

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE HIGH COURT – BHISHO**

Case no: 530/2011

Date argued: 15.12.2011

Date order granted: 19.1.2012

In the matter between:

MASAKHANE SECURITY SERVICES (PTY) LTD

Applicant

vs

UNIVERSITY OF FORT HARE

Respondent

REASONS FOR JUDGMENT

SUMMARY Applicant and respondent herein entered into an agreement of provision of security services by applicant. The contested portion of the agreement reads: “This contract will be for a period of at least 12 months renewable in terms of the University of Fort Hare Supply Chain Management Policy which may be for a further 12 months’.

Respondent refused to renew the agreement on the grounds that its interpretation of the terms of the contract aforesaid is that the agreement was renewable subject to the applicant tendering for and is subsequently awarded a contract in terms of the respondent’s Supply Chain Management Policy, if appointed.

When respondent refused to change its mind, applicant brought the present proceedings. Court ordered that the conduct of respondent is reviewable and gave the order setting aside the respondent’s refusal to renew the contract and payment of costs of the applicant.

TSHIKI J:

A) INTRODUCTION

[1] On 25 November 2011, applicant filed an urgent application against respondent for an order in the following terms:

“1. Dispensing with the forms of service provided for in **Rule 6** and allowing the matter to be enrolled and heard as one of urgency in terms of **Rule 6(12)**.

2. That the Respondent is called upon to show cause on the 15th December 2011 at 09h30 or as soon thereafter as counsel may be heard why:

2.1 The Respondent should not be interdicted and restrained from terminating the Applicant’s contract in terms of Annexure “MSS2” and/or appointing another service provider pending the review of the decision to terminate the said agreement.

2.2 The decision of the Respondent to terminate the agreement between the parties should not be judicially reviewed and set aside.

2.3 The Respondent should not be ordered to pay costs of this application.

3. Prayer 2.1 and 2.2 is to operate as an interim order pending the return day of the rule *nisi*.

4. The Respondent is ordered to provide reasons for its decision to terminate the agreement between the parties within 5 days of the service of this order.

5. Further and/or alternative relief.”

[2] Respondent has opposed the application which was argued on 15 December 2011.

[3] After the matter was argued, I reserved my judgment and on 19th January 2012, I granted an order in the following terms:

“1. That the decision by the Respondent to refuse to consider extending the contract of service with the applicant beyond 31 December 2011 and for a period not in excess of 24 months, as contained in annexure “MSS2”, is hereby reviewed, declared unlawful and is hereby set aside.

2. The respondent is ordered to pay costs of this application.

3. Reasons for judgment will be furnished at a later stage.”

[4] What next follows hereafter are those reasons.

[5] During argument of the application, Ms S.A. Collett appeared for the applicant and Mr S. Swartbooi represented the respondent.

[6] It would appear from the submissions by Ms Collett, which have been recorded, that by the time of argument a lot had taken place which necessitated applicant to seek only the order of review and costs. This was so because the respondent had already appointed another service provider in place of applicant and consequently there was no longer a reason for applicant to seek an order of interdict in terms of paragraph 2.1 of the notice of motion. Consequently, the urgency of the application was no longer urgent for the reason that it was no longer necessary to prevent the appointment of another service provider by respondent. What is disturbing though is the pressure that has, since the order was granted, been put to me through my secretary by a certain Mr Jarana. All along my secretary was under the impression that Mr Jarana was an attorney from the respondent’s attorneys. It

was only on 7 March 2012 that my secretary became aware that Mr Jarana is in fact an employee in the office of the applicant. I cannot, even for a moment, comprehend why the registrar's office in East London would release my phone number to the parties in litigation dealt with by me. This is so especially for the purposes of establishing developments in a case that I am handling on behalf of the parties. In my view, if any represented litigant approaches the registrar's office to know anything concerning his or her case dealt with by a Judge, the registrar should advise the litigant to approach his or her attorneys who will make the enquiries on his or her behalf. It was improper and undesirable for the East London registrar to release the details of the Judge's office phone to a litigant and even to an attorney for that matter. Only attorneys of represented litigants can approach the registrar's office for establishing progress in any matter before a Judge. Attorneys themselves cannot deal directly with the Judge in question but can only address their concerns to the office of the registrar and the latter can then forward the matter to the Judge concerned for his or her response. The Judge in turn can only respond through the registrar's office. The East London registrar's office should discontinue the practice of releasing Judge's office phone number to litigants or their attorneys and this judgment should be brought to the attention of the Head of the Office of the Registrar of this Division. In any event, an application for review of the respondent's conduct in the circumstances of this case could never have been considered on an urgent basis. This is also confirmed by the recorded argument by Ms Collett on pages 13-14 of the record. On page 13 line 21-22 Ms Collett says:

