THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No: 753/11

In the matter between:

FARJAS (PROPRIETARY) LIMITED **Appellant**

and

MINISTER OF AGRICULTURE AND LAND AFFAIRS FOR THE REPUBLIC OF SOUTH AFRICA **First Respondent**
REGIONAL LAND CLAIMS COMMISSIONER **Second Respondent**
CHIEF LAND CLAIMS COMMISSIONER **Third Respondent**

AND

In the matter between:

RAINY DAYS FARMS (PROPRIETARY) LIMITED **Appellant**

and

MINISTER OF AGRICULTURE AND LAND AFFAIRS FOR THE REPUBLIC OF SOUTH AFRICA **First Respondent**
REGIONAL LAND CLAIMS COMMISSIONER **Second Respondent**
CHIEF LAND CLAIMS COMMISSIONER **Third Respondent**

Neutral citation: *Farjas (Pty) Ltd v Minister of Agriculture and Land Affairs for RSA* (753/11) [2012] ZASCA 173 (29 November 2012)

Coram: LEWIS, PONNAN, MHLANTLA and SHONGWE JJA and ERASMUS AJA

Heard: 2 November 2012

Delivered: 29 November 2012

Summary: Restitution of Land Rights Act 22 of 1994 – land claims – determination of proper compensation for expropriation of properties – application of the Consumer Price Index – adequate indicator of the change in value of money over time.

ORDER

On appeal from: Land Claims Court **(**Mia AJ sitting with an assessor as court of first instance):

1 The appeal is dismissed save for paragraph 4 of the order of the court below which is set aside and substituted with the following:

'4 The plaintiffs are entitled to costs herein on a party and party scale including the costs of two counsel where so employed.'

2 The appellants are ordered to pay the costs of the appeal.

JUDGMENT

MHLANTLA JA (LEWIS, PONNAN and SHONGWE JJA and ERASMUS AJA concurring):

[1] Farjas (Pty) Ltd and Rainy Days Farms (Pty) Ltd (the appellants) are two companies, (the sole director of each being Mr F Jasat) which owned immovable properties on the Farm Whispers, Pietermaritzburg. The appellants had purchased the properties for the purpose of developing a township thereon. The properties

were rezoned and the plans were drafted for that purpose. On 24 June 1991, both properties were expropriated by the Minister of Housing (House of Delegates) in terms of the Expropriation Act 63 of 1975. The appellants received compensation as follows: Farjas, an amount of R260 000 and Rainy Days, a sum of R280 000. They were promised an amount of R10 000 each as *solatia* but this was never paid.

[2] The appellants were not satisfied with the compensation paid. As a result, they instituted proceedings in the Natal Provincial Division in terms of the Expropriation Act for increased compensation. They subsequently aborted these legal proceedings when the Restitution of Land Rights Act 22 of 1994 came into operation and lodged claims with the Regional Land Claims Commissioner, KwaZulu-Natal (the second respondent) for the restoration of the properties in terms of the Restitution Act. The second respondent rejected the claims but the decision was set aside by the Land Claims Court in review proceedings instituted by the appellants.[1]

[3] Subsequent to the review proceedings, the appellants abandoned their claims for the restoration of the properties and sought payment of the *solatia* promised as well as equitable redress in the form of financial compensation. The respondents sought an opinion from Nicholas Maritz, a land valuer. Mr Maritz concluded that the compensation paid to the appellants was not just and equitable

1 See *Farjas (Pty) Ltd & another v Regional Land Claims Commissioner, KwaZulu-Natal* 1998 (2) SA 900 (LCC).

and that they had been under-compensated in the sum of R 656 000 made up as follows: Farjas in the sum of R380 000 and Rainy Days Farms in the sum of R276 000. The parties agreed on the amounts proposed by Maritz. The respondents, however, did not accept his other recommendations. There was a dispute about the payment of *solatia*. The appellants sought compensation with interest contending that the amounts had remained unpaid for a period of more than 19 years. The methods for adjusting the

amounts of under-compensation proposed by various experts were rejected by the respondents.

[4] Before dealing with the issues on appeal, it is apposite at this stage to outline the statutory scheme. The Restitution Act was enacted to give effect to section 25(7) of the Constitution. This section provides that '[a] person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress'.

