IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

Johannesburg

CASE NO: A5042/99
DATE: 21/08/2000

In the matter between:

MONTEOLI: REATILE OLIVE CECILE Appellant

And

WOOLWORTHS (PTY) LTD Respondent

JUDGMENT

GOLDBLATT J:

[1] The Appellant, who was the Plaintiff in the court a quo, sued the Respondent for damages sustained by her on the 30th of August 1997 when she slipped on a bean in the Respondent's Sandton City store and fell and injured herself. She alleged that the Respondent failed in its duty to keep the floor of such store reasonably safe for the public using the store.

[2] As a result of a separation of issues in terms or Rule 33(4) the court a quo was called upon to decide whether or not the Respondent's negligence was the cause of the Appellant's falling and injuring herself. At the end of the trial the judge a quo granted absolution from the instance and it is against such order that the Appellant now appeals.

[3] It was, correctly in my view, accepted by both parties that the law in respect of this type of accident was correctly set out by Stegmann J in *Probst v Pick 'n Pay Retailers (Pty) Ltd* [1998] (2) All SA 186 (W) where after a very full analysis of both English and South African authority dealing with spillage on shop floors the learned judge after referring to the judgment in the English Court of Appeal in *Ward v Tesco Stores Ltd* [1976] 1 All ER 219 said:

> " In short, all three members of the court were of the view that the plaintiff had the onus of proving negligence on the part of the defendants; and that negligence on their part would be proved if the fact was that the slippery spillage had remained on the floor for a period longer than was reasonably necessary to discover it and clear it up, and not otherwise; and where the learned lords of justices differed was over the question of whether the plaintiff's evidence that she had slipped and fallen in a spillage on the shop floor was sufficient, in the absence of rebutting evidence, to justify the *prima facie* inference that the slippery spillage had remained on the floor longer than was reasonably necessary to discover it and clear it up. The majority seem to have held that such an inference was justified; and Ormrod LJ held that it was not. The latter view is, perhaps, the more strictly logical.
>
> "Of this result some may be tempted to repeat the adage that hard cases make bad law. In my judgment, however, the case should rather be seen to illustrate a more positive, and considerably more important, adage, to the effect that the genius of the common law is not logic so much as experience. There is a sound reason of legal policy why the majority view should be followed: : it is that in such a case the plaintiff generally cannot know either how long the slippery spillage had been on the floor before it caused his fall. Or how long was reasonably necessary, in all of the relevant circumstances (which must usually be known to the defendant), to discover the spillage and clear it up. When the plaintiff has testified to the circumstances in which

> he fell, and the apparent cause of the fall, and has sown that he was taking proper care for his own safety, he has ordinarily done as much as it is possible to do to prove that the cause of the fall was negligence on the part of the defendant who, as a matter of law, has the duty to take reasonable steps to keep his premises reasonably safe *at all times when the members of the public may be using them* (cf. *Alberts v Engelbrecht (supra).* It is therefore justifiable in such a situation to invoke the method of reasoning known as *res ipsa loquitur* and, in the absence of an explanation from the defendant, to infer *prima facie* that a negligent failure on the part of the defendant to perform his duty must have been the cause of the fall. As explained in *Arthur v Bezuidenhout and Mieny (supra),* this does not involve any shifting of the burden of truth on to the defendant: however, it does involve identifying the stage of the trial at which the plaintiff has done enough to establish, with the assistance of reasoning on the lines of *res ipsa loquitur,* a *prima facie* case of negligence on the part of the defendant, so that unless the defendant meets the plaintiff's case with evidence which can serve, at least, to invalidate the *prima facie* inference of negligence on his (the defendant's) Part, and so to neutralise the plaintiff's case, judgment must be entered for the plaintiff against the defendant. In this situation the defendant does not have to go so far as to establish on a balance of probabilities that the accident occurred without negligence on his part: it is enough that the defendant should produce evidence which leads to the inference that the accident which caused harm to the plaintiff was just as consistent with the absence of any negligent act or omission on the part of the defendant as with negligence on his part. The plaintiff will then have failed to discharge his onus, and absolution from the instance will have to be ordered."

[4] Thus the only issue in the trial was whether or not the respondent had produced sufficient evidence to displace the inference that the only cause of the accident was its negligent act of omission. In this regard the respondent called two witnesses namely Mr. Venter and Mr. James.

