/SG

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)
DATE: 17/11/2005
CASE NO: 16014/2004

UNREPORTABLE

In the matter between:

JACOBUS HERMANUS SWART PLAINTIFF

And

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

MAVUNDLA, J

[1] The plaintiff is claiming damages from the defendant that he suffered as a result of the injuries he sustained from a motor vehicle collision that occurred on 11 July 2003 when the motor cycle with registration number PGD142GP, then driven by the plaintiff collided with a Toyota Corolla motor vehicle with registration number LKY934GP, (hereinafter referred to as the insured motor vehicle) then driven by the insured drive Mr B C Mahlangu.

[2] The matter had been set down for trial on 3 November 2005. Due to unavailability of a judge to hear the matter on 3 November 2005, the matter came before me on

4 November 2005. The matter proceeded on 4 November 2005 and was postponed for argument on 7 November 2005. I requested the counsel representing the respective parties to have heads of argument submitted to me at 09:00 on 7 November 2005. Mr Fourie who appeared for the plaintiff graciously obliged to my directive and I am indebted to him for his heads of argument. Mr Tshisumba failed to furnish his heads of argument due to unforeseen computer problems he had, according to him. This resulted in my having to hear his submissions without the benefits of having read his submissions before hand so as to enable me to be in a position to dispose of the matter on the very same day. I then reserved judgment.

[3] I now proceed to deliver my written judgment.

[4] At the commencement of the trial and in accordance with the agreement of the parties as recorded in the pre-trial minutes, I proceeded to grant an order separating the merits and the quantum and postponed the quantum *sine die* and ordered that the matter proceed on merits, in terms of section 33(4).

[5] Plaintiff testified in his own behalf and closed his case. The insured driver was called as the witness for the defendant whereafter the case for the defendant was closed. Mention needs to be made of the fact that the parties agreed to hand in a merits bundle which was accepted as exhibit "A", which contains an affidavit by the plaintiff, a copy of his identity document and the police accident report forms. The parties agreed that these documents purport to be what they are and are not necessarily being admitted.

[6] Exhibit "B", which is a rough sketch of the road around the vicinity of the accident scene drawn by the plaintiff the very morning of the trial was by agreement handed in court.

[7] Counsel for the defendant, as he indicated that he is not very competent in Afrikaans, the mother tongue of the plaintiff, he made available an interpreter who is conversant in English, Afrikaans and Zulu. I then directed that the proceedings will be conducted in English and the interpreter would then interpret from Afrikaans to English and *vise visa* in the case of the plaintiff and from the vernacular language spoken by the insured driver to English and *vise visa*. I must record that the said interpreter Ms Dube, is a

competent interpreter, in my view, in the aforesaid three official languages. There was no complaint raised by either party save that in certain instances, the plaintiff who preferred to testify in Afrikaans, would correct her English translation and in certain instances he would testify in English.

[8] Exhibit “B” shows a dual motor carriage, with two lanes on either side of an island carrying traffic to opposite directions in relation to each set of the dual lanes. There is an over carriage way traversing across and over the abovementioned carriage way. This over carriage way is identified as N12 and it is almost at the bottom of the page of exhibit “B”. On the left of the dual lanes that carry traffic moving towards the head of this page, is written Atlas. These two lanes form a kink, annexure “S” like bend from right to left and then the road straightens thereafter. There is a broken lane separating the two lanes. As these lanes head towards the top of the page the left lane breaks into two lanes with the extreme left lane thus further breaking to form a slipway to the left to interlink with an overhead road that runs across the main carriage way. The overhead road is identified as Lakefield Avenue.

[9] On the left hand side of these two lanes carrying traffic from the bottom of the page towards the top of the page, there is a square diagram to represent a notice board outside the road. On the right side of the right lane there is a road starting on the edge of the right lane, running across the island and the other two lanes that is carrying traffic in the opposite direction.

[10] Past the notice board and almost where the left lane starts curving further to the left to form the slipway, there is an X mark which is almost at the edge of but on the road. This X mark was made by the plaintiff as he testified.

[11] His evidence was that on 11 July 2005 he was the driver of the motorcycle with registration number PGD142GP that collided with a motor vehicle with registration number LKY934GP. He is 33 years old and is a senior aviation technician in the employ of South African Airways. He was not on duty at the time. The time was about 19:45 and it was already dark. He drew the road sketch on exhibit “B” and gave a description of this sketch. I have already detailed this exhibit “B” herein above and it is therefore not necessary to repeat the plaintiff’s evidence in this regard.

