

REPUBLIC OF SOUTH AFRICA

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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SOUTH GAUTENG HIGH COURT, JOHANNESBURG

APPEAL CASE NO: A5059/10

CASE NO (*a quo*) 09/36885

In the matter between:

BYWAY PROJECTS 10 CC

Appellant

and

MASINGITA AUTOBODY CC

First Respondent

t/a MASINGITA AUTOBODY

D MATHABULA

Second Respondent

L NKUNA

Third Respondent

D NKUNA

Fourth Respondent

L JOHNS

Fifth Respondent

SHERIFF JOHANNESBURG SOUTH

Sixth Respondent

JUDGMENT

PETER AJ

[1] The issues in the appeal are first whether or not an *ex parte* anti-dissipation order ought to have been confirmed, secondly whether or not on a proper interpretation of the provisions of section 23(2) of the Close Corporations Act, 1984 the second to fifth respondents are personally liable for the obligations of the first respondent under and in terms of the agreement of lease, and thirdly, the liability of the first respondent to make payment of alleged arrear rentals, ancillary charges and damages for breach of an agreement of lease of an immovable property.

[2] On 19 September 2007 the appellant entered into a written agreement with the first respondent in terms of which the appellant let to the first respondent premises situated at 25 Fennel Road, Village Main, Johannesburg. The first respondent, a close corporation, was therein described as “Masingita Autobody”. The description of the first respondent did not include either the letters “CC” or its registration number. The agreement of lease was signed by the third and fifth respondents. The rental was payable monthly in advance on the first day of each month. The lease was to commence on 1 September 2007. The rent for September 2007 was R16 000,00 per month and thereafter in the sum of R17 600,00 plus VAT per month whereafter it was to escalate 10% per annum compounded annually. The tenant undertook to pay for all electricity, water, effluent, refuse, sewerage, street frontage and other municipal charges levied on the premises. Pursuant to the conclusion of the lease the first respondent took occupation of the premises.

[3] By January 2008 the first respondent had fallen into arrears with the rent. By February 2008 the appellant was writing letters of demand. Between February 2008 and September 2008 the appellant wrote repeated letters of demand and received intermittent payments. The last of the letters of demand was dated 4 September 2008 in which the appellant demanded several amounts totalling R132 260,00. This was made up of three months rent, a charge for outstanding water and lights of R32 000, 00, a charge for “*rental on compressor and purchase*” of R34 200,00 and R4 500,00 for the deployment of security guards. On 10 September 2008 a second agreement was concluded. The signatories to this second agreement was the appellant’s representative and the second, third and fourth respondents. The second, third and fourth respondents confirmed that they wished to retract from the present lease. They held themselves out as representing “Masingita Autobody” and consented to auctioneers, appointed at the instance of the appellant, to attend to the disposal of the equipment in the premises. Importantly in the second agreement the sum of R213 100,00 was acknowledged as forming part and parcel of the lease. It was further recorded that “the parties responsible for the lease are responsible for the monies that are due as per the lease”. The

wording of the agreement is somewhat confusing, parts thereof suggest that the second, third and fourth respondents are personally parties thereto and parts suggest that they represent Masingita Autobody.

[4] Notwithstanding the conclusion of the second agreement the appellant's complaint is that the respondents remained in occupation and carried on business "as usual" without further payment save for an amount of R45 521,97. Pursuant thereto and in the belief that its tenant was a partnership, the appellant launched motion proceedings in November 2008 against the second to fifth respondents. The appellant sought an interim *ex parte* attachment of the assets constituting the property of Masingita Autobody. It also sought final relief for the cancellation of the lease agreement, confirmation of the attachment and ejection of the second to fourth respondents. The record does not disclose whether or not the *ex parte* relief was granted. The application however was opposed by the fifth respondent who provided evidence of the existence of the first respondent as an incorporated close corporation. This evidence reflected the second to fifth respondents as registered members each holding a 25% members' interest in the first respondent close corporation. The fifth respondent also provided a schedule detailing the rent payable under the agreement and the amounts paid thereunder. In support of payment, copies of deposit slips, cheques and bank statements of the first respondent were adduced. On the fifth respondent's version the first respondent was in arrears with rent and at the beginning of September 2008 owed a sum in excess of R38 961,47 having made non-timeous and irregular payments. The fifth respondent's schedule did not include any charge for municipal services. The fifth respondent raised a dispute in relation to the installation of meters and alleged that from September 2008 the supply of electricity was cut on account of the appellants failure to apply to the City Council for the installation of such meters.

