

```
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<head>
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charset=utf-8">
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  <meta name="generator" content="LibreOffice 4.2.6.3
(Linux)">
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  <style type="text/css">
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<body lang="en-ZA" dir="ltr">
<p align="right" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font face="Arial, serif"><font size="2" style="font-size:
10pt"><span lang="en-US">1</span></font></font></p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">
<br>
</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font face="Arial, serif"><font size="2" style="font-size:
10pt"><span lang="en-US">IN
THE COURT OF APPEAL OF SWAZILAND</span></font></font></p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">
<br>
</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font face="Arial, serif"><font size="2" style="font-size:
10pt"><span lang="en-US">HELD
AT MBABANE</span></font></font></p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">
<br>
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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
```

CASE NO. 4/1996</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
In the matter between:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
SWAZILAND SUGAR ASSOCIATION
 Appellant</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
and</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
SWAZILAND FOOD PROCESSORS (PTY) LTD
 Respondent</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-

height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
CORAM:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-left: 7.62cm; text-indent: 1.27cm; margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
KOTZE
J P
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-left: 7.62cm; text-indent: 1.27cm; margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
STEYN
J A
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-left: 7.62cm; text-indent: 1.27cm; margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
TEBBUTT
J A</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
JUDGMENT

DELIVERED ON</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Respondent sought the following relief in the Court a Quo:</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

which is, in fact, a final warning to Respondent in the following terms:</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
"Ref: 5/118</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Swaziland Food Processors</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
P0 Box 2590

</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
MBABANE</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Dear
Senator Temple CONDITIONS OF SALE OF
SUGAR</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
12</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I
wish to once again confirm the conditions under which the
Association
sell (sic) sugar to customers in Swaziland and which are as
follows;</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

 <p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
 <font size="2" style="font-size:

10pt">Wholesalers
- for domestic consumer market.</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Manufacturers
- for use in process of
manufacture.</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Blenders
- for use in blended products for sale to manufacturers who use the
blend in their final product.</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Exporters
- for sole, direct export to
Mocambique.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
From
the above it is clear that raw sugar may not be sold or traded in Swaziland except as outlined above.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
We
have become aware of a very active 'secondary' market in sugar in Swaziland, resulting from certain customers breaching their conditions
of sale with the Association by selling raw sugar to persons or companies who are not customers of the Association and who mainly export this raw sugar to South Africa.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-

height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">We
have obtained evidence that your organisation is selling, or has
recently sold, raw sugar in contravention of your contract with
the
Association.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">13</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">This
letter is a final warning against such sales of raw sugar. Should
the
Association obtain any further evidence of such breach of
contract,
your allocation will be cancelled without further notice and with
immediate effect.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">We
value your custom and urge you to operate within the conditions
of
sale to avoid any drastic action against your
organisation.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Yours
faithfully</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
P
F DE BEER
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
FINANCIAL
MANAGER"</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
It
is not necessary to cite Respondent's reply to this letter. It is Annex. D dated the 2nd August 1995. In essence Respondent's reaction
is to say that it needs the evidence "so as i could follow up on
the issue..." The reply states further"... that I need this
evidence so that I am able to take action if necessary, for all I know somebody could be doing it fraudently as has happened in the past."
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
This
correspondence was followed by a meeting of the parties on the
4th
August 1995. On the same day Respondent follows its response up
with
a letter which reads as follows:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
"Mr
A Calhoun</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
14</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
General
Manager
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Swaziland
Sugar Association

</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
MBABANE</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
August
4 1995</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
STRICTLY
WITHOUT PREJUDICE</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Dear
Mr Calhoun</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I
thank you and your management for the time spent with me on
Friday
and for the amicable way in which the discussions were

held.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I
have attempted to investigate what happened insofar as the issue regarding the raw sugar is concerned, but unfortunately it has proved
very difficult ascertaining the truth or otherwise of this matter.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
To
attempt to control this practice, (if it has been happening), i have
personally instructed by staff that in future all orders must first
be sanctioned by me before they are placed with the Sugar Association.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Subject
to the discussions held with Mr Folker, we are prepared to release
the following quota to assist the Sugar Association through its current predicament.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
<font size="2" style="font-size:

