IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

C of A (CIV) NO. 44/2016

In the matter between:

HIPPO TRANSPORT (PTY) LTD **APPELLANT**

and

AFRISAM LESOTHO (PTY) LTD **1ST RESPONDENT**
DAILY NEEDS ENTERPRISES (PTY) LTD **2ND RESPONDENT**
DANKIE TRANSPORT (PTY) LTD **3RD RESPONDENT**
SLITZ TRANSPORT (PTY) LTD **4TH RESPONDENT**
S.P. LOGISTICS (PTY) LTD **5TH RESPONDENT**
MEWS TRANSPORT (PTY) LTD **6TH RESPONDENT**
MOTABO TRANSPORT (PTY) LTD **7TH RESPONDENT**

CORAM : FARLAM, A.P.
DR MUSONDA, A.J.A.
CHINHENGO, A.J.A.

HEARD : 5 MAY, 2017

DELIVERED: 12 MAY, 2017

SUMMARY

Invitation to Tender – when process contracts come into existence- where court of first instance fails to give reasons for costs order appeal court obliged to consider issues as to costs de novo.

JUDGMENT

FARLAM A.P

[1] The appellant in this case, a transport company whose principal business activity is the provision of freight services by large scale trucks and lorries, brought an urgent application in the High Court against the respondents, seeking a rule *nisi* and an interim interdict. On 15 June 2016 when the papers came before the judge who ultimately heard the matter, **Chaka-Makhooane J**, as an *ex parte* and urgent application, she very properly refused to hear it on an *ex parte* basis and ordered that all the parties should be given notice of the application.

[2] The papers were thereafter served on the parties during the course of 16 June 2016 and during the morning of 17 June first, second, third and seventh respondents indicated their intention to oppose the application.

[3] In the answering affidavit, dated 17 June 2016, which was filed on behalf of the first respondent, the deponent, Mr Michael

Broadford, the operations manager for distribution of the group of which the first respondent is a member, stated that the affidavit was drafted under extreme pressure as the application and set down only came to his knowledge on 16 June 2016, which was a public holiday in South Africa, where he deposed to his affidavit. In view of the pressure under which his affidavit was drafted he requested leave to amplify his affidavit if this was deemed necessary and his supplementary affidavit was deposed to and filed on 20 June 2016.

[4] An opposing affidavit was filed on behalf of the third respondent on 20 June 2016 and others on behalf of the fourth and seventh respondents, presumably also on 20 June 2016, although the dates have not been filled in the copies included in the record.

[5] The case was argued before the court *a quo* on 17 and 20 June 2016 and the judge's *'Ruling'*, as she described it, was delivered on 28 June, when the learned judge made the following order:

> *'1. The application for the interim interdict is dismissed with costs on the ordinary scale.*
> *2. Costs will be costs in the [cause].'*

[6] Counsel for the first respondent submits that paragraph 2 of the order is a patent error and that it should be disregarded. I agree that there is a patent error but am of the view that the

patent error is in the words after word *'dismissal'* in paragraph 1 of the order.

[7] The judge did not grant the rule *nisi* or the interim interdict which had been sought but the application was postponed to 5 August 2016 at the request of counsel for the appellant for arguments on the remainder of the relief sought.

[8] The appellant did not appear, through counsel or otherwise, on 5 August 2016 when the matter was argued by counsel on behalf of the first respondent, whereafter an order was made dismissing the application on the attorney and client scale.

[9] The following relief was sought by the appellant.

> 1. *Dispensing with the forms and service and time limits in terms of the Rules, and hearing the matter as one of urgency at such time and in such manner and in accordance with such procedure as to this Honourable Court seems meet.*
>
> 2. *For purposes of this order, the phrase* ***"applicant's transport allocation"*** *means 40% of the bagged volumes of Cementitious Products ordered by 1st Respondents' Lesotho Customers for delivery to them, and 100% of the Bulk volumes of such Cementitious Products.*
>
> 3. *A rule nisi is issued calling upon the Respondents to appear and show cause on a date as determined by this Honourable Court why an order in the following terms should not be made:*
>
> *3.1. The 1st Respondent is interdicted from*
>
> *3.1.1 Concluding any freight services contract with any of the 2nd to 7th Respondents [or] with any other company or person other than the applicant, for the transport of the applicant's transport allocation or any part thereof,*

whether pursuant to tender number CMD/LOG/LEG/2016/01 or otherwise.

