



IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO. 03/2014

JUDGMENT

In the matter between:

ARMAND MATTHEW PERRY

APPELLANT

and

THE LAW SOCIETY OF SWAZILAND

RESPONDENT

Neutral citation: Armand Matthew Perry and The Law Society of Swaziland [2014] SZSC 35 (30 May 2014)

Coram: M.M. RAMODIBEDI C.J., S.A. MOORE J.A., and
M.C.B. MAPHALALA J.A.

Heard: 23 MAY 2014

Delivered: 30 MAY 2014

Summary: Application for enrollment as an Attorney – Applicant relying upon section 6 (1) (e) of the Legal Practitioners' Act 1964 – Law society of Swaziland opposing application on the grounds that section 6 (1) (e) of the Act operates unfairly in favour of applicants relying upon it in violation of constitutional fairness – that an applicant relying upon section 6 (1) (e) must disclose his or her academic qualifications – that the Law Society was a Regulatory

Authority empowered to vet an applicant's academic qualifications and practical training - that the applicant was not ordinarily resident in Swaziland – that only enrolled attorneys could recommend an applicant as being a fit and proper person to be enrolled as an attorney – Submissions of the Law Society rejected – Characteristics of a fit and proper person for admission set out - Attributes of a person recommending an applicant as a fit and proper person described- Appeal allowed with costs including the certified costs of counsel – Applicant eligible for admission and enrollment as an attorney.

JUDGMENT

MOORE JA

- [1] This appeal is against the judgment of Hlophe J dated the 16th December 2013 in which he dismissed the application of the appellant and, as a balm to salve the disappointment of the Petitioner, declined to make an order as to costs.

BACKGROUND

- [2] On the 5th July 2013 the appellant who then described himself as 'Petitioner's Attorney' filed a Notice of Application in which he prayed for orders:

- "1. Admitting and enrolling the Petitioner as an Attorney of the above Honourable Court.

2. Granting such order or alternate relief as the above Honourable Court may deem fit.”

[3] On the 18th January 2014, the appellant filed a Notice of Appeal upon the following grounds:

- “1. The Court *a quo* erred in law in finding that the Appellant was required to disclose his academic qualifications and to further disclose the nature of the practical training he had received.
2. The Court *a quo* erred in law in its interpretation of Section 6 (1) (e) of the Legal Practitioners’ Act of 1964.
3. The Court *a quo* erred in law in finding that the Law Society was a Regulatory/Authority which was required to vet the Appellant’s academic qualifications and practical training.
4. The Court *a quo* further erred in law in exercising a discretion as to whether to admit the Appellant in that the admission of a Petitioner is peremptory on the satisfaction of the specific requirement of Section 6 of the Legal Practitioners’ Act of 1964.
5. The Court *a quo* erred in law and in fact in finding that the Appellant was not ordinarily resident in Swaziland”.

ADMISSION OF ATTORNEYS

- [4] The pre-requisites for admission of attorneys in this Kingdom are set out in section 6 of the Legal Practitioner's Act 1964. The date of the Act's commencement is the 14th January, 1966. There are contending interpretations of the section in the judgment of the court *a quo* and in the Heads of Argument filed on behalf of the appellant. It is instructive therefore to strip this legislation down to its component elements so that its essential constituents could more easily be observed, appreciated and correctly applied. Subsection (2) of section 6 may be quoted at the outset to illustrate that it has no application to the circumstances of this case. The appellant is not seeking to avail himself of its benefits.

- [5] It reads:

'Notwithstanding subsection (1), the Chief Justice may for the purpose of any particular case or matter grant a right of audience in the courts of Swaziland or before any quasi-judicial tribunal in Swaziland to any person who, being otherwise eligible for admission, is not a citizen of Swaziland or ordinarily resident or practicing as an attorney thererin, in order to enable such person to appear as an attorney in any such case or matter.'

[6] It is common cause that the measure which calls for consideration in this appeal is section 6 (1) (e) of Act. The essential elements of the all-important subsection are:

- Every person.
- who applies to be admitted and enrolled as an attorney.
- shall produce to the satisfaction of the High Court.
- Proof that.

(a) (i) he is a citizen of Swaziland; or

(ii) is ordinarily resident in Swaziland; and

(iii) is a fit and proper person to be admitted and enrolled as an attorney; and

(b) he is above the age of twenty-one years; or

(e) has been admitted as a barrister or solicitor in England, Scotland or Ireland and no proceedings to remove or suspend him from the roll are pending or contemplated.

