



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No. 20/2014

In the matter between

**MORMOND ELECTRICAL
CONTRACTORS (PTY) LTD**

APPELLANT

And

SHIFA INVESTMENTS (PTY) LTD

RESPONDENT

Neutral citation: *Mormond Electrical Contractors (Pty) Ltd vs Shifa Investments (Pty) Ltd (20/2014) SZSC 59 (3 December 2014)*

Coram: DR TWUM JA, OTA JA AND LEVINSOHN JA

Heard: 11 NOVEMBER 2014

Delivered: 3 DECEMBER 2014

Summary: *Civil Procedure: mandament van spolie; principles thereof; Respondent was dispossessed of peaceful and undisturbed possession of merx without due process; the court a quo granted a spoliation order; appeal against the said order dismissed with costs.*

JUDGMENT

OTA. JA

[1] **INTRODUCTION**

This is an appeal against the decision of the High Court per **Hlophe J**, granting a spoliation order. The case for the Respondent (who was Applicant in the court *a quo*) is that it was in peaceful and undisturbed possession of an electric generator described as a Cumming's generator, when it was forcibly removed from its premises by the Appellant.

[2] Consequently, the Applicant approached the court *a quo*, under a certificate of urgency, contending for the following substantive reliefs:-

“3. Ordering and directing the Respondent to restore possession ante omnia of the 60 KVA Cummings generator, to the Applicants possession at the Eteteni Rental Centre within twenty four (24) hours of the grant of this order.

4. Costs of application at attorney and client scale.”

[3] The application was opposed by the Respondent (Appellant). Suffice it to say that at the end of the day, the court *a quo* granted the order sought. The court held that the Applicant was in peaceful and undisturbed possession of the generator and that its removal was unlawful, in that it was done without either its consent or a court order. The court also awarded costs to the Applicant on the ordinary scale.

[4] **THE APPEAL**

It is convenient for me from this juncture to refer to the Applicant *a quo* as Respondent and the Respondent *a quo* as Appellant.

[5] Aggrieved by the judgment, the Appellant now seeks redress before this Court. The notice of Appeal is couched in the following terms:-

“BE PLEASED TO TAKE NOTICE that the first to third appellants hereby note appeal against the whole of the judgment of the Honourable N.J. Hlophe J dated 6th June 2014 in terms of which the learned Judge *inter alia*:

1. **Granted an order that the appellant should restore possession of the 60KV Cumming generator to the applicant’s possession at Eteteni Retail Centre, within 24 hours of this order;**
2. **Granted an order that the appellant should pay the costs of the proceedings at ordinary scale;**
3. **Held that it is irrelevant in spoliation proceedings that the item, generator, was not being used by the respondent at the time it was removed from its premises as the respondent was in peaceful and undisturbed possession.**

THE GROUND OF APPEAL IS AS FOLLOWS:-

4. **The learned Judge ought to have concluded that the respondent had failed to make out a case of spoliation as it had not exercised factual control of it with the intention to secure some benefit from it. The evidence of the appellant was that it had not connected the generator because the respondent had refused to pay the balance contending it was second hand. In fact, in its own papers the respondent stated clearly that it did not need the generator it only wanted its deposit to be paid back.”**

[6] It is on record that the Appellant filed additional grounds of appeal as follows:-

- “1. **The learned Judge erred in allowing hearsay evidence pertaining to the removal of the generator contained in the founding affidavit.**

2. **The learned Judge erred in allowing evidence pertaining to the removal of the generator contained in the replying affidavit, as same should have been included in the founding affidavit.**
3. **The learned Judge erred in resolving the factual disputes regarding the removal of the generator against the appellant. In particular, the learned Judge erred in attempting to resolve factual disputes with reference to the probabilities.”**

[7] I will deal with the issues arising in this appeal wholistically as they are all interrelated.

[8] The question is, did the court *a quo* err in any of the foregoing respects? My answer to this poser is an emphatic No!. My reasons for this conclusion appear hereunder.

[9] The remedy of *mandament van spolie* has a three dimensional character namely (a) it is a possessory remedy (b) an extraordinary and robust remedy and (c) a speedy remedy. That is why the law regards it as inherently urgent.

