



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Reportable
Civil Case No. 1176/2013

In the matter between:

KFC SWAZILAND (PTY) LTD	1ST APPLICANT
MARIO DA CONCEICIAO BETTEN COURT PIMENTA N.O.	2ND APPLICANT
ZACHARIAS PRINSLOO N.O.	3RD APPLICANT

and

DUPS PROPERTIES (PTY) LTD	1ST RESPONDENT
THE REGISTRAR OF DEEDS	2ND RESPONDENT
THE ATTORNEY GENERAL	3RD RESPONDENT

Neutral citation : K.F.C Swaziland (Pty) Ltd v Dups Properties (Pty) Ltd
(1176/2013) [2014] SZHC 229 (19 SEPTEMBER 2014)

Coram : Q.M. MABUZA - JUDGE

Heard : 27/2/2014

Delivered : 19/9/2014

**SUMMARY : CONTRACT – SETTING ASIDE OF – ON GROUNDS OF –
MIREPRESENTATION – BREACH – REPUDIATION –
INTERPRETATION OF CONTRACT - PAROLE EVIDENCE RULE –
USE OF EXTRINSIC EVIDENCE.**

The Applicants and the first Respondent entered into three separate agreements namely; a sale agreement, a lease agreement, and construction agreement. The Applicants contend that the agreements are linked and because of this linkage the construction and sale agreement should be read together. And that the construction agreement is collateral to the sale agreement. It was submitted on behalf of the Applicants that the court should invoke the parole evidence rule in order to interpret the construction agreement.

The parole evidence or integration rule confines the parties to the written terms of the agreements concluded between them. The agreements are separate and have no nexus clauses linking them to one another.

JUDGMENT

MABUZA -J

- [1] The first Applicant is **KFC SWAZILAND (PTY) LTD**, a company duly registered within the Kingdom of Swaziland with its principal place of

business situated at Portion 7 of Lot No. 273, in the Township of Manzini, District of Manzini, Kingdom of Swaziland.

- [2] The second and third Applicants are adult businessmen cited in their nominal capacities and as trustees of the Pimento Swaziland Family Trust.
- [3] The first Respondent is **DUP'S PROPERTIES (PTY) LTD**, a company duly registered within the Kingdom of Swaziland with certificate of incorporation number 21/1966 and its principal place of business situated at Plot 105, Corner of Mahleka & Masalesikhundleni Streets, Manzini, District of Manzini, Kingdom of Swaziland.
- [4] The second Respondent is the Registrar of Deeds for Swaziland who is represented by the third Respondent, the Attorney General of Swaziland.
- [5] The Applicants seek to set aside three agreements relating to the ownership, occupation and improvement of a property in Manzini (“the property”) on the basis of misrepresentation alternatively breach of contract. The three agreements that the Applicants seek to set aside are:
 - 1.1 A sale of land agreement, entered into on 19 December 2012, relating to Portion 7 of Lot No. 273, in the Township of Manzini, District of Manzini (“the property”).

1.2 A construction agreement relating to the property, entered into on 19 December 2012.

1.3 A lease agreement relating to the property, entered into on 11 June 2012.

[6] The Applicants at paragraph 89 of the founding affidavit have advanced the argument that the business relationship between the parties was regulated by a lease agreement, an agreement of sale and a construction agreement. That each document records an aspect of the overarching agreement, and that they should be read together. They say that a failure to abide by one agreement automatically affects the other two agreements.

The 1st Respondent denies this and argues that each agreement stands alone because each is contained in separate documents.

[7] The first Applicant operates a KFC on the property. Prior to the sale, the Pimenta Swaziland Family Trust (“the Trust”) owned the property. The first applicant’s franchisor, Yum International, requires that certain upgrades take place on the premises, which in turn require expansion of the building. The Manzini Municipal Council (“the Council”) directed that any expansion must involve the building of additional floors.

[8] The Applicants say that as the Trust could not at the time afford to build additional floors, it sold the property to the first respondent and entered into

a construction agreement with the latter in terms of which the first respondent would build the additional floors to enable the first Applicant to retain its franchise.

[9] The dispute between the parties is that the first deed of sale was concluded on 5 December 2011 (Annexure “PDS4”). However that agreement contains no obligation to renovate the structure on the property sold and no construction agreement was concluded between the parties. There is also no suggestion contained in the Applicant’s papers that an oral construction agreement was then concluded.