10pt">15</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
This
is based on the understanding that this is done in good faith and will in no way effect our negotiations for quotas next year. It must
also be noted that we have released this quota on the basis that this
sugar will be used for the purpose it is meant for and not shipped
out in its raw form.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
The
quota we agree to release is:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
75
tonnes Brown Swaziland Food Processors</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
75
tonnes Brown Matsapha Prepackers</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
25
tonnes VHP Swaziland Food Processors</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I
have instructed my management and staff to be on the look out for
any
raw sugar passing through the border. If they find this to be
happening, the information they collate will be passed on to
yourselves for appropriate action.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
The
issue of the white sugar is that i understand you are convicting
us
for an issue neither of us can prove inconclusively (sic). I have
spoken to my management and they are of the opinion that we would
be
able to release 150 tonnes white to assist the Association
through
their current crisis.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I
trust this meets with your approval and confirm that our quotas
up to
March 1995 stand as follows:</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
16</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-

height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">250
tonnes white Swaziland Food Processors
</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">30
tonnes white Matsapha Prepackers
</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">575
tonnes VHP Swaziland Food Processors</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">This
will come up for re-negotiation in March 1996 and will in no way
be
jeopardised by our current commitment to assisting the
Association
and the country as a whole.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">Yours
faithfully</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;

widows: 0; orphans: 0">
SENATOR
M TEMPLE
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
cc.
SENATOR O M DLAMINI
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
MR
A T DLAMINI"</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
This
letter however crossed a letter of the Appellant dated 7th August 1995. It reads as follows;</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
"Ref.
Conf 7 August 1995</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

17</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

Sen.

M Temple

</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

Swaziland

Food Processors

</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

Matsapha</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

Dear

Sen. Temple,</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

I would like to thank you for the useful discussions we had on Friday 4th August.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
The situation now stands, as I understand it, that you will Investigate the occurrence that we brought to your attention. In the meantime your white sugar allocation will be reduced from 400 tonnes per month to 100 tonnes per month. The 100 tonnes per month that you will continue to draw will be in respect of your manufacture of castor and icing sugar.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
I look forward to a speedy resolution of this matter so that we can all return to an amicable business relationship.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
Yours sincerely

</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
A
D Colhoun
</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
GENERAL
MANAGER</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
It
is clear from this correspondence that there is a dispute as to what
occurred at the meeting of the 4th August 1995. Appellant alleges that pending the investigation, the Respondent's allocation will be
reduced. The latter offers a voluntary reduction in
its</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">
18</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

allocation of white sugar of 150 tonnes per month. Further correspondence between the parties followed. It is not necessary to refer to these letter. Ultimately both parties consulted their lawyers. On October

9, 1995 Respondents attorneys write as follows;</p>

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</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

"1.

We write to you on the instructions of our client Swaziland Food Processors (Proprietary) Limited, concerning your unilateral decision

to reduce our client's allocation of white sugar from 400 tonnes per

month to 100 tonnes per month as from August of 1995.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.

As previously pointed out to you by our client in the correspondence

which we have perused your aforesaid action is unlawful in that:</p>

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</p>

<p align="justify" style="margin-left: 1.27cm; margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

a)

there exists a contract between yourselves and our client in

terms

whereof you undertake to supply it with 400 tonnes of white sugar as

from 1st April 1995, to 31st March 1996;

b)

you do not claim that such reduction in supply is in any way related

to the non-availability of such sugar;

c)

your aforesaid unilateral decision was taken without affording our

client the opportunity of a hearing whereat such allegations as you

might have against it could be answered;

19

d)

we understand that in fact there is no evidence against our client

which

would establish that our client is in breach of the agreement between

yourself and which would give you the right to take such

action.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

In

fact it would appear from what little our client knows of the matter

on which you appear to base your unilateral decision that the information in your possession amounts to nothing more than rumours

and unsubstantiated allegations.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

3.

Our client persists in its denial that it is in breach of the conditions of the aforesaid agreement between it and your association.</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

4.

In the circumstances we have been instructed to call upon you to reinstate our client's full white sugar allocation of 400 tonnes per

month retrospective to 1 st August 1995, and to give us your undertaking that you will not again unilaterally reduce such allocation."