[10] The rationale behind its feature of urgency is not far-fetched. It is steeped in the fact that the remedy speaks to the unlawfulness of the action dispossessing another of its possession of property by force, threat of force, violence, theft, fraud, stealth or some other illicit method. It is however now settled law that stealth, fraud or any kind of violence or force is no longer necessary for an act of spoliation. The whole enquiry turns on whether the person in possession was deprived of peaceful and undisturbed possession without a legal process or his consent or acquiescence. This is because in all cases, dispossession is unlawful when it is without the consent of the person

deprived of possession, since consent to the giving up of possession of property, if the consent is genuinely and freely given, negates the unlawfulness of the dispossession.

[11] The philosophical underpinning of this remedy is the fundamental principle that no man is entitled to take the law into his hands. It is thus a laudable remedy geared towards maintaining the public peace, order and security in the society, by discouraging self-help activity in order to gain possession of a property. Therefore, if a person without due process disposes another person of property, the court, without enquiring into the merits of the dispute, will summarily grant an order for restoration of possession to the Applicant. See **Thoko Ivy Mkhabela v Bonginkosi Mkhabela Civil Appeal Case No. 28/07, Voet 41.2.16; Van der Liden 3.5.4; Willies's Principles of South African Law, 7th ed by Gibson at pg 198.**

[12] The remedy is clearly distinct from the process whereby a party's right to ownership or other right to the property in dispute is determined. It takes no cognizance of the alleged title or right of the spoliator to claim possession. The object is **“merely to restore the *status quo ante* the illegal action. It decides no rights of ownership. Its secures only that if such decision be required, it should be given by a court of law, and not affected by violence --- -”** Mans v Maras 1932 CPD 3352 at 356.

[13] In fact before the court will allow any enquiry into the ultimate rights of the parties, the property which is the subject of the act of spoliation, must be restored to the person from whom it was taken, irrespective of the question

as to who is in law entitled to be in possession of such property (**Greyling v Estate Pretorius 1947 (3) SA 514 (W) At 516**).

[14] This is because, in our law possession is viewed with great relevance, so much so that even a thief or *mala fide* possessor is ordinarily protected in his possession and physical control of a thing. A possessor is thus afforded every possible protection in the law, not only in retaining his physical control but also in regaining it when he has been unlawfully dispossessed.

[15] What stands out in its stark enormity from the foregoing statement of the law, is that this is not a remedy that can be had just for the asking. For an Applicant to be entitled to relief, it is incumbent upon him to prove two factors namely:-

(i) That he was in peaceful and undisturbed possession. His possession must have been a sufficiently formed and established possession. The remedy is not open to a person whose *de facto* control is not an accomplished fact, and who is in effect being dislodged by the person already in possession of the property. In such a case, his dislodgment amounts to a justiceable counter spoliation. If the recovery of the property is instant, in the sense of being still part of the *res gestae* of the act of spoliation, it is a continuation of the breach of peace which already exists (**Nhlavana Maseko Khokhela Tfumbatsa Aaron and Another v George Mbatha and Another Civil Appeal Case No. 7/2005, Mbangi and Others v Dobsonville City Council 1992 (2) S.A 330 (W); De Beef v First Investments Ltd 1980 (3) S.A. 1087 (W); Ness and Another v Greet 1985 (4) S.A. 641 (C)**).

(ii) That he was despoiled of possession by the Respondent. The Applicant must show that the dispossession was illicit, in that it was orchestrated without due process.

[16] It is not sufficient for the Applicant to merely make out a *prima facie* case. To be entitled to the spoliation order he must prove on the balance of probability, that the material allegedly despoiled was in his possession and was unlawfully removed from his possession.

[17] A resume of the facts will show whether this case fulfilled the required standards to warrant the order granted.

[18] The common cause facts demonstrate that on or during September, 2013, the parties entered into an agreement of sale in terms of which the Respondent bought a brand new Cumming's generator from the Appellant. The agreement is still valid and subsisting between the parties.

[19] The purchase price agreed upon by the parties for the sale of the generator was the sum of E145,451.46, out of which the Respondent was to make a deposit of E75,000-00 leaving an outstanding balance of E70,541.46, which was payable after delivery. The Respondent paid the deposit of E75,000.00 in two instalments. The Appellant duly delivered, landed and installed a generator in the Respondent's premises, on 26 September 2013.

