expectancy or contingency to DIANE JEAN CHESTER (born Kells).'

[13] The appellant's counsel contends that the mutual will effected a massing of the estates of the testators for the purposes of a joint disposition to her; and that as the testator had accepted a benefit from the testatrix under the mutual will, he had lost the right to revoke his part of the mutual will in accordance with the decision in *The Receiver of Revenue, Pretoria v C H Hancke* 1915 AD 64 at 71-72. The consequence, according to the appellant's counsel, was that the new will was of no effect and the appellant was entitled to inherit the property.

[14] Counsel for the second respondent contended, at least in this court, that clause 3 of the mutual will constituted an out and out bequest of inter alia the property to the second respondent which vested on the testatrix's death; and that clause 5 of the will was a bequest to the appellant by the testator alone, which he was free to revoke. The consequence, according to the second respondent's counsel, was that the new will was valid and that the second respondent was entitled to inherit the property.

[15] The high court gave a third interpretation to the mutual will. It held that:
'[C]lauses 3 and 5 are utterly irreconcilable unless subject to a qualification, namely that clause 5 will only operate upon the happening of certain of the events in clause 4, namely upon the simultaneous death of the testator and testatrix, or in circumstances in which it is difficult or impossible to determine the first dying (thus implying some sort of virtually simultaneous death). This interpretation would render the words "or on the death of the survivor of us" in clause 4 *pro non scripto* but would certainly give meaningful effect to the content of the joint will. This interpretation also clearly militates against any massing of the estate(s) of the testator and testatrix.'

[16] It is convenient to start with the interpretation given by the high court. That interpretation offends against the well-established canon of construction that where it is possible to reconcile and give effect to every clause in a will, that interpretation should be adopted: see for example *Smith v Smith* 1913

CPD 869 at 878. In my view, clause 3 is not irreconcilable with clause 5. It seems plain from the mutual will that clause 3 governs the position where the first spouse has died and there is a survivor, and that clause 5 governs the position where the survivor has died. That is the sequence of the will: the bequest to the survivor is in clause 3; inter alia the death of the survivor is contemplated in clause 4; and the bequest to the appellant follows in clause 5. Clause 4 contemplates three possible situations: both spouses dying simultaneously (the first possibility) or virtually simultaneously (the second possibility) and the death of the survivor after the first dying (the third possibility). In the first, there will be no survivor and in the second, no survivor for practical purposes, and clause 3 would therefore not operate in either case. The third possibility deals with the position 'on the death of the survivor of us' and clause 3 would therefore be applicable. But clause 4 continues, in regard to the third possibility, with the words 'then and in that event we declare our Last Will and Testament to be as follows'. These words cannot refer to the first dying, who would already have died. This conclusion is reinforced by the provision in clause 4.1 appointing an executor. That provision also cannot be applicable to the first dying as the first dying appointed the survivor as his/her executor in terms of clause 2. The words can therefore only refer to the survivor. The last part of clause 4 must accordingly be interpreted as meaning 'on the death of the survivor of us, then and in that event the survivor declares his/her Last Will and Testament to be as follows'. The question is what is to be made of clause 5: is it the bequest of the survivor alone and therefore revocable by the survivor (as counsel for the second respondent contends), or is it a bequest by both testators; and if the latter, was there a massing of estates?

[17] To my mind, in answering the first question, the most important fact to be taken into account is that clause 5 does not form part of clause 4. That is an indication that it is not intended to be disposition solely by the survivor after the first dying has died. Had that been the intention, clause 5 would simply have followed on as the last sub-paragraph of the immediately preceding clause, where it would have been governed by the words that I have interpreted as meaning 'on the death of the survivor of us, then and in that

event the survivor declares his/her Last Will and Testament to be as follows'; and the provisions of clause 5 would then have been a bequest by the survivor alone. But clause 5 stands on its own. Apart from that, to quote Milne J in *D'Oyly-John v Lousada* 1957 (1) SA 368 (N) who at 374D-375A dealt with a similar argument on a similar will and said inter alia:

'I cannot help thinking that if the testators had intended to make the survivor of them the absolute heir of the first-dying and that the rest of the will . . . should be that of the survivor only, they would have worded the will quite differently. They could so easily have said, for example,

"(1) We will that, upon the death of the first-dying, the survivor shall be his or her full and sole heir absolutely, without conditions of any kind.

