“““““““““““““IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

CASE NO: J 958/98

In the matter between:

JJ COETZEE & ANOTHER **Applicants**

and

PITANI (PTY) LTD t/a PITANI ELECTRIFICATION PROJECTS **First Respondent**

PITANI DRILLING (PTY) LTD **Second Respondent**

MGIBA ELECTRICAL (PTY) LTD **Third Respondent**

PITANI CIVIL CONTRACTORS (PTY) LTD **Fourth Respondent**

JUDGMENT

BASSON, J

[1] The applicants, Mr JJ Coetzee and his wife, Mrs EJMW Coetzee (hereinafter referred to as Mr and Mrs Coetzee), alleged that they were dismissed by the respondents on 18 March 1998. The applicants had worked as administrative personnel in the offices of the respondents at Kroondal in the Rustenburg district since 1994. The applicants further alleged that such dismissal for operational purposes was unfair, both substantively and procedurally.

[2] The respondents, Pitani (Pty) Ltd trading as Pitani Electrification Projects, Pitani Drilling (Pty) Ltd, Mgiba (Pty) Ltd and Pitani Civil Contractors (Pty) Ltd, denied that the applicants were ever dismissed. The respondents further stated that the applicants were employed only by the first respondent. It became common cause that some of the respondents were closed corporations and not companies, but nothing much

turns on this. I will refer to the respondents also as "the companies" hereinafter, without inferring thereby that their status as closed corporations is in any doubt.

[3] At the start of the proceedings, the applicants' legal representative placed on record that it was their case that the applicants were dismissed in terms of section 186(a) of the Labour Relations Act, 66 of 1995 ("the LRA") and added that it was not the applicants' case that they were constructively dismissed in terms of section 186(e) of the LRA. The applicants also accepted that the onus to prove that they had, indeed, been dismissed by the respondents, rested upon them in terms of section 192(1) of the LRA.

[4] Mr PW Oosthuizen (hereinafter referred to as Oosthuizen) who was at all relevant times a director or member of all four of the respondents, testified to the fact that the group of companies were experiencing financial difficulties especially as from 1997 when a company which belonged to the group (called "Limpopo") was liquidated.

[5] Oosthuizen also testified that there was a decrease in orders and in work activities as from this time and that the respondents experienced a severe cash flow problem at the beginning of 1998.

[6] It was common cause between the parties that a meeting took place between Oosthuizen and the two applicants on 8/9 March 1998.

[7] Oosthuizen testified that Mr Coetzee had been a close confidant and stated that Mr Coetzee knew about the financial difficulties that the respondents were experiencing. Although this was not conceded in so many words, Mr Coetzee testified that he had offered at this meeting that his and Mrs Coetzee's salaries be cut in half so as to save costs for the companies. It is inconceivable that Mr Coetzee himself would have suggested such a drastic step if he was not convinced that it was necessary in the interests of saving the business. In the event, I have no problem to accept Oosthuizen's evidence that the respondents had to cut costs at the time to stay afloat.

[8] Both the applicants denied Oosthuizen's contention that he had told them to work only a half day on half pay (he stated that the half pay had been his suggestion). It was common cause that the applicants were only paid half their pay as from 8/9 March 1998. Mr Coetzee stated emphatically that the workload was not diminished and that the applicants worked full day for half pay. Mrs Coetzee confirmed this. However, the applicants contradicted one another on an important aspect. Mr Coetzee stated that the agreement was that they would later be paid back the part of the salary that was being taken away. Mrs Coetzee stated that they would only be paid a full wage in future ("vorentoe"), once conditions improved, thereby clearly indicating

that no back payment was to be made.

[9] Oosthuizen testified that he had called Mr Coetzee to another meeting on 18 March 1998. Oosthuizen then gave Mr Coetzee a letter (exhibit A16). It is necessary to quote this letter in full.

[10] The letter, addressed to Mr Coetzee, was headed: "Pitani Projekte: Kennisgewing van werk afleg". The letter read as follows:

" 1. U is bewus daarvan dat die aktiwiteite van PITANI sodanig verminder het dat u pos in gedrang is.

2. Terwyl ons nie in 'n posisie is om meer werk te genereer nie, het ons nie 'n keuse as om u van werk af te sit sonder betaling nie.