[7] There are two alternatives in section 6 (1) (a). These are citizenship of Swaziland or being ordinarily resident in Swaziland. To either or both of those alternatives must be added that the applicant “is a fit and proper person to be admitted and enrolled as an attorney”. There appears to be no dispute about the applicant being above the age of twenty-one years as required by (b).

[8] As has been alluded to in paragraph [6] above, the principal peg upon which the appellant has hung his application for admission was that set out in section 6 (1) (e). Again, disarticulating the elements of (e), the applicant must have satisfied the High Court that:

(i) He has been admitted as a barrister or solicitor in:

- England
- Scotland or
- Ireland; and

(ii) No proceeding to remove or suspend him from the roll is:

- pending; or
- contemplated

[9] In support of his application, the record contained inter alia, a photocopy of a document headed ‘Certificate of Good Standing’ emanating from the independent regulatory body of The Law Society, certifying that the applicant ‘was admitted on **02 April 2013** as a Solicitor of the Senior Courts of England and Wales and is on the roll of solicitors of that court.’ Its issue date is 25th April 2013 S.R.A. Number 568014. The appellant has averred without successful challenge that he:

- Has not been struck off the roll,
- Nor suspended from practice,
- And is of good standing as a solicitor.

A FIT AND PROPER PERSON

[10] Before embarking upon a discussion of the requisite attributes of a fit and proper person as required by section 6 (1) (a) of the Legal Practitioner’s Act, 1964, it may be helpful to say something about the requisite characteristics of a person who undertakes to recommend a candidate for admission to be enrolled as an attorney, as being a fit and proper person to be so enrolled. There has been a debate in this case concerning the character and standing in the community of the two persons vouching that the candidate for admission is fit and proper. The Law Society argued with much force that only an attorney could make an acceptable recommendation.

[11] While a member of the legal profession is eminently suited to make such a recommendation, there are certainly other prominent, well known and well respected members of the community who are perfectly capable of doing so. These include members of several professions such as chartered accountants, the holders of certain offices such as the Governor of the Central Bank, Members of the legislature, Chiefs, members of the clergy, senior members of established educational institutions, and ranking officers of the disciplined forces and services.

[12] A necessary and essential factor is that the person recommending the applicant must be able to do so from his or her personal relationship with the applicant for an acceptable length of time. He or she must have something more than a nodding acquaintance with the applicant. Their relationship ideally should have been one which allowed the sponsor adequate opportunities to assess the character of the candidate and to make a proper evaluation of his or her suitability for enrollment, and of his or her possession of the many worthy attributes which would ground a proper recommendation.

[13] In the case before us, while Dr. Peter Ehrenkranz MD, MPH is on the face of things the kind of person who is capable of making an informed

recommendation, it does not flatter his judgment when he advances social contacts, cooking skills, hiking, being an engaging conversationalist, reasoning skills, and a sense of social justice, as being the only attributes which rendered this applicant suitable. The good doctor's recommendation is silent on the many vital requisites of a candidate for admission enumerated in paragraph [15]. That said, however, the trial court appears to have accepted his recommendation, albeit with cool enthusiasm, and so does this Court.

[14] The South African case of **Kaplan v Incorporated Law Society, Transvaal** [1981] 2 SALR 762 is instructive. Boshoff JP and Preiss J conducted a comprehensive historical review illustrating how carefully and anxiously the courts in the Republic had developed the requirements of a fit and proper person seeking to be enrolled as an Attorney. The following characteristics have been identified by the court in various segments of the judgment:

- Honesty, integrity and dignity.
- A man of trust and with his acknowledged ability, a credit to his profession.
- Shows a profound sense of responsibility.

- Would faithfully and properly discharge all the heavy duties and responsibilities which accompany the practice of an attorney.
- A capacity and willingness to help people.
- A readiness and willingness to keep abreast of current developments in law, in contemporary current public affairs, and in programmes of continuing legal education.
- A capacity for handling large sums of clients' money and the ability to refrain from comingling clients' monies with personal funds and from misappropriating clients' funds or converting such funds to the Attorney's own use.
- A capacity for handling complex and complicated transactions on clients' behalf.
- A sustained industry and competency.
- The capacity for being entrusted with the onerous duties and responsibilities of attorney.
- A person of sufficient responsibility and integrity and one worthy of carrying out and performing the duties and responsibilities of the office of attorney.
- A person who would be a definite asset to his or her clients and would conduct himself or herself in a manner which is in keeping with the taxing demands of the office of an attorney.