[12] He was travelling on the left hand side of the lane (on the extreme left lane) along Atlas Road heading towards Lakefield Avenue direction. His motorcycle has two headlights which were on. These are on at all times, even during the day and they were functioning 100%. He had a helmet that had a short mate with a reflective paint on it with an antiglare visor. He wore a Kevlor motor cycle jacket with reflective stripes like the traffic police jacket. The colour of the reflective material was neo orange with yellow reflective. The vicinity was illuminated by street lights. There was one motor vehicle in front on the right lane which made as if it wants to turn to the left and it fell back on the right lane. He and the other motor vehicle slowed down as the resulting of its swerving to the left. On falling back onto its right lane it started accelerating. He also accelerated towards the slipway. Before he could reach the slipway just around the landmark formed by the notice board the other motor vehicle then turned left as if it wanted to take the slipway as well and it collided with him. Its indicators were not on while his were on. He could not see any of its indicators as it was impossible to do so as the accident occurred very fast. He (the insured driver) did not switch on his indicators to show his move to the left or any side at any stage of his travel. He was about the length of a motor cycle or a motor cycle and a

half behind the other motor vehicle. He has no idea at what speed he was travelling. He could not avoid the collision. The insured driver could have avoided the collision if he had kept on his lane. He did not give indication that he was going to move to the left just before the collision while insured driver was on the right lane. He made a sudden move from right to left. The collision was on the left just behind the left rear wheel of the insured motor vehicle. He ended up on his back on the left lane and the motor cycle skidded towards the back in relation to the direction he was heading to, almost where the advertising board is. He did not know what hit him. Where X is, that is where he landed. He confirms that page 1 of exhibit "A" is his statement and page 3 is a copy of his statement. He says he did not speak to the police at the scene of the accident and the only person he spoke to was the tow truck person. He was referred to the police accident report and he says that exhibit "A" on page (5) of exhibit "A" is his motor cycle and exhibit "B" is the insured motor vehicle. He confirms that according to the police accident report and the sketch plan thereon motor vehicle "B" is alleged to have changed lanes in an unsafe manner and collided with motor vehicle "A". According to 7 and 8 on the middle column B was damaged on the left mid back and left mid front respectively and that according to motor cycle "A"

overturned. According to the mini statement the description of the accident is that motor vehicle “A” was travelling direction south on Atlas Avenue on the left lane and motor vehicle B also on the right lane. Motor vehicle B changed lanes to left unsafely and “A” and “B” collided. (The rough sketch of the accident shows motor vehicle “A” in front and motor vehicle “B” at the back both travelling on the same lane towards the same direction.) He further says that he was sober as he was direct from the place of his employment. Because of the clothes that he had on which were having reflectives he was like a Christmas tree.

[13] Under cross-examination when asked as to whether he knew what caused the other vehicle to turn to the left he said he did not know. He said he did not apply brakes because it was a sudden movement and there was no time. He did not try to move further to his left because the collision occurred in the curve. The other motor vehicle was about a length of a motor cycle or a motor cycle and a half ahead of him when it moved to the right. Because it was a sudden swerve to the left he did not apply brakes. His speed was not more than 60 kilometres per hour. His brakes were functioning properly. He says even if he had applied brakes he still could not have avoided the accident. He concedes having said that he did not

see the motor vehicle before the collision. When it was put to him that the insured driver will say he indicated his intention to turn to the left, he persist that there was no indication given. He says at the time of the accident he had not received any treatment for his eye problem because then he did not have eyesight problems. He confirms that the road is well illuminated by the street lights. On being asked as to whether he tried to avoid the accident he says he could not avoid it as he was travelling on his lane and not travelling on the shoulder of the road after the collision. He says he does not know why the driver moved to the left, he may have had a puncture after the collision because the rim of his motor cycle had spikes. He says he does not drink and he was not in a hurry to get home. The particular section where the accident occurred is a 60kph zone. He denies having bumped into the insured motor vehicle and says that it is the insured motor vehicle that bumped into him. He says that he first saw the insured motor vehicle moving to the left around the kink and it corrected itself and moved back into the right lane. At that stage he did reduce his speed. The rear wheel of the insured motor vehicle was on his sight. He concedes that on the second occasion of the insured motor vehicle moving to the left he did not reduce speed. He says he had no chance to avoid the collision.