(2) Clauses 3 to 6 of this will are intended to be in no sense a joint disposition but solely the will of the survivor which he or she may revoke at any time notwithstanding that he or she may have accepted the bequest contained in clause 1."

Whether this will was made with or without legal assistance, I find it impossible to believe that the framers of its terms intended them to be equivalent to the clauses I have suggested.'

In the present case the will was indeed drawn up by an attorney. I therefore reject the interpretation of the will urged on us by the second respondent's counsel and find that clause 5 is the bequest of both the first dying and the survivor.

[18] I turn to consider the appellant's argument that the mutual will effected a massing of the testators' estates. The problem that arises in cases such as the present is that the testators referred to themselves using the first person plural. The semantic result is that the testators appear to make dispositions of each other's property, and if the will is taken at face value, it can easily lead to the interpretation that massing was intended whereas that might not have been their true intention.

[19] In the mutual will, 'we' and 'our' were used in clauses 2 and 3, which is grammatically correct in as much as both testators were simultaneously making a will in the same terms; but in truth, each testator could only have been saying 'I' and 'my', and to that extent the will stands to be interpreted as the separate will of each, although contained in one document. I have already

pointed out that the third possibility envisaged in clause 4 can only apply to the survivor. The question that remains to be answered is whether the will effects a massing.

[20] The correct approach to the interpretation of a joint or mutual will was authoritatively laid down by this court in *Rhode v Stubbs* 2005 (5) SA 104 (SCA) paras 16-18 (my translation):

'[16] When two (or more) testators make a testamentary disposition together, grammatical uncertainty frequently arises. The use of the (appropriate) first person plural does not convey unambiguously to a reader of the will whether each testator is expressing his wishes only on his own behalf, or also on behalf of the other testator(s). Our law finds a solution to the problem of interpretation to which this structural lack of clarity gives rise in the rule that mutual or joint wills of spouses married in community of property must in the first instance be read as separate wills. The person analysing such a will proceeds on the hypothesis that he or she is dealing with separate wills until the contrary clearly appears. The reason for this approach is embedded in our common law.

[17] In *Joubert v Ruddock and Others* 1968 (1) SA 95 (E) at 98F-G, Eksteen J quotes a passage from Van Leeuwen's *Censura Forensis* 3.11.6 in which he underlines the importance of the principle that a person ought to remain capable of changing his will until the end of his days, and motivates this proposition by saying (*Schreiner's* translation) ". . . there is nothing to which men are more entitled than that their power of making a last will should be free, and hence the rule; that no one can deprive himself of this power".

[18] The proposition is not correct without qualification. A testator *can* deprive himself of the right to make a will by massing, but if there is any doubt about his intention, the will must be interpreted so as to leave the greatest possible freedom of testation. That gives rise to the subordinate rule of interpretation, the presumption against massing, that applies when the golden rule for the interpretation of wills, ie to give meaning to a testator's words within the framework of a will, fails due to vagueness or ambiguity.'

[21] Following the approach in *Rhode*, I find no indication, much less a clear indication, that massing was intended in the situation envisaged in the mutual will that has eventuated, viz where the one testator has survived the other. The test for massing applied to the facts of this case is whether the testatrix disposed of the testator's share of the joint estate as well as her own, either

after her death or after the death of the testator: *Rhode* paras 11-13 and authorities there referred to. The will is ambiguous in that it is not clear whether the testators intended that the appellant was to inherit from the first dying, subject to rights to the estate of the latter that are conferred on the survivor during the survivor's lifetime (no massing); or whether the testators intended that the first dying's estate was to be consolidated with that of the survivor for the purposes of a joint disposition to the appellant on the death of the survivor (massing). In view of the ambiguity, and on the authority of *Rhode*, the presumption against massing is decisive.