</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

</p>

<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

As
can be seen from this letter Respondent alleges that it did not breach the agreement and that Appellant has failed to furnish it with
evidence that it has done so. On the next day, Appellant's attorneys
reply in the following terms: (I only cite that portion of the letter
which is relevant)</p>

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</p>

<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

20</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.1

On 15 March 1995 your client was in writing allocated 400 tonnes per

month of white sugar, 75 tonnes per month of brown sugar and 600 tonnes per month of VHP sugar for the 1995/96 season commencing on 1

April 1995 and ending on 31 March 1996. Your client was specifically

advised that due to the current drought situation prevailing in Swaziland that it reserved the right to supply your client less than

the allocated tonnages in the event of drought and other factors coming into play.</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.2

Your client was sent a standard agreement which specifically set

out
the terms and conditions relating to the purchase and supply of
sugar

from ourselves.</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.3

In terms of your client's proposal, the sugar was allocated to
your
client for blending and manufacturing purposes only and for no
other

reason whatsoever.

</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.4

In terms of the said standard agreement sent to you client, which
your client has refused and/or neglected to sign despite being
reminded to do so on 13 September 1995, it is specifically
provided

that your client was not entitled to sell sugar in its pure form
and

this had in fact applied to previous contracts entered into with
your

client and your client was at all times aware of that
provision.</p>

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<p align="right" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

21</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.5

On 9 June 1995 we wrote to your client reaffirming the conditions of sale and advising your client that we were in possession of evidence

of the sale of pure white sugar to a third party in contravention of the provisions of the agreement. Your client was issued with a final

warning and advised that if it again occurred that your client sold

pure sugar that your client's allocation would be cancelled without

further notice. We have in our possession the necessary proof relating to that sale and your client never requested details relating to the sale in question.</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.6

On 25 July 1995 we obtained proof of another incident of sale of pure

white sugar.</p>

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

2.7

As a result thereof we met with your clients on 4 August 1995 when

your clients undertook to investigate the position. It was at that

meeting agreed to reduce your client's white sugar allocation from

400 tonnes to 100</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-

height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">tonnes
per month.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">2.8
This agreement was confirmed to your clients in writing on 7
August
1995.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">2.9
On 9 August 1995 we again wrote to your client and advised of a
further proof of sale of pure sugar and drew your client's
attention
to the fact that the sale of sugar to your clients was for the
purposes of blending only.</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="right" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">22</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:

10pt">2.10

By agreement between ourselves and your client's brown sugar allocation was cancelled and the VHP allocation was reduced by 25 tonnes per month because of the drought situation in Swaziland.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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3.

With respect, as in any commercial transaction, we were and are perfectly within our rights to have withdrawn your client's allocation completely because of the breach of the standard conditions of sale which has occurred despite warnings having been

addressed to your client in

writing."</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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There

the matter rested until towards the end of October 1995 it appeared

that Respondent was unable to meet it's obligations to Appellant, a

cheque for E200.000 having been dishonoured. A letter of demand was

sent to Respondent on 8 November 1995 in which payment of E2.271.868.99 is demanded, On the 17th November Respondent

initiated

the present proceedings by way of notice of

motion.</p>

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The

issues that arise from the above are the following:

1.
Did Respondent commit a breach of contract by disposing of white sugar in conflict with the terms of the agreement?

2.
Was there compliance with the terms of the contract which entitled Respondent to invoke the provisions of par. 10.5 and

23

3.
Did par 10:5 entitle Appellant to reduce the allocation of sugar as it did i.e. to honour the commitment to deliver but to reduce the quantum to 100 tonnes per month for the rest of the period of the contract.

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</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">The
Court a quo held that "the applicant had every right, under
the
agreement, to expect notice of any alleged breach and a demand
that
the breach be remedied within the seven day period". It held
that:</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">"the
respondents letter of 9 June did not amount to a notice under
clause
10."</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
height: 100%; widows: 0; orphans: 0">

</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
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<font size="2" style="font-size:
10pt">On
the question of the breach and whether there was evidence of the
breach and whether said evidence was furnished to the Respondent
the
learned Judge says the following:</p>
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</p>
<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
widows: 0; orphans: 0">
<font size="2" style="font-size:
10pt">'The
present application was filed with the Registrar on the 20th
November
1995. it is abundantly clear from the correspondence between the
parties which I have set out, that the respondent acted In a
high-handed manner in applying what it considered its rights
under
the agreement with the applicant. The evidence which the

respondent
claimed to have of instances when the applicant exported white
sugar
to South Africa was never put to the applicant prior to the
launching
of this application. The respondent's letter of the 9th June 1995
did
not refer to any specific instance of the export of white sugar
by
the applicant. No details of any such export were given to the
applicant at the meeting of the 4th August 1995. The documents
that
were given to the applicant at that meeting related to
the