He was then re-examined and he says that at the date and time of the accident he did not have eye sight problems. He says if the insured driver had indicated he would have seen this. He says he de-accelerated when he saw the insured driver swerve to his left earlier but he accelerated thereafter as he moved back to his lane while he himself he retained his left lane.

To the court's questions he says when he said he does not know what hit him it was a figure of speech. When the first movement to the left by the insured motor vehicle occurred in the kink he was still behind the kink and the insured motor vehicle was inside the kink. It is possible that the insured driver could have seen him and moved back into his lane. He says the accident occurred so fast that he did not know where it came from and what happened. He said the first movement to the left could have been as the result of the kink and thereafter the insured driver accelerated. The move to the left could have been as a result of the incorrect negotiation of the kink.

This concluded the plaintiff's case.

[14] The insured driver Mr Ben Mahlangu also testified. He confirmed that he was the driver of the insured motor vehicle. He was from Delmas and he was travelling along the N12 and moved down on Atlas road and passed some robots after he had stopped there. He took a left turn. He did not see any car. The road in that section is a dual carriageway with two lanes on either side. He went into the fast lane. At the time he was travelling at 40kph. He got a front wheel puncture. He looked at his mirror and he then indicated. He used the left hand side indicator because he wanted to move to the side of the road and he then went to the side. Before he felt that he had a puncture he had moved to the left hand side. After indicating he thought that it was safe because he did not see anything through his mirrors. He had already been out of the road but close to the pavement and on top of the yellow lane. As he had indicated he thought that it is safe and he moved to the left. Then there was a collision. He was on top of the yellow lane, close to the pavement. Immediately before the collision he did not see the motor bike. On 11 July 2003 and a day before then he did not have any problem with his eyes. He does not consume alcohol. After the collision police arrived. He did not sustain any injuries. After the police arrived they asked him some questions. They were speaking in English. As they were talking they would write down.

After taking a statement from him they did not read it out to him. After he had a puncture he decided to move to the left with the intention of putting a spare wheel. Immediately after the accident had occurred he put on his hazard lights and waited for the police. He did not try to run away from the scene of the accident.

[15] He was then cross examined. He confirms having been travelling at 40kph along Atlas road on the right lane he got a puncture. He then checked his mirrors and saw that it was safe he then indicated his intention to turn to the left. As he tried to move to the side he felt being bumped. He had not as yet stopped when he felt being bumped as he was still trying to stop on the side of the road. He felt a vibration indicating that there was something wrong. That was the only thing he felt, the vibration on the steering wheel and he did not proceed driving. He was travelling at 40kph and when he felt the vibration he thought it might be a wheel. He checked his rear and indicated. It did not take long time to check through the mirrors.

He was not in a hurry. He saw no motor vehicle from the rear. He did not see the motor bike. There is no outside left mirror on his motor vehicle. There is the rear inside mirror and the outside

right mirror. He checked through these two mirrors. When asked why it was necessary for him to check the right mirror if he wanted to move to the left he says that he is used to doing so. He disputes that he created the impression to the court that he checked through a left mirror. On being asked as to why did he not mention that his motor vehicle does not have a left outside mirror, he says that he was waiting for a question from the counsel for the plaintiff. If this question had not been put, he concedes that the court would not have known about the fact that his motor vehicle does not have an outside left mirror. He says he checked through the inside and outside right mirrors and he then turned left and the road was still and he took it that it was safe. He did not check the blind spot because there is no mirror on the left outside. He was asked what the reason is for the left outside mirror. His response was that there should not be a high rate of accidents and that people could check through it. When asked as to whether he agrees that there is a blind spot he requested that it be explained to him what a blind spot is. He says he obtained his driver's licence in 1997 and he has been driving since. It was put to him that if he drives a motor vehicle that does not have a left outside mirror he is driving an un-roadworthy motor vehicle. He did not respond to this. Asked as to how, does he check the blind spot he says when one is driving

a right hand motor vehicle, one does so by checking over his shoulder. He conceded that he did not look behind. He then says he looked at the mirror but he did not check the left blind spot. He says the blind spot is the one in the inside mirror. It was pointed out to him that there was a discussion about the left outside mirror and a blind spot and by asking what a blind spot is he is trying to avoid the question. He denies that he is trying to avoid the question. It was put to him that he did not look on the left. He says he did that by looking at the blind spot through the inside mirror. It was pointed out to him that he had said he did not check the blind spot because there is no left outside mirror. He conceded that he did not keep a proper lookout by starting to move to the left. When asked again whether he agrees to this proposition he says he does agree as he did not keep a proper lookout because he ran short of the outside left mirror.

