THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case Nos: 1119/2017

& 1120/2017

In re the appeal case no 1119/2017:

LOUIS PASTEUR HOLDINGS (PTY) LTD	**FIRST APPELLANT**
AHMED ISMAIL GUTTA (PTY) LTD	**SECOND APPELLANT**
HAROON AHMED GUTTA NO	**THIRD APPELLANT**
FERIEL GUTTA NO	**FOURTH APPELLANT**
ABDUL RAZAK AHMED GUTTA NO	**FIFTH APPELLANT**
SALEEM OMAR GUTTA NO	**SIXTH APPELLANT**
ZUNAID OSMAN TAYOB NO	**SEVENTH APPELLANT**
LEOPONT PROPERTIES (PTY) LTD	**EIGHTH APPELLANT**
ABDUL RAZAK AHMED GUTTA	**NINTH APPELLANT**

and

ABSA BANK LIMITED	**FIRST RESPONDENT**
MEDICAL EMPOWERMENT CONSORTIUM INVESTMENTS LIMITED	**SECOND RESPONDENT**
LIEBENBERG DAVID RYK VAN DER MERWE NO	**THIRD RESPONDENT**
ETIENNE JACQUES NAUDE NO	**FOURTH RESPONDENT**
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**FIFTH RESPONDENT**

And in re the appeal case no. 1120/2017:

LOUIS PASTEUR HOLDINGS (PTY) LTD	**FIRST APPELLANT**
DR HAROON AHMED GUTTA	**SECOND APPELLANT**
DR SALEEM OMAR GUTTA NO	**THIRD APPELLANT**
HAROON AHMED GUTTA NO	**FOURTH APPELLANT**
FERIEL GUTTA NO	**FIFTH APPELLANT**
ABDUL RAZAK AHMED GUTTA NO	**SIXTH APPELLANT**
SALEEM OMAR GUTTA NO	**SEVENTH APPELLANT**
ZUNAID SOMAN TAYOB NO	**EIGHTH APPELLANT**
MARIAM INVESTMENTS (PTY) LTD	**NINTH APPELLANT**
HAROON RASHIED GHOOR NO	**TENTH APPELLANT**
ZUNAID OSMAN TAYOB NO	**ELEVENTH APPELLANT**
AKHTER HOOSEN MOOSA NO	**TWELFTH APPELLANT**
ZAINUB TAYOB NO	**THIRTEENTH APPELLANT**
SAFEEYAH TAYOB NO	**FOURTEENTH APPELLANT**

and

ABSA BANK LIMITED	**FIRST RESPONDENT**
MEDICAL REVIEW CORPORATION LIMITED	**SECOND RESPONDENT**
LIEBENBERG DAVID RYK VAN DER MERWE NO	**THIRD RESPONDENT**
ETIENNE JACQUES NAUDE NO	**FOURTH RESPONDENT**
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**FIFTH RESPONDENT**

Neutral citation: *Louis Pasteur Holdings (Pty) Ltd & others v Absa Bank Limited & others* (1119/2017 & 1120/2017) [2018] ZASCA 163 (29 November 2018)

Coram: Navsa ADP, Swain, Mathopo and Mocumie JJA and Matojane AJA

Heard: 12 November 2018

Delivered: 29 November 2018

Summary: Companies Act 71 of 2008 – ss 134(3) and 136 – business rescue – cession to creditor by debtor of rental income as security – absence of consent by creditor for use of rental income by business rescue practitioner – rental income insufficient to fully and promptly discharge indebtedness – use precluded – no prospect of successful business rescue – final liquidation of companies.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Preller J sitting as court of first instance):

1 The appeals in case numbers 1119/2017 and 1120/2017 are dismissed.

2 The costs of the appeal are to be borne by the appellants, jointly and severally, such costs to include the costs of two counsel, save for 50 per cent of the costs of the preparation of the appeal record.

JUDGMENT

Swain JA (Navsa ADP, Mathopo and Mocumie JJA and Matojane AJA concurring):

[1] This appeal arises from a failure by the Gauteng Division of the High Court, Pretoria (Preller J) to determine an agreed upon separated issue *in limine* in two related applications and counter-applications. The court a quo, after a delay of two years in adjudicating the separated issue, went on not to decide that issue but determined the merits of the principal dispute, without affording an opportunity to the parties to present argument thereon.