[10] On the assumption that a valid sale agreement (Annexure “PDS4”) had been concluded between the first Applicant and the first Respondent they concluded a lease agreement on 11 June 2012 (Annexure “PDS6”). However, the sale agreement turned out to be null and void and the Trust refused to transfer the property to the first Respondent.

[11] The Trust and the first Respondent thereafter on 19 December 2012 concluded a second valid sale agreement (Annexure “PDS16”) in terms of which the property was transferred to the first Respondent in January 2013. A perusal of Annexure “PDS 16” reveals that:

- (a) it is silent on the question of the alteration of the premises;

- (b) specifically records in clause 9.1 that the document constitutes the sole record of the agreement between the parties;
- (c) specifically records in clause 9.2 that no party shall be bound by any representation, warranty, promise or the like not recorded therein;
- (d) specifically records in clause 14 that all previous agreements are cancelled and are of no force and effect.

[12] The Trust and the first Respondent also concluded a construction agreement (Annexure “PDS 17”). A perusal of “PDS 17” reveals that:

- (a) it is silent on what had to be constructed;
- (b) records that the purchaser will begin construction on or before 15 February 2013;
- (c) records in clause 1 thereof that construction shall be finalized on 15 August 2013;
- (d) records that construction is dependent on all approvals being obtained and that the parties will use their best endeavours to ensure that the dates are adhered to;
- (e) records in clause 3 that the purchaser should provide a contractor on the premises who is reputable;
- (f) specifically records that in the event of a dispute between the parties, that dispute shall be submitted to and decided by

arbitration in accordance with the rules of the Arbitration Foundation of South Africa (“AFSA”);

- (g) does not provide for cancellation of the construction agreement or the sale agreements.

[13] The Applicants seek to set aside the sale, lease and construction agreements on the following grounds:

- (a) misrepresentation;
- (b) breach;
- (c) repudiation.

Misrepresentation

[14] In our law a misrepresentation, which induced a party to agree to be bound by a contract, may be relied on by that party to avoid the contract.

See: **Crockroft v Baxter** [1955] 4 All SA 184 (C), 1955 (4) SA 93 (C)

Fitt v Louw [1970] 2 All SA 542 (T), 1970 (3) SA 73 (T)

Indrieri v Du Preez [1989] All SA 254 (C), 1989 (2) SA 721 (C) 728-729

[15] In order to cancel the agreement based on misrepresentation in *casu* it is necessary to prove:

1. that the first respondent represented to the Trust that it would engage in construction activities of a nature that would enable upgrades to the premises to the franchisor's satisfaction;
2. that the representation was false;
3. that the representation was made by the first respondent or its agent;
4. that the first respondent's representation was material – in other words, that it would have influenced a seller to enter into the contract;
5. that it was foreseeable that the representation could induce the seller to whom it was made to enter into the sale agreement;
6. that the representation factually induced the seller to enter the sale agreement.

See Amler's precedents of pleading, 6th edition, at page 294

[16] The Applicants argue that the first Respondent represented to the Trust that it would engage in construction activities and that by the construction deadline it had built nothing. Furthermore, once it started building, it built in direct contravention with the Town Council's directive, which led to the Council's putting a stop to all construction.

[17] They argue that even if the first Respondent intended to effect the necessary construction activities, the fact remains that it has failed to do so. At best for the first respondent, its representation that it would build the necessary improvements was a negligent one. A reasonable person in its place would have ascertained whether or not it was able to perform the necessary construction: namely the building of additional floors without shutting down the business.

[18] They argue further that there are various indications that the first Respondent did not intend to build, including De Sousa's statements to Mphiwa Dlamini, the fact that the Respondents have never in correspondence suggested that there is a dispute as to what must be built, the manner in which the first Respondent demanded higher rental after purchasing the property, the abortive urgent application and the refusals to arbitrate.

