

SOUTH AFRICA / JUDGMENT

McPherson v Khanyise Capital (Pty) Ltd and Others (24309/08) [2009]

ZAGPHC 57 (27 February 2009)

[2009] ZAGPHC 57

COURT

High Courts - Gauteng

BEFORE

Levenberg

CASE / FILE NUMBER

24309/08

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IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 24309/08

DATE: 2009-02-27

In the matter between

McPHERSON, NORMAN NICHOLSON Applicant

and

KHANYISE CAPITAL (PTY) LTD First Respondent

ANDREW VICTOR PAYNE Second Respondent

PRAESIDIUM BOOKS (PTY) LTD Third Respondent

J U D G M E N T

LEVENBERG, AJ:

This application concerns the validity and continued binding effect of an agreement to sell shares, which is hereinafter called “the equity sale agreement”.

In essence, the applicant seeks a declaratory order to the effect that the agreement is lapsed by virtue of non fulfilment of the suspensive conditions set forth therein.

The parties to the agreement were the N N McPherson Stenor Trust (which is hereinafter called “the N N Trust” or “the applicant”), Khayise Capital (Pty) Limited (“the first respondent” or “Khayise”),

Andrew Victor Payne NO, in his capacity as the trustee of the A V Payne Anonne Trust (“the Payne Trust”

or “Trust Wambers” or “the second respondent”), and Praesidium Books (Pty) Limited (“the third respondent” or “the company”).

An issue has been raised by the respondents in the answering papers which was not pressed by counsel for the respondents to the effect that the N N McPherson Stenor Trust must be joined as a party and that it is not good enough for the trustee of that trust to act on behalf of the trust.

Mr Moloemeng, who appeared for the first respondent, very wisely did not press this point. In fact, it is trite law that a trust participates in litigation through the offices of its trustee who is in effect the owner of all the trust property. (See *Mariola and Others v Kae Eddie NO and Others*, 1995 (2) SA 728 (W) 71D-E; *Goolam Ally Family Trust t/a Textile, Curtaining and Trimming v Textile Curtaining and Trimming (Pty) Limited*, 1989 (4) SA 985 (C) 988D-F.) As a matter of law it would be wrong to join the trust as a party as opposed to the trustee himself.

There is no dispute on the papers that the N N Trust and the trust referenced as trust number 2 in the equity sale agreement are one and the same trust. There is also no dispute that the applicant who appears *nomine officio*, is in fact the sole trustee of that trust. Accordingly, I find that the trust is properly before the Court.

I also note that all parties to the agreement are parties to this application. This includes trust number 1, as it should, because trust number 1 is affected by the relief that the applicant claims.

The applicant (who was represented by Mr Hollander in these proceedings), seeks an order declaring that the equity sale agreement has lapsed for non fulfilment of the suspensive condition; or, alternatively, if it has been in some way extended, that the agreement has been validly cancelled.

In essence, pursuant to the equity sale agreement, the two trusts (as represented by their trustees) sold shares that they held in the company to the first respondent for an agreed price of R2 675 000. R175 000 was to be paid by Trust number 1 and R2 500 000 to trust number 2. The amount of R175 000 was in fact paid to trust number 1. However, the full amount of R2 500 000 was never paid to trust number 2.

The payment of R2 500 000 was to be paid to the applicant on or before 30 June 2007 in terms of clause 4.1.3 of the agreement.

In addition to their shares in the company, both trusts sold any claims they might have against the company. In other words the sale appears to have been a sale of shares and loan account.

The following clauses in the agreement are material to a determination of this application;

“14. SUSPENSIVE CONDITIONS

The coming into force and effect of the whole of this Agreement, (save for this clause and clauses 4.8, 9, 10, 11 and 12) which shall come into operation and be binding on the parties from the Signature Date), will be subject to the fulfilment of the following conditions within 60 (sixty) days after the Signature Date, or such further date as agreed to by the parties:

The signing of the Documents of Title; ...

Payment of the full purchase price; ...

If the suspensive conditions referred to in clause 14.1 are fulfilled within 60 (sixty) days of the signature date or by such later date as may be agreed upon in writing then the provisions of the agreement which are suspended shall not take effect and those that have taken effect and become operative shall fall away, unless otherwise agreed in writing by the parties ...

