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1. THE FOLLOWING IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

*12/04/2010*

*[Signature]*

SIGNATURE

IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT)

Case No: 10781/2007

In the matter between:

**DUMISA RANCHING (PTY) LIMITED**

Plaintiff

vs

**STANDARD BANK OF SOUTH AFRICA**

Defendant

#### JUDGEMENT

**SAPIRE, AJ:**

This trial was allocated to me on the morning of the 15<sup>th</sup> April 2010.

The Plaintiff is well known to me. There were numerous matters in which he was involved which I heard when I was a Judge in Swaziland. As a result of judgments which I gave the Plaintiff applied for my recusal which I refused. My decision was upheld on appeal.

In view of this when Mr Dlamini together with counsel came to introduce themselves to me before the case started I recognised him and reminded him that we were well-known to each other in Swaziland. I invited him to ask me to recuse myself but he expressed himself entirely satisfied with me hearing the matter.

When the case was called in court I made reference to what has taken place in chambers and the Plaintiff again confirmed that he had no objection to me hearing the case.

I then raised the question of whether Dlamini was entitled to represent the Plaintiff which is a private company. It was long and inflexible rule that a Body Corporate had to be represented in legal proceedings by attorney and counsel. No individuals, however closely connected to the corporation could represent the corporation in legal proceedings.

That rule has in recent years been departed from.

In re: Bankorp vs California Spice and Marinade (Pty) Ltd, 1997 (4) All SA 317 (W) it was held that in certain exceptional circumstances the court had a discretion to permit a juristic person to be represented by one of its members or officers on the basis that the inconvenience of having an unqualified person appear had to be weighed up against the injustice of a juristic person being denied access to the Courts.

Whether such exceptional circumstances exist in the present litigation is uncertain but I heard Mr Dlamini on behalf of the Plaintiff in regard to the sole issue on which my decision had to be made.

This issue was whether or not the trial had been removed from the roll of the 14<sup>th</sup> of April 2010. When the matter was called by the Acting Deputy Judge President the issue was raised and the matter was on the following day referred to me.

There is a note appearing on the front page of the cover of the court file to the effect that the matter had been removed from the roll. The note is vouched by the signature of someone who it is not possible to identify at present, but who could only be the judges registrar (clerk). The note indicated that such order was made on the 19<sup>th</sup> of March 2010 by his Dolamo, J. The order which was transcribed did not specifically mention removal of this matter from the roll, but did direct the setting aside of the subpoenas requiring relevant witnesses to attend the hearing of this trial.

The matter was referred to Dolamo, J for clarification and the proceedings which took place before him were recorded and a transcript thereof was made available to me. On a thorough reading of this transcription it is quite clear that the Judge intended to remove this case from the roll and that in his opinion the order did not require amendment. I am not sure that it would not have been better to amend the order as the Judge's intention is not clearly stated. That he intended to remove the matter from the roll is clear from the transcript and I am satisfied that the note on the cover is a true reflection of the order actually made by him.

In view of this the trial will not proceed but the wasted costs will be costs in the cause.

  
**W R SAPIRE**  
**ACTING JUDGE**

**PLAINTIFF REPRESENTED BY:** **MR D M DLAMINI**  
AWA AND SONS INTERNET CAFE  
84 CENTRAL CORNER  
CNR: ESSELEN AND CELLIERS  
SUNNYSIDE  
PRETORIA

**DEFENDANT'S COUNSEL:** **ADV A J DANIELS**  
PRETORIA

**ATTORNEYS FOR PLAINTIFF:** **NONE**

**ATTORNEYS FOR DEFENDANT:** **WEBBER WENTZEL BOWENS**  
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