[19] In answer to the accusation of misrepresentation it was argued for the first Respondent that the Applicant's case of misrepresentation has undergone a material change from what was first contained in the founding affidavit. That they initially based their case on a misrepresentation as to the first Respondent's intention to purchase the building and then to "drive" the first Applicant from the premises. It also alleged that the first respondent "consistently represented... that it intended building. This case then

changed in the replying affidavit when it was alleged that the case for misrepresentation rested on the first Respondent's stated intention to construct additional floors, use AMS Contractors and effect changes to the building without shutting down the first Applicant's business. Furthermore, in the Applicants' supplementary heads of argument an attempt has been made to strengthen the Applicants' case by alleging a new misrepresentation not previously pleaded to the effect that the building plans approved in March 2013, which did not call for the removal of the property's roof, had been changed. It is then said that this was "one of the representations" that induced the Applicants to enter into the agreement (hereafter attempting to broaden the case). Finally and perhaps most telling, the Applicants in paragraph 19 of the same heads for the first time seek to rely upon fraudulent misrepresentation, apparently in an attempt to overcome clause 9.2 of the sale agreement. They argue further that there is a material difference between an allegation of a "misrepresentation" or even "false misrepresentation" and a fraudulent misrepresentation. See **Breedt v Elsie Motors (Pty) Ltd** 1963 (3) SA 525 (A). That the case made out by the Applicants did not incorporate the latter concept.

[20] As stated in paragraph 11 (c) hereinabove the sale agreement specifically records in clause 9.2 that no parties shall be bound by any representation,

warranty, promise or the like not recorded in the agreement. This clause has the effect that it precludes the Applicants from relying upon any ground of misrepresentation to set aside the agreement of sale including reliance upon fraudulent misrepresentation. The South African Appellate Division and subsequently the Supreme Court of Appeal have consistently upheld the validity of such clauses and have not permitted the parties to resile therefrom. See **S.A. Central Ko-Op Graanmaatskappy Bok v Shifren** 1964 (4) SA 760 (A); **Brisley v Drotsky** 2002 (4) SA 1 (SCA).

[21] Furthermore the construction agreement is not only silent on what alterations have to be made to the premises but it also does not record any of the alleged undertakings made or guarantees given in regard to the alteration of the premises prior to the conclusion thereof.

[22] The Applicants' contention that the sale, lease and construction agreement are linked agreements with the effect that a breach or a misrepresentation made in respect of one agreement has the result of invalidating all three agreements, has no merit by reason of the fact that the agreements themselves do not record this contention, there is no cross reference in the agreements themselves and each agreement contains its own breach or dispute resolution provisions; see **Cash Converters Southern Africa (Pty)**

Ltd v Rosebud Western Province Franchise (Pty) Ltd 2002 (5) SA 494 (SCA).

[23] There is a dispute of fact on the papers concerning the allegations of misrepresentation which must be decided in the first Respondent's favour on the answering affidavit. See **Plascon-Evans Paints Ltd v Van Riebeck Paints (Pty) Ltd** 1984 (3) SA 623 A.

[24] In the result I am of the considered view that a case of misrepresentation has not been made out by the Applicants.

Breach and Repudiation

[25] As stated earlier the Applicants argue that the sale agreement is linked or collateral to the construction agreement, alternatively the obligations imposed by the one are synallagmatic to the obligations imposed by the other. Acceptance of the repudiation of the construction agreement brings an end to both the construction agreement and the sale agreement.

[26] That in the event that this court does not set aside the agreements on the basis of a misrepresentation, and in the event that it finds that the cancellation of the construction agreement cancels the sale agreement, the Trust hereby accepts the repudiation of the construction and sale agreements by the first Respondent.

[27] That first Respondent's conduct demonstrates a deliberate and unequivocal intention not to be bound by the construction and sale agreements, *inter alia*, its refusal to build additional floors with the approved contractor evidences an intention not to comply.

[28] That repudiation or anticipatory breach of a contract gives rise to a right to cancel the contract. [**Schlinkmann v Van der Walt** [1947] 3 All SA 92 (E) 919].

[29] To buttress their arguments further they state as delineated by Harms, *Precedents of Pleading*, 6th edition, page 340 that:

- “(a) repudiation is a breach in itself;
- (b) the ‘intention’ does not have to be either deliberate or subjective but is simply descriptive of conduct heralding non-performance or mal-performance on the part of the repudiator;
- (c) although it is a convenient catchword, ‘acceptance’ does not ‘complete’ the breach; it is simply the exercise by the aggrieved party of the right to terminate the agreement. [**Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd** [2001] 1 All SA 581 (A), 2001 (2) SA 284 (SCA)]”; and that a repudiation entitles the aggrieved party to seek restitution. Harms *supra* at 340.

