IN THE INDUSTRIAL COURT OF APPEAL OF ESWATINI

JUDGMENT

Case No.11/2022

In the matter between:

SWAZILAND CONFERENCE OF CHURCHES Appellant

and

PRUDENCE KUNENE Respondent

Neutral citation: Swaziland Conference of Churches v Prudence Kunene [2022] [11/2022] SZICA 07 (24 March 2023)

Coram: **S. NSIBANDE J.P., M. VAN DER WALT JA AND N. NKONYANE JA**

Date Heard: 20 July 2022

Date Delivered: 24 March 2023

Summary: *Appeal to Industrial Court of Appeal – Industrial Court awarding loss of earning to applicant claiming unfair dismissal and unlawful termination of contract of employment.*

Held: *Legislative inroads made into area of termination of contracts of employment confining claims to unfair dismissal with remedial powers of Court set out in Section 16 of the Industrial Relations Act.*

Claim: *The Industrial Court should not have heard claims not reconciled at CMAC and not listed on certificate of unresolved dispute.*

Held: *Factual issue not raised at Court a quo therefore not properly before Court.*

Held: *No statutory obligation to list claims arising from unresolved dispute on certificate of unresolved dispute. Commission only obliged to certify reported dispute that remain unresolved after Conciliation.*

JUDGMENT

[1] It is common cause that the contract of employment giving rise to the respondent's claim was entered into by the parties on 1st March 2016 and that it was to terminate on 28th February 2019; that the contract was terminated prematurely in October 2017 due to redundancy and that when the contract was terminated it still had sixteen (16) months remaining.

[2] It is common cause further that the respondent claimed she had been unfairly dismissed, substantively and procedurally, and having gone through the processes set out in **Part VIII** of the **Industrial Relations Act 2000** (as amended), the respondent approached the *Court a quo* claiming an amount of E283 147.72 in respect of Notice Pay, Additional Notice, Leave Days, Remainder of Contract, Gratuity Compensation for Unfair dismissal plus costs of suit.

[3] After having heard the evidence led, the Court *a quo* came to the conclusion that the dismissal of the respondent was substantially fair but procedurally unfair in so far as the appellant had failed to comply

with the procedural aspects of **Section 40 of the Employment Act, 1980.** The appellant was ordered to pay the respondent the following:

Notice Pay (E8 500.00); Additional Notice (E636); Severance Allowance (E1590.91); Sixteen (16) months loss of earning (E136 000.00); and two (2) months compensation in respect of unfair dismissal (E17000.00) amounting to **E163 727.27**.

[4] Being dissatisfied with the judgement of the Industrial Court, the appellant noted an appeal to this Court on the following grounds:

"That the Court a quo erred and/or misdirected itself as hereunder captured;

1. *By violating the unambiguous provisions of Section 16 of the Industrial Relations Act of 2000 (as amended), which expressly cap maximum compensation for unfair dismissal at twelve (12) months.*

2. *By importing and implementing a remedy unknown and not provided in the Kingdom of Eswatini's labour jurisprudence i.e loss of earnings. Consequently the Respondent was granted and/or awarded sixteen (16) months as a common law founded remedy*

Alternatively

3. *By granting the Respondent's favour two (2) distinct and legally incompatible remedies ie two (2) months compensation for unfair dismissal and sixteen (16) months remainder of prematurely terminated employment contract.*

4. *By ruling and/or awarding in the Respondent's favour on issues which were never conciliated upon at the Conciliation Mediation and Arbitration Commission (CMAC) and which do not even appear on the Certificate of Unresolved Dispute. These issues are compensation for unfair dismissal and notice pay."*

[5] The Appellant's Submissions

The appellant's attorney, Mr Mhlanga, submitted that the Court *a quo* had erred, in law, in violating **Section 16** of the **Industrial Relations Act 2000 (as amended) (the Act)** in so far as it specifically caps compensation for unfair dismissal at twelve (12) months. Referring the Court to **Sections 16 (4)** and **(6)** of the **Act,** he submitted that the Court *a quo,* being a creature of statute established by **the Act**, can not

exercise powers beyond that which the enabling statute gives to it. The question that arises from the facts of the matter and the judgement of the Court *a quo,* according to Mr Mhlanga, is whether the Court *a quo* was correct in exercising its powers by awarding compensation for unfair dismissal with reference to a sixteen (16) months' time period.

