IN THE HIGH COURT OF LESOTHO
(Commercial Court Division)

HELD AT MASERU

CCA/ NO. 0012/22

In the matter between

COMMISSIONER OF POLICE
(HOLOMO MOLIBELI) **APPLICANT**

And

VODACOM LESOTHO (PTY) LTD **1ST RESPONDENT**

THE PRIME MINISTER **2ND RESPONDENT**

MINISTER OF POLICE **3RD RESPONDENT**

THE ATTORNEY GENERAL **4TH RESPONDENT**

HIS MAJESTY **5TH RESPONDENT**

NEUTRAL CITATION: COMMISSIONER OF POLICE V VODACOM LESOTHO (PTY) LTD & 4 OTHERS [2022] LSHC 162 Comm. (13th July 2022)

CORAM: M. MAHASE, J
M. HLAELE, J
M. S. KOPO, J

HEARD: 01STand 5TH JULY 2022

RULING: 13TH JULY 2022

SUMMARY

Application for referral of a dispute of fact to be determined by viva voce evidence – procedure for such a referral – interlocutory application joining a new party – rules of Court to be followed.

ANNOTATION

Books

South Africa

Cilliers A. C, Loots C, Nel H, C. Herbstein and Van Winsen the Civil Practice of the High Courts and Supreme Court of Appeal of South Africa. 5th edition, Juta and Co. 2009

Hoffman, MA and Zeffertt, DT. The South African Law of Evidence. 3rd Ed. Butterworths. 1986

Cases

Lesotho

ABC & Other v The King and Others Constitutional Case No.96 of 2020 at Para 49

First National Bank of Lesotho Limited v Lugy's Manufacturing (Pty) Ltd. C OF A (CIV) NO.: 51/2019 CCA/0040/2017

Makhetha v Estate Late Elizabeth 'Mabolase Sekonyela C of A (CIV) 44 of 2017) [2018] LSCA 16 (07 December 2018)

Telecom Lesotho (PTY) LTD v Mafatle (LAC/CIV/ APN/08/2005) [2007] LSLAC 4 (31 January 2007)

South Africa

Garment Workers' Union v De Vries and Others 1949 (1) SA 1110 (W)

Goldberg and Another v Di Meo 1960 (3) SA 136 (N).

Hudson v South African Airways Soc Ltd (JA84/2014) [2015] ZALAC 28; [2015] 9 BLLR 879; (2015) 36 ILJ 2574 (LAC) (24 June 2015)

Ismail and Another V Durban City 1973 (2) SA 362 (N)

National Director of Public Prosecutions v Zuma 2009 (1) SA 141 (CC)

Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] (3) SA 623 (A)

Ripoll-Dausa v Middleton NO and Others 1574/04) [2005] ZAWCHC 6; 2005 (3) SA 141 (C) [2005] 2 All SA 83 (C) (25 January 2005

Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1162

Statutes

Constitution of Lesotho 1993 (as amended)

High Court Rules No. 9 of 1980

RULING

INTRODUCTION

[1] Applicant, the Commissioner of Police of this country, in this matter, received a letter from The Prime Minister of this country (2nd Respondent) requesting him to show cause why His Majesty the King could not be advised to retire him from his employment. Upon receipt of that letter, he (Applicant) requested further particulars and/or launched an application in this court in its ordinary jurisdiction per CIV/APN/0179/22.

[2] In CIV/APN/0179/22, Applicant sought;

a. review of the decision of 2nd Respondent, in this matter, requiring him to show cause why he could not be retired.

b. declaration that the decision of 2nd Respondent, in this matter, is unlawful and invalid, and of no consequence and effect in law.

c. interdict against 2nd Respondent, in this matter, from advising His Majesty the King to require him (Applicant) to retire.

d. interdict against his Majesty the King to retire him.