[30] The 1st Respondents response to the argument on breach is set out in paragraph 10 – 15 of his Heads of Argument and is set out hereunder.

The case for breach

[31] That the Applicants face a number of difficulties in seeking to make out a case based on breach the first of which is that no case has been made out that the agreement of sale has been breached in any manner. This agreement is the key agreement between the parties in terms of which ownership of the immovable property was transferred to the first respondent. In the absence of any breach of this agreement there is simply no basis for setting aside the sale and requiring re-transfer of the immovable property to the trust.

[32] As has already been alluded to in paragraph 12 hereinabove the agreement is silent on what alterations the first Respondent was obliged to make to the building. This is not a case of ambiguity of the terms of the agreement as submitted by the Applicants but rather an agreement which is silent on a material issue as a result of which it is void for vagueness. The agreement is simply incomplete and in such a case the court will not make a contract for the parties and go outside the words they have used. The court will also not find *consensus ad idem* by mere conjecture.

[33] There is also a clear dispute between the parties as to what is to be built and such a dispute must be referred to arbitration under the auspices of AFSA. The attempt by the Applicants to appoint Advocate Flynn as an arbitrator was not a referral to AFSA in accordance with its Expedited Rules and it constituted a unilateral attempt to appoint an arbitrator which is contrary to arbitration principles and contrary to AFSA rules. These rules are specific in the manner in which a dispute is referred to arbitration. In terms of rule 2 a claimant must initiate the dispute resolution procedure by notifying the AFSA secretariat in writing declaring the nature of the dispute. In terms of rule 3 early settlement procedures are prescribed. In terms of rule 4 the AFSA secretariat will enquire from the parties whether they have agreed on an arbitrator in which event that arbitrator will be appointed by the secretariat. If no arbitrator has been agreed upon then the secretariat itself will select and appoint a suitable arbitrator.

[34] It follows, therefore, that the dispute between the parties must be referred to arbitration in accordance with the clear terms of the construction agreement. Only an expert arbitrator will be able to determine the dispute that has arisen concerning the manner in which construction should proceed and particularly, whether the foundations of the present structure are capable of

bearing the additional floors and whether the building must be vacated while it is being worked on.

[35] Clause 8 provides that in the event of a breach of the sale agreement written notice must be given and cancellation may only occur on 10 days' written notice. No cancellation notice has been given. No notice of breach was given to the first Respondent nor was there any breach alleged.

[36] In my view the first Respondent's failure to make alterations to the building arises directly from the first Applicant's refusal to vacate the premises, it being its contention that it should be left in occupation of the premises in order to trade in takeaway foods while major alterations are being effected to the building. It would seem that this is simply not possible having regard to the affidavits of the civil/structural engineers Mr. Ncongwane attached to the first Respondent's supplementary affidavit and Mr. Elijah Simelane attached to the Applicant's fifth affidavit. Mr. Ncongwane who is a civil and structural engineer stated in his affidavit as follows:

“(i) The existing building which is the Kentucky Chicken site next to the Manzini bus rank in Manzini was designed to carry only one floor (basement excluded). The approved plans provide for four floors including the basement with the roof of the old building remaining intact and taking up the whole of the second floor. In terms of the new plans submitted the roof will be removed thereby creating space for an additional floor where the roof would have been. The new plans also

provide the first Applicant with 329 m² of additional space as is required by the lease agreement. This structure will also comprise four floors.

- (ii) Irrespective whether the altered building is constructed in accordance with the current approved plans or the new plans, new structural members will have to be designed to carry the extra load of additional floors including foundations, beams and columns. From a construction point of view building these new structures will require full access to all areas of the existing building by the contractor.
- (iii) Alterations to a building produces many hazards including dust and noise. It is also unsafe to move construction equipment over an occupied building and to perform construction work over such a building which continues to be occupied. To do so would constitute a safety hazard to the occupants and to the public.
- (iv) It is accordingly my professional opinion that irrespective of the plans utilized for the alteration of the building, it is essential for the tenant to vacate the building while construction is ongoing. It is also my view that the Manzini municipality will not approve alterations of the building without the tenant vacating the property.”

