



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Reportable

Case no: JA 7/11

In the matter between:

PT OPERATIONAL SERVICES (PTY) LTD

Appellant

and

RAWU obo L NGWETSANA

Respondent

Heard: 19 SEPTEMBER 2012

Delivered: 27 NOVEMBER 2012

Coram: Waglay, AJP, Ndlovu, JA and Musi, AJA

JUDGMENT

MUSI, AJA

[1] After hearing the appellant and the respondent the Labour Court (Moshwana, AJ) made the following order, in favour of the respondent:

“1. The three applications are consolidated for purpose of hearing.

2. The rulings of 26 February 2007, 10 May 2007, and 3 July 2007 are hereby reviewed and set aside.
3. The award issued on 5 February 2004 is hereby made an order of this court.
4. The first respondent to pay the costs of all the applications.”

- [2] The appellant was dissatisfied with the order and successfully applied for leave to appeal against the entire judgment and order. Mr Gerber, on behalf of the appellant, however informed us that the appeal is only aimed against the setting aside of the ruling dated 26 February 2007 mentioned in paragraph 2 as well as paragraphs 3 and 4 of the order. The setting aside of the rulings dated 10 May 2007 and 3 July 2007 is not challenged. Likewise the order consolidating the matters is not challenged.
- [3] Three interrelated applications were brought before the Labour Court on different occasions. The first application was a request to make an arbitration award an order of court in terms of section 158(1) (c) of the Labour Relations Act 66 of 1995 (the Act)¹. The second was an application to review and set aside two rulings made by the arbitrator, Lance Cellier, on 26 February 2007 and 10 May 2007 respectively. The third was an application to review and set aside a ruling made by another arbitrator, Frederick Matshaba, on 3 July 2007. Both arbitrators acted under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA).
- [4] Mr Lazarus Ngwetsana was employed by the appellant. The appellant operates Toll Plazas and maintains Highways in the Platinum Corridor. Ngwetsana was employed at the Stormvoël Toll Plaza. It was alleged that he reported for duty, on 22 February 2003, whilst under the influence of alcohol and when his colleague refused to hand over the float and shift to him, he assaulted her with a telephone receiver. He was charged with being under the influence of liquor while on duty and for conducting himself in a disgraceful, improper and unbecoming manner that was detrimental for the company. He

¹ Section 158 (1) (c) reads as follows:

“(c) The Labour Court may make any arbitration award or any settlement agreement an order of the court.”

was convicted, after a disciplinary hearing was held, and dismissed. He referred an unfair dismissal dispute to the CCMA.

- [5] The matter was set down for arbitration on 7 November 2003 on which date it was postponed at the appellant's request. The appellant was notified, by registered mail, posted on 18 December 2003 that the matter is set down for hearing on 26 January 2004. There was no appearance on its behalf on 26 January 2004. Commissioner Diale Ntsoane proceeded with the matter in terms of section 138(5)(b)(i) of the Act.² Ngwetsana testified and denied the allegations levelled against him. Ntsoane found that his dismissal was unfair and ordered his reinstatement with back pay amounting to R29 150.00. Ntsoane's award is dated 5 February 2004 (the default award).
- [6] On 26 February 2004 the respondent notified the appellant about the arbitration award and that Ngwetsana would be reporting for duty on 1 March 2004. On 27 February 2004 the appellant informed the respondent that it is unable to comply with the award because it is in the process of applying for its rescission.
- [7] The appellant sent its rescission application to the CCMA on 12 March 2004 by way of registered mail. On 17 May 2004 the CCMA informed the appellant that its rescission application was defective and it could not receive any further attention because an application for condonation for the late filing of the application was not submitted. On 21 May 2004 the appellant wrote to the CCMA and stated that the rescission application was sent on 12 March 2004 to all parties that being the 14th day since it became aware of the default award i.e. from 27 February 2004 when it was informed by the respondent to 12 March 2004. The appellant was of the view that it need not, under the circumstances, apply for condonation.

² Section 138 (5) (b) (i) reads as follows:

"If a party to the dispute fails to appear in person or to be represented at the arbitration proceedings, and that party had not referred the dispute to the Commission, the commissioner may continue with the arbitration proceeding in the absence of that party."