[5] In *Alexkor Ltd & another v The Richtersveld Community & others*,[2] the Constitutional Court stated the purpose of the Restitution Act as follows:

'[A]lthough it is clear that a primary purpose of the Act was to undo some of the damage wreaked by decades of spatial apartheid, and that this constitutes an important purpose relevant to the interpretation of the Act, the Act has a broader scope. In particular, its purpose is to

2*Alexkor Ltd & another v The Richtersveld Community & others* 2004 (5) SA 460 (CC) para 98.

provide redress to those individuals and communities who were dispossessed of their land rights by the Government because of the Government's racially discriminatory policies in respect of those very land rights.'

[6] In *Department of Land Affairs & others v Goedgelegen Tropical Fruits (Pty) Ltd*,[3] a case involving a claim for restoration of land under the Restitution Act,

Moseneke DCJ stated that the declared purpose of the Restitution Act 'is to provide restitution and equitable redress to as many victims of racial dispossession of land rights after 1913 as possible'.

[7] It has to be borne in mind that the Land Claims Court is a specialist court which functions in a specialised area of the law. The Legislature enacted the Restitution Act and left it to that court to interpret the Act. In *Goedgelegen*,[4] the learned Deputy Chief Justice said:

3*Department of Land Affairs & others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 42.
4Para 84. See also *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490(CC) para 48.

'Section 35[5] of the Restitution Act confers vast remedial powers on the Land Claims Court. They range from restoration of land claimed or any other right in land to paying the claimant compensation or granting any alternative relief. It would not be appropriate to venture into formulating a remedy beyond a declaratory order and costs. We have heard no evidence on the possible variants of remedies to be preferred. In any event, it would not be desirable to be a court of first and last instance on a matter best left to the Department or a specialist court, which the Land Claims Court is.'

[8] The Land Claims Court is primarily charged to administer and interpret the Restitution Act. It has wide remedial powers as set out in section 35. In considering its decision on the appropriate order to be made, the court is obliged to consider various factors and these are set out in section 33 as follows:

"Factors to be taken into account by Court–

In considering its decision in any particular matter the Court shall have regard to the following factors:

'*(a)* the desirability of providing for restitution of rights in land to any person or community dispossessed as a result of past racially discriminatory laws or practices;

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5 Section 35(1) provides:
'(1) The Court may order–
(a) the restoration of land, a portion of land or any right in land in respect of which the claim or any other claim is made to the claimant or award any land, a portion of or a right in land to the claimant in full or in partial settlement of the claim and, where necessary, the prior acquisition or expropriation of the land, portion of land or right in land: Provided that the claimant shall not be awarded land, a portion of land or a right in land dispossessed from another claimant or the latter's ascendant, unless−
(i) such other claimant is or has been granted restitution of a right in land or has waived his or her right to restoration of the right in land concerned; or
(ii) the Court is satisfied that satisfactory arrangements have been or will be made to grant such other claimant restitution of a right in land;
(b) the State to grant the claimant an appropriate right in alternative state-owned land and, where necessary, order the State to designate it;
(c) the State to pay the claimant compensation;
(d) the State to include the claimant as a beneficiary of a State support programme for housing or the allocation and development of rural land;
(e) the grant to the claimant of any alternative relief.'

(b) the desirability of remedying past violations of human rights;

(c) the requirements of equity and justice;

*(c*A*)* if restoration of a right in land is claimed, the feasibility of such restoration;

(d) the desirability of avoiding major social disruption;

(e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to protect and advance persons, or categories of persons, disadvantaged by unfair discrimination in order to promote the achievement of equality and redress the results of past racial discrimination;

*(e*A*)* the amount of compensation or any other consideration received in respect of the dispossession, and the circumstances prevailing at the time of the dispossession;

*(e*B*)* the history of the dispossession, the hardship caused, the current use of the land and the history of the acquisition and use of the land;

*(e*C*)* in the case of an order for equitable redress in the form of financial compensation, *changes over time in the value of money*;

(f) any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of section 9 of the Constitution.' (my emphasis).