- A capacity for contributing to the objects of the Law Society which are, inter alia, to maintain and enhance the prestige, status, and dignity of the profession, to uphold the integrity of the profession, to uphold and improve the standards of professional conduct and qualifications of practitioners, and to provide for the effective control of the professional conduct of practitioners.
- A capacity, nay a willingness, to be of service to the public.
- The above list is not exhaustive.

THE PETITION

[15] The petitioner asserts that he is ordinarily resident within the jurisdiction of the High Court of Swaziland in that he is permitted to enter and remain in Swaziland, he being the holder of Class A Entry Permit No. TH 457/2011 which declares upon its face that he is:

“Authorised to enter and remain in Swaziland under the provisions of this Class A entry permit until 2013/08/26 in accordance with the provisions of section 5 of the Immigration Act 1982 and Part 11 of the regulations for the purpose of:
Legal Advisor at CANGO”.

[16] The ENTRY PERMIT exhibited to the appellant's petitions speaks for itself. It authorizes the Petitioner to Enter and Remain in Swaziland for a definite limited period. Two other items of importance are part of the record. They are:

- A DEPENDANT'S PASS which permits the applicant to 'enter Swaziland on or before the 2014/08/26 and to remain therein subject to the Immigration Regulations.'
- A certified photo copy of a page of the applicant's passport bearing the legend: DEPENDANTS PASS 4457/11 which appears, with the help of a microscope, to entitle the applicant 'to enter on or before the 26th day of August 2014'.

It is also germane to note that the DEPENDANT'S PASS itself reads immediately under the signature of the Chief immigration Officer:

'Note: This dependant pass should be submitted for renewal three months prior to the date of expiry.'

The above documents clearly confer upon the applicant the right to remain, and consequently reside in Swaziland, for indefinite periods provided that he complies with the relevant regulations.

SECTION 6 (1) (e) LEGAL PRACTITIONERS ACT, 1964

[17] The language of the captioned provision could hardly have been more clear and simple. It is common cause between the contending parties that sub-section (e) provides one of the alternative routes to admission and enrolment as an attorney provided that all of the other preconditions have been met by a petitioner.

[18] The Attorney General has held his office above the fray and is content to abide the judgment of the Court. The Law Society of Swaziland has however, not taking the obvious hint, and assuming the posture of an aggrieved litigant, vigorously opposed the petition upon the basis, *inter alia*, that section 6 (1) (e) affords an unfair advantage upon a petitioner relying upon that alternative for his or her admission.

[19] The appellant's petition was accompanied *inter alia* by the following relevant annexures:

- A certificate of admission as a solicitor of the Senior Courts in the Senior Courts of England and Wales.
- A certificate of Good Standing evidencing the petitioner's presence on the roll of solicitors as a solicitor of the Senior Courts of England and Wales. This certificate was accurate as at the 25th April 2013.

Hlophe J observed correctly, that:

“As to what the Examination in question entailed and what it was aimed at achieving, there is no information.”

As emerges from this judgment, however, the applicant was under no obligation to provide any such information.

[20] Hlophe J captured the essence of the Society’s arguments in paragraphs [9] – [11] of his judgment which read:

“(9) The Law Society denies that simply because of his admission as a Solicitor in England and Wales, the Petitioner is entitled to be admitted in Swaziland. It is contended that section 6 (1) (e) should be read together with and in the spirit of the other subsections of Section 6 (1) as well as the Constitution which emphasize equality as a fundamental principle. Firstly, the Petitioner has to show as required in section 6 (1) (a) that he is ordinarily resident in Swaziland and that he was a fit and proper person to be admitted as such meanwhile section 6 (1) (b) requires proof that he is above the age of 21 years.