[20] Thereafter, there ensued a dispute between the parties, which saw the Respondent questioning the authenticity of the Cumming's generator on

which was inscribed the phrase “**made in Shangai**” contrary to his expectations that the generator to be supplied was to be made in England.

[21] The Appellant for his part maintained that the generator was genuine and insisted on the Respondent paying the outstanding balance, but the Respondent was reluctant as he persisted in disputing the authenticity of the generator.

[22] It is evident that it was in a bid to prevent an imminent impasse, that the parties met on 22 October 2013 to discuss the issue of payment of the outstanding balance as well as the Respondent’s fears that the said generator was not an authentic or genuine Cumming’s generator. Even though the Appellant alleges that at this meeting the Respondent consented to the removal of the generator from its premises, this is however not apparent from the record. I will come to this issue anon.

[23] Suffice it to say that on 24 October 2013, two days after the meeting, the Appellant dispatched a letter to the Respondent demanding that the Respondent pays the balance due on the contract in the sum of E70,451.46 within a day (25 October 2014), or the Respondent would leave it with “**no alternative but to take the necessary action to safegaurd our interest.**”

[24] The Respondent failed to pay as demanded and on 28 October 2013, the Appellant’s workmen went into the Respondent’s premises and removed the said generator.

[25] This is the background of the spoliation proceedings launched by the Respondent before the court *a quo*.

[26] The facts of this case, when juxtaposed with the immutable principles on spoliation, lead me to the inexorable conclusion that the court *a quo* was correct to grant the relief sought.

[27] The ingredients of the remedy are patently obvious from the foregoing established facts of this case. The contractual dispute between the parties is irrelevant. Of paramountcy is the fact that the Respondent had made an advance payment for the generator and the generator was delivered and landed on its premises by the Appellant. This, in my view, constitutes control which is possession.

[28] It is also indisputable from the evidence that the Respondent was in peaceful and undisturbed possession of the generator when it was dispossessed from its possession by the Appellant.

[29] **PROPOSED DEFENCES**

(a) Possession

Untrammelled by these indisputable facts, the Appellant, both in the court *a quo* and this Court, sought to advance some defences geared at disabling the spoliation order. To this end, the Appellant firstly alleged that the Respondent was not in possession of the generator because it had not exercised factual control of it with an intention to secure some benefit therefrom. In support of this proposition, learned counsel for the Appellant Mr Jele, contended that the generator was not commissioned or connected

after its delivery due to default of payment of the balance by the Respondent, therefore, it was not in use. Further, that in contesting the genuineness of the generator, the Respondent made it clear that it no longer needed the generator but wanted a refund of its deposit. These facts, Mr Jele alleged, go to show that the Respondent had no intention to secure any benefit from the generator and should defeat the spoliation order.

[30] The way I understand the law on this subject - matter is that an Applicant for a spoliation order, must prove possession, however, a benefit derived from custody will suffice. This principle is elucidated in the case of **Yeko V Qana 1973 (4) SA 735 A**, where the court made the following condign remarks:-

“The very essence of the remedy against spoliation is that the possession enjoyed by the party who asks for the spoliation order must be established. The possession which must be proved is not possession in the juridical sense; it may be enough if the holding by the applicant was with the intention of securing some benefit for himself. All that the spoliatus has to prove, is possession of a kind which warrants the protection accorded by the remedy, and that he was unlawfully ousted.” (emphasis added)

[31] The foregoing extract attest to the fact that the requirement that the possession should be coupled with an intention to secure some benefits, is not mandatory. There is no hard and fast rule. To my mind the applicable test is **“possession of a kind which warrants the protection accorded by the remedy.”** I think that this inclines to a broad interpretation of the term **“possession”** as circumscribed within the context of a particular case.

[32] **Blacks Law Dictionary (8th ed) pages 1201 – 1202** defines the word **“possession”** as follows:-

“Possession

1.The fact of having or holding property in one’s power; the exercise of dominion over property. [Cases: property 10. C.J.S Property ss 27 -31, 33]. 2.The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. 3. Civil law. The detention or use of a physical thing with the intent to hold it as one’s own. La. Civ. Code art. 3421 (1). 4. (*usu.pl*) Something that a person owns or controls; PROPERTY (2). Cf. OWNERSHIP; TITLE (1) . 5. A territorial dominion of a state or nation.