When this Court pointed out that in terms of the judgement of the Court *a quo* compensation for unfair dismissal was granted at two (2) and not sixteen (16) months, as submitted and that the sixteen (16) months salary granted to the respondent was in respect of damages for breach of contract, Mr Mhlanga's retort was that the starting point ought to be the Certificate of Unresolved dispute which would indicate what issues were before the *Court a quo*. In this respect he submitted that in the matter before Court the respondent had not made a claim for compensation for unfair dismissal but had sought payment for the remainder of the term of the terminated contract of employment (being payment of 16 months salary).

[6] To a question posed by the Court, the appellant confirmed that in respect of the first ground of appeal the legal question to be answered by the Court was whether the *Court a quo* was permitted to go beyond

the statutory cap of 12 months salary in granting compensation for unfair dismissal and/or damages for breach of contract.

[7] The appellant's further submission was that the Court *a quo* awarded the respondent 16 months' loss of earnings whereas there is no such remedy in our law; that in terms of the common law the respondent would have been entitled to damages for breach of contract and that, if proved, such damages would amount to the salary due for the remainder of the breached contract, in this case sixteen months. The appellant submitted that the Legislature, in terms of **Section 16** of the **Industrial Relation Act 2000 (as amended)** had capped awards to the equivalent of twelve (12) months and no more; that the Court *a quo* was not empowered to grant more than twelve months' salary as compensation for unfair dismissal or as damages for breach of contract, as the case may be. Simply stated, the appellant's submission was that even if this Court was to find that the remedy of loss of earnings existed in our law, that remedy, much like that of unfair dismissal, is limited to a maximum of 12 months' salary if so awarded.

[8] Finally, the appellant, in line with its fourth ground of appeal submitted that the respondent's claims for payment of compensation for unfair

dismissal and payment of notice pay had not been conciliated on at the Conciliation Mediation and Arbitration Commission (CMAC) and did not appear on the Certificate of Unresolved Dispute and were therefore improperly before the Court *a quo* and should not have been considered nor awarded to the respondent.

[9] The appellant submitted that it was not enough for a dismissed employee to simply report that he/she had been unfairly dismissed. It was necessary that he/she then list the issues in dispute. The respondent had failed to list the two issues as being in dispute and they therefore could not have been conciliated on by CMAC and were improperly before the *Court a quo*. Consequently, they should not have been considered by the *Court a quo* and Counsel sought that the appeal be upheld.

[10] <u>The Respondent's Case</u>

Mr Mtshali for the respondent's first submission was that the appellant appeared to be protesting at the awards granted by the *Court a quo* to the respondent. With regard to the first ground of appeal it was the respondent's submission that the *Court a quo* is entitled to award

compensation to a party found to have been unfairly dismissed in terms of **Section 16(6) of the Industrial Relations Act 2000,** in particular, Sections (**6**) and **(4)** thereof.

Mr Mtshali submitted that **Section 16(6)** empowers the Court, where an employer fails to prove that the reason for the dismissal was fair, to award *"not more than the equivalent of 12 months remuneration"* and **Section 16(4)** empowers the Court to vary such compensation as it deems just and equitable if the dismissal is unfair only because the employer did not follow a fair procedure. It was the respondent's submission that Court correctly awarded the compensation for unfair dismissal.

[11] With regard to the second and the third grounds of appeal, the respondent relied on the common law and the South African case of **Buthelezi v Municipal Demarcation Board (2004) 25 ILJ** where Jafter AJA stated that *"I conclude that the Respondent had no right in law to terminate the contract of employment between the parties. Accordingly, the termination of such contract before the end of its term was unfair and constituted an unfair dismissal. Thus our Courts*

recognise that employees have rights both under the common law and statutes."

[12] It was the respondent's submission that in terms of the common law, the remedy for the breach of an employment contract was normally payment of the remainder of the prematurely terminated employment contract. Further, that the Court *a quo* was entitled to grant the prayers sought by the respondent (applicant in the *Court a quo*) as it was within its competence to do so.