(10) It was further contended that given that the other subsections of section 6 (1) require academic qualifications to be proved by a Petitioner, the current Petitioner should not be admitted because he was failing to disclose his own

Academic Qualifications. As I understood this argument, these Academic Qualifications were a sine qua non for one to be admitted as an attorney in Swaziland and perhaps anywhere in the World. It was contended further that the other sections contemplating the admission of already admitted attorneys like in cases of one from South Africa, Namibia, Botswana, Lesotho and Zimbabwe, require one to produce proof that he had practiced at least for two years before such a petitioner can be admitted as an attorney in Swaziland. This, Mr. Howe argued, was meant to ensure that the standards are not lowered and that the Law Society, as a Regulatory Body, ensures that that is the case which should start off with the training entailed.

- (11) *It was contended that in so far as section 6 (1) (e) sought to suggest that Practitioners recently admitted in England can or qualify to be admitted in this jurisdiction without any proof of their having attained academic qualifications and received sufficient training in preparation for practice was discriminatory and/or absurd and was against the Constitution and necessitated that this Court interprets them restrictively so as to avoid enforcing the alleged discriminatory and or absurd provision. It was argued further that this Court should refuse to enforce a legislation that apparently discriminates by suggesting that certain intending practitioners are, because of the place from where they come, superior and deserved to be treated differently and better than the others.”*

[21] On this aspect of the matter, Advocate P. Flynn contended that section 6 (1) (e) was a stand-alone and independent item in the alternatives enumerated in section 6 (1) (c), or (d), or (e), or (f). It had to be read and interpreted on its own, he argued persuasively, and was not to be linked or read together with any one or all of alternatives (c), (d) or (f). This Court agrees.

[22] The trial judge came down heavily upon the side of the Law Society. This is how he expressed his acceptance of the society's submissions:

“(15) Section 6 (1) (e) of the Legal Practitioner’s Act 1964, is on the face of it a bad and unfair section. The Law Society would in my view not be faulted for viewing it as discriminatory. This is because whereas all those intending to be admitted in Swaziland are required to be holders of at least a Bachelor’s Degree from Universities in their countries and also that they should have been in practice for more than two years at least, that is not what is required of one admitted as a Solicitor or barrister in England, Scotland, Ireland and Wales in terms of the section. In fact such a person is entitled to merely produce proof that he has been admitted as such there. He does not even have to disclose whether he does have any Academic Qualifications as well as what happened leading to his admission, that is did he undergo any examinations preparing him for Practice. Clearly a person who was admitted whilst fresh from school may not be allowed to Practice Law whether he was admitted in England or anywhere

else. Of course the same thing applies to one who has no legal qualifications. It does not mean that simply because for some reason he had to be admitted in England, he then had to be accepted without questions in Swaziland. That would clearly defeat the establishment of the Law Society of Swaziland as a Regulatory Body and I have no hesitation is not what was intended by the Legislature. It makes matters worse for the Petitioner in my view where it is disclosed ex facie his own papers that although admitted as a solicitor in England and Wales he is however not entitled to practice as a solicitor there as he does not hold a practice certificate.

(16) As the section stands it does not allow the Law Society as a Regulatory Body nor even the Court, to ascertain if indeed the person applying for admission does hold Academic Qualifications and whether he did indeed undergo training preparing him for Practice as is the case in this jurisdiction where one is required to serve articles of Pupilage and sit an Examination. It would be different if this information was being volunteered and disclosed by the Petitioner of his own accord in my view. The Petitioner's Petition does not disclose what academic qualifications the Petitioner holds and from which University, just as it does not annex any certificate proving such. The same thing applies to a disclosure of whether or not he received training in England leading to his admission there as a Solicitor. It worsens his case in my view that when this Court enquired if the Petitioner was prepared to disclose such and avail the appropriate certificates for inspection by the Law Society, Mr. Flynn could only say that the certificates were there but they were not required by the section

and he was therefore not going to disclose them. Whilst that could be true, the question remains as to how is the Regulator expected to effectively carry out its functions if such vital information would be withheld. Further still how can this Court boldly admit such a Petitioner if it is not sure he has the qualification and that he has been prepared for practice to uphold standards and ethics in the practice of law.

(17) Whilst the case could be different on the section as regards one who discloses his qualifications including one who discloses he underwent an equivalent training to our articles of Pupilage here or any other preparatory training, the same thing cannot be said for one who makes no such vital disclosures thereby making it impossible for the Regulatory body to play its statutory role.”

