IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

JR 398/07

In the matter between:

DR ENOCK NGOBENI **APPLICANT**

and

A.I.S. REDDING S.C. (N.O.) **FIRST RESPONDENT**

MSD (PTY) LTD **SECOND RESPONDENT**

JUDGMENT

Introduction

1. This application seeks to have a ruling dated 31 October 2006 issued by the first respondent in a private arbitration in terms of the Arbitration Act number 42 of 1965 reviewed and set aside. Further, the applicant seeks a declarator that the arbitration agreement concluded by the parties herein does not preclude the applicant from raising a claim based upon a contravention of section 3 of the Protected Disclosures Act number 26 of 2000 ("the PDA"). There are further alternative prayers. The application was opposed by the second respondent in whose favour the award was issued.

2. The arbitration ruling was issued on 31 October 2006 but was received by the applicant on 1 November 2006. The review application was filed on 21 February 2007, which period was way beyond the reasonable period of 6 weeks within which the review application ought to have been delivered.

The applicant has filed a Condonation application. An address from the bar by counsel for the second respondent was the only opposition to the condonation application.

Background facts

3. The applicant was in the employ of the second respondent ("the employer") as a Medical Manager. According to the employer an offensive e-mail was circulated to the employer's worldwide employees on 21 October 2005. The applicant considered the contents of the e-mail to be false, completely unjustified and damaging to the reputation of its Managing Director and its Medical Director. The employer took the position that the circulation was done by the applicant and its Managing Director instructed the applicant via a Mr A Botha, the IT Manager, to recall the message. According to the employer, the applicant refused to recall the message but instead it was recalled by Mr Botha. The employer avers that the applicant sent the same message to its worldwide employers from his private e-mail address. The employer decided to charge the applicant with three acts of misconduct described as:

    a) Sent an offensive e-mail to MSD worldwide;
    b) Refusing to obey a lawful and reasonable instruction from the MD to recall the message and,
    c) Improperly copied the second respondent's global e-mail address book from MSD's system and sent the same offensive e-mail from his private e-mail address.

4. The applicant was found to have committed the acts of misconduct with which he was charged and he was dismissed on 6 November 2005. He lodged an internal appeal. The parties agreed that the unfair dismissal dispute of the applicant was to be referred to arbitration in terms of the

Arbitration Act. They then concluded an arbitration agreement which was reduced into writing. The first respondent was then appointed. On 30 June 2006 the parties convened a pre-arbitration meeting and produced minutes thereof. The arbitration hearing commenced on 10 July 2006 and both parties were legally represented. The applicant had been legally represented at the pre-arbitration meeting as well.

5. At the arbitration, the first respondent raised the issue whether or not it was competent of him to award *solatium* constituting the claim of the applicant. It was agreed that the issue would be dealt with by the parties during their arguments. The second respondent was to begin with the calling of its witness and first called and led the evidence of its MD. The matter was adjourned to allow cross-examination proceed on the next date.

6. The proceedings were resumed on 31 October 2006. Even before cross-examination started, the applicant's representative indicated that the applicant would rely on a breach of the provisions of the PDA. Representatives of the parties, made their submissions on the issue and the first respondent made a ruling that his terms of reference did not include the determination of an automatically unfair dismissal arising out of an alleged breach of the Protected Disclosure Act. It is that finding which is the subject of the present review application.

The arbitration agreement

7. The written agreement concluded by the parties as constituting the arbitration agreement had various clauses which include clauses 2, 3, 5.1, 5.5, and 8.2 with the following provisions:-

"Clause 2: Terms of reference

The arbitrator shall determine whether the dismissal of Ngobeni was substantively and/or procedurally unfair.

Clause 3: Powers of the arbitrator

In determining the issue in paragraph 2 above the arbitrator shall have the same powers as if he/she were a commissioner of the CCMA.

…

Clause 5.1:

The parties undertake to hold a pre-arbitration meeting on a date to be agreed between the parties. Ngobeni undertakes to prepare the pre-arbitration minute.

…

Clause 5.5:

The arbitrator has the widest discretion and powers allowed by the law to ensure the just, expeditious, economical and final determination of the dispute raised in the proceedings

…

Clause 8.1: Review

The arbitrator's award shall be rational and justifiable in relation to the reasons given for the award and in relation to the evidence presented to the arbitrator.

