



**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, DURBAN**

Not Reportable

Case no: DA 15/2014

**COMBINED TRANSPORT SERVICES (PTY) LTD**

**Appellant**

and

**BUHLE ZAMOKWAKHE MIYA**

**First Respondent**

**COMMISSION FOR CONCILIATION**

**MEDIATION AND ARBITRATION**

**Second Respondent**

**ROB McCANN N.O.**

**Third Respondent**

**Heard: 19 November 2015**

**Delivered: 25 November 2016**

**Coram: Waglay JP, Musi JA et Makgoka AJA**

**Summary: Review of an arbitration award – proper approach - employee reinstated on arbitration after dismissal – procedural and substantive fairness.**

---

**JUDGMENT**

---

MAKGOKA AJA

Introduction

- [1] This is an appeal against the whole judgment and order of the Labour Court (Cele J) handed down on 11 February 2014, in terms of which the first respondent was reinstated to his previous position as a driver at the appellant with compensation. The Labour Court also ordered the company to pay the costs of the suit. The appeal is with leave of this Court, which was granted on 5 November 2014, after the application for leave to appeal was dismissed by the Labour Court on 1 August 2014.
- [2] The appellant is a company involved in the transport industry in Phoenix, Durban, KwaZulu-Natal. The first respondent (Mr Miya) is an erstwhile employee of the company. The second respondent is the Commission for Conciliation and Arbitration (the CCMA). The third respondent (the commissioner) is an appointed commissioner of the CCMA, who conducted the arbitration proceedings under the auspices of the CCMA.
- [3] The matter has a long history and taken inordinately long to be finally adjudicated upon, both in the CCMA and in the Labour Court. Mr Miya was dismissed from the employment of the appellant almost 15 years ago, on 4 June 2001. After three arbitration awards and three review applications, this Court is finally seized of the matter. The circumstances which led to this extraordinary period of lack of finality will be apparent during the course of the judgment. In terms of the arbitration award issued on 17 June 2009, the dismissal of Mr Miya was confirmed as being substantively and procedurally fair.
- [4] Aggrieved with that finding, Mr Miya applied to the Labour Court, seeking to review and set aside that award in terms of s 145(2) of the Labour Relations Act 66 of 1995 (the LRA). The Labour Court found in Mr Miya's favour. It accordingly reviewed and set aside the award and in its stead, made an order of reinstatement from the date of the award in question. The appellant is unhappy with the order of the Labour Court, and challenges the judgment and

that order on a number of grounds, which I shall revert to more fully later in the judgment.

### The facts

- [5] The following is a brief factual background giving rise to the dismissal of Mr Miya. He was employed by the appellant as a bus driver in February 2001. He had to issue tickets for cash-paying passengers. Other, more regular passengers would present a pre-paid voucher. On 30 May 2001, he was on duty, and during the course of his journeys, he encountered two bus inspectors who did a routine inspection, which revealed that there were eight passengers aboard the bus, without tickets. Mr Miya was eventually charged with misconduct for that incident. The disciplinary hearing was scheduled for 4 June 2001.
- [6] It is in dispute between the parties as to what actually happened on that day regarding the attendance and departure of Mr Miya. According to the appellant, Mr Miya arrived at the venue of the disciplinary hearing, and later left the proceedings unceremoniously once the charge was put to him and he was asked to plead. Mr Miya, on the other hand, alleges that he was called into an office shared by two of the appellant's senior managers, Mr Nieuwenhuys and Mr Smith. According to him, he was informed that he had been dismissed as a result of the ticket incident. He was thereafter made to sign a document confirming his dismissal. After receiving advice from his colleagues, he lodged an internal appeal on the same day. Whatever the true position is, and for whatever reason or the manner in which he left, the disciplinary hearing proceeded in his absence, at the end of which he was found guilty of the charge and was dismissed.

### The arbitration proceedings

#### *The initial arbitration proceedings*

- [7] His internal appeal against his dismissal having failed, he referred an unfair dismissal dispute to the CCMA for conciliation, which failed. He thereafter referred the dispute to arbitration. Commissioner Maloney conducted the

arbitration and issued an award on 21 September 2001. It is not clear what the outcome of that award was, but it was taken on review to the Labour Court, which reviewed and set aside that award, and ordered that the matter be referred back to the CCMA to commence afresh before a different Commissioner. This was the first review application. The arbitration commenced afresh before Commissioner Deyzel who issued an award on 12 October 2003, in terms of which the dismissal of Mr Miya was confirmed. Still not satisfied with that outcome, Mr Miya referred that outcome to the Labour Court for review. This was the second review application.