[3] During the pendency of CIV/APN/0179/22, Applicant instituted Constitutional Case 0012/22 (The Main Application) on an urgent basis seeking an order, among others;

a. Suspending (in the interim) the advice by 2nd Respondent, in this matter, to 5th Respondent herein, requiring Applicant to retire.

b. Reviewing and declaring as unconstitutional the decision of 2nd Respondent herein to advice 5th Respondent to ***require*** him (Applicant) to retire.

c. Costs.

[4] The basis of Applicant's Application in the main was an allegation that he received a call from 3rd Respondent herein that 2nd Respondent had decided to go ahead and advice the 5th Respondent to require him to retire and as a result relevant instruments would be delivered to His Majesty.

[5] Upon receipt of 3rd Respondent's Affidavit denying that he called Applicant telephonically and said as Applicant alleges, Applicant launched the present application.

FACTS AND ISSUES OF THE PRESENT APPLICATION

[6] According to the Applicant, the present application proceedings is two (2) pronged. Applicant, on one prong, seeks communication records from 1st Respondent. In his Notice of Motion and his Founding Affidavit, Applicant moves this court for an order compelling the 1st Respondent to disclose the records of communication and transcription of communication between his cellular phone number 58964893 and that of 3rd Respondent's cellular phone number 58886884 that took place on the 4th day of June 2022 between 0900hrs and1030hrs.

[7] On the other prong, Applicant applies for referral of this matter for determination by *viva voce* evidence. This is on the basis of the denial by 3rd respondent that he called him (applicant) and told him that the Prime Minister has resolved to go ahead and advice His Majesty the King to require him to retire raises a dispute of fact upon which this court will not be able to resolve on the papers. He raises this through his replying Affidavit[1]. The two prongs are intricately related. For this reason, therefore, the determination of this second prong in the negative (that there is no dispute of fact that can prevent this court

[1] Para 14.7 thereof

from determining the matter on the papers), negates the need for determination of the first prong (compelling the 1st Respondent to disclose the records of communication of the mentioned cellular phones).

[8] All the respondents have opposed the Application. 1st Respondent has done so on the basis that it does not record conversations of clients and therefore it is impossible to provide any transcribed records. It must be mentioned that 1st Respondent has shown that what they can provide per order of court are what have been termed Call Data Records (CDRs). These are records showing that a certain number called another number, the duration of the call, the tower from which the call was made and the record showing if the communication was a Short Message Service (SMS or Text).

[9] All the other Respondents have attacked the Application in its entirety. Firstly, the other Respondents argue that; the rules do not cater for an application couched as an interlocutory application but joining a completely new party without leave of court, it is an attempt to file a fourth set of affidavit, it is not sanctioned by rules of court, records sought do not exist, it is not clear that Vodacom has what is being required to submit and, 3rd respondent's communication may contain privileged material (state privilege).

[10] Secondly, the issue as to whether the matter should be referred for determination through *viva voce* evidence was argued from the perspective of the main Application and the present Application. It therefore stands for determination in the present application as well.

[11] The Respondents contend that the dispute is not material in itself because;

- it is premised on hearsay;
- applicant should have foreseen the dispute since 2nd Respondent herein refutes that the instruments have been issued; and finally.
- the question as to whether His Majesty has received any advice or acted in accordance with such advice has been removed from the purview of this court per Section 91(5) read with Section 155(3) of the Constitution.

[12] The issues that stand for determination in this matter therefore stand thus:

a. Has Applicant followed the correct procedure in launching this Application?
b. If the answer to the above question is in the affirmative, is there a dispute of fact. To this end, how is a dispute of fact determined or how is its materiality defined?
c. The answers to the above questions will then form a pre-requisite to whether an application for compelling 1st Respondent to dispatch the CDRs can succeed.

DISPUTE OF FACT-

Procedure for Raising a Dispute of Fact and How a Dispute is Determined

[13] As has been shown, it has been argued on behalf of Applicant that a dispute of fact has to be raised in initio and for that matter is jurisdictional. Moreover, it was argued that it can be raised at any stage of the proceedings. In

opposition, it was argued that the question of a dispute of fact belong to the Application in the main. While this was not necessarily saying, it cannot be raised in initio, it is worth determining and giving a ruling on it.