3.1.2 Making use of a company or person other than the applicant for the transport of the applicant's transport allocation.

3.2 It is declared that the process followed by the 1st Respondent in connection with tender number CMD/LOG/LES/2016/01 was materially irregular and unfair toward the applicant;

3.3 Tender number CMD/LOG/LES/2016/01 as issued by the 1st Respondent is declared to be invalid and is hereby set aside for irregular process;

3.4 The 1st Respondent is ordered to pay the Applicant's costs of this application on the attorney and own client scale including the costs of three counsel if employed;

3.5 Any other party or person that may oppose this application is ordered to pay applicant's costs, on such scale and on such basis as the Honourable Court may direct.

3.6 Further or alternative relief.

4. *Paragraph 3.1 above operates as an interim interdict with immediate effect and shall remain in force until it may be discharged or set aside by this Court on the return date or thereafter.*

5. *The Applicant may supplement its papers by way of a supplementary affidavit to be delivered by no later than …….*

6. *Any respondent that wishes to show cause as contemplated in 3 above must file an answering affidavit by no later than….and the applicant may file a reply within two weeks thereafter.*

7. *The rights of the Respondents to anticipate the return day are not restricted in any way.*

8. *This order and the application papers are to be served on the respondents by the sheriff.*

9. *Further or alternative relief.'*

The facts and the main contentions advanced by the appellant are summarised as follows by the judge in paras [3] to [10] of her Ruling:

> *'[3] The applicant and the 2nd – 7th respondents are in the transportation (carriage) business of large cargo. The 1st respondent is said to be the producer and distributor of cement throughout Lesotho. The applicant and 2nd – 6th respondents have existing contracts with the applicant, to transport cement. The contracts ran from May, 2015 to April, 2016. However, the applicant extended the contracts from April, 2015 to the end of June, 2016.*
>
> *[4] The applicant was awarded the contract for forty percent (40%) of the bagged volumes of the cement product, while the respondents were awarded to share the remaining sixty percent (60%). The applicant was also awarded a tender to transport one hundred percent (100%) of the bulk volumes of cement through its specialised containers.*
>
> *[5] Sometime in February, 2016 the 1st respondent invited the applicant and the 2nd, 3rd, 6th and 7th respondents to submit tenders for transport services for the period after April, 2016. The respondents submitted their tenders under number CMD/LOG/LES/2016/01.*
>
> *[6] The applicant was later advised around the 10th May, 2016, that its tender had been unsuccessful. The applicant also found out that when the 1st respondent advised that the existing contracts would be extended to terminate at the end of June, it had also advised the other tenderers, to the exclusion of the applicant, that it was not satisfied with the tender offers it had received and had requested the tenderers to revise their tender prices downwards. This letter that was given to the tenderers was not given to the applicant.*
>
> *[7] It appears also that when the applicant was disqualified, so was the 3rd respondent. However, it is alleged that thereafter 3rd respondent was "secretly" given an opportunity by the applicant to revise its prices, thus providing the 3rd respondent with secret information on the other tenderers' prices.*
>
> *[8] According to the applicant, by giving the other tenderers and not the applicant the opportunity to reduce their tender prices, the 1st respondent was acting in bad faith, it was unfair, unreasonable*

and it also acted improperly by discriminating against the applicant.

[9] The applicant in his founding affidavit averred further that the tender process is regulated by various rights and obligations, even where the tender is invited by a private entity or body. According to the applicant, those rights and obligations arising out of the tender process, collectively constitute a process contract. Applicant contends therefore, that a process contract had come into existence, to regulate the rights and obligations in relation to the tender numbered CMD/LOG/LES/2016/01. The said rights and the 1st respondent's corresponding obligations, included inter alia that;

(a) the tender process must be fair and reasonable and must be governed by absolute good faith at all times;

(b) those invited to tender must be treated fairly and equally.

[10] The 1st Respondent is said to have breached the process contract when it gave the other tenderers the opportunity to reduce their prices and the same opportunity was not afforded to the applicant. By its conduct the 1st respondent acted in bad faith as already shown elsewhere in the Ruling. As a result, a material term of the process contract, namely that all tenderers are entitled to equal treatment had been breached.'

[12] In her Ruling the judge, after pointing out that by allowing the matter to be heard within two days she had effectively heard it on an urgent basis, dealt with the question as to whether the appellant had established the requisites for an interim interdict.