“ but M'Lord I would seek an order in terms of order 2.2 and 2.3 M'Lord”

Whereas on page 14 line 15 Ms Collett says:

“The relief that we would see(k) M'Lord would be that the decision of the Respondent to terminate the agreement between the parties should be judicially reviewed and set aside.”

B) FACTS

[7] In December 2010, applicant and respondent entered into an agreement in terms of which applicant was appointed by respondent to provide security services to the respondent effective from 1 January 2011. The terms of the agreement are contained in the letter annexure “MSS2” on page 18 of the record which reads:

“NOTICE OF APPOINTMENT AS A SERVICE PROVIDER: PROTECTION SERVICE

This serves to advise you that you have been appointed to provide security service to the University of Fort Hare with effect from 01 January 2011. Kindly take note that this service contract will be regulated by a service level agreement which will be signed by both the University of Fort Hare and Masakhane Security service. This contract will be for a period of at least 12 months renewable in terms of the University of Fort Hare Supply Chain Management policy which maybe for a further 24 months. Currently the University is protected by Qush Security service whose contract has been cancelled by mutual agreement as at 31 December 2010.

The University may request you to start earlier than the indicated date to manage the transition phase in the interest of protecting the University assets. The contract amount as agreed with the Managing Director of Masakhane Security service (Mr N Ndinisa) is R670 000.00 per month inclusive of VAT. Should a need arise for any further deployment of security guards a quotation will be required and the necessary approval sanctioned. Our approval of this solicited bid has been influenced by your current service with Nelson Mandela Metropolitan University and we hope that you will provide high quality standards. Once more congratulations on your appointment, thanks.”

[8] As the terms of the contract indicate the contract was renewable possibly for a further two years.

[9] Towards the expiry of the first 12 months and on 15 October 2011, the respondent’s operational manager contacted applicant through its director Mr

Ndinisa informing him that respondent was putting the security services of the applicant out for tender for 2012. It was, therefore, clear to applicant that respondent was no longer to consider the renewal of the contract for a further 24 months period. Letters written by applicant to respondent to avert the inevitable fell on deaf ears. Applicant then filed the present application.

[10] Respondent's opposition of the applicant is based mainly on the contention that the contract was for a period of 12 months from 1 January 2011 to 31 December 2011 and on the latter date the contract would cease to exist. However, the contract could only be extended if the applicant "tendered for and was awarded a contract in terms of the respondent's supply management policy". According to respondent it was not the latter's intention "to create the impression in the minds of the applicant that they had secured a contract for a three year period". Respondent's further submission for the dismissal of the application is that the contract in excess of 12 months would, in any event, have been contrary to the provisions of the Supply Chain Management Policy (SCMP) of the respondent. According to respondent, the above policy is in line with the provisions of the Preferential Procurement Policy Framework Act¹ and the Broad Based Black Economic Empowerment Act².

C) ISSUES

[11] During her address Ms Collett for the applicant narrowed her points of argument and limited them to those specifically mentioned in the preceding paragraph 6 *supra*. She limited the issues to only one issue which is the review and setting aside of the respondent's decision to terminate the agreement between the parties as well as costs of suit.

[12] Mr Swartbooï, in addition to the interpretation of the contract, has also argued the issues regarding urgency of the matter. I must say though that in view of Ms Collett's submissions it was no longer necessary for Mr Swartbooï to argue the issue

¹ Act 5 of 2000

² Act 53 of 2003

of urgency. Applicant could not pursue an order of interdict for the reason that respondent had already appointed another service provider by the date of argument of the application.