[14] The relevant rule regarding a dispute of fact in motion proceedings is Rule 8 (14) of the High Court Rules[2]. It reads thus;

> *"If in the opinion of the court the application cannot properly be decided on affidavit the court may dismiss the application or may make such order as it seems appropriate with a view to ensuring a just and expeditious decision. In particular, but without limiting its discretion, the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for any other person to appear personally or grant leave for him or any other person to be subpoenaed to appear to be examined and cross-examined as a witness, or it may order that the matter be converted into a trial with appropriate directions as to pleadings or definition of issues, or otherwise as the court may deem fit".*

[15] Upon reading this rule, there is nothing complicated on the face of it. However, the trajectory of case law evidences otherwise and suggests that its interpretation should not be taken at face value. Much was made during argument that an application that the matter be referred for determination

[2] Legal Notice No. 9 of 1980

through *viva voce* evidence should be made in initio. Advocate *Maqakachane* for the Applicant argued very strongly on this point. He buttressed his argument by, among others, referring to the case of *Ismail and Another v Durban City*[3] *Council* (Ismail) which went a step further on the question as to whether the dispute is "jurisdictional".

[16] That the application should be made in initio is a general rule but this does not mean that it cannot be made at any time during arguments. In fact, the "inflexible rule" that seem to have been laid down in South Africa by *Goldberg and Another v Di Meo*[4] has since not been followed in subsequent cases. And in fairness to Advocate *Maqakachane*, he submitted that such an application can be made at any time of the proceedings. He however argued, in line with Ismail, that as to whether there is a dispute, it is jurisdictional and the court has no discretion on it.

[17] The methodological approach, as Mr. *Maqakachane* put it, and the term "jurisdictional" used in Ismail should not, I believe, distract us from a settled principle. The term "jurisdictional" may course others to come to a conclusion that raising an issue as to whether there is a dispute of fact should be raised as a point *in limine* as are all jurisdictional issues. I believe that this is just an approach in which the learned judge dissected the problem. It is a given that in deciding whether the dispute is material or real, genuine and bona fide, the court has to first determine if indeed there is a dispute. This need not necessarily be a sectional approach. It is one transaction of determining if there is a dispute of fact upon which "in the opinion of the court the application cannot properly be decided on affidavit". One need not necessarily go at length on this as our court

[3] 1973 (2) SA 362 (N)
[4] 1960 (3) SA 136 (N).

of Appeal in *Makhetha v Estate late Elizabeth 'Mabolase Sekonyela*[5] authoritatively and ably decisively extrapolated on Ismail.

Is there a Dispute of Fact Upon which this Court Cannot Properly Decide this Matter on Papers?

[18] It is common cause that the trigger of Applicant's case in the main is the alleged telephone conversation that he had with 3rd Respondent herein. Applicant deposed that 3rd Respondent (the Minister) called him on the 04th day of June and told him that the Prime Minister had decided to advice His Majesty to require him to retire and that ordinary instruments had been issued. In answer, the Minister denied ever calling the Applicant and ever saying as he is alleged to have said. Moreover, the Prime Minister also has denied that he has decided as alleged nor issued the instruments. These denials are the ones that Applicant seeks an order that they be referred for determination through oral evidence.

[19] The question is, has that denial created a dispute to the effect that this court will not be able to decide the main matter on the papers? Respondents (2nd and 3rd) have argued that this is not the case. The grounds that Advocate *Teele KC* relies on stand thus:

a. Facts relied upon are hearsay;
b. 2nd Respondent says no instruments have been issued and therefore Applicant should have foreseen this dispute; and
c. The question as to whether His Majesty has received the advice or acted on such an advice cannot be enquired into in any court due to the constitutional prohibition enunciated in Section 91 of the Constitution.

[5] (C of A (CIV) 44 of 2017) [2018] LSCA 16 (07 December 2018)

d. The dispute is not a material dispute of fact.

