IN THE APPEAL COURT OF LESOTHO

C OF A (CIV) No.16A/16
CCT/166/2013

HELD AT MASERU

In the matter between:-

OLAF LEEN **APPELLANT**

and

FIRST NATIONAL BANK LESOTHO (PTY) LTD **RESPONDENT**

CORAM : FARLAM, AP

CHINHENGO, AJA

GRIESEL, AJA

HEARD: 11 OCTOBER 2016

DELIVERED: 28 OCTOBER 2016

SUMMARY

Rescission of summary judgment –whether particulars of claim filed together with summons a further step in proceedings which precludes application for summary judgment– No provision in rules precluding a plaintiff who takes a further step in proceedings from asking for summary judgment - Practice of filing combined summons convenient and acceptable –Whether on evidence applicant for rescission satisfied court on requirement that he had bona fide defence –Rule 45(1)(a) –whether judgment granted in error – meaning of "error" restated- Appeal to set aside decision refusing rescission dismissed.

JUDGMENT

CHINHENGO, AJA

Introduction

[1] This is an appeal against the judgment of the High Court (MOLETE J sitting in the Commercial Division) delivered on 3 March 2016 refusing to rescind a summary judgment against the appellant in default.

[2] The appeal is premised on three main grounds namely, the court's finding that the appellant had no *bona fide* defence to the respondent's claim; the finding that the filing by the respondent of the particulars of claim simultaneously with the summons did not constitute a further step in the proceedings and was not, as such, a bar to the application for summary judgment. Allied to this is the challenge that the judge erred in condoning the simulteneous filing of the summons and the particulars of claim when neither of the parties had applied for such condonation. The third ground of appeal is that the judge "totally misconstrued" the law on rescission as provided in Rule 45 of the High Court Rules 1980 (Legal Notice No. 9 of 1980) and came to a wrong decision on the facts and evidence before him.

Background

[3] The background to this appeal is this. First National Bank of Lesotho (Pty) Ltd, the respondent herein ("the Bank") entered into a loan agreement with Tumelo Plants and Civils (Lesotho) (Pty) Ltd ("Tumelo Plants" or "the company") on 17 December 2011 in terms of which the Bank advanced to the company the sum of M1,200,000.00. The loan was repayable in 15 equal

instalments. The appellant, as a director of the company, bound himself jointly and severally as a surety and co-principal debtor with Tumelo Plants on 15 August 2011 when he signed a deed of suretyship for an unlimited amount. Tumelo Plants defaulted in making monthly repayments. In an action to recover the money owed to it commenced by the Bank by way of a summons, to which particulars of claim and other documents were attached, the Bank alleged that, due to its failure to service the loan, the company

> *"became indebted to [the Bank], as at 16th of April 2013 in the amount of M 3 981 343.00 together with interest thereon to be calculated at a rate of 14.25% per annum from 23rd of July 2002 up to and including the date of final payment."*

[4] The action referred to above was instituted against the appellant on or about 5 August 2013 on the strength of the suretyship agreement. The claim was for M3 981 343.00 plus interest and costs of suit on the attorney and client scale. The summons was issued following an application for substituted service granted on 1 August 2013 because the appellant resides in the Republic of South Africa. On receipt of the summons the appellant delivered an appearance to defend on 5 September 2013. On 10 September the Bank served the respondent's attorneys with separate notices to provide security for costs in respect of the defended action and an application for summary judgment which it served on the appellant on 16 September.

[5] After the appellant filed and served his notice of appearance to defend, the Bank applied for summary judgment and served the application upon the appellant on 16 September; stating that the application was set down for hearing on 26 September. The appellant delivered a notice of intention to oppose the application on 20 September but did not deliver an opposing

affidavit within the time prescribed by Rule 28 (3) of the High Court Rules. There had been an exchange of correspondence between his attorneys and those of the Bank; the former complaining that the notices for the provision of security for cost were irregular and the latter insisting that security should be provided. The appellant said that he instructed his attorneys to settle the issue of the security for costs with the Registrar of the court and that he believed that until this was settled the matter would stall. The appellant filed his affidavit opposing the summary judgment application on 7 October but by then the application had been disposed of and summary judgment already entered in favour of the respondent. There had therefore been no appearance for the appellant on the date set down for the hearing of the summary judgment application; hence the court granted judgment in default.