[23] With the greatest respect to the learned judge, I am of the considered view that the above excerpt from his judgment could be properly addressed to the legislature for its attention. I accept without reservation the appellant’s contention that the legislature, in its wisdom, deliberately included alternative (e) as one of the avenues through which, subject to satisfaction of all of the other statutory requirements, an applicant could secure admission and enrolment as an attorney. I am, accordingly, in respectful disagreement with the learned judge when he wrote:

“(17) Whilst the case could be different on the section as regards one who discloses his qualifications including one who discloses he

underwent an equivalent training to our articles of Pupilage here or any other preparatory training, the same thing cannot be said for one who makes no such vital disclosures thereby making it impossible for the Regulatory body to play its statutory role.

(18) I therefore do not think that the intention of the legislator when enacting the amendment to the Legal Practitioner's Act in 1993, as expressed in section 6 (1) (e) was to say the Law Society should not perform its regulatory functions vis-à-vis one admitted in England as a Barrister or Solicitor. I agree with Mr. Howe that the section concerned calls for an interpretation so that the spirit of the same section and the Constitution is not defeated. Clearly if in terms of section 6 (1) (d), the Legislator would insist on academic qualifications being disclosed together with a specific period of practice in case of one already admitted there, it can never be interpreted to mean that one admitted in England does not even have to allege and prove his academic qualifications above not disclosing whether or not he did undergo specific training preparing him for the practice of law which is a highly regulated industry, even if he would not be required to serve a specific period of practice.”

[24] The alternative set out in section 6 (1) (e) was enacted for a number of good and sufficient reasons:

- The legislature knew the law and was fully satisfied that the pre-requisites for admission as a barrister or solicitor in England, Scotland or Ireland had, applying the well known principles of

equivalency, amounted to an appropriate standard for admission and enrolment as an attorney in Swaziland.

- The ethical, academic, and professional standards underlying admission in England, Scotland and Ireland have resulted in the certification of some of the finest legal minds known to the field of law both municipal and International.
- The graduates of the Universities, Law Schools, Inns of Court and related centers of legal learning, have developed over the last thousand years the principles and practices of the English Common Law and Equity which have spread to every corner of the common law world and influenced the growth and development of the common law in every place when it has been accepted and applied. Indeed, many English Common Law concepts, such as the doctrine of Legitimate Expectation and the Mareva Injunction, have been received into the Roman Dutch Law systems of Southern Africa to the enrichment of those systems.
- The graduates of the systems obtaining in England, Wales, Scotland and Ireland have produced such legendary Barristers as Sir William Garrow, Sir Edward Marshall Hall, and in our own times, Mr. Patrick Hennessey. The systems in England, Scotland and Ireland have produced solicitors of world renown and repute. Many of the outstanding English, Scottish and Irish Barristers have matured into some of the greatest common Law judges of all time. Names which spring readily to mind are those of Lord Denning and Lord Bingham. The English House of Lords - now the Supreme Court - was strengthened and enhanced by great South African

Judges such as Lord Hoffman and Lord Steyn. The canons of the English Common Law were developed by great writers such as Lord Chief Justice Coke, Sir William Blackstone, and Jeremy Bentham whose mummified remains adorn the foyer of my Alma Mater the University College London to this very day.

- Barristers of England and Scotland have sat at the pinnacles of Southern African Roman Dutch Law Courts. Lord Sutherland, Lord Coulsfield, Lord Abernathy, and Lord Hamilton have enriched the jurisprudence of Botswana. So have members of this Court who have graduated from Universities, The Inns of Court, and Law Schools in England and Scotland, and who have been called to the Bar in those jurisdictions.

The proposition therefore, that petitioners who have satisfied the requirements for call to the Bar of England, Scotland and Ireland and for admission as Solicitors in those countries are somehow inferior to petitioners who have taken alternative routes is clearly unacceptable. In any event, if the section 6 (1) (e) alternative is to be removed from the statute books, or amended as the Law Society demands, this Court is not empowered to do so. As has been pointed out above, such proposed changes must run the gauntlet of the legislative processes: whereupon this Court will faithfully apply such amendments as might be made.

ORDERINALY RESIDENT IN SWAZILAND

[25] The words “ordinarily” and “resident” are not defined in the Legal Practitioners Act. Nor is the phrase “ordinarily resident”. However, the Concise Oxford Dictionary defines “ordinarily” which means ‘with no distinctive features; normal or usual’. The noun “resident” is defined as ‘a person who lives somewhere on a long term basis’. The adjective “resident” is defined as ‘living somewhere on a long term basis.’ But the adjective ‘long’, be it pointed out at this juncture, is by its very nature, an elastic concept taking its meaning from the surrounding context in which it is used.