[9] The appellants in their statements of claim sought an order against the respondents for payment of the amounts that would, in terms of section 33 *(e*C*)*, make provision for the changes over time in the value of money. They claimed first the amounts that would be achieved by applying the ABSA House Price Index. In the alternative, they sought an order adjusting the amounts by applying for compensation in terms of section 12(3) of the Expropriation Act and in the further alternative the Consumer Price Index (CPI). The matter came before the

Land Claims Court (Mia AJ sitting with an assessor). The appellants adduced the evidence of Mr Jasat and four experts. Mr Ramballi, formerly a consultant researcher to the Commission on Restitution of Land Rights, testified on behalf of the respondents.

[10] The appellants contended for a range of alternatives and in this regard they relied on the evidence of three actuaries, namely Mr Mickey Lowther, Mr Phillip Hellig and Mr Gerard Jacobson as well as Mr Richard Pardy, a valuer. The testimony of the experts related to the method to be applied to adjust the amounts of under-compensation. All the witnesses focused on the returns the appellants would have made had they received the amounts in 1991 and invested them. They were opposed to the application of the CPI stating that most investors would expect a return in excess of that provided by the CPI. They were each critical of the methods proposed by the others and had different views on the issue. Mr Hellig preferred the use of building society rates. Mr Jacobson, on the other hand, was of the view that the ABSA House Price and Land Value Indices would be appropriate. Mr Lowther recommended the addition of compound interest whilst Mr Pardy proposed a township development approach. Not one of them considered that the CPI was the appropriate measure of value of money over time to compensate a developer of property for loss of growth on an investment.

[11] Mr Jasat's testimony related to the acquisition of the properties. He did not testify about any hardship the appellants experienced as a result of the expropriation. He sought compound interest as it would provide the maximum amount of compensation.

[12] Mr Ramballi in his testimony, dealt with the massive nature of the land reform process that had been established. He also related the administrative and financial hurdles experienced by the Commission and the complex questions of policy and compensation they had to deal with. He explained that the Commission, after conducting some research, accepted that the CPI was the best method of assessing the value of money over time. According to Ramballi, the Commission received 72 000 land claims nationwide. It had applied the CPI in settling other claims and there had been no opposition to the use of that method. Regarding *solatium*, he testified that it is not provided for in the Restitution Act.

[13] Mia AJ concluded that the CPI adequately catered for changes over time in the value of money. The judge rejected the methods relied upon by the appellants. She held that section 33*(e*C*)* of the Restitution Act did not envisage an application of compound interest rates and housing and land indices to determine changes over time in the value of money and that commercial instances had to be distinguished from claims for restitution under the Restitution Act. The judge thereafter applied the CPI to adjust the amounts of under-compensation and

awarded Farjas an amount of R1 053 376 and Rainy Days R1 454 192.[6] She did not make any order with regard to the appellants' claims for *solatia*. The appellants appeal against this order with leave of the Land Claims Court contending that it erred in applying the CPI and in failing to award them the s*olatia* they were promised.

[14] The appeal turns on three issues. Firstly, whether the court below erred in applying the CPI and rejecting the methods proposed by the appellants. Put differently, the question is whether the court below misdirected itself in the exercise of its discretion. Secondly, whether the appellants are entitled to payment of *solatia* under the Restitution Act. And thirdly, whether the respondents should have been ordered to pay the costs of the matter on a punitive scale.

[15] When the appeal was heard, we invited counsel to address us on whether an appeal did in fact avail the appellants in the circumstances of this case. It will be recalled that CPI was one of the alternative claims advanced on behalf of the appellants before the Land Claims Court. Judgment was entered in their favour in respect of that claim. Having successfully obtained judgment in respect of one of the alternative claims advanced by them, one could not help wondering why an appeal would lie in those circumstances. Counsel sought to contend that by the

6In its judgment, the Land Claims Court made a mistake and stated that Farjas was under-compensated by R276 000 and provides that Rainy Days was under-compensated by R380 000. This mistake was carried through in its award of the adjusted amounts. In fact Farjas was entitled to the higher amount. Nothing turns on this as the appellants are related companies.

time the matter had come to be argued before the Land Claims Court there had, by implication, been an abandonment by the appellants of any reliance on CPI and that it was no longer open to the Land Claims Court to enter judgment in their favour on that alternative claim. A perusal of the record, however, does not support that contention. Counsel sought – and was granted – an opportunity to file additional written argument on this point. That has been done. Those written submissions conclude: 'Appellants cannot find authority precisely on the issue raised at the appeal'. Given the apparent novelty of the matter and also the conclusion to which I come on the other issues that call for a decision in this appeal, I shall assume (without deciding) in favour of the appellants that an appeal does indeed avail them.