[5] The final relief was argued before Beasley AJ. On 2 April 2009 the application was dismissed on account of the appellant having sued the second

to fourth respondents in partnership, whereas its tenant was the first respondent.

[6] In August 2009 the appellant instituted a second application which gives rise to this appeal. The appellant again sought interim *ex parte* relief. It sought not only an attachment and inventory of all the assets of its tenant but an attachment of the right, title and interest of the second to fifth respondents in the costs order and any attachment made in terms thereof arising from the order of Beasley AJ. Final relief was sought to rectify the lease agreement to reflect the lessee as Masingita Autobody CC, confirm cancellation of the lease, confirm the attachment of the assets and to eject the first to fifth respondents and all those enjoying occupation through them, from the premises. In addition, an order for the payment of money was sought against the first to fifth respondents jointly and severally. Payment was sought for an amount of alleged arrears prior to cancellation in September 2008, liquidated damages and payment of all municipal charges for the month of October 2008 and for each further month that the first to fifth respondents remained in occupation of the premises without any quantification thereof. Alternative relief was sought premised on a later date of cancellation but similarly seeking payment of arrears, liquidated damages and an order directing payment of the municipal charges, without any quantification thereof.

[7] On 8 September 2009 an interim order of attachment was granted. In November 2009 the fifth respondent filed an affidavit in which he again stated that he was the managing member of the first respondent raised the same disputes in relation to the payments and municipal charges and annexed copies of the same documentation, as he had done previously. He repeated his allegation that the electricity and water supplies had been cut off and there had been no consumption. The second, third and fourth respondents did not oppose the application.

[8] On 31 March 2010 Mayat J made an order setting aside the *ex parte* attachment, rectifying the lease agreement sub-joining the letters “CC” to the

name Masingita Autobody, declared the lease cancelled and granted the order of ejectment with costs against the first and fifth respondents. The relief sought for a judgment sounding in money and visiting personal liability on the second to fifth respondents was not granted.

[9] Leave to appeal having been refused by the Court *a quo*, this appeal is prosecuted with a leave of the Supreme Court of Appeal.

Confirmation of the ex parte attachment order

[10] There are two considerations: the bringing of the application *ex parte* without notice to the respondents and the case to be made out for the so-called anti-dissipation interdict.

[11] Forty years ago Beck J made the following comment in *Republic Motors (PVT) LTD v Lytton Road Service Station (PVT) Ltd* 1971 (2) SA 516 (R) at 518 F–H:

“The procedure of approaching the Court *ex parte* for relief that affects the rights other persons is one which, in my opinion, is somewhat too lightly employed. Although the relief that is sought when this procedure is resorted to is only temporary in nature, it necessarily invades, for the time being, the freedom of action of a person or persons who have not been heard and it is, to that extent, a negation of the fundamental precept of *audi alteram partem*. It is accordingly a procedure that should be sparingly employed and carefully disciplined by the existence of factors of such urgency, or of well-grounded apprehension of perverse conduct on the part of a respondent who is informed beforehand that resort will be had to the assistance of the Court, that the course of justice stands in danger of frustration unless temporary curial intervention can be unilaterally obtained.”

[12] In my view that observation is equally relevant today. In similar vein is *Clegg v Priestley* 1985 (3) SA 950 at 953J to 954C. There it is stated that the fundamental rule is that a court will refuse to make an order that may prejudice the rights of parties not before it. This rule is subject to qualification where temporary immediate relief is essential, because of the danger in delay or because notice may precipitate the very harm the applicant is trying to forestall.

[13] In relation to the requirements that must be met for the grant of anti-dissipation interdict, irrespective of whether same is brought *ex parte* or on notice, there are two requirements that must be met. First a debtor is wasting or getting rid of funds or secreting assets, or there is a reasonable apprehension that the debtor is about to embark on such conduct. Secondly, save in exceptional circumstances, there is an intention on the part of the debtor to defeat creditors' claims. These requirements were laid down in *Knox D'Arcy Limited and Others v Jamieson and Others* 1996 (4) SA 348 (A) at 372F–H and recently confirmed in *Carmel Trading Co Ltd v Commissioner, South African Revenue Service and Others* 2008 (2) SA 433 (SCA) at 435 para 3.