[26] Let it be said at once that, from the evidence of his passport, the petitioner is a citizen of another country and is entitled to perpetual residence in that country according to the laws of that country. His claim to be ordinarily resident in Swaziland is therefore based upon the laws of this Kingdom. As set out in his petition, his claim to be ordinarily resident within the jurisdiction is founded upon his having been ‘permitted to enter and remain in Swaziland under the provisions of Class A Entry Permit No. T4457/2011.’ See also Paragraphs [16] – [17] above.

[27] The earliest definition of ‘ordinary residence’ to which reference has been frequently made in later cases is to be found in **Levine v Inland Revenue** [1928] UKHL 1 at paragraph 9 which reads:

‘The expression “ordinary residence” ... is contrasted with usual or occasional or temporary residence; and I think that it connotes residence in a place with some degree of continuity and apart from accidental or temporary absences. So understood the expression differs little in meaning from the word “residence” as used in the - Income Tax - Acts.’

The more recent case of **Davies & Another v Revenue and Customs** [2011] UKSC 47 restates the following established principles:

- It is permissible in law for a person to be resident and ordinarily resident in different places at the same time.
- Ordinary residence is not necessarily the same as permanent residence.
- Ordinary residence is to be contrasted with occasional residence.
- Ordinary residence does not include presence in the country for some temporary purpose only, and not with a view or intent of establishing residence there.

The dictum which I think is most apposite to the facts and circumstances of this case is that which was cited with approval in **Davies**, and which was attributed to Lord Scarman in **R v Barnet London Borough**

Council, Ex p Nilish Shah [1983] 2 AC 309 where this definition of Ordinary Residence was laid down:

*“‘**Ordinary Residence**’ referred ‘to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.’”*

Applying the principles enunciated above, this Court concludes that the applicant was ordinarily resident in Swaziland at all material times.

CONCLUSION

[28] For the reasons set out in the foregoing paragraphs, this Court has concluded that the appeal should succeed: first, because the appellant has satisfied all of the requirements of the statute, and secondly, because of the several misdirections by the *court a quo*, relying as it did upon the untenable submissions of the respondent. Those submissions, on all of the contested issues between the parties, are wholly without merit. They are accordingly rejected in their entirety. The appeal must accordingly be allowed.

COSTS

[29] The normal rule is that costs follow the event. Counsel for the respondent argued that since the Law Society was a Regulatory Body, An Order for

costs against it would have a chilling effect upon the performance by it of its statutory functions: and that no order for costs should be made against the Society for that reason if the appeal should succeed.

[30] Counsel for the appellant advanced the self-evident fact that his client has been put to the trouble and costs of prosecuting the appeal as a result of the voluntary intrusion of the Law Society, which was rendered more conspicuous by the non-intervention of the Attorney General. He also makes the additionally powerful points that:

- The Respondent submitted in its heads of Argument that ‘the appellant should be directed to pay the costs of the respondent including the costs of senior counsel.’
- Ignoring the equitable principle that, what is sauce for the goose should also be sauce for the gander, the Society contends that it should not be ordered to pay costs if the appeal succeeded.
- The Society’s Opposing Affidavit refers to ‘the Legal Profession in Swaziland’ as ‘a productive industry’. The Society’s affiant then went on to aver that ‘There is a large influx of lawyers who are not citizens and the Society has to protect the industry for Swazis.’
- The Society should be made to pay the costs of their ‘protection of the industry’ which concerns the narrow interests of the Society

rather than the interests of the legal profession as such or the public interest.

This Court is persuaded by the arguments advanced by the appellant's counsel that orders for costs ought to be made against the respondent.

ORDER

[31] It is the order of this Court that:

- i. The appeal be and is hereby allowed.
- ii. The respondent is to pay the costs of the appellant in this Court.
- iii. The respondent is to pay the costs of the appellant in the court below.

S.A. MOORE
JUSTICE OF APPEAL

I agree

M.M. RAMODIBEDI
CHIEF JUSTICE

I agree

M.C.B. MAPHALALA
JUSTICE OF APPEAL

For the appellant : Advocate P.E. Flynn

For the Respondent : Advocate B.L. Skinner S.C.