[6] The appellant learnt through his attorneys on 4 November that summary judgment had been entered against him on 26 September. By way of an *ex parte* urgent notice of motion the appellant obtained a *rule nisi* with interim relief staying execution of the judgment pending the hearing of the application for the rescission of judgment which he had lodged simultaneously with the stay application.

[7] The Bank opposed the rescission application. There followed several applications which are not relevant to the disposition of this appeal. These related to condonation for late filing of certain affidavits, the provision of security for costs, discovery of documents and rescission and stay of certain orders made before the judgment appealed against was delivered.

[8] It is absolutely important to clearly delineate the scope of this appeal because, in the heads of argument, counsel tended to deal with issues not germane to this appeal. I have stated in paragraph 2 above that the

respondent appeals against the judge's finding that he had no *bona fide* defence to the respondent's claim; the finding that the filing of particulars of claim to which other documents are attached together with the summons did not amount to the taking of a further step precluding an application for summary judgment, and that the judge misconstrued and misapplied Rule 45 of the High Court Rules. The appellant also appealed against the costs order in favour of the respondent. One only has to look at the grounds of appeal at pages 1-2 of the record to see that indeed these were the main issues raised by the appellant. As submitted by counsel for the appellant (see para 3 of his heads) the first to third grounds of appeal are related. The fourth ground of appeal is related to the third, I may add.

Particulars of claim filed together with summons

[9] I will start with the contention that the simultaneous filing of a summons and particulars of claim is a bar to an application for summary judgment. For this proposition the appellant relies on *Standard Lesotho Bank Ltd v Mahomed* CIV/T/182/2010, a decision of LYONS AJ and the subsequent decision of HLAJOANE J in *Decor Lesotho (Pty) Ltd v Al Barakah Investment (Pty) Ltd* CIV/T/243/2103.

[10] In the case before LYONS AJ a declaration and other documents were filed together with the summons. After an appearance to defend was entered, the palintiff applied for summary judgment. The issue that fell for decision was whether a plaintiff who files a declaration together with his summons has by the fact of filing the declaration taken a further step in the proceedings and disentitle himself from applying for summary judgment. In his judgment, the judge said that summary judgment relates to such claims as are pleaded in the summons and no reference is to be had to a declaration or other pleading that may have been filed. He was emphatic that in deciding

a summary judgment application the court must have reference only to the summons and what is pleaded therein. In support of this statement the judge cited Rule 18(2) of the High Court Rules, which provides that a summons must contain a concise statement of the material facts relied upon by the plaintiff in support of his claim, in sufficient detail to disclose the cause of action, and on Rule 28(1) which reads-

> *"Where the defendant has entered appearance to defend the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only-*
>
> *(a) on a liquid document;*
>
> *(b) for a liquidated amount in money;*
>
> *(c) for delivery of specified movable property; or*
>
> *(d) for ejectment."*

[11] Later in his judgment LYONS AJ said the following –

> *"… the process of commencing civil litigation by summons is provided for in the rules. A summons is first filed and served. The entry of appearance then follows (if not, judgment can be taken by default). Then the plaintiff has to take one of two options – either proceed towards trial by filing the declaration or proceed by way of summary judgment. There is no room in the process for any other step. The process defined in the rules is clear:- file the summons, receive the entry of appearance, then if summary judgment is the chosen option, proceed only on the pleading in the summons.* ***I note the practice of filing the summons and the declaration at the same time. I suppose that is a convenient way of proceeding, and though not in strict compliance with the rules, can probably benefit from an exercise of the Court's discretion by application of rule 59 – provided, of course, the rules and proper processes of evidence and pleading are followed. I harbour some doubt that this 'practice' would permit a summary judgment application. Certainly the declaration could not be relied on….***

As summary judgment relies solely on the pleading contained in the summons, then, logically that pleading must contain all the particularity necessary to support a judgment against the defendant. Once the summons has been filed and an entry of appearance made, the further steps a plaintiff can take to move the matter forward are to move to summary judgment, to file a declaration or to file an answer for further particulars if so requested (although this latter step would be unusual prior to delivery of a declaration). The point is that which ever further step a plaintiff took other than summary judgment it would most likely (by definition and by application of the rules-see rule 21.2), result in the pleading by the plaintiff of additional particulars. A plaintiff must plead such particulars as are necssary to prove its case. By taking a further forward step that must require pleading of further particulars, a plaintiff is tacitly (at least) acknowledging that the pleading contained in the summons is deficient of sufficient particularity to prove its case. Hence it must follow that the summons is unable to support summary judgment. Thus taking a further step must be said to preclude (or disqualify, if you like) a plaintiff from taking summary judgment under rule 28." (Emphasis is mine.)