[13] Regarding the issue as to whether the appellant had established a *prima facie* right she said that she was

'unable to find anywhere in the following affidavit proof of the facts that establish the existence of a right (s), enough to entitle the applicant [to] the right sought. In casu the applicant relies on the rights that it says have accrued under the process contract. The applicant contends that the 1st respondent violated those rights in relation to the tender, in

tender number CMD/LOG/LES/2016/01. According to him he was discriminated against and that the tender process was not fair and it was not governed by absolute good faith.

In my view the applicant was informed since the 10th May, 2016 that he had been disqualified as a contender for the new tender. In that regard the applicant is already out of the race. Any dealings that the 1st respondent has with the other tenderers [are] clearly between 1st respondent and those tenderers. That he wants the court to preserve the status quo in relation to the 40% that it says belongs to it, is stretching it a bit far.

[As regards] the process contract referred to, I am unconvinced that this area of the law forms part of our law of contract, so far. Even if it was persuasive, in casu the 1st respondent had already short listed the companies that it wished to be contracted to.

As far as the current contract is concerned, this expires in June, 2016. Nothing so far shows that the 1st applicant has any rights that could be interpreted as extending beyond the life of the existing contract, that is beyond June, 2016. So that any reference to legitimate expectation and the process contract where these were not mentioned in the contract between the parties cannot be enforced.'

[14] She then proceeded to find that the appellant had not established a well-grounded apprehension of irreparable harm if the interim relief is refused and the ultimate relief was eventually granted or that the balance of convenience favoured the granting of the interim interdict or that it did not have a satisfactory alternative remedy.

[15] The judge did not give reasons for dismissing the main application or for the costs order she made on 5 August 2016, *viz* that the attorney and client scale would apply.

[16] The appellant has appealed against the whole of the judgment delivered on 5 August 2016 on the following grounds:

'1. The learned judge erred and or misdirected herself in dismissing the entire application notwithstanding clear evidence which was pleaded which evidenced that the awarding of the contract was not done in a fair and transparent manner.

2. The learned judge erred and or misdirected herself by awarding costs on the attorney and client scale in respect of the entire application.

3. The learned judge erred and or misdirected herself in dismissing the interim reliefs in that she ventured into the merits of the main reliefs when she was enjoined to restrict herself to the interim reliefs sought.'

[17] The appellant reserved the right to file further grounds of appeal upon receipt of the written reasons for judgment in the main case.

[18] This Court has on a number of occasions in the past criticised the failure by some judges in the High Court to provide written reasons for their judgments. See, for example, **Mosebo v Angel Diamonds Ltd LAC (2011-2012) 302** at **303 F-I** where the following was said:

'This Court has on the numerous occasions in the past strongly deprecated the failure by judges of the High Court to give reasons for their decisions. See e.g ***Qhobela and Another v Basutoland Congress Party and Another*** *LAC (2000-2004) 28 at 38C-D;* ***Hlalele and Another v Director of Public Prosecutions and Another*** *LAC (2000-2004) 233 at 237H-238A;* ***R v Masike*** *LAC (2000-2004) 557 at 559G-560B, and* ***Otubanjo v Director of Immigration and Another*** *LAC (2005-2006) 336 at 343F-346C.*

What was said by ***Friedman JA*** *in* ***Qhobela****'s case applies to this case also. The passage to which I refer reads as follows-*

"It is necessary for the proper administration of justice that courts give reasons for judgment. A litigant has every right to know why a case has been won or lost. And a lower court is also obliged to furnish reasons so that a Court of Appeal will be properly informed as to what prompted the court a quo to arrive at its decision. In the present case

> *no reasons are given by the learned judge a quo either for his order confirming the rule or for his subsequent 'ruling'. His conduct in this regard is to be deplored." '*

[19] In the present case the judge furnished reasons for dismissing the claim for an interim interdict (indeed her doing this is the subject of the third ground of appeal). While it is correct that a judge granting an application for an interim interdict should strive as far as possible to avoid predetermining the judgment to be delivered ultimately on the merits (**Tshwane City v Afriforum 2016 (6) SA 279 (CC)**), the same approach cannot so easily be applied when the application for an interim interdict is refused. One of the matters to be considered is whether the applicant has established a prima facie right which might be open to some doubt.