- [8] The rescission application was set down and Commissioner Cellier (Cellier) dismissed the application on 12 August 2004 (the defective process ruling).
- [9] The ruling of 12 August 2004 is pivotal to the adjudication of this appeal. I will therefore set out Cellier's reasoning and ruling in full and without emendation. Cellier correctly set out the gist of the applicable rules and said the following:

"The award was brought to the respondent's attention on 27 February 2004. The application was posted to the CCMA via registered mail on 12 March 2004. Rule 32 of the Rules for the Conduct of Proceedings before the CCMA ("the rules") states that an application to rescind a ruling must be made within 14 days of the date on which the applicant becomes aware of the ruling. Rules 7 & 8 of the rules state that a document is filed with the commission when the office of the provincial Registrar receives it, and that a document sent by registered mail is presumed to have been received by the person to whom it was sent 7 days after mailing. This application was therefore filed late with the CCMA and thus the respondent would need to make application for condonation for the late application.

2. Ruling

Due to the defective process referred to above, I herewith dismiss this application."

- [10] On 11 October 2004, in a badly couched notice of motion, the appellant sought the following relief:

- "1. Reinstating the rescission application which have (sic) been submitted on 12 March 2004 under case number GA 21236/03 and dismissed by Commissioner LH Cellier on 21 August 2004 (sic) on the basis of the (sic) defective process.
2. Granting the prays (sic) as contained therein.
3. Alternatively granting condonation of the late filing of the rescission application."

- [11] On 5 November 2004, before the applications for condonation and rescission were heard, the respondent applied for the certification of the default award in terms of section 143 (3) of the Act.³

³ The relevant parts of section 143 reads as follows:

- [12] On 19 November 2004 the appellant wrote to the CCMA informing it that it had applied for the rescission of the default award and requested the CCMA to stay the section 143 application pending the outcome of the rescission application. It received no reply. On 8 December 2004 it enquired about the outcome of its request and forwarded copies of the relevant documents to the CCMA.
- [13] On 9 October 2006 the respondent delivered an application in terms of section 158 (1) (c) of the Act wherein it asked the Labour Court to make the default award an order of court. On 9 November 2006 the respondent withdrew its section 143 application because it desired to continue with the section 158(1) (c) application instead. Needless to say, the section 158 (1) (c) application was opposed by the appellant.
- [14] On 26 February 2007, after much water had flown under the bridge, and in spite of the respondent's objections, the applications for condonation and rescission of the default award were granted by Cellier (the rescission ruling).
- [15] Cellier issued another ruling on 10 May 2007 (the obvious error ruling) wherein he stated that his rescission ruling was erroneous because he neglected to set aside his ruling issued on 12 August 2004 (the defective process ruling). He classified this as an obvious error. He then set aside his ruling dated 26 February 2007(rescission ruling) purportedly in terms of section 144 of the Act. Section 144 of the Act reads as follows:
- “Any commissioner who has issued an arbitration award or ruling, or any other commissioner appointed by the director for that purpose may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award –
- (a) Erroneously sought or erroneously made in the absence of any party affected by that award.

“(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award.

(2) ...

(3) An Arbitration award may only be enforced in terms of subsection (1) if the director has certified that the arbitration award is an award contemplated in subsection (1)...”

(b) In which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission.

(c) Granted as a result of mistake common to the parties to the proceedings.”

[16] He further purported to vary his defective process ruling by stating that the intent ***“of the ruling issued on 12 August 2004 was to draw the respondent’s attention to a procedural defect in his application and to afford him (sic) a reasonable opportunity to remedy the defect, which he (sic) did by applying for condonation for the late application.”*** He then stated that another Commissioner should, in the interest of justice and fairness, consider the applications for condonation and rescission afresh.

[17] The respondent launched, on 5 June 2007, a review application to set aside Cellier’s rulings issued on 26 February 2007(the rescission ruling) and 10 May 2007(the obvious error ruling).

[18] On 3 July 2007, Commissioner Matshaba granted the condonation and rescission application and set aside the default award dated 5 February 2004. The respondent launched a review application to set aside Matshaba’s award issued on 3 July 2007.