[14] Mr Nowitz, who appeared for the appellant, submitted that the *ex parte* application for an anti-dissipation order was justified by reason of three facts: the first respondent was in arrears with its rent, it had not adequately responded to the letters of demand and the first respondent did not vacate the premises but carried on trading as before, notwithstanding the second agreement, in terms of which the appellant was permitted to sell the first respondent's goods.

[15] To my mind none of these facts gives rise to a reasonable inference that any of the respondents were either dissipating or secreting assets, or any reasonable apprehension of such future conduct. Accordingly the question as to whether such conduct was accompanied by an intention to defeat the appellant's claim, or there existed exceptional circumstances which justified the grant of the relief in the absence of such intention, does not arise.

Similarly, none of these facts indicate either dire urgency or a reasonable apprehension that the relief sought would be frustrated justifying the bringing of the application *ex parte*. Furthermore it is difficult to see how there could have been any justification for seeking to attach the costs order made in the second to fifth respondents favour by Beasley AJ.

[16] Both litigants and practitioners should take heed that both *ex parte* orders, without notice to affected parties, and anti dissipation interdicts are departures from fundamental rules. The first is a departure from the rule of *audi alteram partem*. The second is a departure from the rule that an owner should be unfettered in the management and exercise of control over his or her own assets. These orders are not to be had for the mere asking. Care must be taken that the requirements for the orders are present before approaching a court for such orders.

[17] Accordingly, the learned Judge was correct in setting aside the *ex parte* order and refusing to confirm the attachment.

Personal liability of members under section 23 of the Close Corporation's Act

[18] Section 23(1) of the Close Corporations Act requires the full name of the close corporation and its registration number to appear on notices, other official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money, goods or services purporting to be signed by or on behalf of the close corporation as well as letters, delivery notes, invoices, receipts and letters of credit. Section 23(2) of the Act reads as follows:

- “(2) If any member of, or any other person on behalf of, a corporation—
 - (a) issues or authorises the issue of any such notice or official publication of the corporation, or signs or authorises to be signed on behalf of the corporation any such bill of exchange, promissory note, endorsement, cheque or order for money; goods or services;

- (b) issues or authorises the issue of any such letter, delivery note, invoice, receipt or letter of credit of the corporation

without the name of the corporation, or such registered literal translation thereof, and its registration number being mentioned therein in accordance with subsection (1)(b), he shall be guilty of an offence, and shall further be liable to the holder of the bill of exchange, promissory note, cheque or order for money, goods or services for the amount thereof, unless the amount is duly paid by the corporation.”

[19] What is immediately apparent from the provisions of section 23(2) is that where there has been a contravention of the provisions of section 23(1) in that the full name of the close corporation or its registration number is not evident in any of the twelve instances, there is the potential consequence of a criminal offence. Secondly, only in respect of four types of documents – a bill of exchange, promissory note, cheque or order for money or goods and services – is there the imposition of personal liability to the holder of such document. The imposition of a criminal sanction and a sanction in the form of personal liability are factors which support a restrictive interpretation of the scope of the section.

[20] The founding affidavit made a submission that the lease agreement and the second agreement are both documents falling within the ambit of section 23(2). In argument Mr Nowitz did not contend, correctly so, that the second agreement fell within the class of documents of section 23(2). Mr Nowitz submitted that although the second and fourth respondents were not signatories to the lease agreement, by virtue of their signature to the second agreement, in which reference is made to the much earlier lease agreement, it can be said that the second and fourth respondents authorised the issue of the lease agreement. In my view there does not seem to be any persuasive force in this submission but, for the reasons set out below, it is not necessary to make a final determination as to whether or not some act of ratification after the fact can fall within the meaning of the words “issues or authorises the issue” in section 23(2).