[13] In my view, the only issues herein are whether or not the conduct of the respondent is the subject of review. Secondly, whether the contract between the parties is renewable for a further period of two years after its expiry. As the terms of the contract suggest, it would appear that applicant has entertained an expectation that the contract would be renewed after the expiry of twelve years. Therefore, the Court should also consider whether such expectation by applicant was legitimate. Or to put it in line with the modern legal parlance, whether the administrative conduct by the respondent in refusing to extend the contract with applicant was fair. If so, whether the parties should have automatically renewed the contract for a further two year period after 31 December 2011. The interpretation of the contract, in my view, is decisive of this application.

D) *RATIO DECIDENDI*

D1) WHETHER THE RESPONDENT'S CONDUCT IS REVIEWABLE

[14] A question arises herein whether or not the conduct of the respondent should be subject to review. Generally speaking administrative law regulates the activities of bodies that exercise public powers or perform public functions irrespective of whether those bodies are public authorities in the strict sense³. Section 8 of the Constitution⁴ provides:

“(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

³ Cora Hoexter (Hoexter) on Administrative Law in South Africa, 2007 ed by Juta p 2

⁴ Constitution of the Republic of South Africa, 1996

(2) A provision of the Bill of Rights binds a natural person or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.”

Whereas section 239 of the Constitution defines an organ of state as follows:

“ **‘Organ of state’** means –

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution –

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation, ...”

[15] Section (1) of Promotion of Administrative Justice Act⁵ (PAJA) defines administrative action to include the decisions of organs of state and also of a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision⁶. It also defines an empowering provision as meaning:

⁵ Act 3 of 2000

⁶ See also Hoexter *supra* on page 152 where states:

“Thus even a wholly private body could qualify as an organ of state under s 239, and action taken by it could then be challenged under the Bill of Rights, including s 33 if the action qualified as ‘administrative action’. Even if it did not qualify as an organ of state, a private body exercising public power would still be subject to the constitutional principle of legality, which governs all public power”. See also *Dawnlaan Beleggings (Edms) Bpk v Johannesburg Stock Exchange and Others* 1983 (3) SA 344 (W).

“a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken.”

[16] The respondent herein is a learning institution which has been established in terms of the Higher Education Act⁷ which provides for the establishment of all higher education institutions in the country. It follows that the respondent is an organ of state and therefore its actions and decisions are subject to review in terms of the Constitution.

[17] Applicant’s contention is that it had a reasonable expectation of the renewal of the agreement and bases its averment on the terms of the agreement as appearing from letter annexure “MSS2”.

[18] According to the respondent’s interpretation of the contract, the agreement will endure for a period of 12 months ending on 31 December 2011 and on that date it will cease to exist. And that the agreement was renewable subject to the applicant tendering for and is subsequently awarded a contract in terms of the respondent’s supply management policy, if appointed. Therefore, respondent contends that it has never been its intention to create the impression that the applicant has secured a three year contract.

[19] The contract was made known to the applicant by a letter containing its terms which is dated 17 December 2010. Therefore, the parties had agreed to be bound by the terms of the agreement as envisaged by contents of annexure “MSS2”.

D2) WHETHER CONTRACT IN ISSUE COMPLIES WITH RESPONDENT’S SCMP

[20] I think it would be apposite for me to first deal with the preliminary issue raised by the respondent, if I understood him correctly, which is:

⁷ Act 101 of 1997

[20.1] That the contract applicant relies on does not comply with the provisions of the University of Fort Hare SCMP⁸ and, therefore, an illegality has occurred.

[21] Section 2 of the respondent's supply chain management policy provides: that the university may not act otherwise than in accordance with its SCMP when:

- (a) procuring goods or services
- (b) disposing of goods no longer needed.

[22] However, there are exceptions to the above rule in that section 28 of the same document provides:

“EXCEPTION TO OPEN TENDER POLICY

(28)(1) The Accounting Officer may –

(a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –

(i) in an emergency; an emergency is considered an unforeseeable and sudden event with materially harmful or potentially materially harmful consequences for the university which requires urgent action to address.