[37] On the other hand Mr. Elijah Simelane attested to a confirmation affidavit on behalf of the Applicants. He is a professional engineer. This is what he says of the project:

- “(i) Additional floors can be added to the building without the closing down of the business of the first Applicant. With good management practices and planning skills, this can be achieved without posing an undue risk to worker or public safety.
- (ii) I am of the opinion that if work requiring to be done over, under and inside the existing building is carried out only in the evenings, when the building is not occupied, additional floors can be built without the need to shut down the first Respondent’s business. By using the correct materials

and work methods, the existing structure will support additional floors. Adhering to correct site safety guidelines will ensure that workers are able to build the additional floors without incurring unnecessary risks.

- (iii) I agree with Mr. Ncongwane that it will be unsafe to carry out work over the existing building when the building is occupied.
- (iv) I disagree with Mr. Ncongwane that for work to be carried out over the existing building, the tenant must vacate the property. I propose that such work be carried out only when the building is not occupied (that is in the evenings). This standard practice in the construction industry, both in this country and abroad.”

[38] It should be borne in mind that the Applicants’ case that it would always have been entitled to continue occupying the premises while they were being altered is not supported by either the sale agreement or the construction agreement.

[39] Furthermore, the Applicants’ case that it was a term of the agreements concluded that AMS Building Construction would be the appointed contractor responsible for alterations is directly contradicted by clause 3 of the construction agreement which permits the first Respondent to appoint a contractor as long as the contractor is reputable and registered.

[40] Without deciding the merits of the dispute between the parties, the court made an interim order on 16 August 2013 that the building operations

should commence within five days of the court order. The first Respondent complied with this court order by commencing building operations so that the first Applicant's existing premises would be enlarged but without removing the roof on the current structure so as not to interfere with the first Applicant's business.

[41] However the Manzini City Council stopped the first Respondent from continuing construction on the grounds that it required a multi-storey structure to be erected with the result that the first Respondent has not been able to continue construction until the plans that it submitted were approved, which approval has since been granted.

[42] It would seem that the new plans were submitted because the Manzini municipality required a multi-storey building to be erected and the plans envisage the erection of such a building; and the plans provide for an extra 329 m² to be added on to the first applicant's shop as required by clause 1.4 of the lease agreement.

The case for repudiation

[43] It is submitted on behalf of the first Respondent that as there is an overlap between the concept of breach and anticipatory breach or repudiation, what

has been said above about the Applicants' case regarding breach equally applies in respect of repudiation.

[44] That in order to succeed in proving a case of repudiation it is necessary to prove that the first Respondent's conduct, fairly interpreted, exhibited a deliberate and unequivocal intention no longer to be bound by the contract. See **Culverwell v Brown** 1990 (1) SA 7 (A) at 14 B – E.

[45] The insurmountable difficulty that the Applicants face if they are to succeed is that they must prove that the first Respondent repudiated the agreement of sale. There is simply no basis for alleging that the agreement was repudiated. On the contrary, the first Respondent has abided by that agreement and complied with it by making payment of the purchase price to the trust and receiving transfer of the immovable property into its name.

[46] Even if it could be said that the construction agreement and the agreement of sale are linked, there is again no basis for finding that the first Respondent's conduct "exhibits a deliberate and unequivocal intention no longer to be bound" thereby. On the contrary, the first Respondent submitted plans to the Manzini City Council for the alteration of the building and it in fact commenced building whereafter it was stopped from continuing by decision of the said municipality. The submission of new plans to satisfy the

requirements of the municipality again indicate an intention to build and to alter the premises in accordance with the first Applicant's requirements which is not at all consistent with the alleged repudiation of that agreement.

[47] Finally, most of the conduct relied on in support of the allegations of breach and repudiation preceded the conclusion of the sale and construction agreements. It is illogical for the applicants to seek to rely on such alleged conduct when the very conclusion of the agreements demonstrate that the parties started afresh, putting behind them whatever complaints they had against each other.

[48] It accordingly follows that the Applicants' case based on repudiation must also fail.

Linked agreements

[49] The Applicants contend that the three agreements are linked and that because of this link the sale construction agreement and sale agreement should be read together. In fact they contend that the construction agreement is collateral to the sale agreement and as set out in Law of South Africa – Evidence:

“747 Collateral agreements ... there is nothing to prevent the parties from validly expressing a part of their agreement collaterally in either written or oral form –

and parole evidence of the collateral or parallel agreement is then admissible. If there is a conflict between the two agreements and both are in writing, it has to be resolved by interpretation...”