[20] On the question of hearsay, Mr. *Maqakachane* argued that looking at the definition of hearsay, what 3rd Respondent said cannot be hearsay. He argues that definition of hearsay is "a statement uttered by a person who is not in court". This is a compelling argument and indeed, hearsay has been defined as such but ***Hoffmann and Zeffertt*** argued against this definition[6]. I believe we can add another reason why that definition should not be followed blindly. In the peculiar circumstances of this case, it cannot hold. Applicant is relying on what he was told by the Minister about what the Prime Minister has said and as a result seeks this court to rely on it as the truth of what the Prime Minister has said. While Applicant made the Minister a party on the basis that he is the Police Authority, all the legal powers concerning the crux of this case lies with the Prime Minister. He is relying on what another person told him about what the other 3rd party said. That is hearsay. Besides, if we could rely on definitions on the law of evidence regarding hearsay, we may fall into a dangerous pit trap. The rule against hearsay has so many exceptions that definitions may end up just being more on the academic purview. Without limiting the plethora of guides available on what hearsay is or is not, the safest guide may be asking ourselves if the probative value of what is being said can be tested in court.

Indeed, the court in *Garment Workers' Union v De Vries and Others*[7] warned;

> *"It would be deplorable if a litigant were allowed to come to court on vague rumours and hearsay statements and then to claim to have the right to have viva voce evidence heard about these rumours so that he [or she] could subject witnesses on the other*

[6] South African Law of Evidence, 3rd Edition at p 100
[7] 1949 (1) SA 1110 (W)

side to cross-examination on the off-chance that he might be able to show that the vague rumours and hearsay statements were true. There must be a real issue of fact raised in the proper way by real evidence on both sides and that evidence must be such that the court cannot decide the issue except by seeing and hearing the witnesses."

[21] Another ground that is relied upon by the Respondents on saying that Applicant should not be allowed to rely on the dispute, is that 2nd Respondent herein has denied that the instruments have been issued and therefore Applicant should have foreseen this. The Respondents herein are in a way admitting that there is a dispute but that Applicant should have foreseen it. On that note, the hurdle of hearsay still stands against Applicant. He relies on hearsay in saying that 2nd Respondent has issued the instruments.

[22] Moreover, the question whether or not the dispute was foreseeable would be decisive in the question whether a court would refer a matter to the hearing of oral evidence. It is therefore an inquiry which the court should ferret around. Thus, in the case of *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* [8], Murray AJP stated:

> 'It is certainly not proper that an applicant should commence proceedings by motion with knowledge of the probability of a protracted inquiry into disputed facts not capable of easy ascertainment, but in the hope of inducing the court to apply Rule 9 [now R 6 (5)(g)] to what is essentially the subject of an ordinary trial action.'

[8] 1949 (3) SA 1155 (T) at 1162

The Rule 9 referred to by his Lordship is similar to the Rule 8(14) in our jurisdiction. Put differently, a drafter of litigation must engage in the laborious act of predetermination of whether to draft trial proceedings or motion proceedings in the facts that he or she has at their disposal before drafting. This warning was also sounded in the case of Hudson v South African Airways Soc Ltd.[9]

[23] Another reason upon which the Respondents rely on to move the court that it should dismiss the application for referral of the matter to be determined by *viva voce* evidence is that per law, the question as to whether His Majesty has received the advice or acted on such an advice cannot be enquired into in any court. The reliance herein is on Section 91 (5) read with Section 155 of the Constitution.[10]

This court has had occasion to glean into the powers of the courts in relation to Section 91 of the Constitution and the ultimate interpretation thereof was as follows;

> *"The ouster clause is there to protect the King's alleged failure or non-failure to act from judicial scrutiny. It does not preclude an enquiry into the constitutional validity of the advice or the Prime Minister's act of overreaching the King".*[11]

[24] Mr. *Maqakachane* argues that what is outside the purview of this court is an inquiry as to whether His Majesty received the advice. He argues that what he challenges is the decision to advice regardless of whether the