Clause 8.2:

In the event that either party wishes to review the arbitration award, it shall be entitled to do so on the basis set out in section 145 of the LRA and the award shall for all intents and purposes be treated as if it was an award made by a Commissioner of the CCMA."

8. The pre-arbitration minute outlines facts which are common cause but the applicant was to revert to the second respondent on facts that were in dispute. He did so later. It was felt that disputed facts were too numerous to list. The minute outlines the issues to be decided and the precise relief in the following terms:

Issues to be decided

The parties agree that the issues to be decided are whether the applicant's dismissal was procedurally and substantively fair.

The respondent asked the applicant the grounds upon which he alleges that his dismissal was substantively and procedurally unfair. On substantive fairness the applicant contends that the sanction was too harsh. As regards the other grounds upon which the applicant intends relying, he will revert to the respondent.

The applicant contends that his dismissal was substantively unfair on the following grounds:

a) The applicant denies that he committed any misconduct.

b) In the event that it is found that he did commit a misconduct (which is denied) then it will be argued that the sanction to dismiss was unduly harsh in the circumstances.

Precise Relief claimed

The applicant seeks reinstatement with back pay limited to 2 months' remuneration plus costs. In addition the applicant claims a *solatium* based on *contumelia.*

The respondent asked the amount of the *solatium* claimed. The applicant will revert to the respondent in this regard.

The applicant reverted to the respondent to inform the respondent that he would claim a *solatium* in the amount of approximately R1 million.

The chief findings of the first respondent

- At no stage prior to the conclusion of the agreement did either party expressly contemplate that the issue to be determined was a dispute concerning an automatically unfair dismissal and the potential relief of 24 months' compensation.
- The parties intended that he determined the sort of dispute which a CCMA commissioner would ordinarily determine, that is, an ordinary dismissal dispute. His powers were limited to what a commissioner could ordinarily award-that is reinstatement or 12 months' compensation. This view was fortified by two additional considerations:-
    - The dispute, prior to the signature of the arbitration agreement, was about an ordinary dismissal. It was not an automatically dismissal because of the breach of section 3 of the Protected Disclosure Act. The parties did not appear to have this last mentioned cause of action in their contemplation.
    - One is allowed to have regard to the parties subsequent conduct as an aid to determining their earlier intention in concluding a contract. Subsequent to the agreement, the parties attended the pre-arbitration conference at which the relief sought by the applicant was reinstatement and the ordinary measure of compensation, being twelve months. No

reference was made to automatically unfair dismissal and 24 months' compensation.

- Parties would not ordinarily clothe a CCMA commissioner with powers beyond those set out in the LRA-although this may be possible. One would expect an express reference to the additional jurisdiction and powers in respect of automatically unfair dismissal to be included in the arbitration agreement. The parties did not express that situation. They appear to have contemplated that the dispute concerned a conventional unfair dismissal, not an automatically unfair one.
- The terms of reference therefore do not include the determination of an automatically unfair dismissal arising out of an alleged breach of the Protected Disclosure Act.

Grounds for Review

9. The submission was that the first respondent:-

(i) Failed to apply his mind to paragraph 4 of the pre-arbitration agreement, to the surrounding circumstances and to the subsequent conduct of the parties in determining his jurisdiction and what the parties had intended;

(ii) Committed a material misdirection by not hearing evidence when there was a factual dispute before him on the ambit of his powers;

(iii) Misdirected himself materially by failing to consider clause 5 of the pre-arbitration minute with the claim of a *solatium;*

(iv) Misdirected himself materially in taking into account what powers he had in order to determine his jurisdiction. He took into account an irrelevant consideration, having already found that jurisdiction and powers were separate concepts. He should have considered that the arbitration before him was under the Arbitration Act and not the Labour Relations Act. He should have applied the

Arbitration Act to determine what issues he could or could not arbitrate. The Labour Relations Act was only relevant to his powers to decide what relief he could grant to a party;

(v) Committed a material misdirection in holding that his terms of reference did not include the determination of an automatically unfair dismissal and so prevented the applicant from putting forward his case;

(vi) Materially ignored relevant considerations relating to the conduct of the parties more particularly the contents of the pre-arbitration minute which identified the relief claimed and left it open to the applicant to indicate what grounds he relied upon in challenging the substantive fairness of his dismissal.