[5] Mr. Venter, who was the managing member of Control Specialised Cleaning cc ("Specialised Cleaning"), gave evidence that Specialised Cleaning was contracted by the Respondent to clean all its stores nationally including the Sandton City store. He gave evidence that he had been in the cleaning business for 14 years and he was, in my view, an expert in regard to what cleaning system was required to ensure that the floor of the shop was kept in a condition that was reasonably safe for shoppers. In regard to the cleaning system in place at the time of the accident he gave the following evidence.

[6] The tiles used in the Sandton City store were semi-glazed and were cleaned with a neutral detergent and degreaser and no polish or sealants were applied to them. The store was cleaned in two distinct phases on a nightly and daily basis. During the nightly cleaning the store would be swept, the floor scrubbed with detergents using automatic scrubbing machines and the walls cleaned. In respect of the cleaning during the day Specialised Cleaning employed two spillage cleaners of a 7 day basis during trading hours. Of these two cleaners the one worked full-time in the food market and the area surrounding the tills and the other spent 70% of her time in the food market and till area and 30% in the balance of the store.

[7] The primary function of the spillage cleaners in the food market was to constantly roam throughout that area to detect and clean spillages, remove obstacles lying on the floor and to maintain the general tidiness of the store. For this purpose they were armed with a multi-purpose trolley on wheels which had a double bucket mopping unit on it together with a dustbin bag and a floor mop. In addition the spillage cleaners were obliged to follow instructions given to them by the management and staff of the Respondent

relating to spillage cleaning in the store. The reason why one of the cleaners spent all her time in the food market and the other cleaner 70% of her time is that it was the most common area where spillages would occur. In the event of an emergency Specialised Cleaning would supplement the number of spillage cleaners with trolley collectors who were similarly employed by them. Thus Specialised Cleaning was applying 90% of its time to 10% of the store. The spillage cleaners would cover all areas in the food market within a period of 2 to 4 minutes and would in addition have the assistance of the Respondent's staff in detecting spillages. The aforesaid staff were trained and conditioned to keep the store clean and safe and the Respondent had what is known as a "back to basics, tidy as you go " policy.

[8] On Saturdays the spillage cleaners would take lunch after 14hours as the busiest period on a Saturday is between 10hours and 12hours. In the Respondent's stores, month end Saturday is very much the same as any other Saturday, unlike for example Pick 'n Pay. The Respondent does not work on a Saturday month end philosophy as it is a day-to-day store. Mr. Venter stated that if any one spillage cleaner was absent from work she would be replaced that day within an hour.

[9] He was satisfied on the basis of his many years experience and a recent visit to the store that the system in place was adequate to deal with all common problems associated with spillage.

[10] Mr. James, the loss control manager for the Respondent's Sandton City store, testified that in addition to the daily cleaning services performed by Specialised Cleaning, the Sandton City store had a back-up system which he referred to as a paging or call light system. This system consisted of a series of coloured lights housed in the roof of both the top and bottom floors of the

store which served to alert cleaners and staff too, inter alia to spillage problems in the store. He further testified that if a spillage occurred and a cleaner was paged via the call light system the person who discovered the spillage would wait there until the cleaner arrived. Having considered all this evidence the judge a quo said -

> "Having regard to the totality of the evidence, in my view the cleaning system which the Defendant had in place at its store in Sandton City was a proper and adequate system to provide for the safety of its customers and, in the words of Stegmann J, ensured that spillages were not allowed to create potential hazards for any material length of time but would be discovered and the floor made safe with reasonable promptitude."

[11] Counsel for the Appellant argued that the system was inadequate in that it did not cover a variety of situations postulated by him. In my view this argument was without merit and the judge a quo was correct in accepting the evidence of Mr. Venter (who was an expert) as to what system was reasonably required to keep the shop floor reasonably safe for shoppers. Clearly a reasonable system does not have to cover unlikely and farfetched contingencies.

[12] Counsel for the Appellant further argued that it was not sufficient for the Respondent to prove that it had an adequate system but that it should have led evidence that on the 30th of August 1997 the system did not fail due to some negligence on the part of the Respondent its agents or employees. He argued that in particular the Respondent should have adduced the evidence of a witness who could establish what had happened in regard to the cleaning of the shop on 30th August 1997. The Appellant pointed out that such

witnesses were available but were not called. The same argument was addressed to the court a quo and the judge said in regard thereto:

> "As regards the Defendant's failure to call the cleaners who were on duty at the time the Plaintiff slipped and the manager who subsequently interviewed them, which failure was criticized by Mr.Mpofu, I find such failure to be of little, if any, relevance."