‘[A]s the name of Possession is ---- one of the most important in our books, so it is one of the most ambiguous. Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. In common speech a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others --- [A]ny of the usual outward marks of ownership may suffice, in the absence of manifest power in some one else, to denote as having possession the person to whom they attach. Law takes this popular conception as a provisional groundwork and builds up on it the notion of possession in a technical sense, as a definite legal relation to something capable of having an owner, which relation is distinct and separable both from real and from apparent ownership though often concurrent with one or both of them.’ Frederick Pollock & Robert Samuel Wright, *An Essay on Possession in the Common Law* 1- 2 (1888).

‘In the whole range of legal theory there is no conception more difficult than that of possession. The Roman lawyers brought their usual acumen in the analysis of it, and since their day the problem has formed the subject of a voluminous literature, while it still continues to tax the ingenuity of jurists. Nor is the question one of mere curiosity or scientific interest, for its practical importance is not less than its difficulty. The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title.’” John Salmon, *Jurisprudence* 285 (Glanville L. Williams ed., 10th ed, 1947).

[33] It cannot be gainsaid from the above that terms such as control, use, dominion, detention, continuous exercise of claim to the exclusion of others;

enjoyment and having or holding of property, ownership and control; to mention but a few, all translate to possession.

[34] Invariably, what will constitute dispossession of the type of possession necessary to found a spoliation claim, will depend on the peculiar facts and circumstances of each case.

[35] It is thus certainly preposterous to suggest that in the context of this case, the Respondent was not in possession of the generator because it was not in use. In my view, whether or not the generator was connected or commissioned is immaterial. The fundamental factor is that the Respondent paid a deposit on it and it was delivered and landed on its premises, where it remained under its control in terms of the contract between the parties, from 26 September 2013 until it was removed by the Appellant on 28 October 2013.

[36] In any case, the Respondent has maintained all through in its papers, that even though contesting the genuineness of the generator, it had always insisted on retaining possession of it whilst discussion in relation thereto advanced.

[37] It is obvious to me that the Respondent retained possession of the merx in order to secure the benefit of its contract with the Appellant, which is still valid and subsisting. That being so, the Respondent could not be unlawfully dispossessed of its possession and that benefit, irrespective of its apprehension about the genuineness of the generator.

[38] In the case of **Stocks Housing (Cape) (Pty) Ltd v Chief Executive Director, Department of Education and Culture Services and Others 1996 (4) SA 231 (C)**, the Applicant had possession and control of a building site as well as the plant, equipment and material all on the site, in terms of a building contract with the Respondents. Respondents' officials handed a letter to the foreman at the site terminating the contract and ordering vacating of the site within the hour. A copy of the letter was transmitted by fax to the Applicant's head office simultaneously with the arrival of the Respondents' officials on site. The Applicant was unable to contact the Respondents' relevant officials to protest against action. The Respondents locked the gates of the premises precluding the Applicant from access to the site, notwithstanding the Applicant's protest and objections at the first practicable and reasonable opportunity. The Applicant moved an application for *mandament van spolie* based on unlawful ejection from the site.

[39] In granting the spoliation order, the court held, that a building contractor who entered upon a building site and occupied and took control of it in terms of his contract in order to carry out the contract work, and remained in occupation for that purpose, had possession of the site which might be protected by a spoliation order. The builder possessed the site in order to secure the benefit of his contract and should not be deprived of his possession and that benefit by an unlawful dispossession of the site by the owner of the property or any one else. (underlining my own)

[40] It appears to me therefore, that the court *a quo* was correct to find that the generator was in the peaceful and undisturbed possession of the Respondent, when it was despoiled by the Appellant.

[41] **(b) Consent**

Crucially, it is evident from the papers that the dispossession was unlawful in that it was done without due process. There was neither a court order for the removal of the generator by the Appellant nor did the Respondent consent to it.

[42] The Appellant had alleged in its defence, that the Respondent had consented to the removal of the generator during the meeting of 22 October 2013, therefore, so continued the argument, it did not forcefully remove the said generator. This contention, as correctly found by the court *a quo*, flies in the face of the letter written by the Appellant on 24 October 2013, two days after the Respondent allegedly gave the said consent.