[12] HLAJOANE J's judgment is pleasantly short for reading. She basically followed LYONS AJ's judgment and does not seem to have appreciated that in the earlier matter it was a declaration that had been filed together with the summons and in the case before her it was the particulars of claim that have been so filed. In her summary of the case she talks of "both summons and declaration" having been filed, in paragraph [11] she says that "the plaintiff had filed both the summons and declaration/particulars of claim." Her paragraph [2] is clear that the plaintiff filed "his summons with the particulars of claim at the same time". Whether what is filed is a declaration or particulars of claim is of no significance to this appeal. The only point that must be highlighted is that particulars of claim are invariably filed together with the summons whereas a declaration is, in terms of the rules, to be delivered within the period provided in the rule but after the entry of an

appearance to defend. Because particulars of claim are invariably, nay inevitably, filed with or attached to the summons the question arising in this appeal assumes greater significance.

[13] It seems to me that LYONS AJ's judgment does not lay down an inflexible rule for this jurisdiction. He recognised that the practice in this country is to deliver a declaration together with the summons and opined that where a summary judgment application is made in these circumstances the court may exercise its discretion in terms of rule 59 and condone the taking of a further step as represented by the filing of the declaration. The more important point that he makes is that a court considering a summary judgment application where a declaration has been served together with the summons should have regard only to the contents of the summons and not to the declaration. This means that whether a declaration accompanies the summons or not is immaterial. The Court only has to disregard the declaration and proceed to decide the case in reliance on the summons only. Taken from this perspective the service of a declaration together with a summons cannot be fatal to the grant of summary judgment. Deriving from the practice in this country and the reasoning of LYONS AJ which I have underscored in the quoted passage, the position is not cast in stone that a summary judgment application is incompetent where a combined summons has been issued.

[14] A better view of the law on this point, which also accords with common sense and logic is that the filing of particulars of claim or a declaration simultaneously with the summons does not preclude an application for summary judgment. In Herbstein & Van Winsen, *The Civil Practice of the*

Supreme Court of South Africa 5th ed. at p. 523 the learned authors have this to say-

> *"The application for summary judgment does not presuppose that the plaintiff has filed a combined summons or a declaration… In two decisions of the Orange Free State Provincial Division it was held that if a plaintiff takes any further step after entry of an appearance to defend, for example the filing of a declaration or the supplying of further particulars, he thereby waives his right to apply for summary judgment. Those decisions were not followed in two subsequent cases in which it was held that nothing in rule 32 precludes a plaintiff who takes a further step in the proceedings from bringing an application for summary judgment. There is also nothing in uniform rule 32 to preclude a plaintiff from applying for summary judgment after the defendant has filed his plea, but within the time allowed for the bringing of the summary-judgment application. Indeed, the plea itself may afford good ground for such an application."*

[16] The learned authors refer to *Paul v Peter* 1985 (4) SA 227 (N) and to *Vesta Agencies v Schlom* 1991 (1) SA 593 (C) at 595C-H. In both these cases however the issue was not that the plaintiff had filed particulars of claim with the summons. *Paul v Peter* was a case in the magistrate's court, the rules of which compelled the furnishing of further particulars within a specified time from the time of request. After the plaintiff filed for summary judgment a request for further particulars was made and he furnished them. The court held that by furnishing the particulars the plaintiff was not thereby precluded from pusuing the summary judgment application because he had responded to the request in compliance with the rules. See also *BW Kuttle & Association Inc v O' Connel Manthe & Partners Inc* 1984 (665) C where a similar conclusion was reached. FRIEDMAN J, in an *obiter dictum* went on at 230B-E and expressed the view, with which I agree, that only in those cases where the rules provide that certain steps can be taken by a party only if that