[9] (JA84/2014) [2015] ZALAC 28; [2015] 9 BLLR 879; (2015) 36 ILJ 2574 (LAC) (24 June 2015)
[10] The Constitution of Lesotho
[11] ABC & Other v The King & Others Constitutional Case No.96 of 2020 at Para 49

decision was manifested or not. I tend to agree with him that what cannot be enquired into is whether His Majesty received the advice. This is the reading of Section 91 (5). And to quote the relevant part, it says "the question whether he has received or acted in accordance with such advice shall not be enquired into in any court". This is confirmed also by the court in the ABC case quoted above.

[25] The final reason for opposition for referral to *viva voce* evidence is the issue whether the dispute is material. To this end two propositions were placed before this court. On the one hand the applicants were of the view that this principle relating to the dispute being material is whether a material fact is disputed as opposed to the dispute being material. He termed this the materiality of the fact in dispute as opposed to the dispute being material.

[26] The law guiding courts in the determination of the dispute of facts is long standing and can be ascertained from the case of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.[12] hence it is now called the Plascon-Evans rule. This court will rely on the principles of this rule.

[27] The court in the case of *National Director of Public Prosecutions v Zuma*[13] had this to say concerning motion proceedings and the resultant disputes therefrom;

[12] Plascon -Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] (3) SA 623 (A)
[13] 2009 (1) SA 141 (CC)

> *"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities".*

It is for this reason that it becomes imperative, if not the law, that when resolving issues on motion proceedings, it should be done on facts that are common cause. In the event that there are disputed facts, the principles enunciated in what has become known as the Plascon- Evans rule kick in to determine the outcome of the case. In its simple and basic form, the Plascon - Evans rule states that the final relief may only be granted if those facts as stated by the respondent, together with those facts stated by the applicant that are admitted by the respondent, justify the granting of an order.[14]

Simply stated, the court will consider –

- what facts have been alleged by the respondent in its answering affidavit; against
- the facts and/or version of the applicant which have been admitted by the respondent.

This may however be difficult where the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. This clearly means that not every denied fact automatically leads to a dispute of fact which would then lead the court to make a determination whether to proceed in terms of Rule 8(14) of the High

[14] The general rule was initially formulated in Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd [1957] (4) SA 234 (C)

Court Rules. The question therefore is, what type of dispute attracts the Rule 8(14)?

[28] It should be noted that the Plascon-Evans rule is not applicable to interlocutory matters and only to the final relief sought. This therefore means that in determining whether the dispute of fact exists, courts are directed by the prayers alluded to in the main application. The courts thus have to make a determination whether the dispute talks to the prayers in the main action as opposed to the interlocutory application. Courts have further interpreted the Plascon -Evans rule to mean that not every dispute is a dispute that should be referred to *viva voce* evidence. That only those disputes that raise a genuine or *bona fide* dispute require referral to *viva voce* evidence.

To this end, the case of Ripoll-Dausa v Middleton NO and Others[15] is instructive in determining what constitutes a genuine and *bona fide* dispute. It states;

> 'It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. *In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact* … If in such a case the

[15] (1574/04) [2005] ZAWCHC 6; 2005 (3) SA 141 (C) [2005] 2 All SA 83 (C) (25 January 2005)

> respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination … and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks… Moreover, there may be exceptions to this general rule, as, for example; where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers...'

Simply put, the dispute must be material to the relief sought. Meaning a denial by respondent of a fact alleged by applicant may be insufficient to raise a real, genuine or *bona fide* dispute of facts.

[29] The Court of Appeal has confirmed this test in the determination of what constitutes a material dispute of fact that would lead the court presiding to apply the dictates of Rule 8(14) in the case of *Mamahloli Mathaabe Makhetha and another v Estate of the Late Mabolase Sekonyela* cited above where the court had this to say;

> The existence or non-existence of a *bona fide* dispute of fact *on a material question of fact* is the determinant whether one proceeds by way of motion or by way of action. The question whether a real and genuine dispute of fact exists is a question of fact for court to decide.