[13] To various questions raised by the Court regarding the respondent's right to both the common law of remedy loss of earnings resulting in the payment of wages for the balance of the terminated contract and the statutory remedy of compensation for unfair dismissal, the respondent submitted that she was entitled to both given the provisions of **Section 16(8) and (9) of the Industrial Relations Act. Subsection 8** reads thus *"Where the Court, in setting any dispute or grievance finds that the employee has been disciplined or otherwise disadvantaged or prejudiced contrary to a registered collective agreement or any other law relating to employment, the Court shall make an order granting such remedy as it may deem just."*

Subsection (9) reads as follows – *"compensation awarded under this section is in addition to, and not in substitution for, any severance allowance or other payment payable to an employee under any law, including any payment to which an employee is entitled under his or her contract of employment or an applicable collective agreement."*

[14] Finally, and with regard to the last ground of appeal, the respondent submitted that she had reported a dispute in respect of unfair dismissal and even though the certificate of unresolved dispute does not list notice pay and compensation for unfair dismissal as being in dispute, she was entitled to same as the statutory remedy for unfair dismissal; and that an employee is not confined to what is contained in the certificate of unresolved dispute.

[15] The respondent then prayed for the appeal to be dismissed with costs. In his submissions Mr Mtshali further stated that the appellant had been remiss in paying the respondent her terminal benefits and ought to be taken to task for such behaviour and that up to the date of argument the respondent had not been paid her dues. For these reasons he sought costs against the appellant.

[16] The questions before this Court

Having heard the parties and read through their heads of argument, it appears there are four (4) questions of law to be answered by this Court, namely –

16.1 Whether in law the Court *a quo* can grant compensation in excess of the 12 month cap imposed by **Section 16 (6) of the Industrial Relations Act 2000 (as amended)**, to an employer whose dismissal is found to be unfair because the employer did not prove that the reason for dismissal was a fair reason related to the employee's conduct, capacity or based on the employee's operational requirements?

16.2 Whether loss of earnings as a result of breach of contract forms part of our law?

16.3 Whether the remedy of loss of earnings and that of compensation for unfair dismissal are legally compatible?

16.4 Whether an employee is bound by what is recorded on the certificate of unresolved dispute?

[17] We will start with last question for convenience sake. The appellant's complaint herein was that the issues of compensation for unfair dismissal and notice pay should not have been considered by the Court *a quo* as they were never conciliated upon at the Conciliation Mediation and Arbitration Commission (CMAC) and do not appear on the certificate of unresolved dispute.

[18] The problem with the appellant's complaint is that it was never raised at the Court *a quo*. Faced with the respondent's application in the Court *a quo*, in which the respondent claimed payment of notice pay and payment of compensation for unfair dismissal, the appellant simply dealt with the merits of these claims without complaint, to the extent of leading evidence to show why the respondent was not entitled to either of the two prayers she sought. This question ought to have been placed before the *Court a quo* wherein *viva voce* evidence would have been led, if necessary, to ascertain whether or not the issues complained of were conciliated on. It is a question of fact whether these issues were conciliated on or not. It seems improper to us that the appellant can take an active role in the proceedings before the *Court a quo* and not raise its alleged inability to hear these claims but raise it before this Court. This court is not a Court of first instance and can only deal with

decisions of the *Court a quo.* That Court was not asked to decide whether the claim of notice pay and compensation for unfair dismissal were properly before it. It made no decision in that regard and therefore there can be no decision to consider in the circumstances.

[19] Apart from the above, there is no statutory obligation to list claims that arise from the unresolved dispute on the certificate of unresolved dispute. The Commission is required only to certify the reported disputes that remain unresolved after conciliation and the claim of unfair dismissal is what remained after conciliation. This is the dispute that was reported and conciliated at CMAC and this is the dispute that appears on the face of the certificate. In terms of **Section 16(1) (c) of the Industrial Relations Act,** if the Industrial Court finds that a dismissal is unfair it may order that the employee be paid compensation by the employer. Further, **Section 33** of the **Employment Act 1980** prescribes the statutory notice to be given on termination of an employee's service.

[20] These are claims that the respondent was entitled to make upon issue of the certificate of unresolved dispute and these are the claims she made. There is therefore no basis on which the court *a quo* should not

have taken cognisance of these claims. (**See Samuel Fanyana Sikhondze v William Barry Rochat t/a Malkerns Undertakers IC Case No. 19/2007**).