SOLE RECORD OF AGREEMENT

This Agreement constitutes the sole record of the agreement between the parties with regard to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

NO AMENDMENT EXCEPT IN WRITING

No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or behalf of the parties.

WAIVERS

No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the right of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in the future.”

[emphasis added].

The equity sale agreement also contains a dispute resolution clause which provides as follows:

“8. DISPUTE RESOLUTION

If any dispute shall arise in respect of any provision contained in this agreement, then such dispute shall:

if it shall be of a legal nature, be referred to a senior partner having not less than 10 (ten) years experience in commercial law of any in the larger law firms in Johannesburg; and

if it shall be of an accounting nature, be referred to as senior partner of any of the international firms of accountants practicing in Johannesburg;

who shall act as an expert and who, in determining such dispute shall, if he deems it necessary, be entitled to received oral written representations from the parties and whose decision shall be final and binding upon the parties and, in the absence of manifest error, not subject to review.”

Although it is not clear that clause 8 is an arbitration agreement that falls within the provisions of the Arbitration Act 42 of 1965 (“the Arbitration Act”), Mr Hollander very properly conceded that I should for purposes of this application treat the clause as if it is an arbitration clause governed by the provisions of the Arbitration Act and, of course, the common law appertaining to arbitrations.

Before going on to deal with the facts of this matter, I note that the first respondent has, among other things, as a “point in limine” contended that this court cannot decide this matter because of the arbitration agreement. This issue was not raised by way of an application for stay under Section 6 of the Arbitration Act. However, I accept for purposes of this application that it was properly raised as effectively a special plea in accordance with the common law.

In response to this contention, the applicant maintains that there is no dispute between the parties “arising in respect of any provision contained in the agreement”. In support of this argument the applicant relies on *Delfante and Another v Delta Electrical Industries Limited*, 1992 (2) SA 221 (C) 227H, 228A, in which Gauntlett A J held with respect to an arbitration clause that:

“As counsel for the respondents acknowledged, it cannot be that on every occasion the “interpretation” of any one of the provisions in the amending agreement is in some loose sense moot that there is to be a referral to arbitration. There must be an issue, palpable and genuine. (See further in this regard, Russell (op cit at 171); Mustill and Boyd Commercial Arbitration 2nd ed

(1989) at 12, 123) ...

If I am wrong in the approach which I have adopted in each of the above respects, then it follows that I have discretion which I am obliged to exercise as best I can on what is before me. Taking into account the founding papers, with the unanswered allegations to which I have referred, and the incorporation of the previous application by reference, I do not consider that the proceeding should properly be stayed. I reach this conclusion mindful of the restricted nature of the discretion to be exercised; I however consider the application for a stay, in short, to be but an adjunct to the stratagems which the respondents have elected not to

deny, and not to relate to any bona fide dispute between the parties. How could it be a proper exercise of even the limited discretion accorded the Court to order a stay in these circumstances?”

In the latter paragraph, the Court was referring to the provisions of Section 3 of the Arbitration Act which provides:

Binding effect of Arbitration agreement and power of court in relation thereto. –

Unless the agreement otherwise provides, an arbitration agreement shall not be capable of being terminated except by consent of all the parties thereto.

The court may at any time on the application of any party to an arbitration agreement, on good cause shown –

set aside the arbitration agreement; or

order that any particular dispute referred to in the arbitration agreement shall not be referred to arbitration; or

order that the arbitration agreement shall cease to have effect with reference to any dispute referred.”

In the present application, unlike Delfante, the first respondent did file a rather prolix answering affidavit. That in itself does not effect the situation.

In the light of what I find factually below, I conclude that the Court can decide this matter notwithstanding the provision of the arbitration agreement for the following reasons:

There is no “issue, palpable and genuine”.

Even if there is a palpable issue, in the absence of some scintilla of a real dispute between the parties (of which there is none) I can, under Section 3, even in the exercise of my limited discretion, order that any so called “dispute” that arises in this proceeding shall not be referred to arbitration.

There appears to be no dispute as to the meaning and effect of the suspensive condition clause in issue here and of the fact that the time period contemplated in the suspensive condition expired without payment of the purchase price. There is accordingly no dispute in respect of any provision of the agreement. The “dispute”, to the extent that it may exist, relates to an alleged subsequent agreement.¹

Accordingly, I find in the circumstances, that I am able to decide this matter. In any event, insofar as it is necessary, I order that the matter in dispute here should, in accordance with Section 3 (2) (b) of the Arbitration Act, be decided by the Court.