Alternative relief

10. In so far as the court finds that the arbitrator's award is reviewable, the applicant seeks a declaratory relief to the effect that the arbitrator's ruling does not preclude him from referring a dispute about an automatically unfair dismissal to the CCMA. As an alternative and only if the court finds that the arbitration agreement precludes him from even raising an automatically unfair dismissal before the CCMA, then he seeks an order permitting him, on good cause, to resile from the arbitration agreement and to pursue an automatically unfair dismissal claim in the CCMA. He further seeks an order remitting the matter to the parties to appoint a different arbitrator and if they are unable so to agree, to permit the chairman of the Bar Council of the Johannesburg Bar to appoint an arbitrator.

The version of the second respondent

11. The review application is fatally defective and should be dismissed for that reason alone in that:

- In a review application an applicant must allege and support with credible evidence that the Arbitrator:
  - delivered an award with conclusions which are not rationally connected to the reasons in the award or the evidence before the Arbitrator; or
  - acted in excess of his powers; or
  - misconducted himself in relation to his duties as an Arbitrator; or
  - committed a gross irregularity in the conduct of the arbitration proceedings; or
  - that the award was improperly obtained.

- The application does not allege or support with evidence any of these grounds. In the absence of these allegations properly pleaded, it cannot be contended that the applicant has established a basis to interfere with the award. On this basis alone, the application stands to be dismissed with costs.

- When properly analysed, this entire application essentially boils down to a desire by the applicant to refer for adjudication an allegation that the second respondent acted in breach of the PDA. Nothing in fact precludes the applicant from pursuing such claim in the appropriate forum. The ruling of the arbitrator does not in any way prevent the applicant from instituting proceedings in terms of the PDA.

- In addition, the applicant accepts that the arbitration agreement and the pre-arbitration conference do not expressly provide for a claim based on an alleged breach of the PDA. The applicant is in essence criticising the arbitrator for failing to imply a term in the agreement between the parties. There is no allegation that he exceeded his powers. The allegation is that he interpreted the agreement narrowly

and refused to include a term which was not expressly included in his terms of reference. The complaint in reality is about a difference of interpretation between the applicant and the arbitrator. The applicant is in fact attempting to appeal the ruling under the guise of review.

12. The second respondent proceeded to respond to the individual allegations made by the applicant. The view I have of this matter makes it unnecessary that I should set out each of such submissions.

The submission on behalf of the parties

13. The submissions made by Mr Boda who appeared on behalf of the applicant are essentially that:-

- While it may be so that the initial pre-arbitration agreement does not expressly make reference to an automatically unfair dismissal, the issues were enlarged upon in the pre-arbitration conference when the applicant recorded that he would revert to the respondent about the substantive basis of the challenge to the dismissal and when he claimed a *solatium*.

- The pre-arbitration agreement is a consensual document which binds the parties thereto and obliges the court (in the same way as the parties' pleadings do) to decide on the issues set out therein – *Numsa v Driveline Technologies (Pty) Ltd & Another [2000] 1 BLLR 20 (LAC).*

- The applicant is entitled to enlarge upon the issues contained in the pre-trial agreement if he has not abandoned them, by amending the type of relief sought. In the *Driveline* case the applicant initially referred a dispute based on unfair dismissal but later successfully

sought to enlarge upon the case by including an automatically unfair dismissal.

- The arbitrator must decide upon the true issues that the parties intended for him to decide upon and these issues can be enlarged upon during evidence or in a subsequent pre-trial meeting.

- The fact that the applicant claimed a *solatium* and further left open the substantive basis to challenge the dismissal without the respondent's objection, indicated that the applicant had legitimately enlarged upon the dispute in the pre-arbitration minute and that he was entitled to ventilate a dispute based upon a protected disclosure. If anything, that is why he claimed a *solatium*.

- The authorities indicate that in cases involving an automatically unfair dismissal the measure of compensation is not limited to financial loss but includes a *solatium* – *Ceppawu & Another v Glass & Aluminum 2000 CC [2002] 5 BLLR 399 LAC*.

- The pre-arbitration minute accordingly enlarged upon the disputes contained in the pre-arbitration agreement and the arbitrator was accordingly obliged to determine the applicant's case based on an automatically unfair dismissal. By refusing to allow the applicant to ventilate a case based on an automatically unfair dismissal, the arbitrator in effect committed a gross irregularity.