[21] The lease agreement clearly did not fit the description of a bill of exchange, promissory note or cheque. Mr Nowitz however argued that the lease agreement constituted an order for services. Mr Nowitz was unable to cite any authority for the proposition that a lease agreement falls within the description of an order for services. Mr Nowitz based his submission on the contention that regard should be had to the purpose of the section which is to protect the public by ensuring that it is not exposed to the risk of being misinformed or misled by requiring objective compliance in the document itself, see *Constantaras v BCE Foodservice Equipment (Pty) Ltd* 2007 (6) SA 338 (SCA) at 343, para 11.. This, it was submitted, was the reason for giving wide meaning to the word “order” so as to include any contract.

[22] The word “order” in section 23 has been the subject matter of judicial consideration. In *G & C Construction v De Beer en 'n Ander* 2000 (2) SA 378 (T) Du Plessis J held that the word order was an instruction or direction (“opdrag”). An order for goods has been considered in the context of section 50(3) of the Companies Act, 1973 which is the equivalent provision relating to companies although an order for services is not included in section 50(3). In this context it was held in *Van Lochen v Associated Office Contracts (Pty) Ltd* 2004 (3) SA 247 (W) at 251 that an order means a “command or direction”. I agree with the plain meaning attributed to the word order in these cases.

[23] By reason of the penalties imposed in section 23(2) and the existence of a remedy under section 63(a) of the Close Corporations Act which is capable of application to contracts generally, I find no reason to disagree with the ordinary meaning attributed to the word order as being a command or direction. Accordingly, there is no basis to hold the second, third, fourth and fifth respondents personally liable for the obligations of the first respondent in terms of the lease. That being so it is unnecessary to decide whether or not some act of ratification after the fact can fall within the meaning of the words “issues or authorises the issue” in section 23(2).

The claim for payment

[24] The appellant sought a final order for the payment by way of motion proceedings. In this regard there are two principles that are relevant. Firstly, it is trite that motion proceedings are not appropriate for the resolution of material disputes of fact. Should a factual dispute arise which is incapable of being resolved in the papers there is a risk of a dismissal of the application should the court, in exercise of its discretion, not refer the matter for trial nor direct that oral evidence be heard on specified issues, *Tamarillo (Pty) Ltd v B N Aitken (Pty) Ltd* 1982 (1) SA 398 (A) and *Gounder v Top Spec Investments (Pty) Ltd* 2008 (5) SA 151 (SCA). A court will exercise a discretion to dismiss the application if the applicant ought to have foreseen, or in fact did foresee, when launching his application, that a serious dispute of fact, incapable of resolution on the papers was bound to develop, *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1153 (T) and *Adbro Investment Co Ltd v Minister of the Interior* 1956 (3) SA 345 (A).

[25] The second principle is that motion proceedings are not appropriate to pursue illiquid claims for damages, *Room Hire Co* at 1161. The appellant's claim for payment of monies can be divided broadly into two parts. First is the payment of arrear rentals and charges in respect of municipal services. The second part is a claim for damages from the date of cancellation.

[26] In respect of the first part of its claim, the appellant claimed that there were arrears to September 2008 in the sum of R167 578,03. This amount was calculated on the basis of the acknowledgement in the second agreement of an amount of R213 100,00 less a payment received thereafter of R45 521,97.

[27] The appellant's founding affidavit did not provide any breakdown of how the amount of R213 100,00 was arrived at. The founding affidavit anticipated, from the first abortive application proceedings, a dispute in this regard. The appellant's challenge to the schedule provided by the fifth respondent was that there was only one payment in February 2008 whereas the

schedule reflected two months of payments, that there had been no payments since 12 August 2008.

[28] It is correct that the annexure does not reflect payments beyond 12 August 2008 and are in the fifth respondent's own showing, as at September 2008 and in respect of rent the first respondent was approximately two months in arrears including the rent due at the beginning of September 2008. In relation to the challenge to the amount reflected for February 2008, although it is correct that only one deposit slip was annexed, the fifth respondent attached a bank statement which reflected two identical amounts being paid on the same day with different cheque numbers totalling the amount of the first respondent's schedule.