When asked as to whether he told his legal advisors he says he did not tell anyone because he did not have legal advisors. It was pointed out to him that the counsel and the attorney on behalf of the defendant were his legal advisors he says he did not understood the question. He says he did not tell them because they never spoke about it. He denies that it was a quick sudden move to the

left he executed and he says it was a slow movement and does not agree with the plaintiff on that point. When it was pointed out to him that it was never put to the plaintiff that it was not a sudden left move but a slow movement he says it comes from the very fact that he was not driving fast. He says he did tell both his counsel and attorney that it was a slow movement. He says it is the plaintiff who caused the collision because he bumped him on the side. He concedes that he also contributed to the collision because he had thought that it was clear at the back. He concedes that he contributed to the collision because he did not look carefully at the back and had told himself that there was nothing whereas there was the motor bike. He does not agree that he was the sole cause of the collision. He says he had switched on his indicator and then looked at the mirrors and saw that it was safe at his back for him to move to the left and he then moved to the left and was bumped. It was then put to him that he is changing his version because counsel understood him to have said that he first felt a vibration, then checked through his mirrors if it is safe, moved to the left and collision occurred. He disputed that he was changing his version and said that the truth is that he had a puncture and felt a vibration. He concedes that there was no emergency. He does not agree with the version of the plaintiff that the collision occurred in the vicinity

of and around X on exhibit “B”. He conceded that he did not keep a proper look out.

His counsel objected that he should be cross-examined on the police accident report unless the counsel for the plaintiff was going to lead evidence of the person who prepared the said police accident report. I, however, ruled that the witness can be cross-examined thereon.

Mr Mahlangu conceded that the names on the police accident report and the address are his and are correct. He says he told the police that the plaintiff bumped him on the side. He says it is incorrect that the plaintiff did not speak to the police as he saw him speaking to the police and giving them his address. He says he is amazed that the plaintiff would say that he only spoke to other witnesses and gave his address to them and not to the police. He says he does not dispute the rough sketch plan on the police accident report. He concedes that the version on the police accident report was given to the police by him.

[16] On re-examination he says from the point of indicating to the point of the collision it must have taken 5 seconds. After he felt the

vibration on the steering wheel he went out to check the wheel and found that it had a puncture. He confirmed having checked his mirrors and the blind spot.

[17] It is trite law that the plaintiff bears the *onus* of proving his case on a balance of preponderance of probability.

[18] Mr M J Fourie, for the plaintiff contends that it was impossible for the plaintiff to have avoided the collision because of the sudden swerve to the left by the insured driver. The plaintiff's evidence should be accepted as he was an honest truthful witness and the insured driver's evidence should be rejected as he was an evasive unreliable witness. He further contends that defendant pleaded contributory evidence and therefore bears the *onus* of proving such negligence and its causal connection to the damages suffered by the plaintiff and relies on *Beswick v Crews* 1965 2 SA 609 (A) 705E-F. He further submits that the plaintiff was entitled to expect reasonableness rather than unreasonableness and legality rather than illegality from the insured driver and that the insured driver acted unreasonably, illegally and recklessly in executing the sudden swerve manoeuvre to his left and thus causing collision. He relies on *Moore v Minister of Posts and Telegraphs* 1949 1 SA

815 (A) 826 and *Wilson v MacKay and Another* 1962 3 SA 291 (FC) 292G-H.

[20] It is trite law that the party who alleges must prove. The plaintiff bears the *onus* to prove his case. In *Marine and Trade v Pauley* 1965 2 SA 207 (D) 212B it is stated that:

> "Aanvaar moet word dat 'n bestuurder van 'n stadige voertuig wat heeltemal links ry om snelverkeer te laat verby gaan nie onverwags sover na regs moet swenk dat inhalende voertuie in gevaar gestel word nie. Aan die ander kant moet 'n mate van sydelingse beweging toegelaat word en inhalende voertuie moet nie so naby 'n ingehalde voertuig verby gaan dat hy sy bewegisryheid verloor nie. In die onderhawige geval het daar 'n bewys las op die respondent gerus om te bewys dat die rede waarom sy van agter in die trekker gery het was omdat die bestuurder van die trekker onverwags te ver na regs gery of geswenk het."

