

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA
HELD AT DURBAN.**

Case No. DA6/2001

In the matter between

**LUCKY MZOLO
JOSHUA WANDA
SONNY SARDEO
ELLIOTT GUMEDE
JEFF PERKINS
COLIN ARNOLD VICTOR COOMBE N.O.
(In his capacity as Executor of the Estate Late
WILLEM EDMUND YATES, as substituted)
WILSON BELL
GLEN DHAMPAL
LES SINGH
ALBERET LECHELA
NEIL GALWAY
TOM WALMSLEY
GARY DE BORLE**

**First Appellant
Second Appellant
Third Appellant
Fourth Appellant
Fifth Appellant

Sixth Appellant
Seventh Appellant
Eighth Appellant
Ninth Appellant
Tenth Appellant
Eleventh Appellant
Twelfth Appellant
Thirteenth Appellant**

And

**TOYOTA SA MARKETING,
A DIVISION OF TOYOTA SA MOTORS LTD**

Respondent

JUDGMENT

DAVIS AJA

INTRODUCTION.

[1] Applicants were retrenched by respondent in December 1998 and January 1999.

They brought an action in the Labour Court challenging their retrenchment on both procedural and substantive grounds. **Pillay AJ** decided that the dismissal of appellants for operational reasons was both substantially and procedurally fair. Appellants have

now appealed to this court against that decision.

ESSENTIAL FACTS

[2] At all material times appellants were members of the Staff Association for the Motor and Related Industries ('SAMRI').

[3] The process culminating in the dismissal of appellants for operational requirements commenced on 21 November 1997 when at a meeting the respondent's management gave SAMRI an overview of the prevailing international local economic trends, their likely impact on respondent's operations and offered a range of possible solutions.

[4] At that meeting slides were used in order to assist in the presentation. A slide headed 'Consequence and action' provides a clear indication of the nature of the presentation :

- ∅ Excess manning during 1998
- ∅ Consider redeployment of excess employees
- ∅ Stop external recruitments except T skills
- ∅ Explore other options
- ∅ If above options do not resolve excess manning situations severe impact on profitability, loss of shareholder confidence and retrenchments.

[5] On 12 February 1998 respondent and SAMRI held a brief meeting during the course of which respondent recapitulated the contents of the presentation on 21 November 1997 and indicated that it would initiate a process to deal with excess manning in due course.

[6] On 3 March 1998 respondent issued a notice to all employees, the following extract from which is of particular relevance

'With reference to the planned deduction of manpower at Toyota the state of proceedings is as follows:

Consultation with NUMSA, SAMRI and other employee representative groups commenced during 1997.

During these consultations management explained the need for reduction of the employees as being

Volume related...

Loss of business and process Redesign...

To remain a viable competitor in the fiercely contested South African Motor Manufacturing arena, it is of vital importance that tough decisions are made in order to survive.

[7] The above decision to retrench was not taken lightly and all efforts are being made to avoid job losses...'

[8] A further slide presentation was made to SAMRI on 7 March 1998. This meeting raised the need for respondent to address efficiencies and possible restructuring in order to achieve world class manufacturing standards. SAMRI was also informed of a proposed '**benchmarking trip**' to the United Kingdom and the United States.

[9] On 20 April 1998 a further notice was sent to all employees in which it stated that the latest forecast for vehicle demand had showed a '**tentative improvement in the forthcoming three months**', as a result of which management had committed itself to stable yield volumes for the period ending September 1998. In the light of this decision, management has agreed to suspend retrenchment consultations with the National Union of Metal Workers ('NUMSA') September. According to the evidence of Mr. Thomson, respondent's General Manager Human Resources, it was intended that discussions with SAMRI about manning levels would continue.

[10] A meeting was held on 20 April 1998 between respondent and members of SAMRI. At that meeting reference was made to the '**bench marking trip**' to be undertaken by executive management. SAMRI informed management of uncertainty amongst employees with regard to which areas have been affected as a result of retrenchments and

the identity of those affected. It was contended that the structures resulting from the bench marking exercise required a comprehensive explanation to all stakeholders .

[11] Between 20 April 1998 and 23 June 1998 further correspondence was exchanged between SAMRI and respondent but no consultations took place in relation to the position of the appellants.