(ii) where the Accounting Officer determines that it is impractical to invite competitive bids for specific procurement such as urgent or emergency cases, or in the case of a sole supplier, he may in consultation with the Chief Financial Officer, General Manager:

⁸ A policy drafted in terms of section 2 and 3 of the Act

Operations and End User procure the goods or services by other means such as price quotations or negotiations, or reduce the required advertising period from 14 days to an appropriately deemed period.

(ii) ...

(vi) ...

(v) ...

(vi) ...”

[23] The contract between applicant and respondent was concluded in terms of paragraph (1)(a)(i) and (ii) of section 28 thereof which provides for exceptions to the general rule. The respondent’s SCMP and the Act have not prohibited the conduct of the respondent in the manner in which the parties contracted. It is, therefore, not correct to suggest that the respondent acted *ultra vires* when appointing the applicant to provide security services. Section 28 of the SCMP applies to all contracts irrespective of the amount involved. I say so because there is no indication to the contrary in the wording of the document and therefore I am entitled to assume that there is no such exception. In the circumstances it is not for the applicant to establish or prove that the respondent has complied with the internal requirements or management of the university on whether or not the internal processes had been correctly done⁹. This is so because the requirements of the Act in question are no longer in issue as the contract was concluded in terms of the exceptions to the general rule imposed by the SCMP of the respondent¹⁰.

[24] In the present case, we are not dealing with a situation where *ultra vires* has arisen. In fairness to the respondent the least that could be imagined is that the situation *in casu* is akin to the rule in ***Royal British Bank v Turquand***¹¹ (the Turquand rule). This is so because there has been no contravention of any provision of a statute. In any event, there is no suggestion from the respondent that the

⁹ National and Overseas Distributors Corporation (Pty) Ltd V Potato Board 1958 (2) SA 473 (AD) at 480

¹⁰ Exceptions in terms of section 28 of the SCMP of respondent quoted in para 22 of the judgment

¹¹ [1843-60] All ER Rep 435

parties could and have not entered into this contract in terms of the exception provided by section 28 above. Even if there is such a contention it has not been seriously contended by the respondent and should be rejected as having no basis. There has been no illegality committed by the respondent in entering into the contract with the applicant¹². Therefore, the contract in issue is valid and enforceable. The decision in ***Eastern Cape Provincial and Others Government v Contractprops 25 (Pty) Ltd***¹³ quoted by Mr Swartbooi has no application in the present scenario. Its facts are completely distinguishable from those *in casu*. In that case the contract was concluded contrary to the applicable section 4(1) of the Provincial Tender Board Act¹⁴ (Eastern Cape). The statute provided that lease agreements could be concluded on behalf of the province solely by the tender board. The Eastern Cape Department of Education, Culture and Sport had entered into such a contract contrary to the provisions aforesaid. The Supreme Court of Appeal (SCA) set aside the trial Court's order which held that the Provincial Department of Education was correct in entering into the contract instead of the Provincial Tender Board. The SCA held that the Eastern Cape Provincial Government cannot override or ignore the provisions of the statute and enter into the contract which the Act stipulates should be concluded with the provincial tender board.

E) INTERPRETATION OF THE CONTRACT

[25] I now turn to the interpretation of the contract entered into by the parties herein. Obviously the main issue in this case is the interpretation of the contract in question. The controversial words of the contract are:

“This contract will be for a period of at least 12 months renewable in terms of the University of Fort Hare Supply Chain Management policy which maybe for a further period of 24 months.”

¹² Holgate v Minister of Justice 1995 (3) SA 921 (E) at 932 F; Potchefstroom se Stadsraad v Kotze 1960 (3) SA 616 at 621-624, see also Mbana v Mnquma Municipality 2004 (1) BCLR 83 (TK) at 93 para 22

¹³ 2001 (4) SA 142 (SCA)

¹⁴ Act 2 of 1994

[26] Fairness or otherwise in a contract can only be determined by having regard to the language used in the contract when interpreted. It follows that there is nothing preventing the parties to a contract from including such terms as they will require the observance of fairness. By now it has long been established that our courts have accepted that the requirements of natural justice may be imported into contracts entered into by private as well as public bodies in given circumstances¹⁵. In modern language brought by the Constitution natural justice in this context is known as procedural fairness.