- [8] The second review application came before the Labour Court (Cele AJ). That Court concluded, in its judgment handed down on 26 June 2006, that the Commissioner had committed “a serious error” in his evaluation of the evidence tendered during the arbitration proceedings. The Labour Court referred the matter back to the CCMA for a fresh hearing before a different Commissioner. The arbitration proceeded before Commissioner Hiralalt, who issued an award on 26 November 2007. That award was later rescinded because the hearing had been conducted in the absence of the appellant.

*Final arbitration proceedings*

- [9] Ultimately the matter was set down before Commissioner McCann. For a number of reasons, which include various postponements, the hearing took place between 9 June 2008 and 29 May 2009. In the arbitration proceedings, Mr Miya contended that his dismissal was both procedurally and substantively unfair. As to procedural unfairness, he alleged that he did not receive in advance, a notice of a disciplinary enquiry, but was informed on the day of the dismissal that he was supposed to attend a disciplinary hearing. Having learnt of his dismissal in that manner, he noted an appeal, which upheld his dismissal in his absence. With regard to substantive fairness, Mr Miya argued that he had a valid reason for not issuing tickets to the eight passengers who were found by the inspectors to be without tickets. His reason was that the machine had malfunctioned, and issued a stream of tickets on one push of a button.

- [10] The appellant led three witnesses during the arbitration, namely Mr Raymond Chetty (Mr Chetty) Mr Phillip Mtolo (Mr Mtolo) and Mr Henry Nieuwenhuys (Mr Nieuwenhuys). Mr Miya testified in his own case and did not call any witnesses. It is not necessary to traverse the whole evidence. What follows is a summary of the testimonies of the witnesses. Mr Chetty was the Operations Manager of the appellant. His testimony was essentially of a formal nature, concerning company policy and the operation of the ticket machine. Mr Chetty testified mainly about the procedural aspects of Mr Miya's appeal process and how it was handled by the appellant.
- [11] Mr Chetty testified that Mr Miya's appeal form, dated 5 June 2001, came to his attention. He responded to that form by informing Mr Miya's union representative of the appeal date. He made two manuscript annotations on the appeal notification form. In the first one, dated 7 June 2001, he noted that Mr Miya had requested that he should call him on his mobile phone to indicate the date and time of the hearing of the appeal. The note further indicates that Mr Chetty had indeed done that on 7 June 2001, providing the date as being Saturday, 9 June 2001 at 08h00. In the second annotation on the appeal notification letter, made on 9 June 2001, Mr Chetty noted that Mr Miya had reported at the appeal hearing at 09h15, instead of the scheduled time of 08h00, and that, after consultation with a Mr Ngcobo, Mr Miya decided not to proceed with the appeal, and left the premises. Mr Chetty also testified with regard to the substantive fairness of the dismissal. He testified that the machine would only issue individual tickets and if more tickets were needed, the machine operator would have to punch that information into the machine for each ticket.
- [12] Mr Mtolo is one of the two inspectors who had encountered eight passengers without cash tickets aboard the bus driven by Mr Miya on 30 May 2001. The passengers were six students and two adults. After such discovery, it was brought to the attention of Mr Miya, who did not proffer any explanation for that situation. Instead, he issued eight replacement tickets to the passengers without tickets, which tickets the two inspectors retained for the purposes of their report to the company. During cross-examination of Mr Mtolo, it emerged

that his evidence was different to the evidence he gave in the two previous arbitration hearings. This related to the replacement tickets. It appeared from the minutes of the hearing in September 2001 that Mr Mtolo had testified that it was at the request of the two inspectors that Mr Miya issued the replacement tickets, whereas in the second arbitration hearing in October 2001, he testified that Mr Miya issued the replacement tickets on his own initiative. While acknowledging the apparent discrepancy, Mr Mtolo suggested that this did not detract from the fact that there were passengers on the bus without tickets. According to him, whether the replacement tickets were issued at their insistence or on Mr Miya's own initiative was immaterial.