[19] The Labour Court found that the *functus officio* maxim or doctrine applies to rulings made by commissioners acting under the auspices of the CCMA and that CCMA commissioners may not set aside their own decisions. The Labour Court found that the ruling of 26 February 2007 (the rescission ruling) is at odds with the ruling of 12 August 2004 (defective process ruling). In the Labour Court’s view the commissioner became *functus officio* when he issued the ruling of 26 February 2007. According to the Labour Court, unless and until the decision of 12 August 2004 is reviewed and set aside no other ruling, relating to this matter, can be valid.

[20] Mr Geber argued that Cellier was called upon, on 12 August 2004, to act in terms of section 144 of the Act. He did not do so because there was no application for condonation for the late filing of the rescission application. The

decision of 12 August 2004 was therefore not a final decision as far as the rescission application is concerned. He argued that the Court *a quo* was wrong to conclude that Cellier was *functus officio*.

- [21] Mr Khoza, for the respondent, argued that the Court *a quo* was correct because Cellier dismissed the application on 12 August 2004. The appellant was supposed to take that decision on review. Absent a review application that decision is valid until set aside by the Labour Court and Cellier had no power or authority to revisit it because he was *functus officio*.
- [22] Does the *functus officio* doctrine apply to CCMA commissioners? If so, was Cellier *functus officio* after the 12 August 2004 ruling?
- [23] It is now settled that commissioners conducting arbitrations under the auspices of the CCMA are performing an administrative function.⁴ Although commissioners perform an administrative function such function includes adjudicative functions.
- [24] Pretorius explains the *functus officio* doctrine as follows:

“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter. This rule applies with particular force, but not only, in circumstances where the exercise of such adjudicative or decision-making powers has the effect of determining a person’s legal rights or of conferring rights or benefits of a legally cognizable nature on a person. The result is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker. However, this is not an absolute rule. The instrument from which the decision-maker derives his adjudicative powers may empower him to interfere with his own decision. Furthermore, it is permitted to make variations necessary to explain ambiguities or to correct errors of expression in an order, or to deal with accessory matters which were inadvertently overlooked when the order was made, or to correct costs orders made without having heard argument on costs. This list of exceptions might not be exhaustive and a court might have

⁴ See *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2008 (2) SA 24 (CC) at paragraph 88

discretionary power to vary its orders in other cases. However, this power is exercised very sparingly, for public policy demands that the principle of finality in litigation should generally be preserved rather than eroded.

The same considerations that require finality for the decisions of courts of law apply to the decisions of administrative authorities. Consequently, the *functus officio* doctrine applies in administrative law as it does in relation to curial proceedings. In elementary terms, the effect of the *functus officio* doctrine in administrative law is that an administrative agency which has finally performed all its statutory functions or duties in relation to a particular matter subject to its decision-making jurisdiction has exhausted its powers and has discharged its mandate in relation to that matter. Consequently, such an agency is without further authority as far as that matter is concerned because its duties and functions have been fully accomplished. Thus, an administrative agency which is *functus officio* is unable to retract or change its own earlier decision, unless it is authorised by its enabling legislation to do so.”⁵

- [25] The Court *a quo*, in examining whether the *functus officio* doctrine applies to CCMA commissioners firstly had regard to section 10 (1) of the Interpretation Act 33 of 1957 which provides that:

“When a law confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.”

- [26] The Court *a quo* agreed with Professor Hoexter’s interpretation of section 10 (1) where she says that the section merely enables administrators to exercise their powers anew in different situations, and not to revisit or revoke their existing decisions whenever they like.⁶ The Court *a quo* added that it seems to be against public policy for administrators to blow hot and cold. The Court *a quo* then said:

“The LRA for instance has as one of its purposes, the resolution of labour disputes. It cannot be said that allowing CCMA commissioners, at the alter of the provisions of section 144, authorising them to act at own accord, to revisit their decisions is consistent with effective resolution of disputes.” (sic).

⁵ D M Pretorius: The Origin of the *functus officio* doctrine, with specific reference to its application in Administrative Law 2005 SALJ vol 122 page 832 at832-833.

