IN THE LABOUR APPEAL COURT OF SOUTH AFRICA,
CAPE TOWN

Reportable

Case no: CA 8/16

In the matter between:

WILLIAM JAMES **First Appellant**

THOMAS BARRY **Second Appellant**

and

ESKOM HOLDINGS SOC LTD **First Respondent**

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION **Second Respondent**

MR DANIEL DU PLESSIS **Third Respondent**

Heard: 09 May 2017

Delivered: 13 June 2017

Summary: Jurisdiction of the CCMA – employees dismissed for contravening employer's disciplinary code- stole watermelons belonging to a client – CCMA dismissing employees' unfair dismissal claim – employees on review challenging the award on the validity of their dismissal – employees now challenging the validity and lawfulness of the general manager's decision to overturn the chairperson of the disciplinary initial sanction- employees contending that such decision contrary to the collective agreement – held that

the jurisdiction of the CCMA should be established by employees' pleaded case at the CCMA - that the information on the referral form reveals that the employees referred a substantively and procedurally unfair dismissal dispute to the CCMA, thereby clothing the CCMA with jurisdiction. Court deems it unnecessary to deal with the validity and lawfulness allegation as the Constitutional Court in *Edcon* has not overruled the LAC's *dictum* in the same Case – Appeal dismissed and Labour Court's judgment upheld. Coram: Tlaletsi AJP, Davis JA and Phatshoane AJA

JUDGMENT

TLALETSI AJP

Introduction

[1] This is an appeal against the judgment of the Labour Court (per Steenkamp J) in terms of which the learned Judge dismissed with costs, an application by the appellants to review and set aside an arbitration award issued by the third respondent ("the commissioner"), issued under the auspices of the Commission for Conciliation, Mediation and Arbitration ("the CCMA"). The appeal is with leave of the court *a quo*.

[2] The appellants sought to have the award reviewed and set aside on the ground that the commissioner lacked jurisdiction to determine the dispute referred to the CCMA by them because their employer, cited as the first respondent, ("the respondent") acted in breach of a collective agreement. The relief they sought was specific performance of their employment contracts under a common law remedy.

Factual background.

[3] The salient facts necessary for the adjudication of the appeal are common cause. The first respondent is a national electricity provider with various subdivisions and depots. The appellants were until their dismissal employed as senior technicians. The appellants were charged for contravention of

'misconduct 2.8' of the Eskom Disciplinary Code in that "*while on duty conducts himself in an improper or disgraceful manner or at anytime behaves in such a manner, that he harms the image of Eskom in that on 17 January 2013 you participated in the removal of watermelons from a farm in the Rawsonville area without permission of the farmer Mr Bok*".

[4] The factual basis for the misconduct is simply that the appellants deviated from the farm where they were supposed to work on the electrical poles on that day, drove in their Eskom vehicle some 19 kilometres to the farm of Mr Bok where they were caught red-handed by the owner stealing watermelons.

[5] The appellants were found guilty by the chairperson of the disciplinary enquiry and were summarily dismissed. They did not tender any evidence. Their union, National Union of Mineworkers (NUM) lodged an internal appeal against their dismissal on 14 August 2013. The chairperson of the appeal tribunal changed the sanction of dismissal to two weeks' unpaid suspension apparently on historical inconsistency. The appellants resumed their duties on 5 October 2013 after serving the sanctions imposed by the appeal tribunal.

[6] On 22 October 2013, the appellants were informed that the General Manager had set aside the sanction imposed by the appeal tribunal and that they have been dismissed.

The Arbitration award

[7] Aggrieved by the conduct of the respondent, the appellants referred an "unfair dismissal" dispute to the CCMA. On the summary of the facts supporting the dispute, they indicated that they were dismissed for allegedly stealing watermelons and that they wanted to be reinstated.

[8] In the award, the commissioner was satisfied that the appellants were guilty of the misconduct. As to the General Manager changing the sanction of two weeks' unpaid suspension imposed by the appeal tribunal, he found such conduct inconsistent with the Disciplinary Code and for that reason, the

dismissal of the employees was found to be procedurally unfair and awarded each of them R20 000.00 compensation payable by 30 September 2014.