[20] In view of the fact that the judge gave her reasons for holding that the appellant had not established a prima facie right, it can, I think, be accepted that her reasons for dismissing the application are set out in the Ruling she gave when she dismissed the application for an interim interdict.

[21] It is, however, unsatisfactory that we do not have her reasons for the costs order she made and the comments made in the judgments cited in the **Angel Diamond** case are applicable. The fact that we do not have her reasons means that the issue as to the correctness of the costs order will have to be considered by this Court *de novo*.

[22] I turn now to consider whether the judge erred in dismissing the entire application.

[23] The appellant's case is based upon the submission that a *'process contract'* came into existence to regulate the rights and obligations of the parties in connection with tender number CMD/LOG/LES/2016/01.

[24] If a process contract came into existence between the appellant and the first respondent it would have to have been an actual contract, not one deemed to have come into existence or imposed on the parties by the common law or the court. On the facts of the present case if there was such a contract it would have been a contract by conduct and not a contract concluded expressly by the parties. *Consensus ad idem* would have been required, the parties would have had to intend to conclude a contract and the terms would have to have been certain. (It is possible, I take it, that in a *'process contract'* context it could happen that one party had the requisite intention to conclude the contract on definite terms and the other would be held to it on the basis of quasi mutual asset but nothing of that kind is suggested.)

[25] Process contents have been the subject of judicial decisions in England, Canada and Australia and especially in New Zealand, where the courts have given a number of decisions on the topic. A useful summary of the main decisions was given by William Young P in New Zealand Court of Appeal in **Prime**

Commercial Ltd v Wool Board Disestablishment Company Ltd [2006] NZCA 295, at para [15], where he said:

> *'[15] The law as to the circumstances in which the calling for tenders gives rise to a process contract was extensively reviewed in **Transit New Zealand v Pratt Contractors Ltd** [2002] 2 NZLR 313 at [63] – [77] (CA), aff sub nom **Pratt Contractors Ltd v Transit New Zealand** [2005] 2 NZLR 433 (PC). The primary rule is that a tender process involves simply an invitation to treat on the part of the party calling for tenders with no contractual obligation crystallising until an offer is accepted, see **Shivas & Westmark Investments Ltd v BTR Nylex Holdings NZ Ltd & Ors** [1997] 1 NZLR 318 (HC). But tender processes will sometimes create process contracts between the party calling for tenders and the tenderers, see for instance **Blackpool & Fylde Aero Club Ltd v Blackpool Borough Council** [1990] 1 WLR 1195 (CA) and **Pratt Contractors Ltd v Palmerston North City Council** [1995] 1 NZLR 469 (HC). As noted by this Court in **Quay Stevedoring Services Ltd v ENZA Ltd** CA214/00 15 in November 2001, a party alleging a process contract must establish the "necessary elements" of offer and acceptance and intention to enter into a binding contract.'*

See also the article *'The Law of Tendering*' published on the website of Clendons, a firm of barristers and solicitors of Auckland, New Zealand (to be found at *'clendons. co.nz/ resources/ background-papers/ law-tendering'*, accessed on 19 April 2017).

[26] In the present case the appellant deals with the alleged process contract in paragraphs 36 and 37 of its founding affidavit, which read as follows:

> *'36. I am advised and respectfully submit that the tender process is itself regulated by various rights and obligations, even where the tender is invited by a private entity rather than a government entity or body. I am further advised that those rights and obligations collectively constitute what is referred to as the*

"process contract" and legal argument will be submitted at the hearing of this matter in connection with the process contract.

37. Applicant contends that a process contract came into existence, to regulate the rights and obligations in connection with tender number CMD/LOG/LES/2016/01. The Applicant's rights, and the corresponding obligations of Afrisam, included inter alia:

37.1. The tender process must be fair and reasonable and governed by absolute good faith at all times;

37.2. Those invited to tender must be treated fairly and equally.'

[27] It is not possible to hold on the basis of the facts set out in the founding affidavit that a process contract came into existence between the parties in this case.