[13] Mr Nieuwenhuys was the Outsourcing Inspector of the appellant during the relevant period. He testified that Mr Miya had been issued a final written warning for a similar offence on 21 May 2001 - just over a week before the incident which gave rise to the charge Mr Miya was facing, occurred. In the prior incident, Mr Miya was found by inspectors to have failed to issue tickets to seven passengers. Regarding Mr Miya's claim that the machine was faulty, resulting in multiple tickets being issued at a press of a button, Mr Nieuwenhuys testified that the machine had a clutch system which ensures that on a press of a button one could only get one ticket issued at a time.

[14] According to Mr Nieuwenhuys, the Department of Transport had chosen that particular machine as part of their contract, because there were a number of safety factors built into the machine. One of the safety measures was that one could not issue a stream of tickets by holding down the button. He further testified that in his 15 years' experience, including the operation of the machine, he had never encountered one able to replicate more than one ticket without resetting. This was because of the clutch referred to earlier. He also pointed out that should there be any difficulty with the machine, he would have expected the driver to report the incident to the company, which, in the case of Mr Miya, there was no such report in the register where such defects are reported.

[15] Regarding the disciplinary hearing of Mr Miya scheduled for 4 June 2001, he testified that the proceedings were chaired by a Mr Smith, and he was the

initiator. The hearing was scheduled to commence at 9h30. However, Mr Miya only arrived at 10h00. Upon arrival, the proceedings commenced. Mr Miya was offered the services of an interpreter as well as a representative. After the preliminary issues had been dealt with, Mr Miya indicated that he was satisfied about the procedure and that he was aware and understood what was taking place. The charge was read to Mr Miya, who did not respond thereto. The chairperson enquired from Mr Miya if he understood the proceedings, and if he needed the assistance of a representative. Without any response, Mr Miya left the disciplinary hearing and caught a bus which left the premises. The hearing was adjourned for about half an hour in the hope that Mr Miya would return. When the hearing resumed, Mr Miya had not returned. The disciplinary hearing proceeded in his absence and the appellant's only witness, Mr Mtolo testified about the incident of 30 May 2001. Mr Miya was dismissed the same day. Mr Nieuwenhuys' evidence concluded the appellant's case in the arbitration proceedings.

[16] In his own defence, Mr Miya testified that on the day of the incident, he encountered a problem with the ticket machine, which produced intermittent tickets at a press of a button. One Inspector Ngcobo boarded the bus as a passenger and he informed him of the problem. Inspector Ngcobo advised him to keep on selling the issued tickets. Inspector Ngcobo advised him to use the tickets for passengers who subsequently boarded so that he does not come short at the end of the day. According to Mr Miya, scholars paid half the price, so he gave two scholars one ticket to share in order to use up the extra tickets he had printed. This explained why there were some passengers who did not have tickets on the day in question. By the time he reached his destination most of the tickets issued by the machine were still with him. When inspectors Mtolo and Thembe boarded the bus, he informed them of the problem and the earlier advice given to him by Inspector Ngcobo. They were apparently not satisfied with his explanation, and requested him to sign a report slip to record the incident, which he did.

[17] Later when he returned to the company, he was issued with a notice to attend a disciplinary hearing. On the same day Mr Smith called him to his office and

expressed his dissatisfaction about his performance, and reminded him of the incident of 21 May 2001, during which he was also found to have had passengers on his bus without tickets. He was requested to sign a final written warning pertaining to the incident of 21 May 2001, which he refused to do. Regarding the disciplinary hearing, Mr Miya testified that on 4 June 2001, he was called to Mr Smith's office where he was informed that he had been dismissed, and asked to sign a document confirming his dismissal. With the advice from some of his colleagues he completed the appeal form and lodged the appeal the same day. After two weeks he was informed that his appeal had been unsuccessful.

#### *The arbitration award*

- [18] On 17 June 2009, the commissioner issued an award in terms of which the dismissal of Mr Miya was confirmed as being substantially and procedurally fair. As to the substantive fairness, the commissioner found the evidence of Mr Miya regarding the alleged defect in the machine, to be improbable. He reasoned that had there been a fault in the machine, Mr Miya would have simply retained the tickets allegedly issued incorrectly until he returned to the depot, or he could have handed over such tickets to the inspectors who had conducted the inspection on his bus. This, according to the commissioner, would have been more in line with the company policy.
- [19] The commissioner found the version of Mr Miya to be a fabrication and most improbable. He accordingly concluded that, on the probabilities, Mr Miya was fairly found guilty on the substantive charge pertaining to the incident of 31 May 2001. As to the sanction of dismissal, the commissioner concluded that it was an appropriate one. For this conclusion, he took into consideration that Mr Miya's conduct was fraudulent towards the employer, and the fact that Mr Miya had a written final warning involving a charge of a similar nature.