[16] The Land Claims Court exercised a discretion when it applied the CPI. The discretion is a strict one. In *Mphela & others v Haakdoornbult Boerdery* CC & *others*,[7] Mpati AJ said the following in relation to the exercise of the discretion by the lower courts in restitution cases:

'(I)n coming to its decision on whether or not to order the return of the whole of the land claimed the Supreme Court of Appeal exercised a discretion. The question whether leave should be granted

will therefore require a consideration of the circumstances in which this court will interfere with the exercise by the Supreme Court of Appeal of its discretion.

7*Mphela & others v Haakdoornbult Boerdery CC & others* 2008 (4) SA 488 (CC) paras 25 and 26.

The discretion exercised by the Supreme Court of Appeal in this matter is one in the strict sense, or as was said in *S v Basson*, a "strong" discretion or "true" discretion, in the sense that a range of options was available to it. As such this court, exercising appellate jurisdiction, will not set aside the decision of the Supreme Court of Appeal merely because it would itself, on the facts of the matter before the Supreme Court of Appeal, have come to a different conclusion. It will only interfere where it is shown that the Supreme Court of Appeal had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.'

It follows that this court may only interfere with the order of the Land Claims Court if the appellants can show that the court below did not exercise its discretion judicially.

[17] Where the order to be made is in the form of financial compensation, the Legislature did not prescribe the method to be applied to determine 'changes over time in the value of money'. The Legislature left it to the Department and the Land Claims Court to consider all the options available and determine an appropriate method having regard to the relevant provisions of the Restitution Act. In this regard section 25(3) of the Constitution requires that the amount of compensation be just and equitable.[8] This section requires an equitable balance to be struck between

8Section 25(3) provides:
'The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including–
(a) the current use of the property;

the public interest and the interests of the appellants. In *National Coalition for Gay and Lesbian Equality & another v Minister of Justice & others,*[9]Ackerman J said that 'justice and equity must also be evaluated from the perspective of the State and the broad interests of society generally'.

[18] In *Haakdoornbult Boerdery CC & others v Mphela & others,*[10] Harms ADP said:

'(C)ompensation, to be fair… must recompense. The purpose of giving fair compensation is to put the dispossessed, insofar as money can do it, in the same position as if the land had not been taken. Fair compensation is not always the same as the market value of the property taken; it is but one of the items which must be taken into account when determining what would be fair compensation.

Because of important structural and politico-cultural reasons indigenous people suffer disproportionately when displaced and Western concepts of expropriation and compensation are not always suitable when dealing with community held tribal land. A wider range of socially relevant

factors should consequently be taken into account, such as resettlement costs and, in appropriate

(b) the history of the acquisition and use of the property;
(c) the market value of the property;
(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
(e) the purpose of the expropriation.'

9*National Coalition for Gay and Lesbian Equality & another v Minister of Justice & others* 1999 (1) SA 6 (CC) para 94.

10*Haakdoornbult Boerdery CC & others v Mphela & others* 2007 (5) SA 596 (SCA) para 48.

circumstances, solace for emotional distress.'

[19] A claim for compensation under the Restitution Act is a claim *sui generis*. As

Moseneke DCJ said in *Goedgelegen*:[11]

'(N)either liability nor culpability in the conventional sense is a feature of the restoration scheme envisaged by s 25(7) of the Constitution and the Restitution Act. Entitlement to redress under the Restitution Act does not hinge on any form of blameworthy conduct such as intention or negligence or a duty of care. Equally important is that the operative legislation does not hold liable any party for historical dispossession, whatever the motive of the dispossessor. It merely sets conditions that entitle a claimant to restitution . . ..