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24</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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incident

of the 25th July 1995. Those documents standing alone as they did at

the time of the filing of this application did not constitute evidence of a breach of the agreement between the parties by the

applicant. The applicant made this quite clear to the respondent in

the letter from the applicant's attorneys dated 9th October 1995. No

further details were provided by the respondent."</p>

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<font size="2" style="font-size:

10pt">It would seem to me that the Court a quo held that there was an obligation on the Appellant to furnish Respondent with evidence of
"instances when the applicant exported white sugar to South Africa." and that such evidence "was never put to the applicant prior to the launching of such application."

</p>

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<font size="2" style="font-size:

10pt">However,

the Court does not seem to have adjudicated upon the question as to

whether on the evidence before it a breach was in fact committed, but

rather that no such evidence was furnished to the Respondent, that

Appellant was obliged to do so and that it had failed to give Respondent the requisite notice of the breach.

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

<font size="2" style="font-size:

10pt">Whilst

the issue of due notice was argued before us by counsel for the Respondent, it was not contended that there indeed was any

obligation

on Appellant to furnish Respondent with evidence that a breach had in

fact been committed. That counsel was right in not pursuing such an

argument seems to me to be clearly correct. The issue was not whether

evidence of a breach was furnished but whether or not a breach had in

fact occurred. This seems to me to be the first issue which has

to be decided. The evidence before the Court a quo established the following:

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25</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<p align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

"Swaziland

sugar is approximately E300 000 per tonne cheaper than sugar produced

in the RSA. Respondent contends that "if South African manufacturers were in a position to obtain Swaziland sugar, there would be little incentive to set up sugar related manufacturing industries in the Kingdom of Swaziland. The Respondent (Appellant before us) as a mater of policy, wishes to promote the establishment

of local industries. This is a policy supported by the Ministry of

Commerce. The restrictions contained in clause 2 of the Agreement,

Annexure "A", is therefore designed to give effect to this

policy."</p>

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These

averments were not in fact disputed by the Respondent. It is also clear from the evidence that as early as 9th May 1995 concern was expressed by Appellant's concerning Respondent's financial viability.

On the 30th June 1995 Appellant states that"... the account

of

SFP (Respondent) with the Association (Appellant) remains problematic."

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The

letter goes on to state:</p>

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"In

view of our past experiences we have no option but to cease all deliveries of sugar to SFP until the amounts owed to the Association

have been paid in full. Thereafter, depending on guarantees provided,

SFP will be allowed to operate an account of a strictly 30 days basis

within the credit limit agreed with SFP. Failing the delivery of suitable guarantees, all further purchases by SFP will be on a cash

with order basis."</p>

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26</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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<font size="2" style="font-size:

10pt">Whilst Respondent challenges the relevance of these allegations, there is no real dispute that this correspondence reflects the attitude of, and view held by, Appellant of Respondent's financial soundness and its ability to meet its obligations to Appellant. Indeed, an objective view of the testimony before us paints a picture of ongoing and grave financial crises.</p>

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That

these facts are relevant is clear. In the first place Appellant contends that the present application was launched only after letters

of demand of the 7th and 8th of November 1995 from Appellant were received by Respondent and that it was this fact that prompted the

institution of these proceedings. It is also contended by Appellant

that Respondent's attempt to ascribe its financial situation to the

reduction in the allocation of white sugar cannot be sustained on the

evidence, inasmuch as its financial problems were already evident some months previously. Finally, if Respondent's ship was sailing

in troubled waters, it would be more readily inclined to risk

breaking its contract and to seek a quick profit than if it were financially

stable.</p>

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A

careful reading of the affidavits filed on Appellant's behalf, the correspondence and the evasive response of the Respondent, leaves me

in no doubt that even if there were an onus resting on Appellant to prove that Respondent had indeed been a party to the export into the

RSA of white sugar in conflict with the terms of its agreement, it

had succeeded in discharging such onus. The affidavits filed in this

regard by Messrs Mbuso Simelane and William Justice Dlamini that pursuant to an order placed by Respondent a truck bearing registration no. TDH968T (which i am satisfied must have