[9] The commissioner found the appellants to have lied throughout the investigation and at the arbitration; that although they were not charged with

theft or attempted theft, their conduct satisfied all the elements of the said charge. He concluded that the first respondent cannot reasonably be expected to continue with the employment relationship under such circumstances. A sanction of dismissal was found to be fair.

The Court *a quo*

[10] Further aggrieved by the award, the appellants sought to review the award and that a declaratory order be made to the effect that their dismissal by the respondent is invalid and of no force and effect. In support of the orders sought the appellants contended that:

9.1 there existed a collective agreement between the appellants' trade union, NUM, and the first respondent regulating the terms and procedures to be followed in all disciplinary enquiries to be conducted by the first respondent against its employees;

9.2 the collective agreement formed part of the appellants' employment contract with the first respondent;

9.3 the collective agreement and procedures outlined therein are binding on the first respondent;

9.4 clause 8 of the collective agreement granted the appellants the right of appeal against their conviction and sanction by the chairperson of the disciplinary enquiry;

9.5 it is nowhere stated in clause 8 or the entire collective agreement that the decision of the appeal tribunal has the effect or status of a recommendation to the General Manager;

9.6 By implication, the decision of the appeal tribunal is final and binding on the first respondent and its managers.

Therefore, the argument continues, the conduct of the General Manager was invalid/unlawful and of no force effect because he contravened the provisions of the collective agreement which had been incorporated into the contracts of employment of the appellants. That being the case, it was contended, there was no valid dismissal, and absent a valid dismissal, the commissioner lacked jurisdiction to arbitrate the dispute.

[11] It needs to be recorded that the appellants deliberately did not base their review application on the Labour Relations Act, 66 of 1995 (LRA), remedies and seek the review on the merits and consequential relief. They solely relied on the breach of the collective agreement.

[12] The first respondent contended that the award was unassailable and the review application had to be dismissed.

[13] The Labour Court, relying on the decision of this court *Edcon v Steenkamp*[1] held that the commissioner had jurisdiction to arbitrate the dispute as they were dismissed for the purposes of the LRA and dismissed the review application with costs. The learned Judge also held that he could not grant any relief to the appellants by virtue of the alleged breach of the collective agreement as the Labour Court had no jurisdiction to do so.

The Appeal.

[14] The appellants do not, in the current proceedings, dispute the allegations of misconduct against them as they view them irrelevant for purposes of determining the issues on appeal. Mr F Rautenbach, on behalf of the appellants, contends that the review of the award should have been granted for the following reasons:

[1] *Edcon v Steenkamp and Others* 2015 (4) SA 247 (LAC); [2015] 6 BLLR 549 (LAC); (2015) 36 ILJ 1469 (LAC).

- Their dismissal was unlawful, invalid and of no force and effect as being in breach of the respondent's procedural code to which it was bound, as it was incorporated in the appellants' contracts of employment.

- An invalid dismissal is in law deemed as no dismissal at all, also for purposes of the referral of an alleged unfair dismissal dispute under s191 of the LRA.

- In the result, the CCMA had no jurisdiction to hear the dispute arising out of their dismissal, the facts grounding jurisdiction having to be determined objectively.

[15] Mr F A Boda SC, on behalf of the respondent, contends that the appellants were dismissed for the purposes of the LRA definition of 'dismissal'. The challenged decision qualifies as a dismissal for the purposes of the LRA even though it may have been contrary to a collective agreement. Furthermore, he contends, the appellants accepted that the decision of the manager constituted a dismissal when they referred the dispute as a dismissal dispute and are not permitted to change course. Before the arbitrator, the dismissal was a common cause fact not placed in issue. He submitted that they should be restricted to their LRA remedies and not be allowed to now pursue a remedy outside the LRA. Counsel submitted that no common law remedy is, in fact, available as the source of their case lies in a collective agreement.

[16] The issue to be determined is whether the arbitrator had jurisdiction to determine the dispute that was referred by the appellants to the CCMA. For the arbitrator to be clothed with jurisdiction, a dismissal of the appellants by their employer should have been established. The test applicable is whether the facts placed before the commissioner, objectively considered, clothed the commissioner with jurisdiction to arbitrate the dispute.[2]

[2] *SARPA v SA Rugby (Pty) Ltd and Others* [2008] 9 BLLR 854 (LAC).