[2] Before the court a quo were separate applications brought by Absa Bank Ltd (ABSA), for the final liquidation of two related companies, Medical Empowerment Consortium Investments Ltd (MECI) and Medical Review Corporation Ltd (MRC). MECI is the owner of the Kine Centre and MRC is the owner of the adjacent Small Street Mall situated in central Johannesburg. The basis for the application against MECI was the breach of a loan agreement concluded with ABSA to re-finance the Kine Centre. As at 25 October 2013, MECI was indebted to ABSA in an amount of R98 262 816.17. In the application against MRC, based on a breach of a loan

agreement to facilitate the development of the Small Street Mall by MRC, an amount of R61 million was said to be owed to ABSA, as at 20 February 2014. A further amount of R98 million was owed by MRC to ABSA in respect of suretyship obligations.

[3] As a precursor to the grant of final liquidation orders in respect of MECI and MRC, ABSA sought orders setting aside the resolutions adopted by the directors of MECI and MRC on 26 March 2012, which had placed these companies under voluntary supervision and in business rescue in terms of s 129(1) of the Companies Act 71 of 2008 (the Act). In response, Louis Pasteur Holdings (Pty) Ltd (Louis Pasteur), an alleged creditor of both companies, delivered counter-applications in each of the MECI and MRC applications, seeking further orders placing both companies under supervision and in business rescue. Additional parties belatedly alleging they were also creditors of the companies, sought leave to intervene in each application and joined in seeking further orders placing both companies under supervision and in business rescue, which had the effect of postponing and delaying the finalisation of both applications.

[4] There was an urgency to the applications due to the deteriorating condition of the buildings which served as security for the loans, the finalisation of which was frustrated by repeated postponements and delays caused in no small measure initially by Louis Pasteur and later aided and abetted by the intervening parties. The spectre of a delay in the finalisation of the present appeal was raised shortly before the hearing thereof, when the attorneys representing the second to ninth appellants wrote to the Registrar of this court requesting that the appeals be removed from the role, as the appellants were not in a financial position to place their attorneys of record in funds to argue the appeal. Shortly thereafter however, new attorneys representing the appellants stated that the matter would proceed as arranged.

[5] Of significance in relation to the delays in the finalisation of the applications, is that Louis Pasteur itself was also placed under supervision and in business rescue and represented in the proceedings by its business rescue practitioner. In addition, Dr Mohamed Adam who represented MECI in concluding the loan agreement with

ABSA, is not only a director of Louis Pasteur but also a director of both MECI and MRC and deposed to affidavits on behalf of Louis Pasteur, in both applications.

[6] Because of the repeated delays and postponements, a directive was sought and obtained by ABSA from the Deputy Judge President of the Pretoria High Court, that the applications be heard as a special motion during the period 13 to 16 April 2015. The applications were argued together before the court a quo on those dates and at the hearing, an order was granted by consent in terms of rule 33(4) of the Uniform Rules of Court. The following separated question was to be determined as a preliminary issue:

'Having regard to the provisions of Section 136 read with Section 134 of the Companies Act, 71 of 2008, would a business rescue practitioner be entitled to utilise the rental income without ABSA's consent or unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness of the Second Respondent as protected by the First Respondent's security?'

[7] Preller J, rather than dealing with the separated issue, considered the principal question before him to be whether a liquidation order should ensue. This question was inextricably linked to the question of the viability of business rescue proceedings. In his view, the past financial record of MECI and MRC was crucial. He had regard to the repeated failed attempts by MECI to procure the City of Johannesburg as a tenant in the Kine Centre, with the envisaged rental agreement providing the means to repay their indebtedness to ABSA.[1]

[8] Preller J considered the deterioration in the relationship between the incumbent business rescue practitioners of MECI and MRC and Dr Adam, whose role I have referred to above, as another negative factor in relation to placing them in business rescue. In this regard, he thought that the withholding of crucial financial information by Dr Adam and related parties was a compelling factor against the

[1] Preller J at pg 9 of the judgment deals in some detail with the history of the litigation which I find unnecessary to restate.

viability of business rescue proceedings. In addition, the court below rejected the superficial information presented to it on behalf of Louis Pasteur, MECI, MRC and the parties belatedly seeking leave to intervene in support of business rescue proceedings, as relevant in deciding this issue.