[43] For the avoidance of doubt, I recite the relevant portions of the letter hereunder:-

“6. It is becoming abundantly clear that you no longer want a generator and you are looking for an excuse to return the said generator to us.

On the basis that the generator is now regarded as second hand and that Mormond has now incurred both administrative, transport and labour costs in landing the set we are more than happy to remove the generator and refund your deposit LESS reasonable costs incurred to date. Should you be agreeable to this, please contact me on an urgent basis, in this regard.

I regret to inform you that should you fail to pay the balance of the monies due by close of business on Friday 25th October 2013, we shall have no alternative but to take the necessary action to safeguard our interest.”

(emphasis added)

[44] The emergence of this letter in these proceedings is tantamount to the proverbial “**opening of a Pandora box**” on the unlawfulness of the dispossession. It is axiomatic. It foreshadows the Appellant’s intention to despoil the Respondent as well as the lack of consent by the Respondent to the dispossession.

[45] This is because, the letter not only solicits the Respondent’s agreement (consent) to the removal of the generator by the Appellant upon the terms and conditions stipulated therein, but it goes further to advance an ominous alternative of an intention by the Appellant to take steps to safeguard its interest in the generator in the event of default of payment of the outstanding balance by the Respondent, penultimate 25 October 2013. There is no evidence to show that the Respondent either paid the outstanding balance or consented to the removal of the said generator by the Appellant.

[46] In these circumstances, I think that the court *a quo* was correct to draw the inference, that it was the failure of the Respondent to give the solicited consent as well as its failure to pay the outstanding deposit as demanded in the foregoing letter, that elicited the forceful and unlawful removal of the said generator by the Appellant on 28 October 2013, precisely four (4) days after the issuance of the letter. The Appellant was apparently making good its threat to safeguard its interests in the generator. This fact shows the lack of consent and unlawfulness of the dispossession.

[47] **(c) Hearsay evidence**

There is a further point taken by the Appellant on the issue of consent. This is that part of the evidence tendered by the Respondent in this regard is hearsay evidence. In the Respondent's founding affidavit, the deponent thereof had alleged that he was informed by Respondent's security guard that Appellant's employees forced their way into the premises and forcefully repossessed the generator. To this end, they sawed off the gate and padlocks and broke down the generator house. In its answering affidavit the Appellant took issue with this evidence condemning it as hearsay, whereupon the Respondent, in an effort to remedy the situation, urged a confirmatory affidavit of the said security guard in its replying affidavit.

[48] Mr Jele contended, that the Respondent was required by law to make out its case in its founding affidavit and is precluded from urging the confirmatory affidavit in reply. This being so, the court *a quo* totally misdirected itself in relying on both the founding affidavit and confirmatory affidavit in drawing the inference that the forceful method in which the generator was removed from the Respondent's premises, denotes lack of consent.

[49] In my opinion, whether this piece of evidence is hearsay or not is of no moment. This is because the combined effect of the letter of 24 October 2013 and the Appellant's admission that it did indeed dispossess the generator subsequent thereto, constituted sufficient material from which the lack of consent could be easily extrapolated. This rendered the alleged hearsay evidence surplusage. It needed not be pleaded.

[50] In any event, I am not persuaded that the court *a quo* misdirected itself in relying on the alleged hearsay evidence on how the generator was removed.

- [51] Admittedly, as a general rule, hearsay evidence is not permitted in affidavits. This is not however a rule of thumb. It is not sacrosanct.
- [52] Sound legal practice allows a deponent who has in his founding affidavit included facts in respect of which he does not have first hand knowledge, to substantiate such facts by annexing a confirmatory affidavit of a person who does have knowledge of those facts. Such a confirmatory affidavit is usually annexed to the founding affidavit in accordance with the general rule against new matter in reply.
- [53] *In casu*, the confirmatory affidavit emerged via the replying affidavit. Inasmuch as I agree that this procedure is irregular, the court *a quo* still had the discretion to accept it. This is in appreciation of the urgency of the spoliation application which is informed by the threatened injury or invasion of the rights of the Respondent. This is the general position of the law where hearsay allegations are allowed in affidavits, as advanced by or great weight of judicial authorities. See **Syfrets Mortgage Nominees Ltd v Capre St Francis Hotels (Pty) Ltd 1991 (3) SA 276 (SE) at 285 D –E, The Civil Practice of the Supreme Court of South Africa 14th ed page 309 – 370 by Herbstein and Van Winsen.**
- [54] Most importantly, and as correctly found by the court *a quo*, there is no demonstrable prejudice, whether actual or perceived, suffered by the Appellant by reason of the appearance of the confirmatory affidavit in the Respondent's replying affidavit.