As stated above, it is common cause that the price of R2 500 000 was not paid within the period contemplated in the suspensive condition. The respondents argue that the applicant extended the period of time for the respondent to pay the purchase price after the expiration of the period stipulated in the suspensive condition. It is common cause that the purchase price was not paid prior to the expiration of the date contemplated in the agreement and that, insofar as there was any extension, it was granted subsequently.

In this respect the respondents’ case falls foul of the doctrine enunciated by the Coetzee J in *Mekwa Nominees v Roberts* (1), 1985 (2) SA 498 (W). In that case Coetzee J enunciated the proposition that, after a contract has lapsed by reason of the failure of a suspensive condition, it is too late for the parties to revive their agreement by waiving the suspensive condition, even if

they have the power to waive the suspensive condition under their agreement. At page 501 of Mekwa Nominees, Coetzee J quotes from the judgment of Kumleben J in the Full Bench decision of Phillips v Townsend, 1983 (3) SA 483 (C) 408 E as follows;

“The plain meaning of the words used in an agreement must therefore prevail, unless as a necessary inference, it can be said that it does not reflect the true intention of the parties. In deciding whether such an inference is justified, one must consider not only whether the condition was inserted for the benefit of the purchase so, but also – and this is not quite the same question – whether the seller had an interest in the stipulated consequence of non fulfilment and would or could therefore be prejudiced if it were disregarded. A seller may understandably agree to a suspensive condition of this nature in order to accommodate the purchaser, but concomitantly regard it as matter of importance to him that there should be certainty as to the fate of the sale at the end of the time period stating the condition: whether it is at an end or enforceable. At the time of contracting and agreeing to the inclusion of such a condition, a seller may well appreciate that during the time specified in the condition he might be in a position to negotiate and conclude a more profitable sale with another buyer which in term could be more (sic) conditional upon non fulfilment of the condition in the existing agreement. Or he may have in mind that he may be able to obtain an option to purchase from another perspective buyer with an expiry date just after the final date for fulfilment of the condition. Such are illustrations of the contingencies which a seller might quite feasibly contemplate when agreeing to such condition. They do not appear to me to be far fetched and, as CARDOZO J put it in Jacobs and Young v Kent Vol 230 New York Reports 239 at 242: “Intention not otherwise revealed, may be presumed to hold in contemplation the reasonable and probable”

One or more of them may well have weighed with the applicant in this case. That being the position it cannot be said with any degree of certainty that she had no interest in the strict observant and implementation of the terms of the condition.

One should also point out that, had the parties intended that the second respondent should have the right to “waive the conditions” after its non fulfilment, words to that effect could have quite easily have been chosen and inserted in their agreement. The fact that in the result the loan was only one day late, that provision is made for her to call for a guarantee to secure payment and that she has in the result not suffered any prejudice, is irrelevant if one bears in mind, as in my view one must, that it is the intention of the parties at the time of contracting, which is the determining factor.”

Mekwa Nominees, insofar as it followed the reasoning of Phillips v Townsend, departed from a line of previous Transvaal cases, starting with Wax v Goldman, 1965 (4) SA 386 (W) which held to the contrary.

Fortunately for us the controversy has since been laid to rest by the judgment of Van Heerden JA in the Appellate Division in Trans-Natal Steenkoolkorperasie Beperk v Lombaard en 'n Ander, 1988 (3) SA 625 (A) 640, in which the learned Judge held;

“’n Analogiese posisie geld indien ’n kontrak onderhewig gestel word aan ’n opskortende voorwaarde dat iets voor of op ’n bepaalde datum moet plaasvind; soos bv dat die koper ’n lening moet bekom. In ’n aantal Transvaalse gewysdes is die houding ingeneem dat indien so ’n bepaling ten gunste van slegs een party verlei is, hy ook na die sperdatum van die voordeel daarvan afstand kan doen. In die tagtiger jare is egter in drie uitsprake bevind dat ’n latere afstand doening nie tot herlewing van die kontrak kan lei nie; Phillips v Townsend, 1983 (3) SA 403 (K); Meyer v Barnardo and Another, 1984 (2) SA 518 (N); Mekwa Nominees v Roberts, 1985 (2) SA 498 (W). Ek hoef slegs te sê dat ek ten volle saamstem met die gevolgtrekkings wat in hierdie drie sake bereik is.”