[28] Counsel for the appellant contended that the first respondent's invitation to tender, which was annexed to the founding affidavit, was *'a contract which confers obligations and rights to the respective parties'*. This submission cannot be upheld. As was held in **Port Nolloth Municipality v Xhalisa and Others**; **Luwalala and Others v Port Nolloth Municipaliy** 1991 (3) SA 98 (C) at 111 A-E, an annexure to an affidavit in motion proceedings is not an integral part of it, and an applicant must justify his or her claims by relying on facts alleged in his or her founding affidavit and may not rely on facts emerging from an annexure which were not set out in the affidavit and to which the attention of the respondent has not been specifically directed. See also **Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others** 1992 (2) SA 279 (T) at 324 F-G.

[29] Counsel for the appellant also relied on an English case, **Blackpool and Fylde Aero Club Ltd v Blackpool Borough Council** [1990] 3 All ER 25 (CA) and an Australian case **Hughes Aircraft Systems International Inc v Airservices Australia** (1997) 76 FCR 151, in which it was held that process contracts had come into existence. In my view both cases are distinguishable.

[30] The facts in the **Aero Club** case were very special. The council owned an airfield and raised revenue by granting a concession to an air operator to operate pleasure flights from the airport. The council sent invitations to tender to the club and six other parties. The invitations stated that tenders were to be submitted in the envelope provided, were not to bear any name or mark which would identify the sender and that tenders received after the date and time specified, *viz* 12 noon on 17 March 1983 would not be considered. The club's tender which was in the provided envelope and did not bear any name or mark which would identify the club as the sender was put in the Town Hall letter box at 11 a.m. on 17 March. The letter box was not cleared by council staff on that day and the club's tender, which was taken out of the letter box the next morning was recorded as being late and was not considered.

[31] The Court of Appeal upheld the aero club's claim for damages arising from a breach of an implied contract between the club and the council that the club's tender (which was higher

than the others) would be opened and considered with the other tenders. **Bingham L J** said (at 30 – 31 d):

> *'A tendering procedure of this kind is, in many respects, heavily weighted in favour of the invitor. He can invite tenders from as many or as few parties as he chooses. He need not tell any of them who else, or how many others, he has invited. The invitee may often, although not here, be put to considerable labour and expense in preparing a tender, ordinarily without recompense if he is unsuccessful. The invitation to tender may itself, in a complex case, although again not here, involve time and expense to prepare, but the invitor does not commit himself to proceed with the project whatever it is; he need not accept the highest tender; he need not accept any tender; he need not give reasons to justify his acceptance or rejection of any tender received. The risk to which the tenderer is exposed does not end with the risk that his tender may not be the highest (or, as the case may be, lowest). But where, as here, tenders are solicited from selected parties all of them known to the invitor, and where a local authority's invitation prescribes a clear, orderly and familiar procedure (draft contract conditions available for inspection and plainly not open to negotiation, a prescribed common form of tender, the supply of envelopes designed to preserve the absolute anonymity of tenderers and clearly to identify the tender in question and an absolute deadline) the invitee is in my judgment protected at least to this extent: if he submits a conforming tender before the deadline he is entitled, not as a matter of mere expectation but of contractual right, to be sure that his tender will after the deadline be opened and considered in conjunction with all other conforming tenders or at least that his tender will be considered if others are. Had the club, before tendering, inquired of the council whether it could rely on any timely and conforming tender being considered along with others, I feel sure that the answer would have been "of course". The law would, I think, be defective if it did not give effect to that.*
>
> *It is of course true that the invitation the invitation to tender does not explicitly state that the council will consider timely and conforming tenders. That is why one is concerned with implication. But the council does not either say that it does not bind itself to do so, and in the context a reasonable invitee would understand the invitation to be saying, quite clearly, that if he submitted a timely and conforming tender it would be considered, at least if any other such tender were considered.*
>
> *I readily accept that contracts are not to be lightly implied. Having examined what the parties said and did, the court must be able to conclude with confidence both tht the parties intended to create contractual relations and that the agreement was to the effect contended for. It must also, in most cases, be able to answer the*

> *question posed by Mustill LJ in Hispanica de Petroleos SA v Vencedora Oceanica Navegacion SA, The Kapetan Markos NL (No 2) [1987] 2 Lloyd's Rep 321 at 331" "What was the mechanism for offer and acceptance?" In all the circumstances of this case (and I say nothing about any other) I have no doubt that the parties did intend to create contractual relations to the limited extent contended for. Since it has never been the law that a person is only entitled to enforce his contractual rights in a reasonable way (White & Carter (Councils) Ltd v McGregor [1961] 3 All ER 1178 at 1182, [1962] AC 413 at 430 per Lord Reid), counsel for the club was in my view right to contend for no more than a contractual duty to consider. I think it plain that the council's invitation to tender was, to this limited extent, an offer, and the club's submission of a timely and conforming tender an acceptance.'*

[32] In the Australian case the two prospective tenderers and the authority which issued the tender invitation agreed in writing to a set of guidelines for the assessment of the tenders. The trial judge held that this agreement constituted a contract between them.