[29] The founding affidavit makes no attempt to explain why the appellant's letter of demand dated 4 September 2008 is for monies for arrear rental, municipal charges, compressor rental and security guards was in aggregate of only R132 260,00 yet the amount outstanding at 10 September 2008 was R213 000,00. The founding affidavit argues if the amount of R213 100,00 was not due, it begged the question as to why the second, third and fourth respondents affixed their signatures to the second agreement admitting liability for such amount. The appellant, both the author of the demand and party to the agreement of 10 September 2008, fails to furnish any fact explaining how this demand is to be reconciled with the sum of R213 100,00 agreed, with the second, third and fourth respondent, a mere six days later.

[30] I accept that the lease was cancelled in September 2008. The appellant was entitled to in terms of the lease to cancel same forthwith for non payment. Furthermore the second agreement was signed by the second, third and fourth respondents who are members of the close corporation. Notwithstanding the allegation, which must be accepted for purposes of motion proceedings, that the fifth respondent was the managing member of the first respondent, the provisions of section 54(1) of the Close Corporations Act

nevertheless operate to attribute the signature of the second, third and fourth respondents, members of the first respondent, as signifying agreement on behalf of the first respondent. The admission of the sum due and payable however stands in a different footing. This is merely an admission of a factual state of affairs as opposed to a juridical act. As such, whatever the *prima facie* evidential value of such an admission might be, it is nevertheless open to the first and fifth respondents to adduce evidence of the true state of affairs. In this regard the fifth respondent's affidavit sets out evidence supporting his averments sufficiently to raise a *bona fide* dispute.

[31] It is not necessary to find as a matter of fact that the fifth respondent's calculation of arrears owing by the first respondent in the sum of R38 961.47 was correct. It suffices for present purposes that there was a *bona fide* dispute in this regard. Having regard to the admitted and acknowledged receipt of payment of the sum of R45 521,97, there was no undisputed balance of arrears owing for rent at the time of the bringing of the application.

[32] In relation to the claim for arrear municipal charges the appellant adduced no evidence as to the existence or quantification of such charges other than its say so. A dispute as to the installation of meters, an acknowledged problem relating to a water leak and a claim by the fifth respondent that the electricity had in fact been cut together with the inability of the appellant to adduce any evidence as to the existence and quantification of municipal charges rendered it impossible for the court *a quo* to grant a money judgment in that regard.

[33] Where a landlord has cancelled a lease the tenant is liable to evacuate occupation of the premises and is liable for damages. Principles which govern quantification of such damages is that the sufferer of a breach should be placed in a position it would have occupied had the contract been performed so far as could be done by the payment of money without hardship to the defaulting party, (see *Victoria Falls and Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd* 1915 AD 1 at 22). The application of this

principle where a landlord has terminated a tenant's lease is that the landlord is entitled to the amount of rent less any amount the landlord has in fact received by re-letting or would have received if the landlord had taken advantage of reasonable opportunities to re-let the premises, see *Tos v Angelo Outfitting Stores* 1915 TPD 22 at 24–25 and *Smith v Weeks* 1922 TPD 235 at 237–238. Where a landlord is not in a position to re-let the premises because the tenant has not vacated same, then the landlord's claim includes damage from the wrongful retention of the occupation of the premises. This is the market rental value of the premises for the period of the unlawful occupation, no credit need be given for any surplus the landlord might achieve if the property is at a higher rent after the tenant has vacated, *Sandown Park (Pty) Ltd v Hunter Your Wine & Spirit Merchant (Pty) Ltd and Another* 1985(1) SA 248 (W) at 256 I.

[34] Ordinarily, and in the absence of evidence to the contrary, the reasonable market rental value of the premises will be assumed to be the rent paid under the lease, see Cooper, *Landlord and Tenant* 2 Ed 1993 p 234. Nevertheless, the *prima facie* assumption that the rental payable under the lease is a reasonable market rental does not alter the principle that the landlord's damages are limited to the reasonable market rental of the premises. This is illustrated in the *Sandown Park* case where the reasonable market rental was proved to be higher than the rental that would otherwise have been payable under the lease. That being so, the claim for damages was not liquidated but constituted an illiquid claim for damages.

