IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JA76/2019

In the matter between:

SOUTH AFRICAN TOURISM **Appellant**

and

TEBOGO BRIAN MONARE **Respondent**

Heard: 27 AUGUST 2020

Delivered: Deemed to be date the judgment is emailed to the parties**.**

CORAM: Coppin JA, Kathree-Setiloane and Murphy AJJA

JUDGMENT

COPPIN JA

[1] This is an appeal and cross-appeal against an order of the Labour Court (Thlothlalemaje J) ('the court a quo'). Leave to appeal having been granted by that Court. The appellant was the respondent and the respondent in this court was the applicant in that court. The late filing of the appellant's notice of appeal and power of attorney in this appeal was condoned.

[2] The order of the court a quo made on 2 May 2019 reads as follows:

"1. The special plea of prescription as raised by the respondent is dismissed. 2. The respondent is ordered to pay to the applicant, an amount of R87529-53, together with interest thereon at the rate of 9.75% *per annum* calculated from 11 January 2016 to the date of payment.

3. The respondent is ordered to pay to the applicant, an amount of £257550.42 for damages suffered in respect of salaries for the period 1 October 2010 until 31 January 2015.

4. The amount mentioned in (3) above for the purposes of conversion from Rand/British Pound Sterling shall be at the exchange rate applicable at 31 January 2015, together with interest at the rate applicable as at that date, and from the date on which payment fell due until the date of final payment.

5. There is no order as to costs."

[3] The appeal essentially relates to the court a quo's dismissal, with costs, of a special plea of prescription raised by the appellant as defence against a claim of the respondent for the payment of arrear salaries, and the consequent order made in favour of the respondent in that regard for payment in an amount of £ 257 550– 42 and interest. The respondent is cross-appealing the order insofar as: (a) it directed that the exchange rate applicable was that as at 31 January 2015 (i.e. instead of the date of payment); (b) it omitted to deal with the *mora* interest that was payable; and (c) did not mulct the respondent with the costs.

[4] The respondent abandoned the relief in paragraph 2 of the order, which was apparently made in error by the court a quo in the following circumstances:

4.1 The claim for the payment of R87 529-53 was included in the respondent's statement of claim as originally formulated and represented the amount which he had been short paid in respect of back-pay by the appellant.

4.2 In its response to the claim the appellant admitted liability for that short payment and undertook to pay the amount to the respondent by 28 February 2018.

4.3 When that payment was not made as promised the respondent brought an application under the same case number in which he, inter-alia, sought an order that the respondent pay that amount with interest and costs of the application on the scale as between attorney and own client.

4.4 Before the matter was finalised the appellant paid the respondent the said amount plus interest, which meant that the court a quo was not supposed to order payment of those amounts, but merely decide on the question of the costs.

4.5 That aspect forms part of the respondent's cross-appeal against the cost order made by the court a quo.

[5] Hence, the issues in this appeal, broadly stated, are the following: (1) Whether the court a quo was correct in finding that the respondent's claim for arrear salaries had not prescribed in terms of the Prescription Act[1], and consequently in granting the order for the payment of amount of £247,550-42 in respect of arrear salaries; (2) whether the court a quo was correct in not making an order in respect of the interest payable on the salaries, and what order should have been made in that regard; (3) whether the court a quo was correct in ordering that the exchange rate that applied was the one as at 31 January 2015; and (4) whether the court a quo erred in respect of the costs order it made.

[6] Each of those issues will be dealt with in turn after relating the essential background and chronology.

Common chronology/background facts

[7] The appellant entered into a fixed term contract of employment with the respondent on about 23 December 2009. The period of employment was to commence on 1 February 2010 and terminate on 31 January 2015. The parties agreed in the stated case that the respondent was to receive a gross remuneration package of £5674 .23 at the end of every month for the duration of his contractual period.

[8] On 30 September 2010 the appellant dismissed the respondent from its employ following a disciplinary hearing. In response the appellant referred an

[1] The Prescription Act, 68 of 1969.

unfair dismissal dispute to the Commission for Conciliation Mediation and Arbitration ("CCMA") on 17 November 2010 in terms of the Labour Relations Act [2]("LRA"). In an arbitration award dated 31 August 2011 the Commissioner found, essentially, that the respondent's dismissal was substantively unfair and directed the appellant to reinstate the respondent retrospectively, i.e. as from 23 February 2011; and to pay him back pay from that date in the total amount of £37,509.54 within thirty days of the award, but by no later than 23 September 2011. The reinstatement was to be effected by no later than 13 September 2011.