3. Kontak my asseblief op 17 April om uit te vind of die werksituasie verander het.

4. Ons is jammer vir die ongerief. Baie dankie vir die goeie diens wat u gelewer het.

5. U is welkom om die saak met die bestuur te bespreek".

The letter was signed by Oosthuizen and dated 18 March 1998.

[11] The following annotations appeared (in Oosthuizen's handwriting) at the bottom of the letter:

" <u>Gesprek</u>

1. PITANI sal nog einde Maart en soos sake ontwikkel die annuiteit betaal.

2.Joop ("Mr Coetzee") bespreek met Piet ("Oosthuizen") woonstel huur voor hy 'n drastiese besluit neem.

3. Betaling vir werkstyd in Maart by einde Maart.

4. Verdere moontlike betalings sal wanneer nodig bepaal word".

Again, these annotations were signed by Oosthuizen. Mrs Coetzee received a similar letter (without the annotations - exhibit A18).

[12] Oosthuizen emphatically denied the applicants' contention that they were dismissed in terms of this letter. He insisted that the applicants remained in the respondents' employ but were merely "laid off" ("afgelê") from work. Mrs IE Venter ("Venter") Oosthuizen's daughter who also worked for the respondents and was the other witness on their behalf, stated in this regard that the applicants were "laid off" from work ("afgesit") for a period of a month.

[13] When giving evidence, the applicants conceded that the letter only foresaw a temporary ("tydelike") position until the circumstances at work ("die werksituasie") changed. Mrs Coetzee went further and

conceded that the employment relationship was "temporarily suspended" ("tydelik opgeskort") in order to see how the situation at work developed. In this regard Mr Coetzee also conceded that, if new tenders had come in, the applicants' services would again have been affordable ("bekostigbaar"). In my view, the contents of the letter given to the applicants also support this conclusion.

[14] In this regard, it was stated at paragraphs 1 and 2 of the letter (quoted at paragraph [10] above) that the activities of the companies had decreased to such an extent that the applicants' positions were at stake (a position already clear at the meeting of 8/9 March 1998 - *supra* at paragraph [7]), and while ("terwyl") the companies were not in a position to generate more work, the respondents had no choice but to "lay off the applicants from work" ("van werk af te sit") without pay ("sonder betaling"). Mr Coetzee further conceded that to "dismiss" an employee "without pay" would be absurd ("onsinnig").

[15] In the light of the concessions by the applicants and the contents of the letter, I am accordingly satisfied that the applicants were not told in terms of this letter that they were, indeed, dismissed on 18 March 1998 and neither did they believe this to be the case. The choice of wording of the letter was unfortunate, especially the word "afsit", which generally means "uit 'n amp te sit" and can be taken to be synonymous with dismissal. However, the usual Afrikaans words for dismissal, that is, "ontslag" of "afdanking", which would have made such intention unambiguously clear, were not used at all.

[16] In the event, in reading the letter as a whole, especially paragraph 3 which made it clear that the applicants were to contact Oosthuizen again within a month (on 17 April 1998) to see if the situation at work had changed, I am satisfied that the letter did not convey to the applicants the fact that they were being dismissed with effect 18 March 1998.

[17] The annotations of Oosthuizen at the bottom of the letter (quoted at paragraph [11] above) also support this conclusion. Mr Coetzee stated that these issues were indeed discussed as annotated.

[18] In terms of paragraph 1 of the annotations, Oosthuizen was still to pay the companies' contribution to Mr Coetzee's annuity until the end of March 1998 and even longer, as circumstances developed. This undertaking was hardly to be reconciled with an intention to end the employment relationship already on 18 March 1998. As it happened, the respondents paid their annuity contribution until June 1998. Even if this was due to an oversight (as Oosthuizen appeared to concede), this does not mean that such clear undertaking had not been given in terms of Oosthuizen's annotation. After all, it was the applicants who initiated the breakdown in the relationship by writing a lawyer's letter on 17 April 1998 (I will return to this issue below).