[13] In particular Appellant's counsel relied on *Naude NO v Transvaal Boot & Shoe Manufacturing Company* 1938 AD 379 and the following dicta of Stratford CJ and Tindall JA.

[14] At page 39 8 Stratford CJ is reported as having said:

> "Proof in some degree is required from the defendant to rebut the presumption arising from the fact that the occurrence speaks for itself. ... I would observe that if mere explanation (as distinguished from proof by evidence) were sufficient, then in my judgment it would not be a case of res ipsa loquitur. If then the burden of proof incumbent on a defendant is not of the degree necessary to disprove negligence, what is its measure? The answer, it seems to me, is simple and clear: he must produce evidence sufficient to destroy the probability of negligence presumed to be present prior to the testimony adduced by him. If he does that, then - bearing in mind that the burden of proving his allegation is always on the plaintiff and never shifts - on the conclusion of the case the inference of negligence cannot properly be drawn. Put differently, his evidence must go to show a likelihood in some degree of the accident resulting from a cause other than his negligence."

[15] Tindall J.A. at page 392 is reported as having said -

> "Though the inference suggested by the nature of the accident does not shift the burden of disproving negligence onto the defendant, still it does call for some degree of proof in rebuttal of the inference. The conflict in the judgments in the decided cases is as to what that degree of proof is. Where a plaintiff establishes a prima facie case which, unless rebutted, justifies a decisive inference, the nature of the answer which is called for from the defendant to enable him to escape such inference depends upon ' the nature of the case and the relative ability of the parties to contribute evidence on the issue' (if I may borrow words used by the present CHIEF JUSTICE in *Rex v Jacobson & Levy*, 1931, A.D. 466). The mere suggestion of a reasonable theory according to which the accident may have happened without negligence cannot be a sufficient answer. It seems to me clear that where admittedly, as in the present case, the nature of the occurrence itself creates a probability of negligence, it would be a negation of that premise if it were held that the defendant displaced the prima facie evidence by merely proving a reasonable possibility that the accident could have happened without negligence. Where the taking of a certain precaution by the defendant is the initial and essential factor in an explanation of the occurrence consistent with the absence of negligence and the evidence that such precaution was taken is accessible to him and not to the plaintiff, the prima facie evidence afforded by the occurrence is not displaced if the defendant's evidence goes no further than to show that the precaution may or may not have been taken. In my judgment the defendant must produce evidence sufficient to displace the inference that the precaution, which is the very foundation of his explanation, was not taken."

[16] The crux of Appellant's argument was that whilst the Respondent may have proved an adequate system to deal with spillages it had failed to prove that such system did not fail on 30 August 1997 due to some negligence on the part of the Defendant, its employees or agent e.g. that the spillage

cleaners were not on duty or were not performing their duties in terms of the system.

[17] The Respondent contended that the court was entitled to infer from the existence of the system that it was in place and being adhered to at the time of the accident. It was further contended that as the Appellant had never put in issue the question of whether the system was being adhered to it was not necessary to lead evidence in this regard.

[18] In my view the Respondent's contentions are not correct. It was for the Respondent to decide what evidence to adduce in order to prove the existence of a satisfactory system and the fact that it was being adhered to by Specialised Cleaning and its staff. The failure to raise a matter in cross - examination which did not relate to the evidence given by the witness cannot amount to an agreement that such matter was not in issue. It is only when evidence of a disputed factual issue is given that it is necessary in cross - examination to dispute such evidence. In the words of the old cliche it is not necessary to raise skittles to knock them down.

[19] I am satisfied that on the basis set out in *Naude NO v Transvaal Boot & Shoe Manufacturing Company (supra)* "The Defendant's evidence goes no further than to show that the precaution may or may not have been taken." The mere fact that it is proved that a system is in place does not, in my view, prove that its failure to prevent the occurrence was not due to negligence of the party seeking to displace the inference of negligence. I would accordingly have upheld the appeal.

However I am in the minority and accordingly the following order is made:

" The appeal is dismissed with costs."