The claim is against the State. It has a reparative and restitutionary character. It is neither punitive in the criminal law sense nor compensatory in the civil law sense. Rather, it advances a major public purpose and uses public resources in a manifestly equitable way to deal with egregious and identifiable forms of historic hurt.'

I turn now to consider the issues raised on appeal.

[20] Regarding the claim for compound interest, counsel for the appellants argued that the Land Claims Court erred in rejecting the expert evidence on behalf of the appellants. He informed us that the appellants persist in their claim for compound interest and were no longer interested in the other alternatives advanced. A revised schedule of calculation prepared by Mr Lowther was handed in. In support of this contention, counsel called in aid the decisions in *Davehill (Pty) Ltd & others v Community Development Board*,[12] *Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga & others*[13] and *Mokala Beleggings & another v Minister of Rural Development and Land*

11 Paras 67 and 68.
12 *Davehill (Pty) Ltd & others v Community Development Board* 1988 (1) SA 290 (A).
13 *Crookes Brothers Ltd v Regional Land Claims Commission for the Province of Mpumalanga & others* [2012] ZASCA 128.

Reform & others,[14] which re-affirmed the principle that 'interest is the life-blood of finance'.

[21] These cases do not assist the appellants as they involved commercial transactions and interest in terms of the Expropriation Act. Both *Crookes* and *Mokala* dealt with *mora* interest. The parties in these cases had concluded contracts of sale of immovable properties subject to certain conditions. Both properties were subject to land claims under the Restitution Act. The sellers claimed *mora* interest as a result of the purchasers' failure to pay the purchase price within the stipulated period. This court substituted the orders of the courts below which had dismissed the sellers' claims for interest. Similarly reliance on *Davehill* is misplaced as that case dealt with section 12(3) of the Expropriation Act, which provided for interest to be paid by the expropriating authority. There is no mention of interest in the Restitution Act.

[22] Having regard to the facts of this matter, the judge considered and evaluated all the evidence. She was faced with conflicting expert evidence and had to determine what would constitute just and equitable compensation having regard to an equitable balance between the public interest and the interests of the claimants. The evidence of the experts reveals that they prepared their reports from an investor's point of view

14 *Mokala Beleggings & another v Minister of Rural Development and Land Reform & others* 2012 (4) SA 22 (SCA).

whereas restitution has nothing to do with commercial transactions, but with redressing massive social and historical injustice. The experts asserted that the CPI was not appropriate; however, that is not the test. A court when considering a claim under the Restitution Act has to determine what is just and equitable having regard to the factors set out in section 33 of the Restitution Act. The judge analysed the evidence of the experts and, in my view, correctly chose not to accept it. The appellants have not demonstrated that the application of the CPI is inappropriate or perhaps more accurately would on the facts of this case lead to an unjust or inequitable result. None of the experts demonstrated that resort to the CPI would have the effect that the compensation would be unjust and inequitable.

[23] In my view, an application of compound interest will defeat the purpose of the Restitution Act. It will result in the over-compensation of the appellants. Furthermore, this method is not contemplated in the provisions of the Restitution Act. In *Hoffmann v South African Airways,*[15] the Constitutional Court stated that '[f]airness requires a consideration of the interests of all those who might be affected by the order'. It follows that the compensation awarded must be just and equitable not only to the appellants but also to the members of society who have an interest in the manner in which public resources are utilized.

[24] Counsel for the appellants submitted that the court below erred in applying the CPI without any acceptable evidence being produced to support it. This

15 *Hoffmann v South African Airways* 2001 (1) SA 1 (CC) para 43.

argument is without merit. The CPI is an official government statistic and published monthly in the *Government Gazzette*. There was no need for expert evidence in that regard and the court below was entitled to take judicial notice thereof. Furthermore, the courts have for a long time applied the CPI to adjust amounts of financial compensation. It is apposite at this stage to have regard to instances where the courts have recognised the CPI as an adequate indicator of the change over time in the value of money and endorsed its application.