- By not hearing any evidence concerning background circumstances before deciding that the background circumstances allowed him to restrict his terms of reference, he committed a gross irregularity.

- The main thrust of the arbitration award seems to rest on the proposition that because a CCMA commissioner cannot deal with an automatically unfair dismissal claim, he also could not deal with it in consequence of the fact that the parties had stipulated that he would have the same powers as if he were a commissioner of the CCMA.

- The CCMA is not prevented from dealing with automatically unfair dismissal claims if the parties consent thereto. In the pre-arbitration minute the second respondent expressly recorded that it would not take any points *in limine* after the applicant recorded that he would *inter alia* be seeking a *solatium* in the sum of R1 million. The second respondent allowed the applicant the luxury of enlarging upon the dispute. Consequently, the second respondent had consented to the arbitrator determining the issue.

- Even if the arbitrator did not have the power to grant relief beyond 12 months, he was still not prevented from dealing with the merits of the dismissal. The parties did not limit the arbitrator's jurisdiction based on the reasons for dismissal. On the best case for the second respondent, they simply limited the relief. The Arbitration Act does not prevent the arbitrator from arbitrating a protected disclosures claim. Unlike the CCMA, the arbitrator's jurisdiction was not limited based upon the reason for dismissal.

14. In opposing the application, Mr Ngcukaitobi appearing for the second respondent submitted that:

- In this application, there is no allegation that the first respondent misconducted himself in relation to his duties as an arbitrator. The challenge in this matter is that the arbitrator committed "material

misdirections". A material misdirection is not misconduct. See *Hyperchemicals International (Pty) Ltd and Another v Maybaker Agrichem & another 1992 (1) SA 89 (W).*

- Similarly, in *Bester v Easigas (Pty) Ltd 1993 (1) SA 30 (C)* it was said with regard to setting aside of an award on the basis of misconduct, the applicant would have to show that there was an improper or *mala fide* conduct on the part of the arbitrator in relation to his duties as arbitrator.

- As pointed out in the present matter, there is no allegation that the arbitrator misconducted himself. There is nothing further on the record to substantiate a claim based on misconduct of the arbitrator. The fact that an arbitrator delivered a ruling adverse to one party is not misconduct, even where the arbitrator "wrongly" does so. (*Dickenson & Brown v Fisher's Executors 1915 AD166)*

- The ruling thus cannot be set aside on the basis that the arbitrator committed misconduct in relation to his duties as an arbitrator.

Gross irregularity or exceeding powers

- The founding affidavit does not properly set out the exact grounds of review by reference to the Act. None of the grounds contained in section 33 of the Act have been expressly pleaded by the applicant. From the argument, it can be inferred that the complaint is that the arbitrator committed a gross irregularity by finding that he did not have jurisdiction to determine a dispute based on the breach of the PDA. By its very nature, the dispute cannot be that the arbitrator acted in excess of his powers. An arbitrator who finds that he does

not have powers to determine something cannot sensibly be said to be acting in excess of his powers.

- It is assumed that the complaint of the applicant is that the arbitrator committed a gross irregularity in the conduct of his proceedings. At a formal level, the approach of the applicant – in failing to expressly plead a gross irregularity and apparently relying on it in argument – stands to be criticised. A party wishing to allege a gross irregularity in an award must make that clear in the review application. A respondent in a review application is entitled to know what case it must meet. (*Smuts v Adair & Others [1999] 4 BLLR 39 2 (LC) para 16)*

- The crucial question is whether the conduct of the arbitrator prevented a fair trial of these issues. A wrong view on the law or the facts is not gross irregularity.

  "The power given to the arbitrator was to interpret the contract rightly or wrongly; to determine the applicable law, rightly or wrongly; and to determine what evidence was admissible, rightly or wrongly." – *See Telecordia Technologies Inc v Telkom SA Ltd 2007 (3) SA 266 (SCA)."*

<u>On the facts</u>

- When the facts of this case are considered, no gross irregularity can be said to arise. The issue in dispute concerns the interpretation of the arbitration agreement between the parties. A useful background to the conclusion of the arbitration agreement is set out in the answering affidavit.

- In the answering affidavit, it is stated that after his dismissal, the applicant lodged an internal appeal. The internal appeal was not processed

because the parties decided to refer the unfair dismissal dispute of the applicant to private arbitration.