#### In the Labour Court

- [20] On 28 July 2009, Mr Miya, aggrieved with the outcome of the arbitration proceedings, launched a further review application (the third review application) to the Labour Court, seeking to review and set aside the

arbitration award referred to above. He contended that the Commissioner failed to properly assess the evidence; and argument presented to him; failed to assess the credibility of witnesses; he issued an award which is not justifiable in relation to the reasons given for it, and that he reached conclusions which were not capable of reasonable justification; he failed to take into account relevant considerations and made findings which are not supported by the evidence; he issued an arbitration award which was not appropriate and thereby exceeded his powers, alternatively issued out an award which was unreasonable.

[21] Incidentally, the third review, like the second one, came before the same learned Judge (Cele AJ) in the Labour Court. The learned Judge took the view that the versions of the parties with regard to procedural fairness had not been properly examined by the commissioner, and that the commissioner had overlooked material evidence relating to what transpired at the disciplinary hearing. The learned Judge reasoned that because it was common cause that Mr Miya had filed an appeal against his dismissal the very day of the dismissal, it was “a clear indication that the probabilities should have been found to favour the version of Mr Miya.” The learned judge also stated that the Commissioner should have found that the witnesses of the appellant “lied on what happened on that day” and that the evidence tendered on behalf of the appellant should not have been accepted “without any kind of confirmation or corroboration.” For that reason, the Labour Court concluded that the dismissal was procedurally unfair.

[22] With regard to substantive fairness, the Labour Court characterised the issue for determination as follows:

‘The issue turns on whether he (Mr Miya) issued (the additional tickets) on his own in order to balance up for passengers whose money he had taken without issuing tickets or he issued the eight tickets because of an instruction given to him by the two inspectors including Mtolo.<sup>1</sup>

---

<sup>1</sup> Para 18 of the judgment.

[23] The Labour Court went on to find that Mr Miya's version that he had issued the additional tickets on the instruction of Mr Mtolo and his colleague, was more probable, and should have been preferred over that of Mr Mtolo. In paras 17 and 18 of his judgment, the learned Judge noted that in the earlier review application, he had expressed concerns about the quality of Mr Mtolo's evidence with regard to whether the additional tickets were issued by Mr Miya on his own or on the instruction of the inspectors (Mr Mtolo and his colleague). Furthermore, the learned Judge found that Mr Mtolo's evidence in the two earlier arbitration proceedings was contradictory, and that he had raised concerns about this in the earlier review application, which concern the learned Judge still had in the second review application. The learned Judge remarked that the evidence on this aspect was "critically important."

[24] On the version of Mr Miya that the machine had malfunctioned, the Labour Court found the evidence of Mr Miya probable, and that the commissioner had failed to deal with the probabilities, and in the process, failed to apply his mind appropriately. It went on to criticise the acceptance of Mr Nieuwenhuys' testimony in this regard, holding that his testimony as to how the machine operated should have been rejected, as he was not an expert on the operation of the machine and this was an issue that needed expert evidence. On the above considerations, the Labour Court concluded that the resultant award by the commissioner was one which a reasonable decision-maker could not issue in the circumstances. Accordingly, the Labour Court reviewed and set aside the award made by the Commissioner and substituted it with an order for reinstatement of Mr Miya with back-pay. The appellant was also ordered to pay the costs of the review proceedings.

#### Issues on appeal in this Court

[25] In this Court, the appellant assailed the judgment of the Labour Court on four grounds. Firstly, it is contended that by virtue of having heard and determined the earlier review application involving the same parties on the same dispute, the learned Judge did not bring to bear, an unbiased, impartial and objective mind on the issues. In essence, the appellant asserted that the learned Judge should have recused himself from hearing the second review application.