[9] The court below took a dim view of the dilatory stratagem employed by Louis Pasteur and the other intervening parties and reached the following conclusion:

'It is clear from the papers that both companies are hopelessly insolvent, not only in that they are not able to pay their debts as they become due, but also in that their liabilities vastly exceed the value of their assets. Sufficient notice of the proceedings up to this stage and of the intention of the applicant to apply for the liquidation of both companies has been given to all possible interested parties. I can see no need for a provisional liquidation order of which the only effect will be to invite further litigation. Both companies are accordingly finally liquidated.'

[10] Orders were also granted setting aside the resolution adopted by MECI placing it in voluntary business rescue and the application and the counter-application for intervention, were dismissed with costs. The costs of ABSA on the scale as between attorney and client were to be costs in the administration, and the intervening creditors were liable for the costs of ABSA, jointly and severally with the company in liquidation, on the scale as between party and party.

[11] Aggrieved by the procedural irregularities committed by the court a quo, Louis Pasteur together with the intervening parties in the MECI and MRC applications, sought and were granted leave to appeal to this court against those orders, not by Preller J who had retired, but by Tuchten J. Both appeals were enrolled and argued together. Louis Pasteur is the first appellant in both appeals and the remaining appellants in each appeal are the respective intervening parties. ABSA is the first respondent in both appeals and the second respondents in each appeal are respectively MECI and MRC. The third respondent in both appeals is Mr Liebenberg van der Merwe NO, the duly appointed business rescue practitioner in respect of MECI and MRC. The fourth respondent in both appeals is Mr Etienne Naude NO, the duly appointed business rescue practitioner in respect of Louis Pasteur.

[12] The appellants submitted that the central issue on appeal was the correction of the material irregularity in the proceedings in the court a quo. In addition, notwithstanding their apparent assent thereto, they submitted that the formulation of the separated question was imprecise and unclear, with the result that no order in terms of rule 33(4) should have been made. It was submitted that the proper remedy was to correct the material irregularity in the proceedings by setting aside the order for liquidation and related orders and to thereafter remit the matter to the court a quo for decision on the merits of liquidation and the counter applications for business rescue.

[13] This court is called upon to decide whether the decision to grant a final liquidation order, instead of deciding the separated issue discretely, should be set aside. Put differently, in anticipation of what is set out later, the question is whether this court can decide the separated issue which, essentially, is a law point, which in consequence has the result arrived at by the court below by way of the final liquidation order.

[14] At this stage it is necessary to consider the ambit and purpose of the separated issue, which Preller J was called upon to address. First, it is necessary to consider whether it is sufficiently precise and clear and calculated to serve the purpose of rule 33(4). In this regard, because it refers to the provisions of s 134(3) and s 136 of the Act, it has to be assessed, contextually, against those sub-sections and common cause facts.[2]

[15] It was common cause that any rental income to be received by MECI, in respect of a lease agreement allegedly concluded with the City of Johannesburg in respect of office space within the Kine Centre, had been ceded to ABSA in *securitatem debiti*. The rental income was the only income available to MECI. It was

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[2] As will be seen, the provisions of rule 33(4) do not apply to applications, but a court may deal with separate issues in applications *in limine* and in its inherent power apply a similar procedure to them. (D Harms *Civil Procedure in the Superior Courts* Part B High Court at B33.9)

alleged that MRC would receive from this income, a monthly payment of R125 000 from MECI, which would enable it to repay its obligations to ABSA. The possibility of a successful business rescue of MECI and MRC, was therefore entirely dependent upon the business rescue practitioner being entitled to receive and utilise for general business rescue purposes the rental income. In the absence of a successful business rescue of MECI and MRC, their final liquidation would inevitably follow.

[16] Section 134(3) provides as follows:

'(3) If, during a company's business rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company must–

(a) obtain the prior consent of that other person, *unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest*; and

(b) promptly –

(i) *pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person*; or

(ii) provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.' (Emphasis added.)