[50] Thus, a collateral agreement is an agreement which is not in conflict with the main written agreement. In order to decide this issue, the court is entitled to examine all the circumstances surrounding the transaction, including the prior negotiations between the parties. See **Capital Building Society v De Jager, De Jager v Capital Building Society** 1963 3 SA 381 (T), **Slabbert, Verster & Malherbe (Bloemfontein) Bok v De Wet** 1963 1 SA 835 (O) 837C; **National Board (Pretoria) (Pty) Ltd v Estate Swanepoel** supra 26H.

[51] However, the first Respondent contends that because the construction agreement does not define what must be built, and the communications relating to what must be built lie outside of that document, the Applicants cannot lead evidence on what was to be built.

[52] It is trite law that once a contract is reduced to writing the court may not, as a rule, admit evidence which tends to contradict, alter or vary the written contract. This rule, known as the parole evidence rule, is subject to the exception that the court may always admit evidence to interpret the meaning

in the written contract of ambiguous words or words used in a technical or special sense.

[Philmatt (Pty) Ltd v Mosselbank Developments CC 1966 1

All SA 296 (A); 1996 2 SA 15 (A) 25]

[53] It is the Applicant's contention that to the extent that the construction agreement does not define what must be built, it is ambiguous. That it is accordingly necessary to lead evidence as to what the parties agreed should be built. That evidence which shows that the first Respondent was obliged to build additional floors includes:

- (i) The Council's directive that expansion had to be vertical;
- (ii) The fact that the Trust sold the property because it could not afford to build additional floors;
- (iii) Dos Santo's testimony that:
 - a. De Sousa agreed to use his company AMS Construction (Pty) Ltd ("AMS"), as the building contractor;
 - b. AMS undertook to build two additional floors at the premises without closing down the business;
 - c. AMS submitted plans to the Council for constructing two additional floors, which plans were approved; and
 - d. The first Respondent dropped AMS as the contractor.

- (iv) The minutes of meetings, attended by De Sousa, at which contractors were chosen to install lifts;
- (v) The fact that the Council prevented the first Respondent from continuing to expand the ground floor of the premises.

[54] The first Respondent's counter argument with which I agree is that the parole evidence or integration rule confines the parties to the written terms of the agreements concluded between them. See **Johnston v Leal** 1980 (3) SA 927 (A) at 943 B; Corbett JA held that:

“It is clear to me that the aim and effect of this rule is to prevent a party to a contract which has been integrated into a single and complete written memorial from seeking to contradict, add or modify the writing by reference to extrinsic evidence and in that way to redefine the terms of the contract. To sum up therefore, the integration rule prevents a party from altering, by the production of extrinsic evidence, the recorded terms of an integrated contract in order to rely upon the contract as altered.”

See also **Union Government v Vianini Ferro-Concrete Pipes (Pty) Ltd** 1941 AD 43 at 47.

[55] In *casu* the Applicants' founding and replying affidavits are replete with references as to what was discussed before the conclusion of the valid sale agreement and the construction agreement. Such evidence is contrary to the parole evidence rule and it is, therefore, inadmissible.

[56] As submitted on behalf of the first Respondent and there are material disputes of fact between the parties concerning:

- (a) the allegation that the first Respondent tried to “drive” the first Applicant from the property in various ways and in respect of which a great deal of reliance is placed on the affidavit of Prince Dlamini;
- (b) the alleged misrepresentations made by the first Respondent;
- (c) what construction was required to be performed to the building;
- (d) whether it is possible to perform alterations to the building while the first Applicant remains in occupation.

[57] In view of the foregoing and in particular with reference to paragraph [34] hereinabove, it seems to me that in order to resolve the current impasse it would be prudent for the parties to submit to arbitration in terms of the construction agreement as soon as possible and I so order.

[58] In the result the application is dismissed with costs including the certified costs of counsel.

Q.M. MABUZA

JUDGE OF THE HIGH COURT

For the Applicants : Advocate F. Joubert SC instructed by
Mr. K. Simelane of Cloete – Henwood Associated.

For the Respondents : Advocate G.O. van Niekerk SC instructed by
Mr. S. Masuku of Howe, Masuku, Nsibande Attorneys