Secondly, the appellant argued that the learned Judge erred in finding that because Mr Miya had lodged an appeal on the same day of the hearing, the appellant's witnesses were lying as to what transpired at the disciplinary hearing. Thirdly, it is contended that the Labour Court was wrong in concluding that the evidence of Mr Nieuwenhuys about the operation of the machine should have been rejected merely because he was not qualified as an expert. Lastly, it is argued that the Labour Court should not have ordered reinstatement and back-pay given the lapse of more than 12 years, where Mr Miya had contributed to the delay.

[26] On the other hand, on behalf of Mr Miya, it was contended that Mr Ngcobo was a crucial witness, who was not called by the appellant, and that the commissioner was grossly unreasonable in finding that Mr Ngcobo did not advise Mr Miya as the latter contended he did. It was also argued that the failure by the appellant to call Mr Ngcobo, was fatal to its case before, and that the commissioner should have drawn an adverse inference against the appellant. The suggestion obviously was that Mr Ngcobo would not have been able to refute Mr Miya's evidence that it was on his advice that he used the erroneously issued tickets for passengers who subsequently boarded the bus.

[27] It was also argued that the commissioner ignored relevant evidence. This relates to the number of tickets issued the morning of the day in question. It would be recalled that it was common cause that at 05H16 during that morning, 15 tickets were issued in one minute. According to Mr Miya, this is when the machine malfunctioned. The contention in this regard is that it lends credence to the version of Mr Miya that the machine malfunctioned. Counsel for Mr Miya argued that the commissioner failed to deal with the improbability of so many tickets being issued within a minute in his assessment. Had the commissioner properly applied his mind to this aspect, so argued counsel, the only reasonable conclusion he could have come to was that there was support for Mr Miya's version.

[28] The further argument on behalf of Mr Miya was that the Commissioner misdirected himself by not treating the evidence of Mr Mtolo with caution. It is argued that the latter had given contradictory evidence in the two previous

arbitration proceedings, and therefore, the Commissioner ought to have treated his evidence with caution, and if not corroborated, it should have been rejected in favour of Mr Miya's. By not doing so, the argument goes, the Commissioner came to a conclusion that was unreasonable.

[29] Lastly, it was contended that it was unreasonable and a gross misdirection for the commissioner to rely on the evidence of Mr Nieuwenhuys regarding the operation of the machine, since such evidence required an expert, and Mr Nieuwenhuys did not have the necessary expertise to give such evidence.

[30] From the above contentions, the following issues have crystallised for determination, which I shall consider in turn:

- (a) The Labour Court's treatment of the commissioner's approach to the evidence;
- (b) The lack of impartiality of the Judge on review;
- (c) The significance (or lack thereof) of the date of lodgement of the appeal;
- (d) Expert evidence with regard to the operation of the machine.

*The Labour Court's treatment of the commissioner's approach to the evidence*

[31] It is clear from the judgment that the learned Judge was largely influenced by his own findings in the earlier review application. The learned Judge adopted the same findings and reasoning which led to the setting aside of the earlier arbitration award. That approach, unfortunately, led the learned Judge astray. He overlooked material aspects of Mr Miya's evidence, which were pointed out in the latest arbitration proceedings. Counsel for the appellant contended, correctly in my view, that the learned Judge isolated and confined his judgment to the evidence serving before the Commissioner, thus ignoring the versions which had been proffered by Mr Miya.

[32] Had the learned Judge taken Mr Miya's versions which he proffered from time to time, the inescapable conclusion would have been that the commissioner

was reasonable in the findings he made, based on the credibility findings and probabilities. In my view, part of the reason the learned Judge came to a wrong conclusion on the evaluation of the evidence, was the postulation of the criminal law standard, when he said that all Mr Miya had to do was to establish a version which was reasonably possibly true, as opposed to a version which was more probable than that of the appellant.

*The date of lodging the appeal*

[33] The Labour Court concluded that the date on which Mr Miya lodged an appeal, was a crucial and a determinative factor in confirming Mr Miya's assertion that he was summarily dismissed without a hearing. That date, according to the Labour Court, was 4 April 2001 and was common cause between the parties. First, I fail to understand how the date of lodging the appeal could be "a clear indication" that the probabilities should have been found in favour of Mr Miya, as the Labour Court found. Second, and apart from anything, the Labour Court was in any event wrong to state that it was common cause that Mr Miya's appeal was lodged the same day he was dismissed.