[17] In Gcaba *v Minister for Safety and Security and Others*[3] the Constitutional Court authoritatively held that:

> "Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in Chirwa,and not the substantive merits of the case. If Mr Gcaba's case were heard by the High Court, he would have failed for not being able to make out a case for the relief he sought, namely review of an administrative decision. In the event of the Court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction. An applicant like Mr Gcaba, who is unable to plead facts that sustain a cause of administrative action that is cognisable by the High Court, should thus approach the Labour Court."[4]

The same approach should apply to consideration of the jurisdiction of the CCMA in disputes referred to it.

[17] The starting point would be to investigate what was in fact referred to the CCMA. Put differently, one should establish what the appellants' pleaded case at the CCMA is. In the LRA Form 7.11 for referral of disputes to the CCMA, the appellants indicated their dispute as "unfair dismissal". As summary of the dispute, they wrote that "*members were dismissed for [alleged stealing] of [watermelons]*" and that the dispute arose on 4 October 2013. The outcome they desired is reinstatement. On the part to be additionally

[3] 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC) ; (2010) 31 ILJ 296 (CC) ; [2009] 12 BLLR 1145 (CC)
[4] At para 75.

completed for dismissal disputes only, the appellants indicated that they were dismissed for misconduct, that their '*dismissal*' was procedurally "*unfair*" because "*procedures were not followed"* and that the dismissal was substantively unfair because of an "*inappropriate sanction"*. There is no doubt from the information on the referral form that the appellants referred a substantively and procedurally unfair dismissal dispute to the CCMA. To them there was no doubt that they had been dismissed and they accepted such state of affairs as fact.

[18] An arbitrator faced with the information referred to above is, in my view, entitled to proceed with the arbitration of the dispute. It would be remiss of the arbitrator to ignore the factual material placed before him or her and doubt

that he or she has jurisdiction to arbitrate the dispute. There was nothing that suggested, at this stage, that dismissal could be a contentious issue when all the parties agreed that there had been a dismissal. Furthermore, the evidence tendered by the parties supported their view that there had been a dismissal and what was required of the commissioner was to determine the fairness or otherwise of the dismissal. At no stage during the proceedings was any evidence tendered that could have created doubt that the commissioner lacked jurisdiction. If such evidence was tendered it would have been required of the commissioner to reconsider the jurisdictional issue and to stop the proceedings for lack of jurisdiction.

[19] Section 186 of the LRA defines dismissal to mean, *inter alia*, that an employer has terminated a contract of employment with or without notice. The ordinary meaning of "termination" is to bring to an end. In this *case*, the respondent has through the action of the General Manager brought the contracts of employment of the appellants to an end. It does not matter that the General Manager did so contrary to the collective agreement. The appellants were in the circumstances entitled to approach the CCMA to challenge the fairness of the conduct of the respondent as they did. Having done so, it is not open to them to abandon their arbitrated referred dispute, and claim that they had not been dismissed. Nothing

barred the appellants from approaching the CCMA for relief. It all depended on how they pleaded their case to the CCMA. Termination of the contracts of employment of the appellants was a factual phenomenon which they themselves found to constitute a dismissal that was unfair. In Gcaba (supra) the Constitutional Court warned that "**Once a litigant has chosen a particular cause of action and system of remedies (for example, the structures provided for by the LRA) she or he should not be allowed to abandon that cause as soon as a negative decision or event is encountered**[5].

[20] For the above reasons, I am satisfied that the facts that objectively clothed the commissioner with jurisdiction had been established and on this basis alone the ground of appeal challenging the jurisdiction of the CCMA cannot be sustained. Since there was no challenge to the merits on review in the Court a quo and in this Court, the award as well as the order of the Court *a quo* should stand.