[9] In a letter dated 7 September 2011 the respondent's attorneys requested the appellant's attorneys to advise where the respondent should report for duty on 13 September 2011. In a written response the appellant's attorneys advised that the appellant was not going to reinstate the respondent, or pay him any amount stated in the award and that it intended to review the award. An application for review was indeed brought in the Labour Court by the appellant on 13 October 2011, and on 31 March 2014 the Labour Court (per Van Niekerk J) ordered that the arbitration award be reviewed and set aside on the basis that the CCMA lacked jurisdiction to entertain the dispute.

[10] The respondent appealed to this court against the Labour Court's judgement. On 11 November 2015 this court upheld the appeal, having found that the CCMA had the requisite jurisdiction, and dismissed the review application. By then the fixed term contract had already expired on 31 January 2015, and the appellant did not reinstate the respondent.

[11] About a year after this court's judgment, on 18 November 2016, the respondent served his statement of claim in this matter on the appellant. The appellant delivered a response in which it, inter-alia, raised the special plea of prescription. The respondent replicated, and after the parties had signed the pre-trial minutes the matter was set down for trial. At the outset of the trial the parties agreed that the dispute was about prescription and that it had to be determined by way of a stated case, which was duly formulated and placed before the court a quo.

[2] Act 66 of 1995.

[12] In terms of the stated case, which is signed by their respective attorneys and dated 5 February 2018, the appellant, inter-alia, conceded that the termination of the applicant's fixed term contract had been unlawful, and that his dismissal was accordingly unlawful. Under the heading "Question of law to be determined" the parties agreed in their stated case as follows:

> "5.1. In the premises, the above Honourable Court is requested to adjudicate on the question of whether the applicant's claim in respect of prayer 3 has prescribed and without limiting the generality of the aforegoing, whether-
>
> 5.1.1. the applicant's cause of action arose on 30 September 2010;
>
> 5.1.2. the award of reinstatement referred to above was suspended during the time period between the Labour Court judgment being handed down on 31 March 2014 and the Labour Appeal Court judgment being handed down on 11 November 2015; and
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> 5.1.3. whether prescription in respect of the contractual claim was interrupted for this period by virtue of the said suspension. The parties agree that costs should follow the cause. "

[13] Early in April 2018, allegedly after considering the heads and supplementary heads of argument of both parties, the appellant sought to file a "rejoinder" and to "amend" its case to allege, in effect, that in light of the respondents contention in his heads, namely, that his claim for salaries arose on a monthly basis on the date that each salary payment fell due, a substantial portion of the respondent's claim would have prescribed. The respondent refused to agree to such amendment, essentially contending that the appellant was bound by what was agreed to in the stated case. The appellant then seemingly changed tack and filed supplementary heads in which those points were raised. It sought to justify such filing claiming that the respondent had raised issues in his heads that were not consistent with the stated case. Ultimately the court a quo decided the matter on the basis of what was agreed in the stated case.

[14] On 2 May 2019 the court a quo handed down its judgment and order. By written notice dated 21 May 2019 the respondent abandoned the relief granted to him in terms of paragraph 2 of the order, namely the order that the

appellant pay him an amount of R87,529.83 together with interest on that amount. On 24 May 2019 the appellant brought an application for leave to appeal in the court a quo, and on 5 July 2019 the court a quo granted the appellant leave to appeal to this court. The appellant filed its notice of appeal on 21 August 2019 and the respondent delivered is notice of cross-appeal shortly thereafter. All non-compliance with prescribed time periods were condoned.

Prescription issue

[15] In his statement of claim the respondent had alleged that as a result of the appellant's unlawful termination of his fixed term contract and material breach thereof he has suffered damages in the amount of £257 550.42, which is made up of his salary of £5674.23 per month over 52 months (i.e. £295 059.96) less an amount received in respect of backpay in terms of the arbitration award (i.e. £37 509.54). The respondent also alleged that he was entitled to interest at the rate of 15.5% per annum calculated from the date on which payment of each monthly salary for the period 1 October 2010 to 31 January 2015 fell due, until date of payment.