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<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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27</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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been

the same truck that loaded the sugar at Ubombo Ranches Mill by one JJ

Horn) transported 170 metric tonnes of sugar through the border post

at Oshoek/Ngwenya.</p>

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widows: 0; orphans: 0">
On
evidence which is largely undisputed, Appellant therefore dearly established a prima facie case that Respondent was indeed involved in the export of sugar obtained from the Ubombo Ranches Mill.</p>

<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-height: 100%; widows: 0; orphans: 0">

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Some point was made of the fact that counsel for Respondent only saw the affidavit by Mr Dlamini at the hearing of the application and that this was the reason why it had not been replied to. It is quite clear, however, from the bound record prepared and filed by Respondent's attorneys and which included the said affidavit, that

Respondent's attorneys were aware of the averments contained in Dlamini's affidavit some days before the hearing in the Court a quo

and that had Respondent wished to dispute its contents it could have

done so.

</p>

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However,

Dlamini's affidavit was merely a confirmation of and expanded upon

that of Simelane which was replied to by Respondent in what is in my

view an evasive and unsatisfactory manner.</p>

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In

fact the allegations of a breach were canvassed in correspondence and

in personal discussions over a considerable period of time. I

therefore find myself in respectful disagreement with the Court a quo

that Appellant "acted in a high-handed manner in applying what

it considered its rights under the agreement with the

Applicant"</p>

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(Respondent

in this Court).</p>

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My

reading of the correspondence and of the affidavits leads me to conclude that Appellant was at pains to try to "keep the

peace"

as it were with Respondent. I say this

because:</p>

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It

knows as early as the 9th May 1995 that it has Respondent a customer

whose financial viability is suspect. On the 30th of June the

problematic nature of Respondent's account is once again adverted to

and credit arrangements are tightened.</p>

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In

the meantime and on the 9th of June 1995 Respondent's attention is

drawn to the fact that "raw sugar may not be sold or traded in

Swaziland contrary to the provisions of the agreement between the

parties." As is apparent from the other terms of the letter of

9 June cited above, Appellant issues a serious and final warning

that should any further breach occur "your allocation will be

cancelled without further notice and with immediate effect"></p>

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Despite

this notice, it is established on the evidence that Respondent on

the 20th July accepted an order for 170 tons of white sugar which

was on the 25th July loaded by the said JJ Horn pursuant to order no

431 submitted to Appellant by Respondent and on the same day exported via the same vehicle out of Swaziland into the

Republic of
South Africa.</p>

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I

accordingly find that a breach having been established, Appellant was

legally entitled to exercise its rights under the contract. The next

question is did it do so lawfully and in accordance with its terms?

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As

appears from what has been recorded above two points were raised in

this regard. The first is the following: Did the contract give Appellant the right to reduce the quantum of the white sugar to be

delivered to Respondent or was it obliged to cease the delivery of

"all supplies of sugar"; (my underlining). Secondly, was it

obliged to comply with the provisions contained in the preamble in

para

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10.

of the agreement by giving 7 days notice and affording Respondent an

opportunity to remedy the breach and if so, did it comply with such

provisions.</p>

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At

first blush the terms of the contract seems to limit the right of the

Appellant to a cessation of "all supplies of sugar".

This could in my view not have been the intention of the parties. When one

considers the provisions of the legislation which confers exclusive

rights on Appellant to regulate and control the industry, when one

takes cognisance of the fact that no one can import or export sugar

other than the association or a person authorised by it, it seems to

me that it would be artificial to give a meaning to the agreement that would limit the rights of the Appellant in the manner

postulated.

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Indeed,

such an interpretation would defeat the very objective the legislature had in mind, i.e. that industrial development via the beneficitation of sugar would occur and that employment opportunities would be created. If no discretion were to be conferred on Appellant and it were obliged in all circumstances and in every case to cease to supply all allocations of sugar it would result in the closing down of industries with the loss of Jobs that would ensue: It is common cause that the agreement is a standard one

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applicable
to all those who enter into relationships with Appellant pursuant to
which sugar is purchased from and supplied by it and that these consequences would follow if the agreement were to be held to confer
only a right to cease the supply of all
sugar.</p>

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In
my view, therefore, counsel for Appellant is right when he contends
that "the greater includes the lesser" and that
"all"

also comprehends "some".</p>
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Moreover,

it is clear that the generality conveyed by the use of the word "all"

can be confined by the context in which the word is used. See Re Portal and Lamb 30 Ch.D.50 where it was held that the generality of a

devise of "all my lands" may be restricted by the context.