DATED AT JOHANNESBURG THIS DAY OF AUGUST 2000

L. I. GOLDBLATT

JUDGE OF THE HIGH COURT

WILLIS J:

[20] I have had the benefit of reading the judgment prepared in this matter by my learned brother Goldblatt J.

[21] I regret that I am unable to agree with him.

[22] Although counsel for both parties took the view in the trial and, intially, during the appeal, that the case of *Probst v Pick'n Pay Retailers (Pty) Ltd* [1998] (2) All SA 186 (W) was a correct reflection of the law and neither expressly abandoned this position, it became clear during the course of argument that the correctness of this judgment is not beyond question. It is not clear whether the learned judge in that case (Stegmann J) was applying a maxim (*res ipsa loquitur*) or making a rule of policy. Furthermore, in my opinion, the views expressed in that case at 197g-198c go too far. The application thereof may be apposite when considering absolution from the instance at the close of the plaintiff's case. This I need not decide. It must, however, be offensive to policy to find negligence on the part of a defendant by the artificial application of a maxim at the end of a trial when the defendant has given evidence. This is particularly the case where common sense indicates that, upon an overview of the facts as a whole, there probably was none.

[23] I also disagree that the only issue in the trial was whether or not the respondent had produced sufficient evidence to displace the inference that the only cause of the accident was its negligent act of omission. It is true that the learned trial judge said that:

> " I approach this case on the basis that the plaintiff did, indeed, establish a prima facie case of negligence against the defendant and that the defendant is in these circumstances saddled with the evidentiary onus to neutralise or rebut the prima facie inference. "

[24] It is quite clear, however, that the issue in the trial was whether or not the evidence as a whole justified the inference that the respondent was negligent.

[25] It is absolutely trite that the onus of proving negligence on a balance of probabilities rests with the plaintiff.

[26] (See, for example, *Arthur v Bezuidenhout and Mieny* 1962 (2) SA 566 (A) at 574H and 576G; *Sardi v Standard and General Insurance Co Ltd* 1977 (3) SA 776 (A) at 780C-H and *Madyosi v SA Eagle Insurance Co Ltd* 1990 (3) SA 442 (A) at 444D-G)

[27] Sometimes, however, a plaintiff is not in a position to produce evidence on a particular aspect. Less evidence will suffice to establish a *prima facie* case where the matter is peculiarly in the knowledge of the defendant**.**

[28] (See, for example, *Union Govt v Sykes* 1913 A 156 at 173-4; *Gericke v Sack* 1978 (1) SA 821 (A) at 827D-H and *Macu v Du Toit* 1983 (4) SA 629 (A) at 649B- 650F).

[29] In such situations, the law places an evidentiary burden upon the defendant to show what steps were taken to comply with the standards to be expected. The onus nevertheless remains with the plaintiff.

[30] (See, for example, *Ex parte Minister of Justice: in re R v Jacobson and Levy* 1931 AD 466 at 473; *Durban City Council v SA Board Mills Ltd* 1961 (3) SA 397 (A) at 404C-405A; *Marine & Trade Insurance Co Ltd v Van der Schyff* 1972 (1) SA 26 (A) at 37A-38G)

[31] It is my understanding of the law that the maxim of *res ipsa loquitur* can only come into operation where an inference is at least suggested from the evidence produced.

[32] (See, for example, *Naude NO v Transvaal Boot & Shoe Manufacturing Company* 1938 AD at 392-393 and 398-399).

[33] The maxim does not place any onus on the defendant to explain or rebut anything.

[34] (See, for example, *Arthur v Bezuidenhout and Mieny* (*supra*) at 574A-576G)

[35] In my view, the mere fact that there were three green beans (upon one of which the plaintiff stood and slipped) in close proximity to a large brick pillar at the entrance to the defendant's food hall does not, in itself, create the inference of negligence on the part of the defendant. The occurrence does not speak for itself; there is nothing in the facts themselves that suggests that the defendant was negligent. In other words, the applicability of the maxim of *res ipsa loquitur* does not arise.