party has taken no further steps in the proceedings would that party be precluded from, for example, applying for summary judgment. In the *Vesta* the plaintiff delivered the application for summary judgment after the defendant had already filed a plea. That, the court held, did not preclude the plaintiff from applying for summary judgment. The judge also said, in substance, much the same thing as in *Paul v Peter* that unless there is a specific rule proscribing the making of an application after taking a further step in the proceedings, then it cannot be said that there is a general rule in that connection. Our Rule 28, in subrule (1), merely prescribes the stage in the course of litigation at which a summary judgment application may be made. It must be delivered within 14 days of the entry of appearance as provided in subrule (2). This means that a plaintiff may not apply for summary judgment before the defendant has intimated an intention to defend. When a summons is served on a defendant the expectation is that he will consent to judgment if he has no defence. So, if he enters an appearance when he has no defence, the expectation of the law is that the plaintiff will quickly within the time prescribed by the rules apply for summary judgment. The requirements for the grant of summary judgment are such as to exclude, by implication, the possibility that summary judgment may be denied for the reason that the plaintiff has taken a further step. The procedure for summary judgment is designed to enable a plaintiff with a clear case to obtain swift enforcement of his claim against a defendant who has no real defence to the claim. The remedy closes the door to the defendant and should be accorded to the plaintiff if his case is unanswerable. That is why in terms of Rule 18(2) a plaintiff is required to swear positively to the facts verifying the cause of action and the amount of the claim, state that in his opinion the defendant has *no bona* fide defence to the action and that he has entered appearance for the purpose of causing delay. There can be no prejudice whatsoever that

can be occasioned to a defendant by the delivery of particulars of claim or a declaration together with the summons. In other jurisdictions, such as Zimbabwe, a plaintiff may apply for summary judgment at any time before a pre-trial conference is held. Rule 64 (1) of the Zimabwe High Court Rules, 1971 as amended in 1994 provides that-

> *" Where the defendant has entered appearance to a summons, the plaintiff may, at any time before a pretrial conference is held, make a court application in terms of this rule for the court to enter summary judgment for what is claimed in the summons and costs.*

[17] In my view to adopt the approach in *Standard Lesotho Bank (supra)* would open the door wide for a *mala fide* defendant faced with judgment being granted against him to simply resort to technicalities to buy time, which is precisely what the rule seeks to curb. It therefore follows that a purposive interpretation should be adopted especially in view of the fact that the rules do not disallow filing of the summons and particulars of claim concurrently. As noted by LYONS AJ a declaration is usually served together with the summons for convenience and that cannot be regarded either as a further step or a waiver of the right to ask for summary judge. This point is made in the *obiter dictum* in *Paul v Peter* in criticism of the statement of KLOPPER J in *Esso Standard South Africa (Pty) Ltd v Virginia Oils & amp; Chemical Co (Pty) Ltd 1972 (2) SA 81 (O)* at 83A-B where he said:

> *"I agree, though, that once appearance to defend has been entered and a plaintiff thereafter files a declaration or takes a further procedural step, he thereby waives his right to ask for summary judgment, but not in a case like the present, where the declaration was attached to the summons for the sake of convenience only and before appearance to defend was entered." (emphasis added).*

[18] Where as in this case particulars of claim are attached to the summons, not for convenience but in order to set out the claim in sufficient detail as required by rule 18(5) the party doing so should not be precluded from asking for summary judgment. Even where a plaintiff serves a declaration together with the summons it cannot be said that such party has taken a further step. Whilst the delivery of a declaration in terms of the rules after entry of appearance to defend is taking a further step, I am not persuaded that even in that case the plaintiff should be precluded from applying for summary judgment. The stage at which a party may not apply for summary judgment because he has taken a further step or steps should be a matter for the discretion of the court. In any event where a party has already filed the summons with the particulars of claim and taken no other procedural step after such filing there is no further procedural step to talk about; hence asking for summary judgment would be in order. In Steyn P's judgment in *Sotho Development Corporation (Pty) Ltd v Nedbank Lesotho (Pty) Ltd* LAC (2000-2004) 110 (with Friedman and Ramodibedi JJA concurring) the plaintiff had filed its declaration on the same day as the summons and, in dealing with the summary judgment issues arising therein, no issue was taken with the filing of the the summons and declaration on the same day. It may be well worth it to recall what the South African Supreme Court of Appeal said in *Joob Joob Investments v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 SCA para 33:

> *"Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are 'drastic' for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set*

> *out with customary clarity and elegance by CORBETT JA in the Maharaj case at 425-426E."*

[19] The learned judge in the court a quo rightly rejected the appellant's contentions on this issue. The point was merely a technical objection to the summary judgment application. Technicalities of this nature are often raised raised merely for dilatory purposes; the court should not allow too much formalism to defeat the substance of the dispute and the purpose of summary judgment. A measure of commercial pragmatism should imbue our litigation. I find the words of Schreiner JA in *Trans-African Insurance Co. Ltd v Maluleka* 1956(2) SA 273(A) at 278F calling for a robust approach to be illuminating:

> *"No doubt parties and their legal advisers should not be encouraged to become slack in their observance of the Rules, which are an important element in the machinery for the administration of justice. But on the other hand technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits."*

[20] I think the approach in the cases I have referred to is sound and should be adopted in the practice of our courts. There is need to desist from too much formalism and to adopt a robust approach. The learned Judge in the court *a quo* was correct to restate what is so often said: the rules are made for the court and not the converse. I do not find merit in the appellant's first ground of appeal. In view of this conclusion, the second challenge to the judgment of the High Court that the judge condoned the simultaneous filing of the summons and the particulars of claim when neither party had applied for such condonation, necessarily falls by the wayside.

Whether bona fide defence shown to exist

[21] The appellant disputes the granting of summary judgment against him and maintains that the judge erred in not finding that he had a *bona fide* defence to the respondent's claim. David Barnard in *The Civil Court in Action*, Butterworths 1977 at page 91 states:

> *"This summary judgment effectively denies the defendant the chance of testing the plaintiff's case by discovery and oral evidence and therefore will only be granted where the plaintiff is able to show an unanswerable case; it is not enough for a plaintiff to show that he has a strong case or that he is likely to succeed, he will only obtain judgment if he can show that he is bound to succeed."*

[22] The summary procedure is there to prevent delay where the defendant has no tangible or plausible defence and to save the plaintiff from subjection to the rigours and expense of a trial to only establish that a defendant had no defence. A defendant confronted with an application for summary judgment must show that he has a *bona fide* defence or a triable or arguable issue. It must be such that when advanced at a trial and proved the defendant would most likely succeed. (*Marsh and Anor v Standard Bank of SA Limited* 2000(4) SA 947(W) at 949C and *Breitenbach v Fiat SA (Edms) Bpk* 1976(2) SA 226 (T)). Rule 28 of the High Court Rules of 1980 provides for summary judgment, it presents two options to the defendant. He may give security to the plaintiff to the satisfaction of the Registrar for any judgment, including costs, that may be given or satisfy the court by affidavit or with the court's permission by oral evidence of himself or other person who can swear positively to the fact, that he has a *bona fide* defence to the action.

[23] When the appellant was served with the application for summary judgment he did not file an affidavit articulating what his defence was as required by the rule neither did he appear in court on the day of the hearing which was clearly stated on the face of the application as required by the rule. All that he did was to file a notice of intention to oppose. He then raised the point that counsel for respondent should have alerted the court that the matter was disputed. This point is devoid of any merit; appellant should have adhered to the rules of court.

[24] According to the evidence, at the hearing of the first application for rescission the court directed the parties to engage each other and verify the defence raised by appellant that there had been an instruction to the bank not to authorise payments unless they were authorised by the two directors of the company, Mr Leon Bosch and the appellant. The appellant also asserted that he never authorised any internet transactions in respect of the account. Having stated that his defence was premised on these factors the appellant did not furnish evidence, documentary or otherwise in that regard. His were merely bald statements; no substantiation whatsoever.