(Emphasis added).

Accordingly the principals enunciated in Phillips v Townsend; Meyer v Barnardo and Mekwa Nominees reign supreme in our Courts to day and I am bound to follow them.

In the result, the consequence of the admitted failure of the fulfilment of the suspensive condition as well as the parties’ failure to extent the suspensive condition within the time period contemplated in the agreement is fatal to the first respondent’s contention that the agreement has not lapsed as a result of failure of the suspensive condition. It is also fatal to the first respondent’s contention that there continues to be a dispute concerning a provision contained in that agreement. There is no bona fide dispute concerning the agreement.

The principle enunciated in Mekwa Nominees and Trans-Natal Steenkoolkorporasie Beperk must also be read in the light of Cronje v Tuckers Land and Development Cooperation (Pty) Limited, 1981 (1) SA 256 (W) 259. In that judgment, Cilliers A J considered whether a subsequent agreement to revive an agreement that was subject to a suspensive condition after the suspensive condition had failed could have any validity. At page 259 – 260 the Court held,

“The decision in D S Enterprises (Pty) Limited v Northcliff Townships (Pty) Limited, (supra) is distinguishable from the present case. That case was decided solely on the basis of a waiver, for which provision was made in the written contract itself. In the present case, the paragraph in the plea to which exception is taken, makes no mention of waiver but simply avers that the written agreement has been revived. Here, however, the defendant is confronted by this difficulty; a revival of the whole of the written agreement, including the reference to 24 months (from the date of signature of the original contract), would again bring the condition in clause 4 into effect and cause the termination (or self destruction) of the agreement immediately on revival. This could obviously not have been, or ever be, intended by the parties seeking to “revive” the written agreement. Thus, the parties to a written agreement containing a clause such as clause 4 of the agreement in this case, who seek to revive the lapsed agreement, will, in addition to agreeing to revive the agreement, also have to eliminate the operation of such clause in the “revived” agreement. Where such a clause operated for the benefit of one party only, the clause, or the consequences flowing from such clause, can be eliminated by a waiver. Where such a clause operates for the benefit of both buyer and seller, it would appear artificial to speak of a waiver by a seller and buyer: the more realistic view is that the parties would agree to revive their agreement without the condition in clause 4 in its original form. If a new date for the coming into operation of the condition were to be orally agreed upon at the time of the “revival” this could presumably amount to an attempted revival and simultaneous variation of a material term of the old

written agreement – which attempt would be ineffective because of the provisions of S1 (1) of Act 71 of

1969. Even if the parties agreed to “revive” the old written agreement with exception of the whole of clause 4, the simplicity of the situation in *Neethling v Klopper* (supra) no longer pertains: it is no longer a question simply whether the original agreement (at least as to its material terms) has again become effective or not; it becomes necessary to look at the consensus of the reviving agreement to determine which clause or clauses of the original agreement would not be revived.

One can also imagine the parties may agree to revive a lapsed agreement without the clause which originally caused it to lapse (e.g. the clause containing a resolutive condition), while not appreciating what effect the omission of such a clause may have to the meaning of the remaining clauses, and so introduce the spectre of a claim for rectification of the revived agreement on the basis of the true common intention of the parties at the time of the conclusion of the agreement to “revive”. There would then be little left of the simple concept of revival approved in *Neethling v Klopper* (supra).

But it is not necessary to speculate further on what form the “revived” contract will have if the self destructing condition is not revived in its original form together with the rest of the written contract.”

The correctness of the doctrine enunciated in *Cronje* has been reaffirmed in *Benkenstein v Neisius and Others*, 1997 (4) SA 835 (C) and *Fairoaks Investment Holding (Pty) Ltd and Another v Oliver and Others*

[2008] ZASCA 41; 2008 (4) SA 302 (SCA).

The principles applicable can therefore be summarised as follows:

28.1 A suspensive condition cannot be waived or extended after the time for fulfilment of the condition has passed.

28.2 An agreement that has “lapsed” by virtue of the non-fulfilment of a suspensive condition or the failure of a resolutive condition cannot be “revived”. It is necessary for the parties to enter into an entirely new agreement. The new agreement can of course be on the same terms and conditions as the old.