[19] Further, in terms of paragraph 2 of the said annotations, Oosthuizen warned Mr Coetzee not to take the "drastic step" to give up the flat which the applicants had been renting to be near to their place of work. Although the respondents failed to pay the rent at the end of March, I accept Oosthuizen's evidence that this was due to an oversight. After all, Oosthuizen himself was clearly concerned about the fact that the applicants may loose the flat. What is of greater importance, is the fact that Oosthuizen saw fit to warn Mr Coetzee in this way. Mr Coetzee conceded that Oosthuizen had warned him not to give up the flat before 17 April 1998 in order that the flat will still be available if they came back ("as ons later terugkom"). This was hardly the attitude of an employer who has already intended to dismiss such employees on 18 March 1998. After all, the applicants heeded his warning and stayed on in the flat for a further two months (they had paid the rent themselves for this period).

[20] Moreover, in terms of paragraph 4 of the said annotations, Oosthuizen undertook that "further possible payments" shall when necessary be determined. The applicants contended that these payments were payments in lieu of notice or payments for leave not taken. However, the applicants had to concede that they were unsure about this perception and that Oosthuizen could have had something different in mind. Mr Coetzee was also clearly uncertain as to what was said at the meeting of the 18 March 1998. At first he stated that he himself had said absolutely nothing. Later, Mr Coetzee could recall that he did discuss the issue of the flat. The memory of Oosthuizen, on the other hand, was much better. He stated categorically (and this was also stated by Venter) that such further payments would have been made to assist the applicants even though they had done no work. In other words, the intention was to pay the applicants something even though they did not work, for instance, during April 1998. This contention was also supported by the fact that this paragraph follows upon paragraph 3 in terms of which "payment for March" was undertaken by Oosthuizen.

[21] In the event, although these annotations were clearly only financial in nature, they support the inference that the applicants were not informed that they had been dismissed on 18 March 1998. After all, it was common cause that no notice pay, leave pay or even severance pay were ever offered or paid to the applicants. It is inconceivable that such payments were only to be made at a later stage after the applicants were allegedly told that they were dismissed on 18 March 1998 (this was the applicants' version when giving evidence on the issue of the alleged notice pay and leave pay).

[22] The events which followed subsequent to the meeting of 18 March 1998 also had significance. In this regard it was common cause that Oosthuizen had telephoned the applicants before 17 April 1998, had spoken to Mrs Coetzee and had informed her that the situation at work had not changed.

[23] Oosthuizen testified that he had cancelled the proposed meeting of 17 April 1998 because he had urgent business in the Eastern Cape until the end of that month. Oosthuizen further alleged that had told Mrs Coetzee that the parties should meet again on 30 April 1998 when he returned. Oosthuizen stated that he had also told Mrs Coetzee that they would then talk about "further payments". Venter who had been present (at home) when her father made this call, could also remember all of this, including the fact that her father had spoken of an amount of money that could be paid out.

[24] However, Mrs Coetzee denied that a further meeting or payments was mentioned at all. She also placed in dispute the date on which the telephone call was made. According to her evidence, it was on 16 April 1998, the day before the 17 April deadline.

[25] Oosthuizen stated that the conversation took place on a weekend or holiday and Venter remembered it being on a Sunday evening. Oosthuizen stated that it was around 13/14 April 1998.

[26] The date on which the UIF cards were fetched was also placed in dispute by Mrs Coetzee. Venter stated that the date reflected on the UIF cards, that is, according to her evidence, 16 April 1998, was when Mr Coetzee fetched the UIF cards. Oosthuizen remembered his daughter calling him about the UIF cards and asking him whether she could give it to Mr Coetzee around this date. However, Mr Coetzee could not even remember that he had fetched the UIF cards and stated that it was Mrs Coetzee who went to the respondents' premises to do so. Mrs Coetzee contradicted him and stated that he had indeed fetched the cards, but only in May 1998.

[27] Nothing much turns on these disputed dates. It is common cause that the telephone conversation took place before 17 April 1998. I am also satisfied that the applicants had fetched their UIF cards before this date. Not only was the recollection of the respondents' witnesses better, with Mr Coetzee who, on Mrs Coetzee's evidence, went to fetch the cards only in May 1998 not even remembering that he had done so at all, but also because the applicants had clearly taken a very important decision to refer this matter to their lawyer before 17 April 1998. What therefore makes it all the more probable that they would have been inclined also to fetch their UIF cards was their contention (in terms of the referral documents that accompanied their lawyer's letter of 17 April 1998 - exhibit B) that they were allegedly unfairly dismissed on 18 March 1998. I will return to a discussion of these documents below.