[34] The evidence before the Commissioner was that the appeal was lodged on 5 April 2001, the day after the disciplinary hearing. The appeal form itself is dated 5 April 2001. The Court rejected the evidence of Mr Chetty and Mr Nieuwenhuys in this regard without setting out the reason for doing so. Instead, the Court stated baldly that the Commissioner should have found that they "lied" as to what happened on the date of hearing, and that the commissioner should not have accepted their evidence without some form of corroboration. The Labour Court neither furnished any reasons or motivation for that conclusion nor state the nature of corroboration it expected from the appellant.

[35] Unlike, the Labour Court, I find, on the contrary, that the evidence of those two witnesses was clear and without any inherent contradictions. What is more, it was in fact common cause before the commissioner that Mr Miya had left the

hearing at some stage and returned later that day to obtain an appeal form from Mr Nieuwenhuys. As stated earlier, Mr Miya only lodged the internal appeal on 5 June 2001. The commissioner was thus correct, in my view, in accepting that evidence. Accordingly, the criticism of the commissioner in this regard was unwarranted, and his finding was not reviewable.

#### *Expert evidence*

[36] The Labour Court held that the Commissioner ought to have required expert evidence concerning the function of the ticket-issuing machine. I do not agree. Both Messrs Nieuwenhuys and Chetty gave factual and reliable evidence concerning their experience with the operation of the machine in question, their training thereon and the reason why that particular machine was preferred over others. Part of that reasoning was that it could not issue more than one ticket at a time even if a person pressed the button continuously. What is significant is that none of their evidence was challenged by Mr Miya during cross-examination of the two witnesses. On that basis, I agree with the contention on behalf of the appellant that the Commissioner was entitled to determine the issue on the probabilities. Among the key considerations with regard to the probabilities is that Mr Miya never reported the alleged malfunctioning of the machine and that the machine worked just fine after the alleged incident.

[37] Even if the evidence of Mr Nieuwenhuys regarding the operation of the ticket machine is discarded, one is still left with a sufficient body of evidence, which enabled the commissioner to make a factual determination. The commissioner, after having regard to the evidence, concluded that the appellant's version was the most probable one. He did not misrepresent the evidence or incorrectly record any of the evidence which was before him. On the contrary, he recorded and analysed the evidence with remarkable detail, and applied the correct basis of analysing the evidence, i.e. which version was more probable.

#### *Lack of impartiality*

[38] I did not understand the argument to be that the learned Judge was deliberately biased. As a matter of fact, he was not. Instead, the complaint is that by virtue of having determined the earlier review application, the learned Judge failed to separate the evidence led at the three arbitration proceedings. It is also argued that the learned Judge relied on his prior findings in the review proceedings to adjudicate the review arising from the arbitration proceedings before the commissioner. Whilst it would have been preferable for the learned Judge to have recused himself from the review application forming subject of this appeal, I do not think that anything turns on this aspect. As stated earlier, there is no evidence of partiality or bias on his part. The fact that he imported his own findings in the earlier review application to determine the present one, is not, in itself a manifestation of lack of impartiality.

### Conclusion

[39] To sum up, I agree with the appellant's contention that the Labour Court failed to have regard to the reasons advanced by the Commissioner in support of the arbitration award. What is more, the Court failed to state why the findings and conclusions made by the Commissioner were reviewable, i.e why they did not fall within the band of findings and conclusions a reasonable decision-maker could have reached based on the evidence before him. In my view, there was nothing unreasonable about those findings. As a result, the award issued by the Commissioner should not have been set aside. The commissioner's findings are within the band of decisions which a reasonable decision-maker, applying his mind to the facts before him, would have made. The appeal should accordingly succeed. .

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

1. The appeal is upheld;
2. The order of the Labour Court is set aside and the following is substituted for it:

‘The review application is dismissed. No order is made as to the costs.’

3. No order is made as to the costs of the appeal.

---

TM Makgoka  
Acting Judge of the Labour Appeal Court

Waglay JP and Musi JA concur in the judgment of Makgoka AJA

#### APPEARANCES

FOR THE APPELLANT:

Ms CA Nel of MacGregor Erasmus  
Attorneys, Durban

Instructed by MacGregor-Erasmus  
Attorneys, Durban.

FOR THE FIRST RESPONDENT:

Adv. M. Pillemer SC

Instructed by Jafta Incorporated, Durban