[16] In the stated case the parties were agreed, inter-alia, that in terms of his employment contract with the appellant the respondent was entitled to a gross remuneration package of £5674.23 per month payable at the end of every month. The respondent contended there that he was entitled to be paid a salary at the end of every month for the period 1 October 2010 until 31 January 2015. Ironically, although it had by then already paid the respondent in terms of the award in respect of backpay (albeit short) and had undertaken to pay him the balance by a set date, the appellant contended that the respondent's claim for arrear salaries had prescribed because his cause of action for such salaries arose on 30 September 2010, when he was dismissed, and more than three years had elapsed by the time the respondent had served his statement of claim on the appellant on 18 February 2016.

[17] The respondent's contentions, in the court a quo and in this court, were essentially the following. That even though his claim was formulated as a

damages claim for salaries that became payable to him pursuant to the appellant's contractual obligation to pay such salaries following its repudiation of the contract, it was in actual fact a claim for specific performance which may include an order to perform a specified act or to pay money in pursuance of a contractual obligation. The respondent had no accelerated claim for arrear salaries until all of the salaries fell due, which was only upon the termination of the contract at the expiry thereof. The respondent submitted that it was not open to the appellant to contend that the respondent's claim arose on any date other than 30 September 2010.

[18] The respondent contended further that if it was a claim for damages following cancellation of the contract (i.e. after acceptance of the repudiation of the contract by the appellant) prescription would only have commenced to run on the date when the repudiation was accepted by the respondent and when the decision to cancel the contract was communicated to the respondent. Since it was not part of the stated case that the respondent accepted the repudiation, cancelled the contract and communicated the election to cancel the contract, i.e. prior to the service of the statement of claim on the appellant, the appellant could not succeed with its defence of prescription.

[19] According to the respondent, in our law as it stands, a debt only becomes due when it is immediately claimable and recoverable[3]; his claim for arrear salaries had arisen and fell due as and when the monthly salaries became due and payable; he only acquired a complete cause of action in respect of all the salaries (i.e. for the period after he was supposed to be reinstated by the appellant), and that would have been due, owing and payable in terms of the contract, at the expiry of the contract.

[20] The court a quo essentially held that the appellant did not prove that prescription began to run before this court's judgement on 11 November 2015. According to the court a quo there was no full cause of action prior to that date and prescription only started to run from the date a new cause of action arose. It referred to a statement by Froneman J in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Ltd t/a Metrobus and*

[3] *Makate v Vodacom (Pty) Ltd* 2016 (4) SA 121 (CC) para 188.

Others[4] *("Myathaza")* namely that: "the manifest injustice of depriving the applicant of the arbitration award in his favour by first avoiding its implementation by way of instituting proceedings and then crying prescription of the back of the time wasted by the review can be met by the application of the principle that prescription should not run until proceedings are finalised."

[21] The court a quo further stated:

" [43] In light of a conclusion being reached that the applicant's claim in respect of arrear salary was contractual in nature, and only commenced to run from the date of the judgement of the Labour Appeal Court, it is also accepted in line with exceptions pointed out by Zondo J in *Hendor* that an employer cannot be liable for payment of remuneration to an employee for a period when that employee would no longer have been in its employment for any reason including, inter-alia, death or taking retirement.

[44] In this case, it is accepted that the applicant had tendered his services, which tender was rejected on 12 September 2010 as the respondent sought a review of that arbitration award. The respondent's review application was successful with the judgement of Van Niekerk J on 31 March 2014. Effectively, the arbitration award was in operation from 31 August 2011 – 31 March 2014. When the Labour Appeal Court delivered its judgement on 11 November 2015, the arbitration award was revived in full, but only to the extent that or until the fixed term contract was in place, being 31 January 2015. It follows that any remuneration due to the applicant could only have been for the exact duration and remainder of the fixed term contract."

[22] The court a quo found that clause 2 of the respondent's fixed term contract made provision for the payment of an annual salary and that, in line with the common cause facts as recorded in the stated case, the respondent was entitled to a globular payment of salaries owed to him in terms of the fixed term contract for the period 1 October 2010 to 31 January 2015.