[28] Whether Oosthuizen set up a further meeting for 30 April 1998 and offered to discuss payments are also not determinative issues. After all, Oosthuizen had discussed such further payments with Mr Coetzee already on 18 March 1998 (see the discussion at paragraph [20] above). It was also common cause that Oosthuizen did

say that the situation at work had not changed. In the event, this telephone conversation added nothing to the question of whether the applicants were dismissed or not. In other words, it did not take the matter any further at all. In this regard Mrs Coetzee also testified that, after the meeting of 18 March 1998, the applicants had waited to hear whether they should come back and nothing happened ("niks het gebeur nie").

[29] Oosthuizen testified that, when he returned to the office on 30 April 1998, he found a letter from the applicants' lawyer dated 17 April 1998 on his table.

[30] Mr Coetzee stated in this regard that, immediately after the telephone conversation between Oosthuizen and Mrs Coetzee, the applicants engaged the services of a legal representative.

[31] It was argued on behalf of the applicants that an employer who did not dismiss such employees but merely "suspended" them from employment (as Oosthuizen alleged that he had done) would have come back to them at some stage to make it clear that they were, indeed, still employed.

[32] I agree that it is probable that such employer would usually act in this way. However, Oosthuizen did give an explanation as to why he did not go back to the applicants after 17 April 1998 to assure them that they were not dismissed.

[33] Oosthuizen stated that it was clear to him that the applicants had instituted legal steps against him (as at 17 April 1998) in engaging the services of an attorney. Oosthuizen referred to the lawyer's letter in this regard and pointed out that the attorney invited him to "give your representative instructions" to attend the conciliation meeting at the Bargaining Council (see exhibit B1). Oosthuizen said that he did just that and instructed his labour consultant to handle the matter from that moment on. Oosthuizen alleged that the labour consultant was also instructed to arrange settlement meetings with the applicants but without success. This evidence was not challenged.

[34] Oosthuizen added that the referral form, referring the alleged unfair dismissal dispute to the Bargaining Council (which was attached to the attorneys letter of 17 April 1998 - exhibits B2 to B9), also made it clear to him that further communication with the applicants themselves would prove fruitless. He referred in this regard to paragraph 9.6 of the referral form (exhibit B8 - page 8 of 8). After alleging a dismissal on 18 March 1998, it was stated (and I quote in full):

"Die werkgewer se optrede dui op 'n onbillike ontslag en is die prosedurele billikheidsvereistes, soos vervat in die Wet nie nagekom nie. Die werkgewer word gebonde gehou aan sy optrede en is die vertroue tussen

werkgewer en werknemers sodanig geskaad dat hulle ooit *(sic)* weer vir die werkgewer kan werk nie".

In the event, the applicants sought only compensation (and not reinstatement) as they, in fact, also seek as relief from this Court.

[35] I therefore believe that no negative inference can or should be drawn from the fact that Oosthuizen, after receiving the attorneys' letter dated 17 April 1998 together with the attached referral form, took no further steps to assure the applicants that they were, in fact, still in the respondents' employ. The applicants through their conduct made it very clear that, at that point in time, they were not interested to work any longer for Oosthuizen or his companies. The argument in this regard that Oosthuizen should have cancelled the planned meeting for 30 April 1998 also has no merit because he was already informed on 30 April 1998 that the applicants were simply not interested in attending his meetings any longer.

[36] It is important to note that Oosthuizen's actions as employer were not above reproach. In fact, it was clear on the evidence that Oosthuizen took steps in pursuance of an economic rationale which (even though the existence of such *bona fide* economic rationale was never in doubt - see the discussion at paragraph [7] above) amounted to unfair action towards the two applicants.

[37] Oosthuizen contemplated the retrenchment dismissal of the applicants as it clearly appears from his letter of 18 March 1998 (exhibit B16 quoted at paragraph [10] above). Oosthuizen did not mince words when he informed the applicants that their positions were at stake ("u pos in gedrang is" - see the letter quoted at paragraph [10] above). However, Oosthuizen, in taking a far-reaching decision of "suspending" the applicants from work without any pay at all, failed completely to properly consult on issues such as other alternatives to avoid the dismissals; and appropriate measures to minimise the number of dismissals, to change the timing of the dismissals and to mitigate the adverse effects of the dismissals.