[21] *In casu* the plaintiff says that the insured driver had made a sudden left manoeuvre and he did not have an opportunity to avoid the collision.

[22] The plaintiff, he had seen the insured motor vehicle making the first left manoeuvre. He slowed down according to him and then the said motor vehicle then accelerated. It is the duty of every motorist to continuously scan the road ahead of him. In *Burger v Santaam Versekeringsmaatskappy* 1981 2 SA 703 (AN) the court held that where a reasonable driver of a motor vehicle approaches a motor car which has over a considerable distance been veering to the right or to its wrong side of the road, he would have to take at least three steps, namely he would have to reduce his speed by braking or moving slowly, he would have to turn left or right as far as possible or he would have to hoot continuously to alert the other driver of his presence.

[23] Mr Fourie submits that there was no need for the plaintiff to have expected the insured driver to drive unreasonably, illegally and recklessly in executing the sudden swerve to the left. He refers to *Moore v Minister of Post and Telegraphs* 1949 1 SA 815 (A) 826.

[24] Indeed in *Rondalia Versekeringskorporasie van SA Bpk v De Beer* 1970 4 SA 707 DE VILLIERS J referred to the *Moore v Minister of Post and Telegraphs* matter and he referred to MALAN AR in

Appeal Court in the matter of *Eagle Star Insurance Co Ltd v Sklar* 1959 (2) PH 0191 as saying:

> "That a driver is entitled to make certain assumptions about the conduct of other drivers, whether he has seen their vehicles or whether their presence is unknown to him because they are hidden by buildings, hedges or other traffic, is, I think, clear. In fact every driver whenever he drives along thoroughfares frequently by other vehicles and pedestrians is constantly and legitimately making assumptions as to their probable behaviour. These assumptions he may have to modify as the behaviour belies expectations, so that usually they must be treated as provisional and subject to further verification. So in *Thornton and Another v Fismer* 1982 AS 398 at 410 SOLOMOS CJ recognises the obligation to watch a vehicle that one has seen, not only after it has begun to show signs of dangerous driving, but in case the owner of the other car should be careless and reckless. To the extent that the assumptions are of the utmost importance, for what one is entitled to expect provides a measure of ones duty to take precautions. Speaking very generally one expects and is

> entitled to expect reasonableness rather than unreasonableness, legality rather than illegality, from other users of the highways."

[25] Whilst it is correct as submitted by Mr Fourie that a driver does not expect unreasonableness and illegality, it is apposite to refer to the matter of *Beswick v Crews* 1965 2 SA 690 at 704 where POTGIETER AJA says that "when overtaking a motor vehicle in front of him, must allow for foreseeable and normal lateral movement of the car in front and of his own car and no more ...

> It is only when owing to the conditions of the road or owing to other circumstances a motorist has reason to believe that a car he wishes to overtake might change its course and swerve towards him that a wider berth must be allowed, because then such a swerve is foreseeable and proper precaution must be taken."

[26] Once the plaintiff observed that the insured driver was straying off his right lane towards the left lane, in my view, this presented to him "other circumstances warranting him, as he intended to pass the insured motor vehicle, albeit the fact that he was on the left lane to keep under careful observation the insured driver (*vide*

SOLOMON CJ's remarks in *Thornton and Another v Fismer supra*) and kept a wide berth or swerved to his left (*vide* POTGIETER AJA in *Beswick v Crews supra*). This must be seen in the context that the plaintiff was on a motorcycle which could easily manoeuvre.

[27] The plaintiff says he was about a length of a motor cycle or a motor cycle and a half behind the insured motor vehicle and yet he says he does not know what hit him. His explanation that it was a figure of speech, in my view is an after thought. The probabilities are that he was travelling too fast under the prevailing circumstances, as it has been alleged in the pleadings, and he failed to keep a proper look out. There is the evidence of the insured driver that he was travelling at 40kph, which has not been controverted, and the plaintiff's evidence that he was travelling at about 60kph. It must further be seen in the light of the evidence of the plaintiff that the insured motor vehicle swerved from right to left and the collision occurred around the area he marked X on exhibit "B", which is almost towards the edge of the left lane. This tends to give credence to the version of the insured driver that he was moving towards the yellow lane when the collision occurred.