28.3 If the new agreement is concluded on the same terms and conditions as the old, but the suspensive conditions are not excised, or extended, the new agreement “self-destructs”. This is because the agreement is by its terms subject to a suspensive condition that has failed.

In *Cronje v Tuckers Land* the Court was concerned with an agreement for the sale of land which by law was required to be in writing. The Court therefore held that an oral agreement to revive that agreement without an agreement to do away with the condition was unenforceable. As the contract in this case contains a so called Shifren clause (clause 16.2) and a non waiver clause (clause 16.3), it is effectively on the same footing as a sale of land in relation to the potential for revival sans the suspensive condition.

In an able argument, Mr Moloemeng referred to two exchanges of e-mails which appear at pages 75 and 79 respectively of the papers. Those emails reflect extensions of time afforded to the first respondent for payment after the lapse of the contract due to failure of the suspensive condition.

The first exchange of emails upon which counsel relied as appears at p75 and provides as follows:

On 19 October 2007 the first respondent allegedly addressed a representative of the applicant as follows:

"I have paid R800 K this morning. We will pay the balance around month end, we will confirm the exact date next week Friday."

On the same day, a certain "Lloyd", wrote:

"Thank you. I could unfortunately not open the proof of payment."

Kindly advise how the balance will be financed?"

The parties explained to me that the exchange of emails that appears at paragraph 75 is not an exchange of emails between any representative of the applicant and the first respondent. Accordingly, it can have no value as a "revival" of the agreement in any way and I reject this contention.

Even if the exchange of e-mails was between representatives of the parties to the agreement, it is insufficient to effect an ex post facto "revival" of the agreement for the following reasons:

33.1 It is not a writing signed by both of the parties.

33.2 The language of the exchange of correspondence is insufficient to denote an intent to "revive" the old agreement - i.e. enter into a new agreement on the same terms and conditions as the old.

33.3 Even if the agreement were somehow revived, it would immediately self-destruct because there is no clear intention to extend the suspensive condition.

The respondent also referred to an e-mail which appears at page 79 addressed by, the applicant's current attorney of record to the first respondent's current attorney of record stating:

"I confirm receipt of your email, with annexed letter."

The difficulty is that the finance approval is for R800,000 – far shy of the R2.5 M purchase price. How does your client intend financing the shortfall?

Please revert to me as a matter of urgency.”

I cannot see how this document can amount to a revival of the agreement sans the suspensive condition, or otherwise. It is merely an enquiry as to how the additional amount will be paid. It is common cause that only R800 000 was paid and no further amounts. It also does not appear to be a consensual variation of the agreement between two clearly authorised representatives of both of the parties and reduced to writing and signed by the parties. In addition, even if the agreement were somehow “revived”, the “revived” agreement would self-destruct because there is no clear intention to excise or extend the suspensive condition or to extend the time for its fulfilment.

In the premises, there has been no revival of the agreement whether with or without the suspensive condition.

I pause here to note that the applicant has in fact tendered to pay back to the applicant (presumably upon the final determination of this application in the applicant’s favour of the issues in this application) the R800 000 that it received on account of part payment of the purchase price. I do not believe that it is a requirement for the relief that the applicant seeks that the applicant tender this money back. However, the applicant has demonstrated his good faith by tendering the money back.

I note also that there is another reason why the extension could not have taken place pursuant to those e-mails. There are in fact four parties to this agreement. An exchange of e-mails between two of the parties, even if it were signed by their duly authorised representatives, would be insufficient to extend or revive the agreement in view of the Shifren clause.

I also have to deal with a number of other defences raised by the first respondent. I note that, once there is no dispute that the agreement has lapsed as a result of failure the suspensive condition, the defences asserted by the respondents are insufficient to raise a dispute relating to the provisions of the agreement within the meaning of clause 8.

The first respondent alleges that the applicant advised that the third respondent had no previous indebtedness and was aware of, and failed to disclose to the first respondent, “pre contractual debts”, “pre contractual liabilities” in the amount of R3 million.

These allegations are contradicted by the following:

On the first respondent’s own version, it was shown the third respondent’s financial statements for the year ended 28 February 2007 at the time when the agreement was concluded. These financial statements record the following with respect to the year ended 28 February 2007;

“Trade and other payables R2 663 641.00.”