[38] In other words, the employer failed to comply properly with the requirements of section 189(2) of the LRA which places a statutory duty on such employer to consult with the affected employees with a view to reach consensus on these issues. Apart from such duty to conduct exhaustive consultations during a joint problem resolving exercise, such employer is also under a statutory duty to provide written information to the other consulting parties on relevant issues such as the reasons for the proposed dismissals; the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives; and the severance pay proposed (see the provisions of section 189(3) of the LRA). The employer must then also consider the representations made by the other consulting parties and, if the employer does not agree with them, the employer must state the reasons for disagreeing (in terms of section

189(6) of the LRA).

[39] In failing to properly comply with these statutory duties in circumstances where the employer was, indeed, contemplating the dismissal of the two affected employees, the employer *in casu* was acting manifestly unfairly towards the two applicants.

[40] Moreover, the employer was also acting in serious breach of the employment contract.

[41] It matters not that the employer was, on the respondents' version, merely "suspending" the employment contract or "laying off" the two employees "without pay". South African law certainly does not sanction such actions in terms of the law of contract relating to employment contracts. In fact, in terms of the common law of contract, such actions clearly amounted to a breach of the employment contract between the parties. It is therefore a matter of concern that the employer took the ill-advised step of unilaterally confronting the applicants with a "standard" letter (exhibits B16 and B18) and "suspended" them without pay. Mrs Coetzee stated that this had been done also in the case of other employees. This was, however, never taken up in cross-examination with Oosthuizen and it was also never put to him that he had a hidden agenda for getting rid of the employees without complying with his duties in terms of section 189 of the LRA. On the contrary, the evidence that Oosthuizen had a close personal relationship with especially Mr Coetzee and that he was upset ("aangedaan") when he had to confront him with the said letter, was not challenged. Nevertheless, the message contained in the letter constituted breach of contract of a very serious nature.

[42] The employer was not performing its most important reciprocal obligation in terms of the employment contract, that is, to pay a salary to the employees concerned and, at the same time, not allowing them to perform their reciprocal obligation to work. The breach clearly went to the root of the employment contract between the parties. It would appear that the employer had no intention as such for the employment contract or relationship to end. On the contrary, it was the respondents' case (supported by the evidence of Oosthuizen - see paragraphs [12] to [21] above) that the employer intended for the applicants to stop working but to stay in an employment relationship ("[o]m op te hou werk maar in 'n diensverhouding te bly" - the pre-trial minutes at paragraph 1.2.1 *ad* paragraph 2.1 - exhibit A67). In the event, it appears that the employer *in casu* did not have the intention no longer to be bound by the contract. In other words, the employer did not repudiate the contract.

[43] This, of course, does not mean that the employer did not, in fact, commit a breach of contract that went to the root of the employment contract. As was stated above, it is clear that such breach did, in fact, occur *in*

casu.

[44] It is an important principle of our common law of contract that such breach of contract allows the innocent party an election. It is trite law that the innocent party namely has a choice whether to cancel the contract (and claim damages) or, on the other hand, keep the contract in being and enforce it.

[45] In other words, such breach of contract does **not** terminate the employment contract in terms of the law as the innocent party needs to be protected against the guilty party in that the guilty party cannot insist that the results of termination follow. In the case of employment contracts there may be various reasons why an innocent party would wish to keep the contractual relationship intact because various benefits may flow from a continued employment relationship. For instance, in the present matter, the applicants' length of service would not have been interrupted by the breach of contract on the part of the employer and a claim for other benefits, such as a claim for the annuity payments, would have been possible, provided such contract was kept in being.

[46] I am therefore in full agreement with the following statement on the above mentioned legal position:

"One can find *dicta* to the effect that breach going to the root or repudiation in themselves terminate the contract and that the innocent party's 'cancellation' is no more than an acceptance of this position. But such language must be taken to be no more than a figure of speech, intended to convey the idea that the termination of the contract is a process started off by the breach or repudiation. If it were literally true that breach or repudiation terminated the contract the innocent party would have no choice in the matter and the guilty party could insist that the results of termination follow, but it is trite law that he cannot do so and the choice lies with the innocent party whether to cancel and claim damages or keep the contract in being and enforce it" (RH Christie *The Law of Contract* 2nd edition Butterworths 1991 at page 635).