[36] In the case of *Hammerstrand v Pretoria Municipality* 1913 TPD 374 - which was a full bench decision- it was said at 376-7:

> "The mere fact of a person having fallen into an excavation which has been lawfully dug by another raises no manner of presumption of negligence on the part of the latter; for, in spite of the defendant having taken all reasonable precautions the plaintiff may have fallen into the excavation through gross carelessness on her own part. There is, therefore, no reason to depart from the ordinary rule of law that he who alleges negligence must prove it. "

[37] It seems to me that in the context of a supermarket or something similar, before the presence of produce such as green beans on the floor can give rise to an inference of negligence, there must be some evidence of either a direct or circumstantial nature that the defendant, at the time of the accident:

(i) ought to have taken steps to prevent the presence of beans on the floor from occurring; alternatively,

(ii) knew; or

(iii) ought to have been aware of their presence; and

(iv) failed to take reasonable steps to remove the offending items forthwith.

[38] It seems common cause that the three beans must have fallen from another shopper's bag. There is nothing to suggest that the defendant could have taken reasonable steps to prevent this from occurring. The fall of beans

from a bag would not occur so as to create a noise such that was probable that the staff of the defendant would immediately have become aware of it. Three beans, especially in the place where they were, would not have been so obviously conspicuous that it could have been expected that the staff would immediately have become aware of them. The sight of three green beans on the floor is not such that it is highly probable that another customer would immediately have drawn the attention of the staff of the defendant to the fact of their presence. It seems to me, in any event, that a bean lying on the floor has a somewhat different character from a spillage.

[39] The case of *City of Salisbury v King* 1970 (2) SA 528 (RAD) had facts remarkably similar to those in this case: in that case a woman slipped and fell on a piece of vegetable matter; the place was a vegetable market. The court said at 528H-529A:

> *"* It would not be possible to prevent vegetable matter finding its way on to the floor no matter what precautions were taken. It follows from this that the mere presence of vegetable on the floor of the market during marketing hours is not, in itself, prima facie evidence of negligence on the part of the appellant.*" and at 529B, "* There is no evidence which established that the appellant had a reasonable opportunity of removing the vegetable matter in question before the accident occurred and no evidence that the appellant had failed to avail itself of such an opportunity. On the evidence led, the possibility exists that the vegetable matter had fallen to the ground only seconds before the respondent slipped on it. It is possible, for instance, that it fell from the basket of a customer leaving the market immediately ahead of the respondent and, of course, there are other possibilities.*"*

[40] A note of caution must be introduced before referring to this case with approval: it was decided in another country in times very different from our own in South Africa today. Moreover, a food hall in a retail store in a shopping centre in Sandton is a somewhat different place from a vegetable market in old Salisbury. Nevertheless, the reasoning seems to me to be unimpeachable.

[41] In the case of *Jones v Maceys of Salisbury (Pvt) Ltd* 1982 (2) SA139 (ZH) in which the plaintiff slipped on a piece of chocolate coated ice-cream in a supermarket, Gubbay J (as he then was) said at 142C:

> ″ I am satisfied that it has not been shown on the probabilities that this small piece of chocolate coated ice-cream lay on the floor for a sufficient length of time to justify a finding that the defendant breached a duty of care which it owed its customers in omitting to sweep it away.″

[42] In the English case of *Ward v Tesco Stores Ltd* [1976] 1 All ER 219 (CA), the majority judgment -which was decided in favour of the customer-referred with approval to the "classical judgement " of Erle CJ in *Scott v The London and St Katherine Docks Co* (1865) 3 H&C at 601:

> " But where the thing is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose from want of care." (my emphasis)

[43] The accident of the kind in this case could occur in the ordinary course of things even if the respondent had "used proper care". The English approach seems much the same as that which has developed in our Courts. The minority judgment of Ormrod LJ seems to fall squarely within the approach adopted by our Courts before the judgment in *Probst v Pick'n Pay Retailers (Pty) Ltd (supra*).

[44] The respondent relied on the classic dictum set out in *Kruger v Coetzee* 1066 (2) SA 428 (A) at 430 E-F as to the requirements for negligence. So did the court *a quo.* In my view, in a case such as this, the conclusion is inescapable that a *diligens paterfamilias,* conducting business as a shopkeeper, would

(a) foresee the possibility of accidents of this kind occurring and

(b) take reasonable measures to prevent their occurrence. (See also, for the general principle, *Sea Harvest Corporation v Ducan Dock Cold Storage* 2000 (1) SA 827 (SCA) and, more particularly, *Alberts v Engelbrecht* 1961 (2) SA 644 (T) at 646D; *Gordon v Da Mata* 1969 (3) SA 285 (A) at 289H, for example).