[17] Section 136(2) provides as follows:

'(2) Subject to subsection (2A), and despite any provision of an agreement to the contrary, during business rescue proceedings, the practitioner may –

(a) entirely, partially or conditionally suspend, for the duration of the business rescue proceedings, any obligation of the company that -

(i) arises under an agreement to which the company was a party at the commencement of the business rescue proceedings; and

(ii) would otherwise become due during those proceedings; or

(b) . . .

(2A) When acting in terms of subsection (2) –

(a) . . .

(b) . . .

(c) if a business practitioner suspends a provision of an agreement relating to security granted by the company, that provision nevertheless continues to apply for the purpose of section 134, with respect to any proposed disposal of property by the company.' (Emphasis added.)

[18] The appellants submitted that the formulation of the separated question was imprecise and unclear, principally on the basis that the word 'disposal' as contained in s 134(3)*(a)* of the Act was not employed as the verb and in its place the word 'utilise' was chosen. The word 'disposal' was instead employed as a common noun in the formulation of the separated question. The word 'utilise' did not appear in ss 134 and 136 of the Act and the employment of the verb 'utilise' in conjunction with the common noun 'disposition' was not capable, contextually, of meaningful interpretation. Consequently, a consideration of the separated question with reference to these sections of the Act, was rendered nugatory.

[19] In addition, it was submitted that the separated question did not refer to the exercise by the business rescue practitioner and the court, of powers provided for in s 136(2)*(b)* of the Act. In other words, should a business rescue practitioner successfully approach the court to obtain an order for the cancellation of the cession agreement, the answer to the separated question would be different if such powers were not exercised. Consequently, without the inclusion of assumptions or future facts in respect of the possible exercise of these powers of a business rescue practitioner and the court, the separated question did not permit of an unconditional answer.

[20] It is unhelpful to subject the separated question to this type of analysis. The possibility of a business rescue practitioner applying to court for the cancellation of the cession, was quite obviously extraneous to the issues the parties sought to resolve in its formulation. Although not a model of clarity, its meaning examined in the context of the common cause facts together with the relevant sections of the Act, is sufficiently clear. The separated question is whether the business rescue practitioner would be entitled to utilise the rental income, without the consent of ABSA? If not, would the business rescue practitioner be entitled to utilise the rental income, if such income was sufficient to fully discharge the indebtedness of MECI to ABSA?

[21] Having established the meaning of the separated question, I do not agree with the submission by the appellants that this court should not proceed to answer

the questions raised, as this would require it to do so as a court of first instance. This case does not fall within the ambit of the reservations enunciated in *Women's Legal Centre Trust v President of the Republic of South Africa & others* [2009] ZACC 20; 2009 (6) SA 94 (CC) para 27, as to why a court of appeal is loath to be a court of first and last instance. In addition, as pointed out in *Brian Kahn Inc v Samsudin* 2012 (3) SA 310 (GSJ) para 11, relevant considerations are that the issue raised by the separate question is important not only for the parties, but also for business rescue practitioners in general. In addition, there is no possibility of a further party having an interest in the matter. More importantly, as pointed out below, the parties when arguing the application for leave to appeal, agreed that this court would be asked to decide the separated question. In any event, because of the delay, to refer the matter back to the high court would not result in the just and expeditious resolution of the litigation.

[22] Section 134(3) of the Act provides that in the absence of the prior consent of a person holding any security or title interest in property, which the company in business rescue proceedings wishes to dispose of, it may only do so if the proceeds of the disposal of the property will be sufficient to fully discharge the indebtedness protected by that person’s security, or title interest. The company is then obliged to promptly pay the proceeds of the disposition to such person, up to the amount of the company's indebtedness.

[23] What the subsection therefore requires, in the absence of consent by the person holding security over the property, before it may be disposed of by the company, is that the proceeds of its disposition must be sufficient to fully discharge the indebtedness of the company to the holder of the security. If this requirement is not satisfied, the company may not dispose of the property. If this requirement is satisfied, the company must promptly pay the proceeds of the disposition to the security holder. On receipt by the security holder of the proceeds of the disposition, which fully discharges the indebtedness of the company, the property is released from the security. Simply put, there must be prompt payment by the company of the proceeds of the disposition to the holder of the security and the payment must fully discharge the indebtedness of the company. Obviously, the security held by a

person in relation to a debt owed by a company in business rescue, is not nullified by the business rescue procedure.