[47] It follows that the breach of contract *in casu* did not terminate the employment contract. Neither did the applicants elect to terminate (cancel) the employment contract. In fact, the applicants insisted that they did not "resign". As such action would require an unequivocal election, the employer's case, that is, that the applicants did resign, cannot be sustained on the evidence presented.

[48] In the event, the breach of contact *in casu* as such did not terminate the contract of employment in terms of the provisions of section 186(a) of the LRA (and I quote): "an employer terminated the contract of employment with or without notice". For the reasons fully discussed above (at paragraphs [12] to [21]) the

applicants also failed to show that the employer either by words or actions indicated that the employment contract was terminated on 18 March 1998, as alleged (or thereafter). It follows that the applicants have failed to show (in terms of the onus contained in section 192(1) of the LRA) that their employer dismissed them. The application therefore stands to be dismissed.

[49] For the sake of completeness it must be pointed out that employees in the position of the applicants are not without a remedy.

[50] Should an employer that contemplates dismissing employees not consult with the affected employees in terms of the duty to do so contained in section 189 of the LRA, the employer is acting in a manifestly unfair manner towards them. Should such an employer then further exacerbate matters by committing a breach of contract that goes to the root of the employment contract, it may very well be that the affected employees are being placed in an invidious position.

[51] Such employees can, of course, elect to accept the breach of contract and cancel or terminate the contract of their own accord and claim contractual damages. More important, however, is the fact that such employees may become entitled to claim constructive dismissal in terms of section 186(e) of the LRA.

[52] This subsection defines dismissal as follows (and I quote): "an employee terminated the contract of employment with or without notice because the employer made continued employment intolerable for the employee". It would appear that breach of contract by the employer (even when going to the root of the employment contract) may usually not be sufficient, in itself, to make continued employment "intolerable", because the requirement of "intolerablility" appears to set a higher test than that of breach of contract *per se*. However, in my view, such breach would be a very important factor in assessing the intolerability of continued employment. Coupled with unfair actions of the employer, for instance, in the form of a breach of the statutory duties contained in section 189 of the LRA, circumstances may very well arise where all of these factors combined makes continued employment intolerable, thereby giving rise to a claim of constructive dismissal in terms of section 186(e).

[53] The applicants in the present matter, however, made it very clear that they were not relying on the provisions of section 186(e) of the LRA and, in fact, insisted that they had never resigned (or terminated the contract of employment). It follows that the issue of constructive dismissal cannot be considered *in casu.*

[54] This does not mean that, in deciding on the issue of a proper costs order, I should not take into account the fact that the applicants were treated unfairly as well as the fact that the respondents committed a serious breach of contract. Accordingly, as the respondents' legal representative also indicated, there should be no

order as to costs against the applicants.

[55] Lastly, and in the interests of completeness, I wish to point out that I was satisfied on the evidence presented that the applicants were employees of all four of the respondents and not only the first respondent, as was alleged on the respondents' behalf.

[56] Both applicants worked in the office from which the operations of all the respondents were run. Oosthuizen who was a director (or member) of all the respondents also worked there. Mr Coetzee indicated that he had received direct instructions from Oosthuizen as well as from other directors of such companies. Moreover, Oosthuizen stated clearly that Mr Coetzee had also ordered fuel and provisions for projects undertaken by the other respondents because this was, indeed, part of his job. Mrs Coetzee worked with matters such as the payment of salaries to employees of all the respondents. That the first respondent was paid a management fee by the other respondents for the work done by the applicants matters not. At the very least the applicants clearly were employees of all four respondents as defined in terms of paragraph (b) of the definition of "employee" contained in section 213 of the LRA (and I quote): "any other person who in any manner assists in carrying on or conducting the business of an employer".

[57] There is also no merit in the suggestion that the applicants were "independent contractors", especially because the applicants worked fully under the control of Oosthuizen. Further, the applicants not merely sold the fruit of their labours but clearly rendered their services, not only to the first respondent, but directly to all four of the respondents.

[58] I make the following order:

The application is dismissed. There is no order as to costs.

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Basson, J

On behalf of applicants: Mr M Scheepers of Riaan du Plessis Inc

On behalf of respondents: Adv R Beaton instructed by Van Zyl

Le Roux and Hurter

Dates of hearing: 18 and 19 May 2000

Date of judgment: 25 May 2000