[21] **Does the remedy of loss of earnings, as result of a breach of an employment contract, form part of our law?**

In response to the respondent's application for costs, the appellant pointed out that this question has never been asked in the Court *a quo* before as far as he knew and neither itself nor the respondent had cited local authorities in this respect. The remedy of loss of earnings is a remedy available at common law to an employee whose employment contract was breached prior to the termination date. Counsel for both the appellant and the respondent cited the case of **Buthelezi v Municipal Demarcation Board 2005 2 BLLR115(LAC)** for the proposition that a fixed term contract cannot be terminated in the absence of repudiation or a material breach of contract by the other party in terms of common law, with the exception being where the terms of the contract provide for such termination and that in the event the contract was unlawfully terminated, the damages in such a case, is calculated on the basis of what would have been due to the employee

for the unexpired period of the contract (which we have referred to as 'the balance of the contract") less whatever amount the employee may have received constituting mitigation of his/her damages.

[22] In terms of **section 8** of the **Industrial Relations Act 2000 as amended**, the Industrial Court has the *"exclusive jurisdiction to hear determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this, the Employment Act, the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the Court, or in respect of any matter which may arise at common law between an employer and an employee in the course of employment..."*

[23] It is clear from the above excerpt that the Court *a quo* has the jurisdiction to hear and determine any matter that may arise at common law between an employer and an employee and that the matter before court arises at common law.

[24] The Legislature appears to have made some inroads in the area of the termination of services of employees with the introduction of the

concept of fair and unfair termination in **Sections 35** and **36** of the **Employment Act, 1980.**

Section 35 prohibits employers from terminating the services of an employee unfairly and excludes some employees from the application of the section, namely;- employees who have not completed the period of probationary employment provided for in section 32; employees whose contracts require them to work less than twenty-one hours each week; employees who are members of the immediate family of the employer; and employees engaged for a fixed term and whose term of engagement has expired.

Section 36 provides fair reasons for the termination of an employee's services and lists twelve reasons that constitute fair reasons for an employer to terminate the services of an employee. In terms of this section it shall be fair to terminate the services of an employee because the employee is redundant.

[26] **Section 41** provided remedies against the unfair termination of services and provided for employees who alleged that their services had been unfairly terminated to file a complaint in that regard with the Labour Commissioner who would seek to settle same. Where a complaint could not be settled within twenty-one days, the Labour

Commissioner would submit a full report on the complaint to the Industrial Court, which would deal with the matter in accordance with the Industrial Relations Act.

With the promulgation of the **Industrial Relations Act No.1 of 2000** and the establishment of the Conciliation Mediation and Arbitration Commission (CMAC), employees who have a dispute with their employers now follow the dispute procedure set out in **Part VIII of the Industrial Relations Act** with unresolved disputes being referred either to the Industrial Court or to arbitration under the auspices of CMAC, as the case may be for final resolution.

[27] Also, in terms of **Section 16** of the **Industrial Relations Act**, the remedial powers of the Court in cases of unfair dismissal are spelt out. In terms of **Section 16(1)** *"If the Court finds that a dismissal is unfair, the Court may –*

(a) order the employer to reinstate the employee from any date not earlier that the date of dismissal; or

(b).....; or

(c) order the employer to pay compensation to the employee.

[28] The provisions of **section 35** of the **Employment Act** do not differentiate between employees who are on fixed-term contracts and those who are on indefinite contracts (the so-called permanently employed). Further, employees on fixed-term contracts are not listed in subsection (1) of **section 35** of the **Employment Act** as one of those to whom the section shall not apply.

The provisions of **section 36** of the **Employment Act** also do not differentiate between employees on fixed term contracts and those on indefinite contracts in setting out fair reasons for the termination of employee services.

[29] The conclusion one comes to from the above observations is that employers whose employees are on fixed-term contracts are also prohibited from unfairly terminating the services of their employees. Further, that it may be fair to terminate the services of a fixed-term employee for any of the reasons listed in **section 36** of the **Employment Act,** whether or not his contract provides for such termination.