[23] It was submitted on behalf of the appellant that the court a quo erred in finding that the respondent's claim could not have arisen on the date of his dismissal (i.e. 30 September 2010), since it reasoned that before this court's decision on 11 November 2015, there was no full cause of action. It was contended

[4] (2017) 38 ILJ 527 (CC) para 67.

further that the respondent's claim is a common law claim for damages for breach of contract arising from the unlawful termination of his employment contract; and that it was significant that the respondent claimed the full payment of benefits for the remaining period of the contract of employment, after the unlawful termination of the contract, as a globular amount. According to the appellant, once it had repudiated the contract, the respondent did not have to wait for anything more to occur before bringing such a claim.

[24] The fallacy in the appellant's argument is apparent. It took it upon itself to characterise the respondent's claim and confidently committed to a stated case. Unfortunately, it mischaracterised the claim.

[25] In our law of contract the respondent could only have had a claim for the future payments, he would have been entitled to under the contract, in circumstances where the appellant had repudiated the contract and the respondent had accepted such repudiation[5] and had communicated his decision to cancel the contract to the appellant[6]. But that is not what happened in this instance. Even though the appellant, by unlawfully terminating the contract, effectively repudiated it on 30 September 2010, the appellant did not on that occasion accept that repudiation and communicate his decision to cancel the contract to the appellant. Instead, the respondent contested the termination and took steps to obtain reinstatement. He, effectively, sought to revive and enforce the contract, rather than cancel it.

[26] The claim pursued by the respondent in the court a quo was indeed a different one from the one perceived by the appellant. It came about because the appellant resolutely refused to comply with the award and the contractual period had expired by the time the respondent was vindicated by this court. In terms of the award the respondent had to be reinstated by the appellant from 13 September 2011. But the respondent refused to implement the award just after it was made, and avoided it by instituting the review proceedings. Even though it was successful on a technicality in reviewing the award in the

[5] *HMBMP Properties (Pty) Ltd v King* 1981 (1) Sa 906 (N) at 908G and *Swart v Vosloo* 1965 (1) SA 100 (A) at 105 G.

[6] *Standard Bank of South Africa Ltd v Miracle Investments 67 (Pty) Ltd and Another* 2017 (!) SA 185 (SCA) paras 20 and 26.

Labour Court, that order was suspended when the respondent appealed against it and the order was eventually set aside on appeal by this court on 11 November 2015. The effect of the order of this court was to revive the award[7]. The appellant used the expiry of the contract as an excuse for not reinstating the appellant. If the appellant had been reinstated he would, in terms of his claim, been entitled to the payment of a salary, as and when such payment fell due in terms of the contract. The failure to give effect to the award while the contract period had not expired, was due to the appellant's conduct. Such a claim could not have arisen on 30 September 2010.

[27] The respondent's claim in the court a quo, even though as a globular amount for salaries that he had not been paid (i.e. had the order of reinstatement been given effect to timeously), was not the same as a claim that he would have had at the time of his unfair and unlawful dismissal, if he had accepted that repudiation, and had elected to cancel the contract and had communicated his decision to the appellant.

[28] At worst, the respondent's claim in the court a quo would have arisen when the appellant first refused to implement the award, although I do not find that. As pointed out in the dictum of Froneman J in *Myathaza* quoted above, it is iniquitous for the appellant to deprive the respondent of the benefits of the award, having avoided its implementation by instituting review proceedings and, and notwithstanding the dilatory effect of those proceedings (and the accompanying time wasting) on the effective enforcement of the award, to then raise prescription as a defence, when the respondent was vindicated in his quest for justice. The appellant's contention, in effect, that those review proceedings and time wasting, had no effect whatsoever on the commencement or running of prescription, cannot be correct.

[29] Any common law claim the respondent brought for the salaries, before obtaining an award or order of reinstatement, could have been resisted successfully by the appellant contending that it had fairly dismissed him. The respondent would thus have been obliged to refer an unfair dismissal dispute

[7] See, inter alia, *Coca Cola Sabco (Pty) Limited v Van Wyk* (2015) 36 ILJ 2013 (LAC) paras 16, 20, 24 and 30.

to the CCMA, since the High Court is not the statutory arbiter of the fairness of dismissals and has no jurisdiction in that regard. Even after obtaining the award he would not practically have been able to enforce it before finalisation of the review proceedings. Even though a review, as provided in section 145(7) of the LRA, did not suspend the award, the fact that it had been brought and was not finalised would have served as an effective defence against enforcement of the award. It is only after finalisation of the review proceedings in this court on 11 November 2015 that the respondent would have been able to enforce his claim for reinstatement, alternatively for cancellation or damages, without further obstacle and it is only then that prescription could have commenced to run.