[22] I therefore reject the interpretation put upon the will by the appellant's counsel. I find that the testators intended that the estate of the first dying would devolve upon the survivor; that rights to that estate were conferred on the survivor during the latter's lifetime; and that the estate of the first dying and the estate of the survivor would separately devolve upon the appellant when the survivor died. It was suggested in argument that the rights conferred on the survivor were those of a fiduciary under a *fideicommissum residui*. I do not believe that to be correct, as there is no indication that the survivor was given a power of alienation (see the cases discussed in M M Corbett, Gys Hofmeyr and Ellison Khan *The Law of Succession in South Africa* 2ed (2001) at 328-329). But it is not necessary to determine the exact nature of the rights conferred on the survivor, who in the event was the testator, as the primary asset to which the appellant lays claim is the property; there is no suggestion that there is a dispute in respect of any other assets; and the testator has died.

[23] As I have found that there was no massing, the question of adiation falls away. It is therefore not necessary to decide which of the two approaches summed up in the judgment of Van Winsen J (Steyn J concurring) in *Ex parte Estate van Rensburg* 1965 (3) SA 251 (C) at 255E-256E, should prevail. No argument was addressed to this court on the question and it would accordingly be undesirable to comment further.

[24] The further consequence of the finding that there was no massing, is that the appellant is entitled to succeed to the testatrix's half share of the joint estate in terms of the mutual will — unless the testatrix revoked the dispositions she made therein. I now turn to consider that question.

[25] The second respondent's counsel relied on the rebuttable presumption that when a will that was last known to be in the testator's possession cannot be found, the testator is presumed to have destroyed it with the intention of revoking it: *In re Beresford, Ex parte Graham* (1883) 2 SC 303; *Ex parte Slade* 1922 TPD 220; *Ex parte Warren* 1955 (4) SA 326 (W). But the argument falls to be rejected on both the facts and the law.

[26] So far as the facts are concerned, in order to be effective, revocation would have had to take place before the testatrix's death. But there is no apparent reason for her to have done so. On the contrary, the evidence points the other way. According to the appellant, the relationship between her and the testatrix 'was de facto that of a mother and daughter. It was a close and loving relationship, and remained so until her death'. This evidence is supported by the evidence of the appellant's erstwhile sister-in-law, who deposed to an affidavit in which she stated:

'3. After my brother's marriage to the applicant, I became a close friend of the applicant and of her family, including her grandmother, Isobel Korsgaard ("the testatrix") and her step-grandfather Jens Korsgaard ("the testator"). I visited them regularly. Our friendship survived the applicant's divorce from my brother.

4. I regularly saw the testatrix and the testator in the company of the applicant and I was thus able to witness their interaction with the applicant.

5. The testatrix and the testator were both very family oriented. They treated the applicant as an own child. This accorded with my understanding that they had in fact raised the applicant as if she were their own child.

. . .

7. I am able to say, on the basis of my personal observation, that until the testatrix died in 1990 there was no deterioration in the relationship between the applicant, on the one hand, and the testatrix and testator, on the other. It was apparent to me that their relationship was and remained a close and loving one.'

The appellant has admitted that some two years after the testatrix's death, her relationship with the testator did deteriorate. The second respondent has

attempted to put the date earlier by asserting that the appellant's relationship with both the testator and the testatrix had deteriorated during the testatrix's lifetime; but according to the appellant, he was not in a position to comment on her relationship with the testatrix, because he only started visiting the testator after the testatrix had died. The affidavits of other persons on which the second respondent relies, also relate to the period after the testatrix had died. There is accordingly no conflict of fact on this point and the evidence of the appellant stands uncontroverted. In addition there are the following facts. The appellant was, on the death of her brother, the testatrix's only surviving descendant. The testatrix gave the appellant a copy of the mutual will at about the time it was executed. Having made a will, there is no apparent reason why she would have decided to disinherit the appellant and to die intestate. On the other hand, there was every reason why the testator would seek to destroy the will after the testatrix's death because he did not wish the appellant to inherit anything ─ and that state of mind may explain the late filing of the death notices and the inventory with their incorrect contents, and may further explain why the testator did not disclose the existence of the mutual will to the persons who drew up his three subsequent wills.