[21] Section 23(1) of the Bill of Rights in the Constitution of the Republic of South Africa, 1996 guarantees everyone the right to fair labour practices. Section 185 of the LRA which is enacted to give effect to the rights in the Constitution provides that every employee has the right not to be (a) unfairly dismissed; and (b) subjected to unfair labour practice. By following the procedure provided for in s 191 of Chapter VIII of the LRA dealing with Unfair dismissals and Unfair labour practices, the appellants were asserting their Constitutional and LRA rights and were seeking redress under the LRA. That was, in fact, their cause of action at the CCMA. In *Steenkamp and Others v Edcon Limited,*[6] Zondo J writing for the majority authoritatively held that:

> '[105] The LRA created special rights and obligations that did not exist at common law. One right is every employee's right not to be unfairly dismissed which is provided for in section 185. The LRA also created principles applicable to such rights, special processes and fora for the enforcement of those rights. The requirement for the referral of dismissal disputes to conciliation is one of

[5] At para 57.
[6] *Steenkamp and Others v Edcon Limited* (2016) 37 ILJ 564 (CC); 2016 (3) BCLR 311 (CC); [2016] 4 BLLR 335 (CC); 2016 (3) SA 251 (CC).

the processes created by the LRA. The CCMA, bargaining councils and the Labour Court are some of the fora. The principles, processes, procedures and fora were specially created for the enforcement of the special rights and obligations created in the LRA. Indeed, the LRA even provides for special remedies for the enforcement of those rights and obligations. The special remedies include interdicts, reinstatement and the award of compensation in appropriate cases. These special rights, obligations, principles, processes, procedures, fora and remedies constitute a special LRA dispensation.

[106] Section 189A falls within Chapter VIII of the LRA. That is the chapter that deals with unfair dismissals. Its heading is: UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE. Under the heading appears an indication of which sections fall under the chapter. The sections are reflected as "ss 185197B". The chapter starts off with section 185. Section 185 reads:

"Every employee has the right not to be—

(a) unfairly dismissed; and

(b) subjected to unfair labour practice."

Conspicuous by its absence here is a paragraph (c) to the effect that every employee has a right not to be dismissed unlawfully. If this right had been provided for in section 185 or anywhere else in the LRA, it would have enabled an employee who showed that she had been dismissed unlawfully to ask for an order declaring her dismissal invalid. Since a finding that a dismissal is unlawful would be foundational to a declaratory order that the dismissal is invalid, the absence of a provision in the LRA for a right not to be dismissed unlawfully is an indication that the LRA does not contemplate an invalid dismissal as a consequence of a dismissal effected in breach of a provision of the LRA.

[107] This indication is reinforced when one has regard to the definition of "dismissal" in section 186(1). It starts with what would ordinarily be understood as a dismissal, namely, a termination of employment with or without notice. That encompasses the ordinary situation of the employer giving notice under the contract of employment and a summary dismissal. But then in five further paragraphs it extends the concept of dismissal far beyond its ordinary meaning.

Once again the absence of any reference to an unlawful dismissal is telling. It suggests that, if a dismissed employee wishes to raise the unlawfulness of their dismissal, they must categorise it as unfair if they are to obtain relief under the LRA.

[108] Another indication that the LRA does not contemplate an invalid dismissal is this. In section 187 the LRA created a new category of dismissals. It called them "automatically unfair dismissals". This is a special category of dismissals. What makes this category of dismissals special is that the dismissals in this category are all based on reasons that we, as society, regard as especially egregious. They include cases where an employee is dismissed for his or her race, gender, sex, ethnic origin, religion, marital status, political opinion, membership of a trade union, participation in a protected strike, exercise of rights provided for in the LRA and other such arbitrary reasons. Another factor that makes this category of dismissals special is that for those cases where an employee's dismissal has been found to be automatically unfair, the LRA provides the Labour Court with power to order the employer to pay double the maximum compensation that the Labour Court would have had the power to order if the dismissal had not been found to be automatically unfair but was found to simply lack a fair reason or was found to have been effected without compliance with a fair procedure.