[12] Of relevance was a letter written by SAMRI on 24 April 1998 where reference was made to section 189 of the Labour Relations Act 66 of 1995 (as amended) (LRA). SAMRI then referred to the meeting held on 20 April 1998 and the presentation that had taken place at that meeting and stated: **‘We are not convinced that this can constitute sufficient rationale and requested as a result that no further meetings on this issue be held at various plant levels but at a higher level as it is our view the whole group is to be affected and not just your area of responsibility’**. SAMRI advised respondent that it would give due and proper consideration to representations made and if necessary **‘make a formal request for further information as contemplated in terms of the Act’**.

[13] Mr. Thomson replied on 5 May 1998 in which he requested SAMRI to **‘forward....any further points on which SAMRI (sought) clarity with regard to the process of manning reductions which (the respondent was then) entering’**. He also advised SAMRI that he would **‘call for a meeting to discuss these points and to further the consultation in due course’**.

[14] SAMRI replied on 7 May 1998 stating that **‘it has yet to receive written reasons/ motivations for your (respondent’s) contemplation as s189(3) prescribes. On 11 May 1998 respondent replied stating that, if SAMRI required further information or should it be necessary to arrange another meeting to clarify the position ‘notify (the respondent) by Wednesday 13 May outlining what its specific queries are.’** SAMRI replied on 12 May 1998 stating that they wanted written reasons for (the respondent’s) rationale so that (it might) consider the same and respond accordingly.’

[15] On 15 May 1998 respondent undertook to provide SAMRI with the basis of its rationale for the proposed manning reductions. This was provided by way of a letter of 22 May 1998. In that letter respondent stated **‘[w]e are prepared to meet yourselves to reiterate the rationale for becoming a world class manufacturer’** and that **‘should SAMRI have any suggestions or alternatives to the above that these would be dealt with at the aforesaid meeting’**. It also stated **‘if there is no reasonable alternative to follow the path to become a World Class Manufacturer then it would begin consultations on the effect this may have, if any, on manning levels, and the process to be followed’**.

[16] On 22 June 1998 SAMRI referred to the rationale set out on 15 May 1998 by respondent and said **‘We must, with respect reject it as it gives no substance with which to draw up a response’**. A meeting was then held on 23 June 1998 to discuss the rationale for the proposed manning level reduction. A memorandum of this meeting

prepared by respondent, the accuracy of which was never contested by appellants, claimed that **‘there was general agreement about the rationale for Toyota to review its manning levels and structures in order to remain competitive and to progress towards World Class Manufacturing standards’**. The memorandum then stated **‘having reached consensus on the rationale for us to review manning levels and structures, we shall now need to consult on the effect of the company proposal on these issues.’**

[17] The next meeting of significance took place on 12 October 1998. At that meeting respondent gave a slide presentation to SAMRI in which one slide contained the following **:’ business will have to be resized due to volumes (2000 scenario considered)’**.

[18] On 3 November 1998 respondent wrote to SAMRI stating that **‘the serious economic problems being experienced in South Africa and specifically the severe adverse impact on the Motor Industry made it necessary for Toyota to now consider reducing manning levels. The threats to the Motor industry are well documented and their impact on Toyota have been communicated to yourself on numerous occasions during recent months, including written communication from the Toyota Executive Chairman .The memorandum then stated: ‘Several alternatives have already been considered by Toyota management ’. The memorandum then concluded: ‘We trust information contained in this letter will enable you to formulate**

appropriate responses and to participate fully in any further discussions that revolve around reduction of manning’.

[19] A further meeting took place on 5 November 1998 between SAMRI and respondent. Respondent explained that the reasons for the manning process were related to volume reductions, restructuring and the bench marking exercise. Options which had been considered by respondent were then explained to SAMRI. The memorandum then stated: ‘Mr Thomson requested that SAMRI consider possible alternatives through retrenchment, and supply Management with written proposals by Wednesday 11 November 1998.

[20] The memorandum reflects SAMRI concerns thus:

- * Pressure tactics (coercion) being embarked upon a certain Line Managers to force employees to take the voluntary severance package.
- Ø Outsourcing rumours at TSD
- * Due to emotional pressure employees who are affected should be offered EAP assistance.’