- [55] I hold this view based on the fact that, firstly, this is not a situation where a case was being made out for the first time in the replying affidavit. The material allegations of fact coupled with the source of the facts alleged, were already in the founding affidavit. The confirmatory affidavit, albeit in reply, only served to verify those allegations of fact and could be condoned.
- [56] Secondly, as I have already demonstrated herein, other facts exhibiting the lack of consent which the alleged hearsay evidence was meant to show were evident in the papers, thereby derogating any prejudice that may be occasioned to the Appellant by reliance being placed on it.
- [57] In the absence of prejudice, I know of no reason why the court *a quo* should have rejected the said evidence. This is in accord with the universal trend towards substantial justice, which is that in the absence of prejudice, the substance of the matter should be considered.
- [58] The legal pedigree for the foregoing proposition is the case of **Shell Oil Swaziland (Pty) Ltd v Motor World (Pty) Ltd t/a SIR Motors, Civil Appeal Case No. 23/2006 paras [29] – [30]**, where the court exhorted this principle in the following parlance.

“[29] **It is now well established that when a factual issue which appears in the founding affidavit is challenged or denied by the respondent in the answering affidavit, the courts will allow the applicant to clarify or rectify the issue in a replying affidavit. In BAECK AND SO (SA) (PTY) LTD v VAN ZUMMEREN AND ANOTHER 1982 (2) SA 112 (W) the headnote to the report of that case reads:**

‘Where in an application the applicant does not state in his founding affidavit all the facts within his knowledge but seeks to do so in his replying affidavit the approach of the Court should nevertheless always be to attempt to consider

substance rather than form in the absence of prejudice to the other party.’

[30] **Goldstone J** who gave the judgment in the **Baeck** case was following a long line of cases in which the courts of South Africa have allowed applicants to supplement their founding affidavits in replying affidavits. In **SHEPARD vs TUCKERS LAND AND DEVELOPMENT CORPORATION (PTY) LTD 1978 (1) SA 173 (W) AT 177G – 178A**, Nestadt J. as he then was, was dealing with the requirement that the applicant is obliged to include in his founding affidavit all the pertinent facts on which he relies. The learned Judge said:-

'This is not, however, an absolute rule. It is not a law of the Medes and Persians. The Court has a discretion to allow new matter to remain in replying affidavits, giving the respondent the opportunity to deal with it in a set of answering affidavits.’”

[59] **(d) Disputes of fact**

Furthermore, the fact of lack of consent shown via the letter of 24 October 2013, also defeats the allegation of disputes of fact touted by the Appellant in relation thereto. To my mind, the court *a quo* correctly resolved this issue on the state of the pleadings. It is now a well recognized principle of law that disputes of fact appearing in proceedings by affidavit will qualify to be referred to trial, if such disputes of fact are material to the issues in controversy and are incapable of resolution on the state of the pleading. See for example, **Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa (4th ed) Juta, at page 383 Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1162 and 1168.**

[60] *In casu*, the court *a quo* was correct in its assessment of the probabilities, which probabilities are evident on the record and show that on the

Appellant's papers there was no dispute of fact whether there was consent or not. Whatever dispute that could be perceived was resolvable on the state of the Appellant's pleading, with particular regard to the letter of 24 October 2013.

[61] CONCLUSION

In the final analysis, I see no error or misdirection committed by the court *a quo* that would warrant this court's interference with its decision.

[62] This appeal lacks merits. It fails and is dismissed with costs.

E.A. OTA
JUSTICE OF APPEAL

I agree

DR. S. TWUM
JUSTICE OF APPEAL

I agree

P. LEVINSOHN
JUSTICE OF APPEAL

For Appellant:

Mr. N.D. Jeje

For Respondent:

Mr. N.V. Mabuza