[27] For these reasons, even if the presumption applied, it was in my view (and contrary to the tentative view of the high court) clearly rebutted. But in order for the presumption to apply, it must be established that the will was last known to be in the testator's possession ─ because the presumption, according to the first and third authorities to which I have already referred in para 25 above, does not apply if the will was in the hands of a third party. The high court held that '[i]n correspondence annexed to the applicant's founding papers the applicant (through her attorney) informed the first respondent that the original will "*was handed to the testator and testatrix. ... The present whereabouts of the original document are unknown*" and that the applicant "*is unable to confirm (or deny) that the original will was ever lodged with the Master of the High Court*"'. But the first passage quoted by the high court from the letter sent by the appellant's attorneys is preceded by the words: 'To the best of our client's knowledge'. Those words clearly indicate that the appellant was unable to say one way or the other what the actual position was. There

was simply no evidence to indicate who was in possession of the mutual will before the testatrix's death. The presumption accordingly did not arise.

[28] The final question, apart from costs, is whether the high court was correct in making the following finding:

'Further, the applicant cannot seek a declaratory order against the estate of the testator (which is being dealt with by the executor in terms of the new will), obliging such executor to deal with those assets which might have devolved upon the testator in accordance with the will of the testatrix.

. . .

The alternative relief sought by the applicant lies, not against the testator's estate, but against the estate of the testatrix which is not a party to these proceedings.'

The conclusion of the high court cannot be supported. It may be that the high court overlooked the fact that para 4.3 of the notice of motion was directed at the Master, not the second respondent. Be that as it may, no part of the alternative relief sought would have the effect of compelling the first respondent to distribute any asset in the testator's estate otherwise than in accordance with the new will. Paragraph 4.1 of the notice of motion is directed at an amendment of the liquidation and distribution account filed with the Master by the first respondent in respect of the very estate he is administering, so as to exclude the testatrix's estate. The purpose of paras 4.2 and 4.3 of the notice of motion is to procure recognition by the Master of the mutual will as the testamentary instrument under which the assets in the testatrix's estate, including her half share in the property, fall to be administered. Such recognition is a necessary prerequisite for the appointment by the Master of an executor for the testatrix's estate. No executor was appointed on her death because, as I have said, an inventory was filed with the Master that indicated that her estate comprised only clothing of no commercial value. The relief sought in paras 4.1 to 4.3 of the notice of motion should accordingly have been granted. The appeal must therefore succeed to this extent.

[29] That brings me to the question of costs. The parties were agreed that the costs of an interlocutory application should be costs in the cause; and that

the costs, including the costs of the first respondent, should be paid by the loser in this litigation. The parties were also agreed that the costs of appeal should include the costs of two counsel, where employed. It seems to me that as the appellant had to go to the high court and this court to obtain the relief to which she was entitled, she should have the costs in both courts.

[30] The following order is made:

1 The appeal succeeds, and the second respondent is ordered to pay the costs of the appellant and the first respondent, including the costs of two counsel where employed.

2 The order of the court a quo is set aside and the following order is substituted therefor:

‘(a) An order is granted in terms of paragraphs 4.1, 4.2 and 4.3 of the notice of motion.

(b) The second respondent is ordered to pay the costs of the applicant and the first respondent, including the costs of the interlocutory application and the costs of two counsel where employed.’

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T D CLOETE

JUDGE OF APPEAL

APPEARANCES:

For Appellant:	S P Rosenberg SC (with him T R Tyler) Instructed by: Lamprecht Attorneys, Cape Town Honey Attorneys, Bloemfontein
For Respondent:	J G Dickerson SC (with him D van Reenen) Instructed by: Scheibert & Associates, Cape Town Lovius Block Attorneys, Bloemfontein