Thus e.g. in Doe d. Snape v Nevill 11 QB 466 it was held that "all"

meant, in the context in which it was used "all the residue".

(See Stroud's Judicial Dictionary 5th Ed.p.103)</p>

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I

am therefore satisfied that it clearly was the intention of the parties when they agreed to adopt the standard agreement, that, even

though a breach of the terms of the contract may have occurred, the

Appellant could in its discretion, instead of ceasing to deliver all

of 400 tonnes of sugar, deliver a lesser amount.</p>

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As

appears from the summary of the contentions advanced and from the ruling by the Court a quo the only outstanding issue is the question

as to whether the terms of the preamble to para. 10 of the agreement

obliged Appellant to notify Respondent of the

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breach

and to give it 7 days notice to remedy such breach. Only if this question is answered in the affirmative would one have to consider

whether Appellant did in fact or in substance comply with its terms

.</p>

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Appellant's

contention in this regard was to point to its letter of the 9th of

June 1995 in which it advises Respondent that it holds the view that

Respondent is selling, or has recently sold raw sugar in

contravention of your contract with the association". This -
so
it was argued on behalf of Appellant - was sufficient
notification
making it clear that a breach of para. 2 of the agreement had
occurred. Due emphasis was placed on the terms of the penultimate
paragraph of this letter. I again record its terms. It
reads:</p>
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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
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<font size="2" style="font-size:
10pt">"This
letter is a final warning against such sales of raw sugar. Should
the
association obtain any further evidence of such breach of
contract
your allocation will be cancelled without further notice and with
immediate effect."</p>
<p lang="en-US" align="justify" style="margin-bottom: 0cm; line-
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<p align="justify" style="margin-bottom: 0cm; line-height: 100%;
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<font size="2" style="font-size:
10pt">Clearly
this notification did not call upon Respondent "to remedy
the
breach". It would in my view have been entirely
inappropriate to
have done so. The nature of the breach was not of such a kind as
to
have permitted it being remedied. Once Respondent exported sugar
to
South Africa in conflict with the agreement, such sugar is out of
its
control. If called upon to remedy the breach, it could not do so.
It
would have been as illegal for it to attempt to Import sugar as
to
have exported it.</p>
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The

provisions concerning an opportunity to remedy the breach were imported into the contract to deal with cases where it would be possible for a party to do so, and time</p>

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(seven

(7) days) would be given to it to honour such an obligation. A failure to comply with the provisions concerning payment as provided

for in par. 7 of the agreement would be a prime example of such a breach to which this part of the introductory paragraph in clause 10

would apply.</p>

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It

is my view that the provisions concerning the opportunity to remedy

the breach and the notice period of 7 days to do so, have no application to a breach of the kind that occurred in the case under

review. What Appellant did was both proper and reasonable. It gave

timeous warning to Respondent that it had committed a breach and it detailed what the nature of the breach was. It cautioned Respondent it that should it do so again it would invoke the terms of par. 10(5) of the contract. Despite this "final warning"; Respondent once again breached the same fundamental term of the agreement.

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Appellant
was fully justified in invoking the terms of para. 10(5) in the manner in which it did.</p>

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Bearing
in mind the nature of the breach, the contents of the notice given
was required to be sufficient to inform it of the nature of the breach committed. See West Car Properties v Young 1983(2) SA 188 (N).

Moreover the nature of the notice would depend on the terms of the contract and the nature of the breach. See Godbold v Tomson 1970(1)

SA 61 (N), and Rautenbach v Venner 1928 TPD 26, where at p.30 Greenberg, J says: "And in construing the words setting out the conditions, the object of the conditions will have to be considered in order to assist in the question of construction."

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For

these reasons the appeal succeeds. The order made by the Court a Quo

is set aside. In its place the following order is made: 'The application is dismissed with costs." Respondent is ordered to

pay the costs both in the Court below and in this Court on the scale

as between attorney and client in accordance with the provisions of

par. 10.4 of the agreement. Such costs will include the costs of two

Counsel in both Courts.</p>

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J

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I

agree.

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P C KOTZE J P</p>
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agree.</p>
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A TEBBUTT J A</p>
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