- From its terms, the agreement does not refer to any alleged breaches of the PDA. The reason for this is that the PDA was not raised by any of the parties at the time the agreement was concluded. Crucially, the applicant also does not allege that the agreement provides for a determination of alleged breaches of the PDA. He cannot do so because on its plain terms, the arbitration agreement does not refer to the PDA. In fact, there was no reference to the PDA by any of the parties until 31 October 2006.

- On that day (31 October 2006) the applicant did not argue that the agreement refers to the PDA nor did he argue that the pre-arbitration minute made references to the PDA. In his argument before this court, the applicant does not allege that the PDA appears from the arbitration agreement. He does not even allege that the arbitration agreement was amended to include the PDA. He cannot make any of these arguments because the agreement does not refer to the PDA nor is there a record of any amendment to the agreement.

- In the argument on behalf of the applicant, reliance has been placed on the contents of the pre-arbitration minute concluded on 30 June 2006. At paragraph 4 of that minute, the Applicant informed the second respondent that he would “revert” to it concerning other grounds on which he contends that his dismissal was substantively unfair. It is also argued that in that minute, the applicant claimed *solatium*. This court is then urged on the basis of paragraphs 4 and 5 of the pre-arbitration minute to find that the arbitrator should have expanded the scope of his powers. The applicant’s entire argument is, with respect, flawed.

- The applicant's reference to the decision of the LAC in *NUMSA v Driveline Technologies (Pty) Ltd & Another [2000] 1 BLLR 20 (LAC)* is also misplaced. That case did not concern the question raised by the present matter. As usefully summarised by Conradie JA, that case was "an appeal against a refusal by the court *a quo* to grant an application for an amendment to the appellant's statement of case. The present case is about a private arbitration agreement concluded in terms of the Arbitration Act, which was not the issue in *Driveline Technologies*.

- The applicant also argues that by undertaking to revert to the second respondent with regards to "other" grounds on which he claims that his dismissal was substantively unfair, he "left the door open" to make a claim for alleged breach of the PDA. There are two reasons why this argument cannot be accepted. Firstly, the issue in this case is whether there was an agreement to expand the terms of reference of the first respondent. The fact that the applicant undertook to revert to the second respondent about grounds for alleged substantive unfairness does not amount to an agreement. It is manifestly not an agreement. Secondly, on the facts, the applicant reverted to the second respondent about the reasons for his claim of substantive fairness.

- The arbitrator cannot therefore be criticised for deciding the question about the scope of his powers by making reference to the arbitration agreement. He cannot be criticized for refusing to introduce a term to the agreement in the face of a clear dispute between the parties about whether he could award *solatium*.

Analysis

15. As already indicated the review application is to be considered together with a condonation application. The issues between the parties have not

yet been resolved as the arbitration hearing had just commenced. An approach which will tend to provide future guidance of the parties will be followed in the disposal of the pertinent issues.

16. In respect of a condonation application, the approach to be adopted is well settled. The approach followed in *Moila v Shai NO & Others [2007] 28 ILJ 1028 (LAC)* by the learned Zondo JP is appropriate in the present matter. He had the following to say:

> (34) "…… where, in an application for condonation, the delay is excessive and no explanation has been given for that delay or an explanation has been given but such 'explanation' amounts to no explanation at all, I do not think that it is necessary to consider the prospects of success.
>
> (35) In *Melane v Santam Insurance Co Ltd 1962 2 (4) SA 531 (A) at 532* C-F Holmes JA set out the factors that need to be taken in to account in considering an application for condonation where sufficient cause – which is the same as good cause – must be shown before condonation can be granted. One of the principles he set out is that, although the factors he set out therein are interrelated and are not individually decisive, if there are no prospects of success there would be no point in granting condonation…"

17. An unacceptable explanation for the delay remains just that, whatever the prospects of success on the merits – See *Chetty v Law Society, Transvaal 1985 (2) SA 785*.