[109] Most, if not all, of the reasons for dismissal that render a dismissal automatically unfair as contemplated in section 187 are reasons that would ordinarily render a dismissal unlawful and invalid. If the Legislature had intended that under the LRA there would be a category of invalid dismissals, it would have been the automatically unfair dismissals. The Legislature must have deliberately decided that the LRA would not provide for invalid dismissals but rather for automatically unfair dismissals instead. Put differently, the Legislature deliberately provided in the LRA for unfair dismissals and automatically unfair dismissals to be outlawed and to attract a remedy but did not make any provision for unlawful or invalid dismissals. To understand this choice by the Legislature, it is necessary to look back at the legal position before the passing of the current LRA.' [Footnote omitted]

[22] Mr Rautenbach referred us to the remarks by Zondo J from paragraphs 188 to 192 of the Steenkamp matter which according to his interpretation, tend to support his submission that the Constitutional Court recognised the existence of an invalid dismissal where it held that an invalid dismissal is not a dismissal in law and that an employee does not require a reinstatement order pursuant thereto. In those paragraphs, the learned Justice held that:

> '[188] One of the factors on which the first judgment relies to reach the conclusion that dismissal notices given, or, dismissals effected, in breach of the procedural requirements of section 189A(8) are invalid is the proposition that the grant of an order of reinstatement in the case of an invalid dismissal is not automatic but discretionary. Obviously, that implies that an order of reinstatement is competent in the case of a dismissal that has been declared invalid and of no force and effect. I am unable to agree with this proposition. In my view an order of reinstatement is not competent where the dismissal is invalid and of no force and effect. To speak of an order of reinstatement in that case is a contradiction in terms.
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> [189] An invalid dismissal is a nullity. In the eyes of the law an employee whose dismissal is invalid has never been dismissed. If, in the eyes of the law, that employee has never been dismissed, that means the employee remains in his or her position in the employ of the employer. In this Court's unanimous judgment in Equity Aviation, Nkabinde J articulated the meaning of the word "reinstate" in the context of an employee who has been dismissed. She said, quite correctly, it means to restore the employee to the position in which he or she was before he or she was dismissed. With that meaning in mind, the question that arises in the context of an employee whose dismissal has been found to be invalid and of no force and effect is: how do you restore an employee to the position from which he or she has never been moved? That a dismissal is invalid and of no force and effect means that it is not recognised as having happened. It is different from a dismissal that is found to be unfair because that dismissal is recognised in law as having occurred.
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> [190] When a dismissal is held to be unfair, one can speak of a reinstatement but not in the case of an invalid dismissal. This, therefore, means that an order of reinstatement is not competent for an invalid dismissal. An employer against

which an order has been made declaring the dismissal of its employees invalid and who does not want to continue or cannot continue the employment relationship with those employees will have to dismiss them again. Otherwise, they remain in its employ and, if they tender their services or are prevented by the employer from performing their duties, will be entitled to payment of their remuneration.

[191] The distinction between an invalid dismissal and an unfair dismissal highlights the distinction in our law between lawfulness and fairness in general and, in particular, the distinction between an unlawful and invalid dismissal and an unfair dismissal or, under the 1956 LRA a dismissal that constituted an unfair labour practice. At common law the termination of a contract of employment on notice is lawful but that termination may be unfair under the LRA if there is no fair reason for it or if there was no compliance with a fair procedure before it was effected. This distinction has been highlighted in both our case law and in academic writings.

[192] It is an employee whose dismissal is unfair that requires an order of reinstatement. An employee whose dismissal is invalid does not need an order of reinstatement. If an employee whose dismissal has been declared invalid is prevented by the employer from entering the workplace to perform his or her duties, in an appropriate case a court may interdict the employer from preventing the employee from reporting for duty or from performing his or her duties. The court may also make an order that the employer must allow the employee into the workplace for purposes of performing his or her duties. However, it cannot order the reinstatement of the employee.' [Footnotes omitted]

[23] In light of my finding that the appellants knowingly referred an unfair dismissal dispute to the CCMA, having accepted that that tribunal had jurisdiction to assert their Constitutional and LRA rights, that they cannot at this stage after the process has run its course abandon that process and raise a new cause of action, it is not necessary in these proceedings to decide the validity or otherwise of the appellants' dismissal and what the majority could have meant in the paragraphs referred to above. However, one must also take note of the fact that the majority was clearly responding to the view in the minority judgment

that dismissals effected in breach of the procedural requirements of s 189A(8) of the LRA are invalid because, *inter alia*, the grant of an order of reinstatement in the case of an invalid dismissal is not automatic but discretionary. What the majority seem to have said is that one cannot talk of reinstatement if there has not been a dismissal. The majority judgment was not necessarily stating that the LRA recognises an invalid or unlawful dismissal.