[24] It is therefore clear that the utilisation by the business rescue practitioner of the rental income, in order to make periodic payments to ABSA in reduction of the indebtedness of MECI, with the ultimate goal of discharging such indebtedness, does not satisfy the requirement that the prompt payment of the proceeds of the disposition must fully discharge the indebtedness. Consequently, the answer to the separated question is that the business rescue practitioner may not utilise the rental income without the consent of ABSA, even if such rental income may eventually be sufficient to discharge the indebtedness of MECI to ABSA.

[25] This conclusion accords with the requirement that business rescue proceedings must be resolved expeditiously. In *Koen & another v Wedgewood Village Golf and Country Estate (Pty) Ltd & others* 2012 (2) SA 378 (WCC) para 10, Binns-Ward J stated the following:

'It is axiomatic that business rescue proceedings, by their very nature, must be conducted with the maximum possible expedition. In most cases a failure to expeditiously implement rescue measures when a company is in financial distress will lessen or entirely negate the prospect of effective rescue. Legislative recognition of this axiom is reflected in the tight time lines given in terms of the Act for the implementation of business rescue procedures if an order placing a company under supervision for that purpose is granted. There is also the consideration that the mere institution of business rescue proceedings – however dubious might be their prospects of success in a given case – materially affects the rights of third parties to enforce their rights against the subject company.'

[26] Also, in *DH Brothers Industries (Pty) Ltd v Gribnitz NO & others* 2014 (1) SA 103 (KZP) para 27, Gorven J stated:

'Business rescue proceedings are geared at providing a window of opportunity to restore an ailing company to financial health and functionality . . . The window of opportunity does not remain open indefinitely.'

It is quite clear that it would take many years for MECI and MRC to fully discharge their indebtedness to ABSA, in reliance upon the rental income. In addition, ABSA submits that the monthly payment of R125 000 which MRC says it will receive from

MECI, will result in MRC only extinguishing its direct indebtedness to ABSA after 37 years. On this basis, any business rescue proceedings would never be resolved expeditiously.

[27] The determination of the separated question cures any prejudice suffered by the parties as a result of the procedural irregularities, as is clear from the following concession made in the first appellant's heads of argument:

'The need for the separate adjudication of a question of law to determine the validity of the assumption in the proposed business rescue plan that future rentals could be disposed of by the business rescue practitioner (the *substratum* of the application to place the Second Respondent under supervision and in business rescue) is plain to understand. If the assumption is invalid, the basis of the application for supervision and business rescue is non-existing.'

The appellants therefore conceded that if the business rescue practitioner was unable to dispose of future rentals, then the applications for supervision and business rescue of MECI and MCR had to fail. The need for oral argument on the remaining issues is therefore no longer necessary, as the final liquidation of MECI and MRC must inevitably follow.

[28] In addition, ABSA submitted that the request by the appellants that the matter be remitted to the court a quo comprised a *volte face*. The following statement in the heads of argument of ABSA, which has not been disputed by the appellants, is relevant:

'At the hearing of the application for leave to appeal before the Honourable Justice Tuchten (Preller J being unavailable), it was specifically stated, in response to a question by Tuchten J to then senior counsel for the first appellant, Mr Burman SC by Mr Burman SC that the Supreme Court of Appeal will be asked to determine the separated issue as opposed to having the matter remitted back. Mr Subel SC, then appearing for the balance of the appellants, raised no complaint in this regard and did not state that his clients held a contrary position. The application for leave to appeal, and the granting of leave to appeal, proceeded, *inter alia*, on such basis.'

The resolution of the separated question by this court, therefore accords with the basis upon which the appellants sought and were granted leave to appeal.[3]

[29] In essence the findings by Preller J in relation to the financial position of the companies as set out above, cannot be faulted. His views in relation to the conduct of the intervening parties, both in respect of Louis Pasteur and those parties who sought intervention at a later stage, appear wholly justified. For all the reasons set out above the order made by Preller J, albeit misguidedly, should remain extant.

[30] Regrettably, the conduct of Preller J in delaying the furnishing of the judgment for two years after the separated question was argued, must be deprecated in the strongest possible terms. No explanation or apology for the inordinate delay in only delivering the judgment on 11 May 2017, is offered in the judgment. The Judge's conduct was highly prejudicial to the parties and more particularly ABSA, which seeks to recover a large outstanding debt from MECI and MCR, in reliance upon what appears to be inadequate and deteriorating security in the form of the buildings in question.