[21] These concerns were noted but **‘it was stated that Management had taken a strong position against the coercion of employees to take the voluntary separation package and the specific details were requested from SAMRI. SAMRI also recorded concern regarding centralised versus decentralised consultation. Mr Thomson explained the specific process related issues to be consulted on at plant level but that guidance on the governance of the overall programme would stem from the central manning meeting’.**

[22] On 12 November 1998 a further meeting was held during the course of which SAMRI tabled its alternatives to retrenchment. Respondent replied that these alternatives

would be considered and that a written reply would be forwarded to SAMRI. The memorandum of that meeting also recorded that SAMRI reserved its right to request a written explanation of the economic rationale for the retrenchments. Mr Thomson explained that the economic rationale had been dealt with extensively in various recent meetings and also in writing. SAMRI expressed concern at the selection criteria TAC had been manipulated to suit Management and said that TAC'A PLANT employees had been sacrificed at the expense of TAC''B PLANT employees. Mr Thomson stated that Management would consider all submissions by SAMRI and that he would revert in writing as soon as possible.'

[23] On 17 November 1998 SAMRI addressed a letter to respondent in which it claimed that as the meeting of 12 November 1998 **'was the first opportunity we had to attend such a meeting, recorded at the outset, that we reserved our rights to question further information to convince it as to the reason for the proposed redundancies'**. SAMRI then stated: **'We also requested information on courses for salaried staff pertinent to your training and retraining option. To date we have not received the information requested. On receipt hereof we may be in the position to expand on the alternatives raised in our aforementioned meeting.'**

[24] On 19 November 1998 a further meeting was held between SAMRI and respondent at which the severance packages, the selection criteria and the timing of the proposed retrenchments were discussed. SAMRI requested **'time to forward comments regarding matters arising therefrom'**. In response to SAMRI's letter of 12 November 1998 and its queries raised at the meeting of 19 November 1998, respondent addressed a letter to SAMRI dated 23 November 1998 in which it concluded by inviting SAMRI to contact respondent if it had **'any queries'**.

[25] On 23 November 1998 respondent provided a list of salaried employees affected by the **‘manning reduction process’** and attached a list of SAMRI members whose voluntary severance package applications had been turned down. On 24 November 1998 SAMRI raised concerns regarding the position of a number of its members who were so affected including six of the appellants. These concerns related to the fact that certain individuals had already been informed that they were either redundant or about to become redundant or that they should take voluntary severance packages.

[26] On 25 November 1998 Mr Thomson wrote to Mr Blaufeldt of SAMRI attaching the names and functions of the employees who would be affected by the manning reduction process. He then went on to say: **‘Please note that we shall continue to attempt, where possible, to find alternative positions for those individuals, failing which we shall be terminating their employment at shut down.’**

[27] A further meeting took place on 26 November 1998 where respondent confirmed the names and identities of affected individuals with reference to the list which had already been sent on 25 November. SAMRI expressed ‘disagreement regarding the rationale used for redundancy saying that it was unaware that World Class Manufacturing, bench marking and restructuring were part of the rationale for manning reductions and that **‘it was not in a position to discuss (the employees affected) due to the fact that it was not consulted fully on the restructure rationale.’** It did undertake to submit written queries regarding specific employees prior to December 1998.

[28] On 26 November 1998 respondent sent a further notice to all employees advising them of the necessity to proceed with the retrenchment of certain employees, and inviting them 'to follow existing procedures should they wish to clarify any uncertainties and **'approach their management structure in case of any difficulty which they might experience'**.

[29] On 2 December 1998 SAMRI addressed a letter to respondent detailing those affected employees in respect of which they had concerns and, in particular, providing particulars thereof. The position of all appellants, with the exception of eleventh and twelfth appellants, (the latter whose name had not appeared on any list), were canvassed in the SAMRI letter.

[30] On 7 and 8 December 1998 respondent embarked upon a process in terms of which individual managers were called upon to address the concerns raised by SAMRI in its letter of 2 December, particularly in relation to appellants. At this meeting each of the managers of the relevant departments in which the potential retrenchees were employed explained to SAMRI the rationale for the proposed restructuring, the manner in which they had applied the selection criteria and the reasons for the potential retrenchees having been so identified.

[31] In his evidence, Mr von Graevenitz, respondent's senior manager: human resources, described this meeting thus: 'We had all the managers of the people affected there, we brought in one senior manager at a time, I asked the person to go through the structures, to go through the reasoning behind the specific individual having to be retrenched, and then opened the floor to questions from SAMRI's side, and then when all the questions were basically said and done, the manager was released and the next person would come in. And that is how we proceeded right through the whole exercise with every manager that had somebody reporting to him who were retrenched having given some answers or some explanation'. At this meeting SAMRI requested a copy of the bench marking report for the very first time.