[30] Prescription only commences to run when a debt is due and payable and not when it arises. In *Deloitte Haskin & Sells Consultants*[8] the Appellate Division explained the meaning of section 12(1) of the Prescription Act which provides that "prescription shall commence to run as soon as the debt is due". It held: "this means that there has to be a debt immediately claimable by the creditor or, stated in another way, that there has to be a debt in respect of which the debtor is under an obligation to perform immediately… It follows that prescription cannot run "against a creditor before his cause of action is fully accrued, i.e. before he is able to pursue his claim." (Footnotes omitted)

[31] The creditor's cause of action would be complete if it is able to claim forthwith and the debtor does not have a defence to the claim for immediate payment, or if the cause of action is completed[9] (at least by the time the summons, or statement of claim, is served). Thus, the fact that the respondent's claim in this case may have arisen before 11 November 2015 (which I do not find) does not mean that there was a complete cause of action for the recovery of the debt (i.e. arrear salaries) by then.

[8] *Deloitte Haskin & Sells Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991 (1) SA 525 (A) at 532H – I.
[9] *Truter & Another v Deysel* 2006 (4) SA 168 (SCA) para 15.

[32] In any event, it was for the appellant to prove when prescription began to run in respect of the debt (properly characterised) claimed by the respondent in the court a quo[10]. It clearly did not begin to run on 30 September 2010.

[33] As a party to the stated case in the court a quo, the appellant did not have a right to travel outside it. The court a quo was also constrained to confine itself to the agreed stated case and only decide the question that the parties had agreed to submit to it for a decision in terms of that stated case[11].

[34] The appellant was bound to what it had agreed was to be decided in the stated case. As it contended there that the respondent's claim arose on 30 September 2010; that prescription commenced running then; and that three years had elapsed by the time the claim was brought - that is the case that it had to prove. It could not amend the stated case by filing a "rejoinder". In any event, its justification for filing the "rejoinder", namely, that it was not certain of the appellant's case, is also not sustainable, because, if that was so, instead of agreeing to the stated case, the appellant could have excepted to the respondent's statement of claim.

[35] The appellant accordingly failed to prove its defence of prescription and the court a quo rightly dismissed its special plea of prescription.

[36] I now turn to consider the issues raised in the cross-appeal.

Interest payable on the salaries

[37] The court a quo made no order in respect of the interest payable on the salaries claimed by the respondent. It was submitted on behalf of the respondent that once it is accepted that the amount claimed is made up of salaries for the period, from when the reinstatement had to be given effect to up to the date of the expiry of the fixed term contract (i.e. from 23 February 2011 to 31 January 2015), it follows that interest should be payable from the date on which payment of each of the salary payments fell due, until the date

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[10] *Van Deventer v Ivory Sun Trading 77 (Pty) Ltd* 2015 (3) SA 532 (SCA) para 19; *Makate v Vodacom (Pty) Ltd* 2016 (4) SA 121 (CC) para 185.
[11] *Mtokonya v Minister of Police* 2018 (5) SA 22 (CC) paras 15-16.

of final payment. Further, that it is accepted that mora interest should be calculated at the prescribed legal rate.

[38] On the other hand, it was submitted on behalf of the appellant that if this court were to affirm the damages award, it had no objection to the approach of Zondo J (as he then was) in *Hendor*[12] being applied in respect of the calculation of the interest.

[39] Dealing with the facts in that case, Zondo J held that since the employees there were paid weekly, their wages became due at the end of each week and that the employee was, thus, entitled to insist that, in respect of each weekly wage, interest should be calculated from the date when the payment of the wage became due to the date of payment. Since a calculation of the interest had not been placed before the court in that matter, Zondo J was of the view that it was sufficient for the court simply to order that each employee be paid his or her weekly wages plus interest, calculated at the applicable rate, from the date each weekly wage became due to the date of payment, and further, that if the parties were unable to agree on the amounts to be paid when the interest was added, they were to consider agreeing on a third party making a binding calculation, and if that option failed, then either party could refer the issue to the Labour Court for determination. The approach is practical and appropriate.