18. The explanation proferred for the delay must now be considered. In doing so, I take note that the applicant received the arbitration ruling on 1 November 2006. Six weeks would expire around 18 December 2006. The review application was filed on 21 January 2007. There is therefore a

period of about 8 weeks that the review application was delayed for. The delay appears to have been occasioned in the main, by legal representatives of the applicant. The explanation is that the applicant approached three advocates, each of whom could not timeously give him the assistance he needed in processing the review application. What is more disturbing is that no confirmatory affidavits were filed from these advocates which fact waters down the very explanation sought to be made for the delay. There are unexplained periods such as the period 13 December 2006 to 14 January 2007, when it was said that the instructing attorney spoke to a certain Advocate Fourie, as neither of his other standing counsel were available. As Advocate Fourie was unavailable, he referred the instructing attorney to Advocate Venter. The e-mail of 21 December 2006 by Advocate Venter explains only a short period when he needed to scrutinise the paper and study relevant law. That the offices of the applicant's attorney were closed during 15 December 2006 to 15 January 2007, appears irrelevant as he was briefing counsel for the applicant during the same period. By 12 January 2007 the necessary documents for the review application had not been drafted. So nothing much had been achieved and a brief had to be retrieved from Advocate Venter. The explanation for the period 14 January to 13 February 207 is far from being satisfactory when seen against the papers that were subsequently filed. The applicant has not taken this court into his confidence on the explanation proferred. As these are material periods for which no explanation was given, the explanation is not acceptable. On this basis alone I am prepared to dismiss the two applications.

19. However even as I consider the prospects of success, it seems to me that there are no prospects of success in this matter. The submissions made by Mr Ngcutaitobi persuaded me into accepting that the first respondent committed no reviewable defect. There is no allegation made in the papers that the first respondent misconducted himself in relation to his

duties as an arbitrator. The “material misdirections” referred to in the papers by the applicant are not the misconduct. The decision in the case of *Hyperchemicals International (Pty) Ltd and Another v Maybaker Agrichem & Another 1992 (1) SA 89 (W)* is apposite. In page 97 lines C-E the following appear:

> ‘ “As I read Dickenson & Brown v Fisher’s Executors 1915 AD 165, the misconduct which entitles a Court to set aside the award of an arbitrator must amount to dishonesty. I think that is the true reading of the judgment……Now Dickenson and Brown v Fisher’s Executors is express authority for the proposition that a mistake made by an arbitrator, either by fact or of law, is no ground for interfering with an arbitrator’s award, and unless I misunderstood that judgment, so long as a mistake is *bona fide,* it does not matter whether it is gross mistake or a slight mistake, in either there is no foundation for this Court’s jurisdiction to interfere with the award and set it aside.” ‘

20. In the present matter, no case of an act of dishonesty has been made out against the first respondent. Nor are the grounds outlined by the applicant related to the other grounds provided by the Arbitration Act as explained in Dickenson’s case.

21. Further, it is ludicrous to submit that the pretrial agreement between the parties entitled the applicant to enlarge upon the substantive fairness of the dismissal even after the hearing had commenced in this case. The first witness of the second respondent had completed or was about to complete his evidence in chief. In fact the matter was postponed on the understanding that cross-examination was to commence when the matter resumed. It could not reasonably be argued that at that stage the second respondent would be a party in an agreement to enlarge the substantive fairness of the dismissal. That approach would probably have prejudicial effects on how the second respondent was to run its case. The applicant

failed to timeously outline his reliance on the Protected Disclosures Act so that the second respondent would be enabled to deal with that issue through its first witness, If it chose so to do. Accordingly, in my view there never was an express or tacit agreement to enlarge the ambit of the scope of the matters in dispute. The decision in *Cone Textile (Pty) Ltd v Ayres and Another 1980 (4) SA (ZAD)* is of no assistance to the applicant in this regard.

22. It remains open to the applicant, at his discretion to refer a dispute pertaining to a breach of the Protected Disclosures Act to an appropriate forum. In my view he does not need a declarator from this court.

23. Accordingly, the applicant has not shown any prospects of success which when weighted against a not so good explanation, would justify the granting of the condonation application. It must follow then that the condonation for the late filing of the review application should not be granted.

24. The following order will therefore issue:

    1. The application for condonation is dismissed.
    2. The review application is dismissed.
    3. The matter is remitted to the first respondent who is to enable the parties to proceed with the arbitration hearing in this matter.
    4. The applicant is to pay costs of the condonation and the review applications.

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Cele AJ

APPEARANCES:

For the Applicant: Adv F A Boda instructed by S S Jugwanth Attorneys
For the Respondent: Adv T Ngcukaitobi instructed by Bowman Gilfillan

Date of Judgment: 27 June 2008