[32] Subsequent to this meeting Mr Thomson wrote to Mr Blaunveldt of SAMRI confirming that contact had taken place between SAMRI and **'senior line management'**.

He then said **'following your representations in this process we have decided to suspend the retrenchment of the following individuals until end January 1999 in**

order to properly consider your final representations’. The tenth and thirteenth appellants were among those whose retrenchment had been suspended. The services of the balance of appellants were terminated on 10 December 1998 and those of tenth and thirteenth appellants on 30 January 1999.

[33] APPELLANTS CASE.

Appellants’ attack upon the substantive and procedural fairness of the retrenchment procedure can be summarised thus:

At no stage had respondent achieved consensus with SAMRI regarding the necessity or inevitability of retrenchments. The bench marking exercise which was critical to the decision to effect retrenchments remained unknown to SAMRI whose officials were never provided with a complete set of benchmarking reports. Thus it could not be said that respondent had consulted SAMRI at any stage regarding the bench marking exercise and hence the need to restructure around which the decision to retrench had turned. Respondent failed to disclose relevant material information with the result that SAMRI was not in a position to engage meaningfully with the restructuring process.

[34] Respondent failed to consult SAMRI regarding the applicable selection criteria, particularly in that it purported to apply criteria before they were even disclosed to SAMRI. In short, having unilaterally determined the selection criteria to be applied, respondent thereafter failed to apply these criteria but rather applied criteria which were inherently subjective, arbitrary and in certain respects discriminatory. Respondent also failed to consult in any acceptable sense regarding alternatives to retrenchment.

EVALUATION.

[35] Before dealing with an examination of the appellants’ argument it is convenient to refer, albeit briefly, to the purpose of consultation as envisaged in section 189 of the Act.

In **Johnson and Johnson (Pty) Ltd v CWIU (1999) 20 ILJ 89 at 96 (LAC)** this Court said the following:

‘[26] The section places some primary obligations on an employer in order to ensure that an employee is not unfairly dismissed. The employer must

initiate the consultation process when it contemplates dismissal for operational reasons.It must also disclose relevant information to the other consulting party....; it must allow the other consulting party an opportunity during consultation to make representations about any matter on which they are consulting....; it must consider those representations and if it does not agree with them, it must give its reasons...

[27] But all these primary formal obligations of an employer are geared to a specific purpose, namely to attempt to reach consensus on the objects listed in s189(2). The ultimate purpose of s189 is thus to achieve a joint consensus-seeking process. In this manner the section implicitly recognises the employer's right to dismiss for operational reasons, but then only if a fair process aimed at achieving consensus has failed.

[28] The achievement of a joint consensus-seeking process may be foiled by either one of the consulting parties. The employer may obviously frustrate it by not fulfilling its obligations under s189(1), (3), (5), (6) and (7). The other consulting party may do it by refusing to take part in any of the stages of the consultation process, or by deliberately delaying the whole process....It may also appear that one of the parties simply went through the entire formal process with no intention of ever genuinely reaching agreement on the issues discussed. These different possibilities depend on the facts of each particular case'.

See also *Alpha Plant and Services (Pty) Ltd v Simmonds and Others* (2001) 22_ILJ

359 (LAC) at 364-365; *Steyn and Others v Driefontein Consolidated LGD t/a West*

Driefontein (2001) 22 ILJ 231 (LC)at 238 F.

[36] In the present case respondent made its intentions clear at the presentation on 21 November 1997 at which members of SAMRI were in attendance .It was concerned about excess manning levels and accordingly advised SAMRI that it was considering

various alternatives including redeployment of excess employees, cessation of external recruitment except with regard to key skills and , if all else failed ,possible retrenchment. Whatever SAMRI'S concerns might have been with regard to the rationale for this process, it never disputed the memorandum prepared by Mr Thomson and sent to Mr Cronje of SAMRI that consensus on the rationale to review manning levels and structures had been reached at the meeting on 23 June 1998.