[25] The appellant's counsel correctly sets out the law at paragraph 5.2 of his heads of argument where he says that "in an application for rescission (applicant) need not deal with the merits of the case or produce evidence that the probabilities are actually in his favor. He needs only to set out averments which if established at trial would entitle him to the relief sought and enable the court to conclude that there is a *bona fide* defence….". The appellant did not, as found by the High Court, place sufficient evidence to satisfy the court that he had a bona fide defence. He did not show, despite the opportunity he had to do so, that indeed the Bank had been instructed to

make all payments only on his authority and that of his co-director or that Tumelo Plants had not authorised internet transactions on its account. To satisfy the court the appellant had, in the circumstances of this case, to do a little more than he would otherwise have had to do because the principal debtor was consenting to judgment and the two other persons who, like him had signed the suretyship deeds, were accepting liability and had agreed with the Bank on a payment plan. He did not refute the documentary evidence before the court that he himself received M 1 000 000 through internet transactions. Which begs the question, do the bald assertions by appellant qualify to be regarded as sufficient to satisfy the court that he had a *bona fide* defence? Can it be said that he has raised a triable issue? The answer to that is in the negative: a defence must not be 'sketchy or vague' or constitute a bare denial. See *NBS Boland Bank Ltd v One Berg River Drive CC and others* 1994 (4) SA 928 (SCA) at 938G para 35. In this connection the observations of the judge *a quo* become quite pertinent. At paragraph [36] and [37] of his judgment he said-

> *"[36]In the light of the revelation and apparent defence that implied that the bank acted outside its mandate, when the matter came before the court on the 1st of July 2015 it was postponed specifically for the (appellant) to address the question of authority and access to the account as alleged. The (appellant) was to bring anything, to support his statement that the bank was specifically so instructed.*
>
> *[37] Applicant could not find anything to support such allegation. There was no instruction in writing to that effect to the bank, and that much was common cause. Worse still the applicant could not specify to whom he gave the instruction at the bank nor even get Mr Leon Bosch to confirm such arrangement. The matter was postponed numerous times from July and nothing was forthcoming from the (appellant)."*

[26] The implications of suretyship and the defences available to a surety where default has occurred are relevant considerations in examining whether or not the appellant had a bona fide defence. The suretyship agreement, in clauses 1 and 2, shows that the appellant bound himself to pay an unlimited figure representing all or any monies which Tumelo Plants would be owing from 'whatsoever and howsoever arising'. This covers all transactions done by the debtor including the internet transactions. The ramifications of renouncing the benefits of excussion and division should not be underestimated. A further look at the suretyship agreement will show that clause 29 specifically states that the suretyship agreement constituted the entire agreement between the parties and that any alteration would have to be reduced to writing and signed by the parties.

[27] To sustain the applications for rescission it was imperative that the appellant had to show that he had a *bona fide* defence. The learned judge below dealt with this matter very well at paragraphs 35 -43 of his judgment. His conclusion cannot be faulted. This ground of appeal is accordingly dismissed.

Rule 45 contention

[28] The appellant's last ground of appeal is that the judge "misconceived" the law on rescission of judgment under Rule 45(1)(a) of the High Court Rules. This rule provides that the court may rescind or vary a judgment erroneously sought or erroneously granted in the absence of any party affected thereby. A judgment is granted in error if, as stated in *Nyingwa v Moolman* 1993(2) SA 508 at 510 (referred to by the judge a quo) at the time of its issue there existed a fact of which had the judge been aware, he would not have granted the judgment. It is not disputed that on the day that the

application for rescission was dismissed the appellant was not present, neither was his counsel and that on the day that the application was first heard and then adjourned appellant's counsel had only made part of his address to the court. The appellant's contention is that, had the respondent's counsel reminded the court that such address had in part been made, the court would not have dismissed the application. The appellant therefore blames the respondent's counsel for not drawing the court's attention to the fact that at the previous hearing the appellant's counsel had made only part of his submissions. Counsel who is well versed with the rules of procedure represented appellant. There is thus no merit in seeking to hide behind one's finger and blaming a vigilant plaintiff who seeks to assert his rights. The court a quo rightly found that there was no error in granting the application for summary judgment.

[29] The findings of the judge in the court *a quo* are unimpeachable. The appeal is dismissed with costs.

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M. H. CHINHENGO
ACTING JUSTICE OF APPEAL

I agree

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I. G. FARLAM
ACTING PRESIDENT

I agree

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B. M. GRIESEL
ACTING JUSTICE OF APPEAL

For appellant: R.D Setlojoane
For respondent: T. Mpaka