[30] For a proper interpretation of **Sections 35,36** and **41** of the **Employment Act 1980** as well as **Section 16** of the **Industrial**

Relations Act 2000 as amended, one would have to follow the canons of interpretation set out in **Nedbank Swaziland Limited v Swaziland Union of Financial Institutions and Allied Workers and Another (10/2012)[2013]SZICA 4.** In that matter **Ramodibedi JP** (as he then was) quoted with approval **Wessels AJA** in **Stellenbosch Farmers Winery v Distillers Corp SA Ltd and Another 1962(1) SA 458** who stated that – *"In my opinion it is the duty of the Court to read the section of the Act which requires the interpretation sensibly, ie with due regard on the one hand, to the meaning or meanings which permitted grammatic usage assigns to the words used in the section in question and, on the other hand, to the contextual scene, which involves consideration of the language of the rest of the statute as well as the matter of the statute, its apparent scope and purpose, and, within limits, its background.'*

[31] In the matter of the **University of Johannesburg v Auckland Park Theological Seminary and Another 2021 (ZACC) 123 at paragraph 66** the Court stated that the "approach in Endumeni **(Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13/2012(4) SA 593 SCA)** *"updated" the previous position which was that context could be resorted to if there was ambiguity or lack of clarity*

in the text. The Supreme Court of Appeal has explicitly pointed out in bases subsequent to Fundamental that the context and purpose must be taken into account as a matter if course whether or not the words used in are ambiguous.

[32] If one considers the plain meaning of the words in **Sections 35 and 36 of the Employment Act** as well as **Part VIII** of the **Industrial Relations Act 2000** as amended, one can only come to the conclusion that employees who complain of having had their services unfairly terminated must run the full gauntlet of **Part VIII** of the **Industrial Relations Act** – report the dispute, conciliation on the dispute and then either go to arbitration (if the parties agree) or approach the Industrial Court for relief where the conciliation fails and the dispute remains unresolved. The introduction of the unfair dismissal concept through the **Employment Act** and the mechanism for reporting disputes including those involving unfair dismissals set out in **Part VIII** of the **Industrial Relations Act** as well as the remedial powers of the Court set out in the **Industrial Relations Act** point towards legislative inroad into the area of dismissal and the settling of disputes involving same. One can only come to the conclusion that the legislative inroads intended that all terminations of contracts of employment be classified

as fair or unfair in so far as the validity of the termination was not challenged. We say this because the Employment Acts provides for fair reasons for termination and these are applicable to all contracts either fixed term or permanent. **The Industrial Relations Act,** in particular seeks to harmonise industrial relations to, promote fairness and equity in labour relations.

On the scales of fairness and equity it could never have been the intention of the legislature to provide different remedies to employees whose contracts of employment are terminated only on the basis that one is a so called permanent employee and the other a fixed term employee. It is our view that the intention of the legislature was to ensure that all employees who had their contacts of employment terminated unfairly had the same route and that would be the unfair dismissal route that follows part VIII of the Industrial Relations Act. Employees who complain of having had their services unfairly terminated must run the full gauntlet of **Part VIII** of the **Industrial Relations Act** - report the dispute, conciliate and then either go to arbitration or approach the Industrial court if conciliation fails.

It seems to us that in the employment sphere, the legislature has done away with the common law claim of breach of contract with the introduction of the unfair and fair dismissal concepts in terms of the

Employment Act and the **Industrial Relations Act**. The termination of an employee's services can now only be fair (if carried out for a reason set out in **Section 36** of the **Employment Act**) or unfair (if carried out for a reason outside **Section 36**). One can only approach the Court on the basis of unfair termination and the Industrial Court do is clothed with remedial powers to grant compensation of up to 12 months if it finds that the dismissal is substantively unfair.

[33] The respondent argued that in terms of **Section 16 (9)** of the **Industrial Relations Act**, she could bring the common law claim arising out of the employer-employee relationship to the Industrial Court. **Section 16(9)** reads as follows – *"compensation awarded under this section is in addition to, and not in substitution for, any severance allowance or other payment payable to an employee under any law, including any payment to which an employee is entitled under his or her contract of employment or an applicable collective agreement."*

[34] On a proper interpretation of **Section 16(9)**, the respondent's position is unsustainable. This sub section confirms that an employee is to be paid compensation even if that employee is entitled to any other payment arising from any law or an applicable collective agreement. If,

for example, the contract of employment or the collective agreement entitles an employee to payment of gratuity, that entitlement to gratuity will not be extinguished by the fact that the employee has been paid compensation. The employee can receive both compensation and gratuity.