[28] In *Premier Milling Co Ltd v Bezuidenhout* 1954 4 SA 625 (T) 630 it is stated that the duty of the driver of the following vehicle is to pay regard to signals or indications that the leading vehicle is about to turn, this clearly postulates that he must keep a proper lookout in the expectation of the possibility of such a signal or indication being made or given; failure in these duties is negligence on his part. This must be seen in the context of the previous sign manifested by the earlier swerving to the left lane at the kink by the insured driver, as per the evidence of the plaintiff. In any event, as I said earlier the plaintiff did not keep a proper look out.

[29] The insured driver, on his own admission he did not keep a proper lookout when he executed the left turn. In *Kenning NO v London and Scottish Assurance Corp* 1963 3 SA 609 at 612B in regard to the legal principles applicable where one vehicle is followed by another in relation to any change of course by the former or a reduction in its speed, reference is made to *Milton v Vacuum Oil Co of SA Ltd* 1932 AD 197 at 205, where WESSELS JA laid it down that a motorist wishing to cross line of traffic: “must give ample warning of his intention both to vehicles behind him and to those approaching him in the opposite direction, and he must do so at an opportune moment, and in a reasonable manner.”

The insured driver had the duty to ensure that, when he changes lanes from right to left, it was an opportune moment to do so. He should have done so by looking carefully through his mirror and turning his head towards his left shoulder to inform himself that there was traffic coming behind before executing his manoeuvre in a reasonable manner.

[30] In the premises I find that the insured driver on his own admission failed to keep a proper lookout because of the proximity of the plaintiff's motor cycle which was about the length of a motor cycle or a motor cycle and a half behind him but on the left land.

The plaintiff was travelling at 60kph while the other car was travelling at 40kph with the latter having already shown signs of not being constant on its right lane of travel and having swerved to the left lane earlier the plaintiff should have anticipated a sudden turn to the left by the insured motor vehicle and he failed to keep a proper lookout. Therefore I find that both the plaintiff and the insured driver were negligent.

[31] Counsel for the defendant submitted that I should find that both parties have contributed to the collision and that I should apportion

the degree of their contributory negligence at 60%/40% in favour of the plaintiff.

[32] In *Union & National Assurance Co of SA Ltd v Mate* 1952 2 SA 109 BROOME JP, at 112 said:

> "Where both parties had no opportunity of avoiding the collision of which both through their own negligence were unaware, it seems that both parties must share the responsibility unless it is possible to determine the respective degree of their contributory negligence."

[33] *In casu*, the insured driver's motor vehicle did not have an outside left mirror. That only should have made him to be more vigilant. This fact coupled with the fact that he was moving from one lane to the other lane, with the latter process invariably having the effect to incommode the path of travel of the plaintiff, I am of the view that his blameworthiness is much higher than that of the plaintiff.

[34] Consequently, I am of the view that fair and reasonable apportionment of the respective degrees of contributory negligence should be 80% against the insured driver and 20% against the

plaintiff. Therefore the liability of the defendant to the plaintiff's proven and or agreed damages is 80%.

[35] The plaintiff having been substantially successful the costs should be borne by the defendant.

[36] Therefore the following order is made:

It is hereby ordered:

1. That the insured driver was 80% contributory negligent.

2. That the plaintiff was 20% contributory negligent.

3. That the defendant is liable to pay 80% of the plaintiff's proven and or agreed upon damages.

4. That the defendant pays plaintiff's party and party costs, inclusive but not limited to the trial costs of 3, 4 and 7 November 2005, as well as the costs of counsel for preparing heads of argument and of attending pre-trial conference, which costs shall relate to the merits.

N M MAVUNDLA
JUDGE OF THE HIGH COURT

16014/2004

HEARD ON: 03/11/2005
FOR THE PLAINTIFF: ADV M J FOURIE
INSTRUCTED BY: MESSRS VAN ZYL LE ROUX & HURTER ATT, PRETORIA
FOR THE DEFENDANT: ADV TSHISUMBA
INSTRUCTED BY: MESSRS IQBAL MOHAMED ATT
DATE OF JUDGMENT: 17/11/2005