⁶ Cora Hoexter: Administrative Law in South Africa 2nd Edition Juta 2012 at page 277.

[27] Section 10 (1) of the Interpretation Act must always be read in conjunction with the empowering legislation, in this case the LRA, in order to determine whether the empowering statute contains a contrary intention. There was no need for the Court *a quo* and there is no need for this Court given the clear provisions of the LRA to embrace, in this matter, a restrictive or broad interpretation of section 10 (1).⁷ Section 10 (1) must yield to a contrary intention in the LRA. If there is a contrary intention in the LRA then section 10 (1) is displaced by the contrary intention in the LRA. Section 144 of the LRA gives commissioners the right to vary a decision under certain limited circumstances. They therefore have a limited right to revoke their decisions.

[28] In **Minister for Immigration and Multicultural Affairs v Bhardwaj**, Leane J of the Federal Court of Australia suggests that one should have regard to the statutory context in order to decide whether there is a contrary intention. He puts it thus:

“Generally, section 33 (1) of the Acts Interpretation Act will apply in relation to a statutory power or duty. But the statutory context may reveal a contrary intention. In my opinion, the present statutory context does so. It is one which plainly places a high value on certainty. There are strict time limits, detailed provisions governing the conduct of review proceedings and precise requirements as to the way in which the Tribunal is to record its decisions and the reasons for it and is to notify and publish its decisions. There is then a limited form of judicial review, for which applications may be made only within a time limit of twenty-eight days which cannot be extended. I would, in my view, be incongruous with that scheme for the Tribunal to have, in

⁷ In my view neither the restrictive nor the broad approach should be embraced or rejected in a matter like this, where the case was not properly canvassed and the empowering Act is clear. Prof Hoexter seems to be in favour of the narrow approach. In other jurisdictions with identical provisions the broad approach has been followed. Section 33(1) of the Australian Acts Interpretation Act 1901 (C+L) which is word for word the same as our section 10(1) has been found to give administrative decision makers the power to consider and remake a decision, unless the statute, upon a proper construction, indicated that the power was not to be exercised from time to time, but was spent by its first exercise. See **Minister of Immigration, Local Government and Ethnic Affairs v Kurtovic (1990) 92 ALR 93 at 112 and 119-120; Pfeiffer v Stevens [2001] HCA 71 (185 ALR 183)**. Brown and Evans in their work *Judicial Review of Administrative Action in Canada* Canvasback Publishing, 1998 at section 12:6100 state that the effect of a provision similar to our section 10 (1) is that unless the legislation precludes a further decision or the decision is subject to a form of estoppel, non-adjudicative decisions may be reconsidered and varied from time to time. See *Kurukkal v Canada (Minister of Citizenship and Immigration)(F.C.) (2010) 3 F.C.R. 195*.

relation to a particular application for review a power from time to time as occasion requires to make (and revoke) decisions.”⁸

This statement applies, in my view, with the necessary changes, to the detailed provisions in the LRA pertaining to the conduct of arbitrations and the review of CCMA commissioners’ decisions. In my view the Court *a quo* was correct in its conclusion that the *functus officio* doctrine applies to CCMA commissioners. They may therefore only revisit their decisions to the extent that it is permitted by the provisions of section 144 of the LRA. They may not do so whenever they like but may do so if the jurisdictional facts in section 144 are present. They may also do so, as I will show presently, when they have performed an allied function but not yet performed the power or duty bestowed on them by the legislature.

[29] The veritable question is whether a final decision was taken on 12 August 2004 by Cellier. Mr Gerber argued that Cellier was not *functus officio* and relied exclusively on ***Ex parte Koster***.⁹ The facts of that matter are briefly as follows. The applicant was an unrehabilitated insolvent. On 9 February 1965 the applicant’s attorney wrote to the Master of the Supreme Court and requested him to recommend the applicant’s rehabilitation in terms of section 124 (2) of the Insolvency Act 24 of 1936.¹⁰ On 18 February 1965 the Master

⁸ (2000) 99 FCR 251 at paragraph 58

⁹ 1965 (3) SA 709 (O.P.A)

¹⁰ Section 124 (2) reads as follows:

“(2) An Insolvent who is not entitled under subsection (1) to apply to the court for his rehabilitation and who has previously given to the Master and to the trustees of his state I in writing and by advertisement in the Gazette not less than six weeks’ notice of his intention to apply to the court for his rehabilitation may so apply –

- (a) After twelve months have elapsed from the confirmation by the Master, of the first trustee’s account in his estate, unless he fall within the provisions of paragraph (b) or (c); or
- (b) After three years have elapsed from such confirmation if his estate has either under this Act or prior law been sequestrated prior to the sequestration to which he desires to put an end and if he does not fall within the provisions of paragraph (c); or
- (c) After five years have elapsed from the date of his conviction of any fraudulent act in relation to his existing or any previous insolvency or of any offence under section one hundred and thirty-two, one hundred and thirty-three or one hundred and thirty-four of this Act or under any corresponding provision of the Insolvency Act, 1916 (Act 32 of 1916):

Provided that no application for rehabilitation under this subsection shall be granted before the expiration of a period of four years from the date of sequestration of the estate of the applicant, except upon the recommendation of the Master.”

responded in writing indicating that he will not object to the application. The application was launched on 22 April 1965. The application not only contained a prayer for the rehabilitation of the applicant but also a prayer that certain immovable property should vest in the applicant and that he be entitled to deal therewith as he deems fit without his curator having any right or interest in the property. When the Master indicated that he will not object to the application he was not aware of the immovable property. After perusing the application he refused to recommend the application, because of the facts that were only revealed in the application. The applicant argued that the Master was *functus officio* and should be held to his indication that he will not object to the application. Erasmus, J found that the assurance that the Master gave cannot be compared to a final decision of a court and that the assurance was not a recommendation in terms of section 124 (2) of the Insolvency Act. Erasmus, J further found that the Master had to have the application before him before making the recommendation. He found that the Master was not *functus officio* when he refused to recommend the application.

[30] I fully agree with Erasmus, J's reasoning and conclusion. One can strengthen it by stating that it is only after an administrative agency has finally performed all its statutory duties or functions in relation to a particular matter which is subject to its jurisdiction that it can be said that its powers or functions were spent by its first exercise.

[31] It is unfortunate that Cellier decided to dismiss the application instead of striking it from the roll. I have seen many rulings of a technical or a formalistic nature where the correct order ought to be striking a matter from the roll but the matter would be dismissed instead.

[32] This also happens in the High Courts and Labour Court especially when a finding is made that a matter is not urgent and the Judge refuses to enrol it.

The application is frequently dismissed for lack of urgency instead of removed from the roll because of lack of urgency.¹¹

- [33] In **Commissioner for SARS v Hawker Air Services (PTY) Ltd; In Re Commissioner for SARS v Hawker Aviation Service Partnership and Others**, Cameron JA, as he then was, said the following about such orders:

“One of the grounds on which Patel, J dismissed the application was that at their inception they had lacked urgency. This was erroneous. Urgency is a reason that may justify deviation from the times and forms the rules prescribe. It relates to form not substance, and is not a prerequisite to a claim for substantive relief. Where an application is brought on the basis of urgency, the rules of court permit a court (or a judge in chambers) to dispense with the forms of service usually required and to dispose of it “as it seems meet” (rule 6(12) (a)). This in effect permits an urgent applicant, subject to the court’s control, to forge its own rules (which must as far as practicable be in accordance with the rules). Where the application lacks the requisite element or degree of urgency, the court can for that reason decline to exercise its powers under rule 6 (12) (a). The matter is then not properly on the court’s roll, and it declines to hear it. The appropriate order is ordinarily to strike the application from the roll. Thus enables the applicant to set the matter down again, on proper notice and compliance,”¹²

- [34] **Hawker Air Services** tells us what the appropriate order should be but it is silent on what the consequences of such an erroneous order would be where the substantive merits were clearly not dealt with. In **Vena v Vena**, Jones, J discusses **Hawker Air Services** and correctly in my view says the following:

“My understanding of an order for the dismissal of a claim in circumstances such as these is that, generally speaking, it is equivalent to an order for absolution from the instance, in which event it is open to an applicant to set the matter down again. In a given set of circumstances, it may be that dismissal may amount to a final judgment on an issue, with the consequence of res judicata. But that is not in the normal course where the case turns on a procedural point, and, I believe, it is not the case here...”