In *Ismail* cited above, the court couched it thus;

> *"The decision as to whether or not a dispute of fact exists is not, however, discretionary; it is a question of*

> *fact and a jurisdictional pre-requisite for the exercise of the discretion. Thus, in considering whether such a dispute exists, a Court of appeal is not considering whether or not to set aside a discretionary decision of the Court a quo (which can only be done if the Court of appeal is satisfied that such has not been exercised judicially i.e. given not for substantial reasons but capriciously or upon a wrong principle … but whether or not a dispute of fact of the above nature exists on the papers."*

In *Soffiantini vs Mould*[16] the court in intensifying this rule and throwing caution to a court being overzealous in concluding that any dispute constitutes a dispute of fact per the Plascon-Evans rule held;

> 'The court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits.'

It is the view of this court that, the dispute raised by the deponents to the answering affidavit that there have not been communications between the parties to the main litigation on the 4th June, does not constitute a material dispute because it does not address the materiality of the relief sought.

Interlocutory Application (**Application to Compel 1st Respondent to dispatch CDR).**

[16] 1956 (4) SA 150 (ED) at 154 G

[30] In its basic form, an interlocutory application is an application filed in the main case. Interlocutory applications do not initiate proceedings, they are only brought to achieve certain objectives with regards to already existing main actions or applications [See Pete, S et al *Civil Procedure A Practical Guide* 3rd Edition (Oxford University Press Southern Africa (Pty) Ltd 2017) 190]. Even the order made by a court in interlocutory proceedings is not final and is not necessarily the subject matter of the main application. Hence the Court of Appeal has had to say about them;

> An interlocutory order … is not final, not definitive of the rights of the parties and not having the effect of disposing of at least a substantial portion of the relief claimed in main proceeding…[17].

Is the interlocutory Application Irregular by Virtue of the Fact that it has Joined a New Party Without Leave of Court?

[31] It was submitted by Mr Teele that the interlocutory application filed of court by Mr Maqakachane was irregular in that it cited parties who were not initially the parties in the main application. As has been shown, the first prong of this application having been disposed of, the second prong is only dealt with as a by-the-way. It is no longer relevant.

[32] The difficulty in this issue has been caused by the fact that Applicant has decided to clamp his applications together. He could have probably dealt with the issue of the dispute in the main and if he succeeds, then moved on to this leg. Be that as it may, the question is, is it an irregular procedure that Applicant

[17] First National Bank Of Lesotho Limited v Lugy's Manufacturing (PTY) LTD. C OF A (CIV) NO.: 51/2019 CCA/0040/2017

adopted? Is it even interlocutory to the main? Should he have applied for leave of court to join 1st Respondent herein?

[33] To cut the long story short, rules are clear, leave of court has to be sought to join another party in the matter. This is the procedure and rules of court are there for a reason.[18] At the least, condonation for none compliance with the rules should have been applied for.

Conclusion

[34] Having concluded that, what Applicant relies on as a dispute emanate from hearsay, that the dispute is not material, that Applicant should have seen the dispute even if not material, the inevitable result is that this court cannot order that the matter be referred to determination through *viva voce* evidence.

[35] It is also the view of this court that the question as the whether Applicant has discharged his *onus* that indeed a decision was made, is a question for the Application in the main. We may even go further then to even enquire as to whether a decision, not manifested, should be the purview of this court.

The Court therefore makes the following Order:

[18] Telecom Lesotho (Pty) Ltd v Mafatle LAC APN/08/2005

1. The Application for referral of the matter to be determined through *viva voce* evidence is dismissed.

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Kopo, J

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Mahase, J

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Hlaele, J

For Applicant: Adv. Maqakachane and Adv. Nyabela

For 1st Respondent: Adv. Lamani

For 2nd, 3rd, 4th and 5th Respondent: Adv. Teele KC