[27] At page 397-398 Hoexter states:

“Contracts entered into by private bodies are generally governed by the principles of private rather than public law, and there is no general presumption as such in favour of procedural fairness. The parties are free to include terms requiring the observance of fairness, however, and our Courts have often recognised implied terms to this effect ... In the case of contracts entered into by public bodies in terms of statutory powers, the contract may vary the usual requirements of fairness or indeed excluded them from altogether at common law. There is less freedom to do so under the Constitution, ...”¹⁶

[28] The Constitution also governs the contractual relationship whenever public powers are in issue. The reason for this Constitutional provision is clearly to prevent the public bodies from acting unfairly to the detriment of the other party to the contract.¹⁷

¹⁵ Cora Hoexter (Hoexter) on Administrative law in South Africa, 2011 ed p 397

¹⁶ See also *Turner v Jockey Club of South Africa* 1974 (3) SA 633 (A) at 645 H-646B; Hoexter p 398

¹⁷ *Logbro Properties CC v Bedderson NO and Others* 2003 (2) SA 460 (SCA) at para 8 where Cameron JA (as he then was) stated: “This is not to say that the conditions for which the province stipulated in putting out the tender were irrelevant to its subsequent powers. As will appear, such stipulations might bear on the exact ambit of the ever-flexible duty to act fairly that rested on the province. The principles of administrative justice nevertheless framed the parties’ contractual relationship, and continued in particular to govern the province’s exercise of the rights it derived from

[29] It seems to me that the terms of the contract indicate that the contract between them is renewable for a further 24 months. This additional clause, in my view, creates a legitimate expectation on the part of the applicant to have the contract extended in light of the provisions of the contractual terms. On the contrary, respondent has, however, decided to give its interpretation to the contract which suits its own interests. Unfortunately for the respondent, the interpretation of the contract is a matter for the Court and not for the witnesses or parties to the contract¹⁸. Having said that I will then have to deal with the interpretation of the agreement between the two parties by having regard to the language used in the document “MSS2”.

[30] According to the “golden rule” of interpretation the language used in the document is to be given its grammatical and ordinary meaning, unless this would result in some absurdity, or some repugnancy or inconsistency with the rest of the instrument¹⁹. Where the terms of a contract are unambiguous, in relation to context, intention and purpose, evidence of any interpretation which the parties may have given to the contract is not admissible. By the same parity of reasoning, the conduct of parties to a contract is also inadmissible to show that an ambiguity exists in the wording of a contract²⁰. If the language of a contract is unambiguous no recourse may be had to extraneous considerations. The words used should be given their full effect provided, of course, that the language does not conflict with the clear intention or purpose of the contract and does not lead to an absurdity which the parties could

the contract.” See also Daniel Malan Pretorius ‘The Defence of the Realm: Contract and Natural Justice (2002) 119 SALJ 374; Ramburan v Minister of Housing (House of Delegates) 1995 (1) SA 353 (D) at 361-4; Administrator, Transvaal, and Another v Zenzile and Others 1991 (1) SA 21 (A).

¹⁸ KPMG Chartered Accountants (SA) v Securefin (Pty) Ltd and Another 2009 (4) SA 399 (SCA) at 399 para [39]

¹⁹ Coopers & Lybrand and Others v Bryant 1995 (3) SA 761 (A) at 767 E [also reported at [1995] 2 ALL SA 635 (A)]

²⁰ Richter v Bloemfontein Town Council 1922 (AD) 57 at 70; Shill v Milner 1937 (AD) 101 at 110-111; EA Kellaway on Principles of Legal Interpretation 1996 ed p 425

not have intended²¹. In **KPMG v Chartered Accountants (SA) v Securefin Ltd and Another** *supra* at p 409 para [39] Harms DP held:

“If a document was intended to provide a complete memorial of a jural act, extrinsic evidence may not contradict, and to or modify its meaning (**Johnson v Leal 1980 (3) SA 927 (A)** at 943B). Second, interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the Court and not for witnesses (or, as said in common law jurisprudence, it is not a jury question: *Hodge M Malek (ed) Phipson on Evidence* (16 ed 2005) paras 33-64).”