[37] When the process of retrenchment continued on 12 October 1998 because of the further deterioration in economic and market conditions faced by respondent, no objection was raised against respondent's rationale for the process which it had recommenced even as late as November 1998. At a meeting held on 5 November 1998 SAMRI's raised concerns about pressure tactics being embarked upon line managers to force employees to take the voluntary separation package as well as rumours about outsourcing. Respondent replied that it had taken a strong position against the coercion of employees to take voluntary separation packages.

[38] On 12 November 1998 SAMRI raised the issue of the economic rationale for retrenchment for the first time since June 1998. Correctly, in my view, Mr Thomson of respondent explained that the economic rationale had been dealt with extensively in various recent meetings and also in writing. As the notes of the meeting record **'SAMRI then expressed concern that the selection criteria at TAC had been manipulated to suit Management and said that TAC'A Plant'** employees had been sacrificed at the expense of TAC of 'B Plant employees. Mr Thomson stated that Management would consider all submissions by SAMRI and that he would revert in writing as soon as possible'.

[39] At the meeting of 12 November 1998 SAMRI proposed alternatives to the forced manning reductions including allowing medically unfit employees whose applications for disability had been declined to be boarded , the extension of the voluntary severance package for another week, an increase of the package for employees nearing retirement and the demotion of employees as an alternative to retrenchment and training and retraining of employees.

[40] On 17 November 1998 Mr Thomson replied to each of these proposals concluding

that ‘unfortunately we have to reduce our salaried staff on the retrenchment/redundancy basis. We will therefore present to you at our next meeting a list of redundant positions and employees as well as proposed election criteria for employees not in redundant positions but who may have to be retrenched.’

[41] A further meeting was held on 19 November 1998 between SAMRI and respondent in order to attempt to gain confirmation of the selection process for severance packages and the timing arrangements for retrenchments. On 25 November a list of the names and functions of the employees that would be affected by the manning reduction process was supplied to SAMRI. On 7 December 1998 a meeting was held in which the proposed retrenchment of each of the appellants was considered.

[42] These facts indicate that, notwithstanding criticism that could be leveled against aspects of the evidence of certain of respondent’s witnesses, the process had begun in November 1997. It had sought to involve SAMRI from the outset. Through the many meetings which were conducted, SAMRI was provided with information that it requested and informed of the process which respondent proposed to implement. Much was made by Mr Acker, who appeared together with Mr Wade on behalf of appellants, of the bench marking report, the outcome of which Mr Acker submitted had critical implications for respondent’s future organisational structure.

[43] Mr Winchester who appeared on behalf of respondent, observed that by June 1998 consensus had been reached with regard to the rationale for the process. Only on 7 December 1998 had SAMRI requested a copy of the bench marking report despite the fact that it had knowledge of the process which had been undertaken and notwithstanding that certain of its members had engaged in workshops which flowed out of the bench marking report and which, as Mr Thomson testified, were designed to identify differences between world class manufacturing operations and those of respondent so that the objective of attaining world class manufacturing standards could be achieved.

[44] In my view, respondent complied comprehensively with the duties imposed upon it in terms of section 189 of the Act. It followed a joint consensus seeking process to the retrenchments for operational reasons. It supplied SAMRI with comprehensive information after the latter had been put on notice in November 1997 that the possibility of retrenchments was being considered. It held numerous meetings with representatives of SAMRI in which it attempted to explain the process, achieve consensus and then individualize the process by examining each of the individual employees affected by the

decision to retrench. An open and transparent process was initiated in November 1997 in which respondent sought to engage SAMRI in resolving a problem of manning levels which it had defined by means of a number of presentations. Thereafter SAMRI were afforded every opportunity of participating in the process.

[45] To the extent that it is appellants' case that representatives of SAMRI or any of the appellants considered that the facts which I have outlined did not accord with their perception of the process, it is significant that no evidence was led by appellants to justify the existence of this perception .

THE TWELFTH APPELLANT .

[46] I now turn to consider the case of the twelfth appellant, Mr Walmsley. Mr Walmsley was apparently a machine tool fitter. His duties entailed doing machine maintenance. In 1998 he was injured on duty. The injury was to his lower back. As a result of this Mr Walmsley could no longer do his normal job. The company gave him a temporary job in the laboratory. Obviously this was done to avoid dismissing him after he could no longer do his job. Initially he was to work in the laboratory for three months but he went on for about nine months until he was retrenched when the other appellants were also retrenched.