The first respondent does not deal at all with what was stated in the financial statements.

It is incomprehensible to me how the first respondent's allegation that there was a misrepresentation as to the existence of trade and other payables at the time that the agreement was concluded can be made in good faith. The first respondent in the same breath and in the same paragraph says that it received the financials at the time of the agreement and the financials reflected the existence of those "payables".

Even if there was such a misrepresentation I cannot understand how it takes the first respondent's case any further. The agreement has lapsed through non fulfilment of the suspensive condition. If the first respondent believes that it has some claim arising out of misrepresentation it should make it. But it does not effect that the applicant's claim is for a declarator that the agreement has lapsed due to non fulfilment of the suspensive conditions.

There are other allegations of misrepresentation which are similarly unsustainable. There are also not comprehensible in the sense that, for the reason stated above, I have no idea where they lead in relation to the matter at issue in this application. Mr Moloemeng wisely did not press any of these weak misrepresentation defences during the course of his argument.

There is also a contention by the first respondent that the purchase price of the shares was "inflated". Again I have no understanding of where that defence leads. The doctrine of *laesio enormis* was long ago held by our Courts not to apply in the modern law of sale.

The first respondent also attempted to "rectify" the agreement to change the purchase price. No basis is made out for such a rectification. Nor does the first respondents state clearly what it maintains the purchase price should be.

There is also a claim for "unjust enrichment". Again I do not understand what this is supposed to be. None of the elements of a claim for unjust enrichment are present.

In any event, even if there was a valid claim in enrichment, that would not effect the applicant's right to obtain a declarator that an agreement which has in fact lapsed has lapsed. It may or may not give rise to a claim of some sort that the first respondent has against the applicant in enrichment. Given that the applicant has tendered back R800 000 to the first respondent, I cannot imagine what the alleged enrichment is supposed to be.

There is also a defence of estoppel or waiver of rights. I do not know how this defence can possibly be sustainable in the light of the non waiver clause in the agreement. The basis of the estoppel asserted is incomprehensible.

It looks like the first respondent has simply taken out a laundry list of standard defences from a book on pleadings and raised them.

In all the circumstances, I find that there is no genuine dispute of fact or law raised by the respondent on the papers. In relation to this issue I must comment on the manner in which the respondent has conducted itself in this litigation. The respondent has filed an answering affidavit which, together with annexures runs into some 139 pages, but has failed to articulate any intelligible defence in that answering affidavit.

I do not believe that the first respondent's defence here, which is disjointed and difficult to follow, was raised in good faith. No punitive award of costs was requested, but had it been sought I might have granted it. Nevertheless, what is important for the purposes of this application is that the first respondent's so-called "defences" raise no "palpable and genuine" issue.

I note that the answering affidavit purports to have been put up on behalf of the third respondent, the company as well as the first respondent. This approach defies all normal principals of company law. There is a dispute in this case about whether the first respondent is in fact a shareholder in the third respondent. It is an abuse for the first respondent to therefore try to prejudice the issue and steel a march on the applicant by asserting that it represents the third respondent.

Before finalising my judgment I also want to note that yesterday I put a proposition to Mr Moloemeng and he was asked to obtain instructions from his attorney. His attorney was not in Court and he was unable to obtain instructions. I believe that it is a rule of both the Law Society and of the Society of Advocates that an attorney should be in Court when matters are argued. I do not hold this against Mr Moloemeng because I know how difficult it is sometimes to ensure that attorneys are in court. However, I must comment adversely upon the

fact the attorney was not in court and I assume he will not be charging his client for an appearance that did not occur.

In the result I make an order in terms of prayers 1, 3, 4, 5 and 6 of the notice in motion.

P.N. LEVENBERG, AJ

ACTING JUDGE OF THE HIGH COURT

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On behalf of the Applicant : Advocate Hollander

On behalf of the Respondent: Advocate Moloemeng

Attorneys for the Applicant: Tugendhaft Wapnick Banchetti & Partners

Attorneys for the Respondent: L Mbanjwa Attorneys

Date of hearing and date of judgment: 26-27 February 2009

1 Amoretti v Tuckers Land and Development Corporation (Pty) Ltd 1980 (2) SA 330 (W) 640

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