[40] In this matter the respondent was paid on a monthly basis. He could therefore insist that in respect of each monthly salary, for the period 1 October 2010 to 31 January 2015, interest should be calculated as and when the monthly salary became due. Further, since the calculation had not been placed before us, it is appropriate to adopt the approach of Zondo J in *Hendor.*

The date of the exchange rate

[41] The appellant rightly conceded that the court a quo erred in ordering that the applicable rate was the exchange rate as on 31 January 2015, which is the

[12] *National Union of Metalworkers of South Africa obo Fohlisa and Others v Hendor Mining Supplies (A Division of Marschalk Beleggings (Pty) Ltd)* (2017) 38 ILJ 1560 (CC) paras 200-201.

date when the fixed term contract expired. According to case authority the applicable date is the date of payment[13].

The costs order of the court a quo

[42] This court may interfere with the decision on costs if it is satisfied that the court a quo did not exercise its discretion judicially in that regard. This includes instances where the Labour Court had based its decision on an erroneous view of the facts, or the law, or where it failed to take into account relevant facts[14].

[43] While it is so that in matters brought in terms of the LRA the award of costs does not necessarily follow the result, and is based on an assessment of all the relevant facts, the law and fairness, that is not the position with civil claims not brought in terms of the LRA. The general rule in such matters is that the costs ordinarily follow the result [15].

[44] The court a quo seems to have taken for granted that to make no order for costs was appropriate and appears not to have taken into account the following: That the claim was in fact a civil claim; that the parties had agreed in terms of the stated case that the costs would follow the result; and that the respondent was obliged to bring a further application to enforce payment of the amount he was short paid. Taking into account all the relevant facts and circumstances in this matter the appropriate order ought to have been for the appellant to pay the costs.

Costs of the appeal and cross appeal

[45] In respect of the costs of both, the appeal and cross appeal - there is no reason why the costs should not follow the result and include the costs of two counsel. The employment of two counsel was justified.

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[13] Standard Chartered Bank of Canada v Nedperm Bank Ltd* 1994 (4) Sa 747 (A) at 777C-D; *Radell v Multilateral Motor Vehicle Accidents Fund* 1995 (4) SA 24 (A) at 29H-30B.

[14] *Ncanana and Another v Dual Products International (SA) CC and Others* [2019] 11 BLLR 1238 (LAC) para 16.

[15] *Stokwe v Member of the Executive Council: Department of Education, Eastern Cape & Others* (2019) 40 ILJ 773: [2019] 6 BLLR 524 (CC) (7 February2019) para 89: *Biase v Mianzo Asset Management (Pty) Ltd* (2019) 40 ILJ 1987 (LAC) para 48.

Order

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

1. The appeal is dismissed;

2. The cross-appeal is upheld;

3. The order of the court a quo is amended to read:

"1. The special plea of prescription is dismissed;

2. 2.1. The respondent is ordered to pay the applicant an amount of £257 550.42 as damages in respect of unpaid salaries for the period 1 October 2010 until 31 January 2015;

. 2.2. The amount mentioned in (2.1) for the purposes of conversion from Rand/British Pound Sterling shall be at the exchange rate applicable at the date of payment; and

2.3 Interest on the amount mentioned in (2.1) shall be paid, at the prescribed legal rate applicable from time to time, from the date on which each salary, for the period 23 September 2011 to 31 January 2015, fell due to date of its final payment.

2.3.1 In the event of the parties failing to agree on the amount(s) to be paid as interest, they should endeavour to agree to a third party finally fixing the amount(s), alternatively, if no such agreement is reached, either party may approach the Labour Court for a determination of the amount(s).

3. The respondent is to pay the costs, including the costs of the application brought for the payment of the amount short paid."

3. The appellant is to pay the costs of the appeal and the cross-appeal.

P Coppin

Judge of the Labour Appeal Court

Kathree-Setiloane and Murphy AJJA concur in the judgment of Coppin JA.

APPEARANCES:

FOR THE APPELLANT:	Mr A Mosam and Mr A Pantazis
	Instructed by Cliffe Dekker Hofmeyr
FOR THE RESPONDENTS:	Mr R Grundlingh
	Instructed by Bester Rhoodie attorneys