[35] In *Worcester Court (Pty) Ltd v Benatar* 1982 (4) 714 (E), a claim for damages for holding over was granted on motion. An appeal to the full court was dismissed but was confined only to the existence of a defence under Rent Contract Act, 1976, *Benatar NO v Worcester Court (Pty) Ltd* 1983 (4) SA 126 (C). In the motion proceedings Comrie AJ held:

“While damages are invariably assessed after hearing oral evidence (*Sekgota v South African Railways and Harbours*; *Ramotseo v South African Railways and Harbours* 1974 (3) SA 309 (A); *New Zealand*

Insurance Co Ltd v Du Toit 1965 (4) SA 136 (T)), I can see no reason in principle why they should not be fixed in motion proceedings. Nor do the Rules of Court preclude this course. The difficulty is in a sense a procedural one. If respondent contests the quantum alleged, and puts up some contrary evidence, a Court in motion proceedings would normally have to accept the respondent's allegations, with the result that the applicant would prove either no loss at all or a loss much smaller than he claims to have suffered. The alternative is for the Court to hear oral evidence or refer the matter to trial, a practice which is not encouraged. For these reasons illiquid claims for damages are invariably advanced by way of action. *Non constat* that damages cannot be proved on affidavit”.

[36] This case was cited with the approval in *Havenga v Parker* 1993 (3) SA 724 (T) in the context of receiving evidence by way of affidavit in default judgment proceedings commenced by way of summons.

[37] In *Vogel NO v Volkersz* 1977 (1) SA 537 (T), the Full Court of the Transvaal Provincial Division dealt with an appeal in a dispute between a purchaser and seller of immovable property. The seller had brought application proceedings to reclaim occupation of the immovable property and damages for wrongful occupation by a purchaser. The purchaser's defence related to a claim for rectification of the agreement which was the subject matter of the factual dispute. The court referred the factual issue concerning the purchaser's entitlement to rectification but declined to refer the claim of the seller relating to the reasonable value of occupation of the premises. This it did on the grounds that the allegation as to occupational value and claim for payment thereof was akin to a claim for damages by holding over which should not normally be put forward in motion proceedings, at 560 A – B.

[38] In *Meyer v Barnardo & another* 1984 (2) SA 580 (N), an application by the owner and seller of a property under a lapsed sale agreement was made for the eviction of the purchaser. The respondent purchaser counter-claimed for repayment of the deposit paid in respect of the purchase price of the lapsed sale. The seller was not permitted to raise as a defence in motion proceedings the value of a claim for holding over on the basis that it was a claim for

damages in all probability in the lesser amount which at that stage was not determined or formulated at 590 H.

[39] Whether or not the rule in *Room Hire* that unliquidated damages ought not ordinarily to be brought in motion proceedings still holds true and whether the decision in *Worcester Court* is an exception to the rule in *Room Hire* or a new and preferable rule is something we need not decide. In the present case there is a dispute as to whether the property enjoys the supply of Municipal services and thus fit for purpose. Accordingly in these circumstances, the ordinary presumption that the agreed rental is *prima facie* evidence of the reasonable value of occupation holds true or can be relied upon. In these circumstances the facts of the present case do not warrant a departure from the long established practice. The damages, if to be pursued, ought properly to be pursued by way of action.

Conclusion

[40] For the reasons set out above, the Court *a quo* was correct to set aside the attachment order and to refuse to confirm the attachment. The Court was correct in refusing to grant an order for the payment of monies against the respondents. There was no basis to visit personal liability on the second to fifth respondents and there was no undisputed or liquidated claim for money capable of being granted in motion proceedings.

[41] In relation to costs, it is to be noted that the second, third and fourth respondents never opposed the application nor did they participate in the appeal. Although some opposition was offered at the hearing in the court *a quo* by the first and fifth respondents, they did not participate in this appeal. Nevertheless all the respondents were cited as parties and, although not participating in the appeal, may have incurred some costs in being served with and considering the documents in the appeal. To the extent that they are able to demonstrate these to the satisfaction of the taxing master, they ought not to be deprived of their costs.

[42] Accordingly I would make an order that the appeal is dismissed with costs.

J R PETER
ACTING JUDGE
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

I agree

T M Masipa
JUDGE
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

I agree

R S Mathopo
JUDGE
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Appearances:

For the appellant: M Nowitz, instructed by Nowitz Attorneys, Johannesburg

No appearance for the respondents.

Date of argument: 6 April 2011

Date of judgment: 14 June 2011