[25] The first of these examples is *National Director of Public Prosecutions v Gardener & another,*[16] where this court applied the CPI to adjust the amounts by which the respondents had benefited from their criminal activities so as to deprive them of the full extent of the benefit they had received from the commission of the offences. In *Minister of Safety and Security v Seymour,*[17] this court applied the CPI to update an earlier award for wrongful arrest. Similarly in *Ex Parte Sidelsky,*[18] the court changed the terms of a bequest in a will to increase it by the application of the CPI to cater for inflation and the change in the value of money. It follows that the reasoning and conclusion of the court below with regard to the application of the CPI cannot be faulted.

16 *National Director of Public Prosecutions v Gardener & another* 2011 (4) SA 102 (SCA) para 32.
17 *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 16.
18 *Ex Parte Sidelsky* 1983 (4) SA 598 (C) at 603F-604A.

[26] This brings me to the claims for *solatia*. As stated earlier, Mia AJ made no order on the appellants' claims for *solatia*. It may be accepted that she dismissed those claims. The appellants persist in their claims. It became clear during the hearing

of this appeal that the appellants' claims were based on promises made to them in 1991. In this regard counsel for the appellants referred us to notices issued in terms of

the Expropriation Act. No reliance can be placed on these notices as the appellants'

claims are now governed by the provisions of the Restitution Act. A claimant has a duty in terms of the Restitution Act to adduce evidence to prove any entitlement to *solatium*. In *Hermanus v Department of Land Affairs*: *In re Erven 3535 and 3536, Goodwood*,[19] Gildenhuys AJ said that *solatium* awards are by no means automatic. The appellants, in the instant case, had to tender evidence of the hardship caused by the expropriation to justify payment of *solatia*. They failed to do so. Their claims were accordingly correctly rejected.

[27] It needs to be emphasised that given the nature of the discretion exercised by the Land Claims Court appellate interference is permissible on restricted grounds only. Here it has not been suggested that the Land Claims Court exercised its discretion capriciously or upon a wrong principle or failed to bring

19 *Hermanus v Department of Land Affairs:In re Erven 3535 and 3536, Goodwood* 2001 (1) SA 1030 (LCC) para 24.

an unbiased judgment to bear on the matter. In the result the appellants have failed to establish that the Land Claims Court misdirected itself in the exercise of its discretion. They also failed to establish any entitlement to *solatia*

. There is accordingly no basis for this court to interfere with the order of the court below. In the result the appeal must fail.

[28] The final issue is costs. Counsel for the appellants contended that the respondents caused the delays in bringing the matter to finality. He sought a punitive costs order against the respondents, alternatively, a costs order which would include the qualifying fees of the appellants' experts.

[29] It seems to me that both parties were responsible for the delays. There was no malice on the part of the Commission. Counsel for the respondents, correctly, conceded that the evidence points to incompetence on the part of the staff of the Commission. It is evident from the record that offers were made to the appellants but these were rejected by their representative, Mr Jasat. Both parties stuck to their positions. In so far as the qualifying fees of the experts are concerned, it has to be borne in mind that these experts were called by the appellants to advance their case. Their conflicting evidence did not assist the court below and was correctly rejected. It follows that there is no basis to interfere with the discretion of the court below when it ordered the respondents to pay the appellants' costs on a party and party scale.

[30] Finally, the court below requested the parties to submit a report relating to international trends on compensation in restitution matters. The appellants engaged a second counsel to assist with the research and production of such a report, which was handed into court. The costs associated with the production of the report were excluded in the ultimate order issued by the court. In my view the court below erred in this regard as it had expressly asked for this report. In the result the employment of the second counsel for this purpose was justified. The appellants are accordingly entitled to these costs.

[31] In the result, the following order is made:

1 The appeal is dismissed save for paragraph 4 of the order of the court below which is set aside and substituted with the following:

‘4 The plaintiffs are entitled to costs herein on a party and party scale including the costs of two counsel where so employed.’

2 The appellants are ordered to pay the costs of the appeal.

NZ MHLANTLA
JUDGE OF APPEAL

APPEARANCES

For Appellant:	A J Dickson SC
Instructed by:	Cajee Setsubi Chetty Inc, Pietermaritzburg
	Lovius-Block, Bloemfontein
For Respondent:	A A Gabriel SC
Instructed by:	The State Attorney, Durban
	The State Attorney, Bloemfontein