[31] In the present case it is not in issue that the applicant had entered into the contract on the terms contained in the letter to the applicant annexure “MSS2”. Neither did the applicant seek clarification of the terms of the contract when it received the terms of the agreement. It was only surprised when advised by respondent that it has to compete with others in a tender process for the reason that the contract would expire on 31 December 2011 and was not automatically renewable. This was in fact an indication that there was no automatic renewal of the contract in the manner explained by the language used by the respondent in the letter “MSS2”. In **Union Goverment v Vianini Ferro-Concrete Pipes (Pty) Ltd**²² at p 47 Watermeyer JA said:

“Now this Court has accepted the rule that when a contract has been reduced to writing the writing is, in general, regarded as the exclusive memorial of the transaction and in a suit between the parties no evidence to prove its terms may be given save the document or secondary evidence of its contents, nor may the contents of such document be contradicted, altered, added to or varied by parol evidence.”

²¹ Kellaway – *supra* p 426. See also *Glyphis v Tuckers Land Holdings Ltd* 1978 (1) SA 530 (A)

²² 1941 AD 43-47. Approved in *Affirmative Portfolios CC v Transnet Ltd t/a Metrorail* 2009 (1) SA 196 (SCA) at para [13]; *Coopers & Lybrand v Bryant* 1995 (3) SA 761 (A) at 767E-768E

[32] It appears to me that if the contract was meant to expire on 31 December 2011 and was not automatically renewable, as the respondent contends, I find it strange that there could have been any reason to indicate in the letter of appointment “MSS2” that the contract was renewable for a further 24 months. I say so because respondent’s contention is that the meaning of the renewable clause is that applicant would have to be treated like any other contender by having to join the queue of potential tenderers and could only be appointed if he wins the tender. Such an interpretation is absurd to say the least. In any event, in view of the clear intention as expressed by the words used in the agreement, my interpretation of this contract makes it unnecessary for me to go beyond the words used in the contract.

[33] It is clear from the literal interpretation of those words that the contract in issue was renewable after the expiry of the first 12 months for a further period of 24 months. I have not been convinced by respondent what absurdity would occur if the words used in the contract are given their ordinary grammatical meaning²³. I also do not find any. On the contrary any departure from the ordinary grammatical meaning of the words used would create an absurdity which could never have been contemplated by the parties who contracted genuinely. Therefore, the problem of construction which had to be decided herein is capable of solution by linguistic treatment alone, in as much as the language of the contract seems to reveal an unambiguous meaning.

[34] In the circumstances respondent should have advised the applicant that on the expiry of the 12 months it intended to negotiate with the respondent the terms and conditions of the extended renewal portion of the agreement and should have considered that as a priority before 31 December 2011. In doing so, both parties would have met to discuss such terms and possibly have the contract reduced to writing. There was no attempt from respondent to do so. Naturally, upon the expiry of the 12 months portion of the agreement the new lease agreement beyond 31

²³ Brink v Premier Free State and Another 2009 (4) SA 420 (SCA); Also reported at [2009] 3 ALL SA 304 (SCA)

December 2011 need not be on the same terms as the old one and the new terms of the contract have to be negotiated²⁴. Respondent was, therefore, bound to consider the extension of the agreement with the applicant and this he stoutly refused to do and its failure to do so rendered its conduct unconstitutional and unfair. Instead of doing so, respondent terminated the agreement and appointed another service provider notwithstanding that the contract stipulates that it was renewable for a possible two years after the expiry of 12 months. Respondent's conduct aforesaid was unlawful and is hereby reviewed and set aside.

[35] It is for the above reasons that I made the order which was delivered on 19 January 2012.

[36] The costs will always follow the event and respondent would have to pay costs occasioned by the review and setting aside of its conduct aforesaid.

[37] The above, therefore, constitutes my entire reasons for judgment and the order aforesaid.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

For the applicant: Ms S.A. Collett
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²⁴ Aronson v Sternberg Brothers (Pty) Ltd 1985 (1) SA 613 (A); Soteriou v Retco Poyntous (Pty) Ltd 1985 (2) SA 922 (A)