¹¹ See *Mtirara v KSD Municipality* [2010] JOL 25037(TK) *Vena v Vena and Another* 2010 (2) SA 148 (ECP); *POPCRU & Others v National Commissioner of the SARS & Others* [2006] JOL 18047 (T); *Ledimo & Others v Minister of Safety and Security & Others* [2007] JOL 21032 (O).

¹² 2006 (4) SA 292 (SCA) at 299 F – 300A

- [35] Although I agree that the appropriate order in a matter where urgency has not been shown should be striking the matter from the roll, it seems to me that even where the word dismissed is used it does not necessarily mean that the dismissal amounts to a final order. One will still have to enquire, where there is doubt, whether the matter was dismissed on the merits or not. If it was dismissed on the merits then the order is final. If not, then it is not final. A finding that a matter is not urgent does not mean that there are no merits in the applicant's case. Even if a matter is dismissed for lack of urgency it can and should be re-enrolled. To reason otherwise would be to allow form to triumph over substance.
- [36] The same applies in my judgment to applications for rescission that are out of time and not accompanied by an application for condonation. Although the appropriate order would be to strike it from the roll, dismissing it does not mean that the merits of the rescission application have been considered. A commissioner may only hear the rescission application if it is accompanied or preceded by a proper application for condonation.
- [37] To sum up. The commissioner could not consider the rescission application which was out of time without an application for condonation. He could therefore not exercise his powers, duties or functions in terms of section 144 because a condition precedent (condonation) has not been fulfilled. His order dismissing the application was just another way of saying I cannot consider the application at this stage because there is no application for condonation. Without such application I have no jurisdiction to exercise my powers in terms of section 144 of the LRA.
- [38] I conclude that Cellier did not finally perform his statutory function or duty in relation to the merits of the rescission application on 12 August 2004. It cannot therefore be said that he exhausted his powers and discharged his mandate in relation to the rescission application. The Court *a quo* erred in coming to the conclusion that the ruling of 12 August 2004 rendered Cellier *functus officio* and that he could therefore not entertain the subsequent applications for condonation and rescission on 26 February 2007. There were proper applications before him. He applied his mind and granted the

applications. It is not suggested that his ruling should be reviewed and set aside on any other ground other than him being *functus officio*. The Court *a quo*'s order relating to the ruling of 26 February 2007 ought to be set aside.

[39] The order of 26 February 2007 rescinded the award of 5 February 2004 (the default award). The award of 5 February 2004 can therefore not be made an order of court because it does not exist anymore. That application ought to have been dismissed because there was no award to make an order to court. The order of the Court *a quo* making it an order of court should also be set aside.

[40] As stated above the order of the Court *a quo*, pertaining to the rulings of 10 May 2007 and 3 July 2007, is not challenged. They were correctly set aside by the Court *a quo*.

[41] Taking all the circumstances of this case into consideration, especially the dilatoriness of the appellant, fairness and the law dictate that no order as to costs should be made in this matter.

[42] The Director of the CCMA is requested, in the interest of justice, to ensure that the arbitration proceedings are expedited.

[43] I accordingly make the following order:

- (a) The appeal is upheld with no orders as to costs.
- (b) The order of the Court *a quo* is set aside and replaced with the following;
 - i. The three applications are consolidated.
 - ii. The application to set aside the ruling of Commissioner Cellier dated 26 February 2007 is dismissed .
 - iii. The rulings of Commissioner Cellier, dated 10 May 2007, and Commissioner Matshaba, dated 3 July 2007, are set aside.

- iv. The application to make the arbitration award dated 5 February 2004 an order of court is dismissed.
- v. There is no order as to costs.

MUSI AJA

I agree,

WAGLAY AJP

I agree,

NDLOVU AJA

APPEARANCES:

FOR THE APPELLANT: Mr. Botha

CORNEL BOTHA ATTORNEYS

FOR THE RESPONDENT: Mr. Khoza

RAWU