A claim for damages arising out of breach of contract is not an entitlement arising out of law, contract of employment or a collective agreement. This subsection cannot, therefore, be interpreted to entitle an employee to bring a common law claim of breach of contract.

[35] **Section 16 (8)** of the **Industrial Relations Act** was also raised as a doorway through which the common law claim for breach of contract could be brought. **Section 16(8)** reads as follows - *"Where the Court in settling any dispute or grievance finds that the employee has been disciplined or otherwise disadvantaged or prejudiced contrary to a registered collective agreement or any other law relating to employment, the Court shall make an order granting such remedy as it may deem just."*

Our view is that on a plain reading of this subsection it appears to empower the Industrial Court to grant an order it deems just where, in the course of hearing a dispute, there is a finding that the employee

has been disciplined or disadvantaged or prejudiced contrary to the provisions of a collective agreement or any other law. The respondent herein was not disciplined or disadvantaged or prejudiced contrary to the provisions of a collective agreement or any other law and the *Court a quo* did not make such a finding while settling her unfair dismissal claim.

Clearly, this subsection does not entitle a claimant to bring a common law claim based on breach of contract.

[36] Once the Industrial Court is approached to resolve an unresolved dispute wherein the applicant alleges that she/he was unfairly dismissed, it is bound by the provisions of **section 16** of the **Industrial Relations Act**. Being a creature of statute, the Court can only act within the remedial powers granted to it in terms of that section. This situation differs from the one where an employee challenges the validity of the dismissal. When one attacks the validity of the dismissal one does not necessarily allege that the dismissal is unfair. It may be invalid because the person dismissing has no authority to do so or there are agreed steps that have been missed in terms of a collective agreement as the case may be. (**See Eswatini Aviation Authority v Sabelo Dlamini (13/2021) [2022] SZICA 1 (09 February 2022)**.

[37] With regard to the matter before court, the respondent (applicant in the *Court a quo*), followed the provisions of **Part VIII** of the **Industrial Relations Act** and eventually approached the *Court a quo* for the resolution of her unresolved dispute with the appellant. That dispute arose out of the unfair termination of her services by her employer and she reported the nature of the dispute at CMAC as being an unfair dismissal. In her application to the Industrial Court she sought relief against the appellant, for unfair dismissal. The *Court a quo*, having heard evidence led by both parties came to the conclusion that the appellant had been unfairly dismissed only because the appellant had failed to follow a fair procedure. In terms of **section 16(4)** *'If the dismissal was unfair only because the employer did not follow a fair procedure, compensation payable may be varied as the court deems just and equitable and be calculated at the employee's rate of remuneration on the date of dismissal.'*

The *Court a quo* considered this section, took into account the fact that the appellant had not acted in wanton disregard of the law in its failure to follow a fair procedure and concluded that what was just and equitable in the circumstances of this case was to grant the respondent two (2) months' salary as compensation for unfair dismissal.

[38] Having regard for the aforegoing, in particular and in response to the first two appeal grounds and the third, which was in the alternative, we find that the legislature has made inroads into the common law in respect of the issue of termination of fixed term contracts. A fixed term contract that is prematurely terminated by the employer gives rise to a claim for unfair dismissal in terms of the **Employment Act No.5 of 1980** and the remedies for unfair dismissal are located at **Section 16** of the **Industrial Relations Act No. 1 of 2000** (as amended).

[39] On the issue of costs, apart from the fact that parties were both partially successful, Mr. Mhlanga was quite correct in saying that this appeal presented a novel issue and that therefore it was not necessary to lumber any of the parties with costs.

[40] In the circumstances

1. **The appeal succeeds and the Court replaces the Court *a quo's* order with the following;**
2. **The respondent (applicant in the Court *a quo*) is awarded the following:**

40.1 Notice Pay	**E 8,500.00**
40.2 Additional Notice	**E 636.36**

40.3 Severance Allowance E 1 590.91

40.4 Two (2) months for unfair dismissal E 17 000.00

TOTAL E 27 727.27

3. Each party is to pay its own costs.

S. NSIBANDE JP

I agree

M. VAN DER WALT JA

I agree

N. NKONYANE JA

For Appellant: Mr Mhlanga
(Motsa Mavuso Attorneys)

For Appellant:	Mr Mhlanga (Motsa Mavuso Attorneys)
For Respondent:	Mr Mtshali (Mthsali Ngcamphalala Attorneys)