[24] It is also significant that the majority judgment does not seem to have, either expressly or by implication rejected the LAC's conclusions in the *Edcon v Steenkamp and Others*[7] matter at paragraphs [40] and [41] where it held that:

> '[40] The implicit acceptance by the Appellate Division in *Schierhout v Minister* of Justice that a wrongful or "invalid" termination can in effect bring a contract of employment to an end has however persisted in our labour law.
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> The notion is comprehended in the definition of "dismissal" in section 186 of the LRA which defines a dismissal to mean inter alia "an employer has terminated a contract of employment with or without notice". The statutory concept of a "dismissal" is not the equivalent of a lawful cancellation of a contract of employment. It encompasses much more. Besides the termination of a contract of employment with or without notice, it includes the failure to renew a fixed term contract in certain circumstances, the refusal to allow an employee to resume work after taking maternity leave, selective non reemployment and a resignation by an employee where the continuation of the relationship has been rendered intolerable by the employer. The statutory concept of dismissal is therefore not restricted to the contractual notion of lawful cancellation and recognises that contract law is an insufficient instrument to regulate the modern employment relationship. The purpose of the wide definition of "dismissal" is to extend the LRA's scope to cover the effective dismissal of employees, whether or not by due termination of their contracts of employment. A wrongful termination without notice which does not constitute a lawful cancellation or rescission of the contract may therefore still constitute a dismissal in terms of the LRA.

[7] [2015] 6 BLLR 549 (LAC).

> [41] The definition of dismissal is thus wide enough to include a wrongful or "invalid" termination in violation of contractual or statutory notice periods within its ambit. The word "terminated" in section 186(1)(a) of the LRA should be given its ordinary meaning of "bringing to an end". The ordinary meaning is not coloured by the lawfulness, fairness or otherwise of the action. The fact that a remedy may exist to redress any wrongfulness or unfairness does not per se alter the consequence of an ending brought about by the employer's action. As a rule, a wrongful or unfair termination will only be reversed (and the contractual rights and obligations restored) by the grant of the remedy of specific performance or an award of retrospective reinstatement at the discretion of the court. The resultant legal position is not unlike that prevailing in administrative law where a declaration of illegality will not have the inevitable consequence that wrongful action will be declared invalid and set aside.' [footnotes omitted] [Emphasis provided]

[25] The above conclusion by the LAC that, inter alia, the purpose of the wide definition of "dismissal" is to extend the LRA's scope to cover the effective dismissal of employees, whether or not by due termination of their contracts of employment should therefore remain the default position in this Court[8]. Having found that the employees were indeed dismissed and that the CCMA had jurisdiction to entertain the appellants' dispute with the respondent, it is not necessary to deal in any detail with the contention that the appellants did not waive their rights to challenge the jurisdiction of the CCMA in circumstances where they failed to do so during the arbitration proceedings; and whether there was a tacit agreement breached by the respondent rendering the appellants' dismissal invalid and unlawful at the stage when they were served with dismissal letters.

[8] In Gcaba (supra) the Constitutional Court held "Lastly, in view of the perceived tensions between Chirwa and Fredericks, it may be useful to keep the essential meaning of and the reasons behind the doctrine of precedent in mind. Often expressed in the Latin maxim stare decisis et non quieta movere (to stand by decisions and not to disturb settled matters), it means that in the interests of certainty, equality before the law and the satisfaction of legitimate expectations, a court is bound by the previous decisions of a higher court and by its own previous decisions in similar matters." At para 58.

[26] In the result, the appeal falls to be dismissed. Regarding costs, it shall be in accordance with the requirements of the law and fairness that there be no order as to costs.

Order.

The appeal is dismissed.

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Tlaletsi AJP

Davis JA and Phatshoane AJA concur in the judgment of Tlaletsi AJP.

APPEARANCES:

FOR THE APPELLANT:	Mr F Rautenbach
	Instructed by Murray Fourie & Le Roux
FOR THE RESPONDENT:	Mr F A Boda SC
	Instructed by Norton Rose Fulbright S.A Inc