[33] Counsel for the appellant also referred to a judgment delivered in the Privy Council on appeal from New Zealand, **Pratt Contractors Limited v Transit New Zealand** [2003] UK PC 83, by **Lord Hoffmann** in support of the proposition that there is *'an implied pre-contractual duty which is binding on every employer and is to be divorced from the discretionary decision'* made by a private employer to contract with a supplier of his choice.

[34] The dictum of **Lord Hoffmann** on which counsel relies reads as follows: *'The nature of the implied duty to act fairly and in good faith has been the subject of a good deal of discussion in Commonwealth authorities.'* He went on to refer to an earlier New Zealand **case Pratt Contractors Ltd v Palmerston North City Council** [1995] 1 NZLR 469 (HC) and the **Hughes Aircraft**

Systems case. In both of these cases process contracts were held to have been concluded, as was the case in the **Transit New Zealand** case itself.

[35] It is thus clear that **Lord Hoffmann**'s judgment is not authority for the wide submission made by counsel for the appellant.

[36] The appellant also alleged in the founding affidavit that the conduct of the first respondent of which it complains was also a breach of an existing contract it had with the first respondent, which came to an end at the end of June 2016. This contention is entirely without merit as that contract did not deal in any way with how any tender process relating to a future contract between the parties would be handled.

[37] For the above reasons I am satisfied that the appellant's first ground of appeal cannot succeed.

[38] The second ground of appeal attacks the award of attorney and client costs in respect of the entire application.

[39] I have already pointed out that in the absence of the reasons which prompted the judge *a quo* to make this award this court will be obliged to approach this issue *de novo.*

[40] The applicant wrote a letter to the first respondent on 23 May 2016 complaining of what it called the *'termination'* of its

freight services contract with first respondent and stating that in the tendering process all other transporters contracted with first respondent were given letters asking them to re-consider downturn adjustment of their transport rates. Attached to this letter was a copy of a letter sent to one of the other tenderers (whose name was obliterated) asking it to re-assess its submitted rates to ensure that they were *'truly the best'* it could offer.

[41] The first respondent replied on 25 May 2016, stating that the allegation made by the appellant that the first respondent did not follow due process in the tendering process was not accepted.

[42] The founding affidavit was deposed to on 14 June 2016 almost three weeks after this letter.

[43] The appellant then attempted to obtain an *ex parte* order, containing an interim interdict against not only the first respondent but also the six other tenderers. As has been set out above, on the judge's insistence the papers were served on the respondents, but they, particularly the first respondent, were put under extreme pressure to put their response to the appellant's case before the court. In my view the first respondent was correct in describing the appellant's urgent application as an ambush and an attorney and client costs order in respect of that part of the application was appropriate.

[44] I do not think, however, that such an order would be justified in respect of the hearing on 5 August.

[45] In the circumstances I am satisfied that the judge was correct in dismissing the appellant's application for an interim interdict on the attorney and client scale but as far as the costs of the proceedings after 28 June 2016 are concerned the costs should be paid on the ordinary scale.

[46] I do not think that this amendment made to the cost order is of sufficient moment to affect the costs order to be made in this appeal.

[47] The following order is made.

1. Save for the alterations made in the costs order in the court a quo, the appeal is dismissed.
2. The costs on appeal are to be paid by the appellant.
3. The order made in the court a quo is replaced with the following.

'1. The application is dismissed.

2. (a) The costs of the application up to and including 28 June 2016 are to be paid by the applicant on the attorney and client scale.

(b) The costs after 28 June 2016 are to be paid on the scale as between party and party.'

_____

I.G. FARLAM
ACTING PRESIDENT

I agree:

_____

DR P. MUSONDA
ACTING JUSTICE OF APPEAL

I agree:

_____

M.H. CHINHENGO
ACTING JUSTICE OF APPEAL

For Appellants	**:**	Adv K Ndebele and Adv M S Rasekoai
For Respondents	**:**	Adv P.J.J. Zietsman