[47] It is common cause that until the 7th December Mr Walmsley's name had never appeared in any of the lists of employees who were in danger of being retrenched. On that day his name appeared in a list of employees who were to be retrenched. On the 8th December he was called by his immediate superior, a Mr McConnel, to the latter's office Mr McConnel told Mr Walmsley that he had been retrenched but offered him the position of a driver. Mr Walmsley asked him whether

he would lose his car and other allowances. Mr McConnell confirmed this. At this point Mr Walmsley then said some unprintable things to Mr McConnell suggesting what Mr McConnell should do with that job and said he was going to see his union. Mr McConnell understood that Mr Walmsley was rejecting the offer of the alternative job.

[48] On the 9th December Mr Mc Connel offered the same job to the other employees who had been retrenched. A Mr Naidoo, a member of the National Union of Metal Workers of SA, took the job. Mr Walmsley did not come back to Mr Mc Connel. There was an attempt by the appellant's Counsel during the cross-examination of Mr McConnell to suggest that Mr Walmsley had not rejected the offer that Mr McConnell made to him but that he had wanted to consult his union first. This attempt was to no avail in the end because under cross-examination Mr Walmsley conceded that he had in effect rejected the offer. He regretted the fact that he had rejected it. This can be inferred from a statement that he made under cross-examination in this regard. The statement was: **"You do things at a certain time when you are under pressure that you apologise for after"**.

[49] The question that arises then is whether Mr Walmsley's dismissal was unfair. There can be no doubt, as already indicated earlier, that initially the appellant had acted in a manner that was procedurally unfair in deciding to retrench Mr Walmsley without there having been any consultation with either him or his union on his possible

retrenchment. However, the question that needs to be considered is what was the effect was of Mr Walmsley's rejection of the job offer from the appellant on the procedural unfairness that had occurred up to that point? This question is, in my view, highly relevant because, had Mr Walmsley accepted that offer - which has not been described as unreasonable and which, it seems, he later regretted not having taken, he would not have had any cause of action to institute an unfair dismissal claim. In my view the appellant's offer had the effect of removing or obliterating the procedural unfairness which had existed up to then. It is Mr Walmsley's rejection of that offer - which has not been shown to have been justified - that caused Mr Walmsley to be without a job.

[50] In **CWIU v Johnson & Johnson (Pty) Ltd (1997) BLLR 1186(LC)** the employer used selection criteria that were regarded by that Court to be prima facie unfair but the union had failed to take up an offer by the employer which, in all probability, would have seen the employees not being retrenched. At 1198G in that case the Court said: **"Accordingly, I am of the view that such causal link as otherwise would have existed between the use of this selection [criterion] and the retrenches' dismissal was broken by this novus interveniens and, in those circumstances, I cannot find that the dismissal was rendered unfair by reason of the respondent's use of this selection [criterion]."**

[51] In its judgement on appeal in that matter (**Johnson & Johnson (Pty) Ltd v CWIU (1999) 20 ILJ 89 (LAC)**) this Court referred to, among others, the dictum referred to above with apparent approval although it relied on the dictum for its decision to exercise its discretion against awarding compensation to the employees. In par 50 this Court stated that that finding **“was significant, for it illustrates in graphic terms the kind of situation mentioned earlier, where the Labour Court or arbitrator under the LRA might exercise its discretion in favour of not granting the redress envisaged by s194(1), because the employee prevented the employer from remedying a defect in form and from giving the employee redress earlier”**.

[52] In my view, where an employer offers an employee alternative employment to avoid the employee's retrenchment and the employee rejects that offer in circumstance where the offer cannot be said to have been an unreasonable one or where the employee should have accepted such offer and he did not, the dismissal cannot be said to have been unfair because in effect the employer effectively offered to undo the wrong it had done. I, accordingly, conclude that in this case Mr Walmsley's dismissal was not unfair in any respect and his appeal must also fail.

[53] In the result I make the following order:-

7. The appeal is dismissed.
8. The appellants are ordered to pay the respondents' costs jointly and severally, the one paying the others to be absolved.

DAVIS AJA

I agree.

ZONDO JP

I agree.

DU PLESSIS AJA

Appearances:

For Appellant: Adv Acker SC with Adv Wade

Instructed by: Deneys Reitz Inc

For Respondent: Adv Winchester

Instructed by: Shepstone & Wylie

Date of Hearing: 4 September 2002

Date of Judgment: 11 December 2002