[45] As Goldblatt J notes, the respondent led cogent and credible evidence as to the cleaning systems which it had in place which were designed, *inter alia*, to prevent this type of accident. Within the constraints of reasonable prudence, these systems would, ordinarily, be more than adequate. It is clear that the Courts must avoid establishing an unrealistic and impossible standard (See, for example, *Hammerstrand v Pretoria Municipality (supra*) at 377; *City*

of Salisbury v King (supra) at 529C-D*; Jones v Maceys of Salisbury (Pvt) Ltd (supra*) at 142D-E and *Turner v Arding & Hobbs Ltd* (1949) 2 All ER 911 (KB)).

[46] In the *Hammerstrand v Pretoria Municipality* case (*supra*) it was said at 377:

> " But the law does not set impossible demands in such cases; it does not make any extravagant demands upon a person. It is entitled to assume that others will also take reasonable care of themselves, will keep their eyes open, and will not take risks of which they are or ought to be aware. "

[47] In *Turner v Arding & Hobbs Ltd* case (*supra*) (in which the facts were very similar to this case) Lord Goddard CJ said at 912C:

> " Assistants cannot be expected to walk behind each customer to sweep up anything that he or she may drop. "

[48] This judgment was approved in the more recent case *of Ward v Tesco Stores Ltd (supra*).

[49] Admittedly, the evidence in this regard was of a rather general nature. Given the overall circumstances of this case, I do not think that more could reasonably be expected of the respondent. An errant bean, lurking where it should not be, does not readily suggest the time of its hapless arrival or the mode of its detection. The respondent's witnesses were cross-examined as to the enquiries that they made after the accident and, not surprisingly, but

nevertheless credibly, they said that all that could be established was that a bean had been on the floor and that the accident had occurred. Where a defendant credibly gives evidence to the effect that it cannot take the matter further, then it seems to me that no inference adverse to it can be drawn. There was no evidence remotely to suggest that the cleaning system failed on the day in question. On the contrary, rigorous cross-examination on behalf of the appellant brought forth answers to suggest that it had been working normally.

> [50] It must be borne in mind that the respondent admitted that it owed its customers a legal duty to take measures designed to prevent accidents of this kind from occurring. The evidence of the cleaning systems in operation at the respondent may well have been led by careful counsel anxious not to expose his client to any unnecessary risks in litigation. Notwithstanding my observations above about the adequacy of the respondent's cleaning systems, it seems to me that the function (whether intended or not) of this evidence was not so much to rebut an inference of negligence (or, more narrowly, fault) that arose *res ipsa loquitur* but rather to prove that the defendant had acted in a manner consistent with its admitted legal duty ('regsplig') to its customers. It operated, in other words, to exclude the element of wrongfulness rather than rebut an inference of negligence (or even fault). A useful discussion on the importance of distinguishing between the two elements of wrongfulness and fault appears, in my respectful view, in the case of *Randfontein Transitional Local Council v ABSA Bank Ltd* 2000 (2) SA 1040 (W) at

1057C-H**.** As was said in *Administrateur, Natal v Trust Bank van Afrika Bpk* 1979 (3) SA 824 (A) at 832H:

> " Na my mening kan en behoort die eisgrond in die onderhawige saak in die uitgebreide trefgebied van die *lex Aquilia* geplaas te word. Hieruit sou volg dat, volgens ons heersende norme, daar onregmatigneid (wrongfulness) vereis word en skuld (fault)**."**

[51] When the evidence as a whole is surveyed, then both the fault and the negligence, if any, on the part of the respondent remain open to doubt to the extent that the appellant has failed to prove its case against the respondent.

[52] For these reasons, which I accept are slightly different from those of the learned trial judge, I do not think that he can be faulted for making an order of absolution from the instance.

[53] I propose that the following order be made:

The appeal is dismissed with costs.

DATED AT JOHANNESBURG THIS DAY of AUGUST, 2000

N.P. WILLIS

JUDGE OF THE HIGH COURT

I agree with the judgment of **WILLIS J.**

M. B. LABE

JUDGE OF THE HIGH COURT

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Date of hearing: 31st July, 2000

Date of Judgment: 21st August, 2000