[31] This court disapproves of unreasonable delay by judicial officers in delivering judgments. In *Pharmaceutical Society of South Africa & others v Tshabalala-Msimang & another NNO; New Clicks South Africa (Pty) Ltd v Minister of Health & another* 2005 (3) SA 238 (SCA) para 39, Harms JA stated the following:

'The judicial cloak is not an impregnable shield providing immunity against criticism or reproach. Delays are frustrating and disillusioning and create the impression that Judges are imperious. Secondly, it is judicial delay rather than complaints about it that is a threat to judicial independence because delays destroy the public confidence in the judiciary. There rests an ethical duty on Judges to give judgment or any ruling in a case promptly and without undue delay and litigants are entitled to judgment as soon as reasonably possible.

[3] It should be noted that Mr Subel SC and Mr Burman SC did not draft the appellants' heads of argument, nor did they argue the appeal.

Otherwise the most quoted legal aphorism, namely that "justice delayed is justice denied", will become a mere platitude.'

Regrettably, the delay by the Judge in furnishing the judgment resulted in a denial of justice to the parties.

[32] A further issue that requires comment is that the separated question was sought and granted in terms of rule 33(4) of the Uniform Rules of Court. Commenting upon this rule, D Harms *Civil Procedure in the Superior Courts* Part B High Court at B33.9, states the following:

'The provision does not apply to applications, but a court may deal with separate issues in applications *in limine* and in its inherent power apply a similar procedure to them.'

In *Theron & another NNO v Loubser NO & others* [2013] ZASCA 195; 2014 (3) 323 (SCA) paras 10-16, Ponnan JA, after an extensive review of the relevant authorities, concluded that there was a body of authority, the correctness of which he left open, as to the circumstances in which a high court may in the exercise of its inherent jurisdiction, separate issues in application proceedings. Wallis JA, writing for the majority at para 23, expressed the view that it was undesirable to examine those cases in the high court, where this procedure had been followed, as to do so may be taken as implying an endorsement of some, or all of these cases. Wallis JA added the following at para 26:

'In general, however, the desirable course to be followed in application proceedings, where the affidavits are both the evidence and the pleadings, is for all the affidavits to be delivered and the entire application to be disposed of in a single hearing.'

[33] Accordingly, a court in exercising its inherent power in application proceedings to separate issues in limine, must do so with circumspection. In this regard, the cautionary warning in *Democratic Alliance & others v Acting National Director of Public Prosecutions & others* 2012 (3) SA 486 (SCA) para 49, is apposite:

'Generally courts should be slow to allow parties to engage in piecemeal litigation, with attendant delays. Put differently, courts should be intent on obviating prolonged litigation. This case has shown precisely how undesirable for the administration of justice to-ing and fro-ing between the high court and this court over a long period of time, without the merits being finally adjudicated, can be. Courts should be circumspect when suggestions are made

about the procedure to be followed on the basis that it might shorten rather than lengthen litigation.'

The present appeal is a clear reminder of the consequences that flow from insufficient circumspection being exercised by a court of first instance in separating an issue, *in limine,* in application proceedings.

[34] As regards the costs of the appeal, we were advised by counsel for the appellants that it was at the insistence of ABSA that all of the papers in both applications were included in the appeal record. Regard being had to the narrow ambit of the issues on appeal, this demand was unreasonable. As a consequence, ABSA will be ordered to forego 50 per cent of the costs incurred by the appellants in preparing the appeal record.

[35] In the result the following order is granted:

1 The appeals in case numbers 1119/2017 and 1120/2017 are dismissed.

2 The costs of the appeal are to be borne by the appellants, jointly and severally, such costs to include the costs of two counsel, save for 50 per cent of the costs of the preparation of the appeal record.

K G B Swain

Judge of Appeal

Appearances:

For the Appellants:	J Roux SC (with M Riley) Instructed by: Boshoff Smuts Inc, Centurion Strauss Daly, Bloemfontein
For the First Respondent:	K W Lüderitz SC (with G W Amm) Instructed by: Lowndes Dlamini Attorneys, Sandton Phatsoane Henney Attorneys, Bloemfontein