

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
JUDGMENT

I 3625/2007

In the matter between:

TOTAL NAMIBIA (PTY) LIMITED

APPLICANT/DEFENDANT

and

**OBM ENGINEERING AND PETROLEUM
DISTRIBUTORS CC**

RESPONDENT/PLAINTIFF

*Neutral citation: Total Namibia (Pty) Ltd v OBM Engineering and Petroleum
Distributors cc (I 3625/2007) [2017] NAHCMD 54 (3
March 2017)*

CORAM: MASUKU J

Heard: 23 January

Delivered: 3 March 2017

Flynote : **LAW OF CONTRACT** – Settlement agreement –
circumstances in which it has the same status as an order of court –
application for specific performance in relation to compliance with a settlement
agreement.

Summary : The respondent sued the applicant for payment of monies
it claimed it had overpaid the latter in respect of transportation and delivery of
fuel and related products. The parties entered into a settlement agreement in
relation to the claim which required meetings between accountants of the
parties to do reconciliations and later the parties' lawyers to record matters

not settled which would have had to be submitted to court for determination at a later stage. The trial was postponed *sine die*. The parties did not follow the provisions of the agreement resulting in the processes set out in the agreement not being followed. The applicant approached the court seeking that the parties be ordered to comply with the terms of the agreement.

Held – the settlement agreement which was made an order of court did not have the status of a court order for the reason that it did not fully settle the *lis*. As a result, the matter was postponed to enable the court, if required, to settle the outstanding issues.

Held – the settlement agreement did not result in the matter becoming *res judicata* and for that reason, the respondent was not entitled to execute a warrant of execution based on what it contended was default by the applicant.

Held further – that the applicant had made a case for the granting of an interdict precluding the respondent from executing a writ in respect of what it claims it was owed by the applicant, and which was way in excess of what it had claimed in its particulars of claim.

Held that – the parties were to go back to the drawing board and follow the relevant clauses of the agreement in order to have the matter settled or returned to court for determination.

Held further – that the parties were not at large to treat their agreement with levity as it had been endorsed and made an order of court. The court admonished that court orders are to be complied with and treated with the necessary respect and be honoured.

ORDER

1. The parties herein are ordered to reconstitute the meeting contemplated in clause 11 of the settlement agreement which the

parties concluded on 27 October and which agreement was made an order of court under the above case number.

2. Failing agreement on all outstanding issues being reached between the parties at the aforesaid meeting, the parties are:
 - 2.1 required to compile a list of issues they are unable to resolve at the aforesaid meeting;
 - 2.2 required to submit the said unresolved issues back to this court for determination.
3. Pending the final determination of the relief granted in para 1 and 2 above, the respondent is hereby interdicted and restrained from taking any steps to procure or execute upon a warrant allegedly based on the terms of the settlement agreement, the Supreme Court judgment or that issued by Mr. Justice Miller referred to in the body of this judgment;
4. The parties are ordered, in the interregnum, to work out a time table for compliance with para 1 and 2 above.
5. The matter is postponed to 5 April 2017 at 15:15 for a status hearing whereat a report is to be made to the court, on the proposed time table contemplated in 1 and 2 above, for possible endorsement by the court.
6. The parties are ordered to file a status report in relation to the report referred to in para 5 above at least three (3) days before the hearing, namely 5 April 2017.

JUDGMENT

MASUKU J;

Introduction

[1] This is an opposed application in which a rather unusual order is sought. The applicant approached this court, seeking the following relief:

'1. Directing the parties to reconstitute the meeting contemplated in clause 11 of the settlement agreement which the parties concluded on 27 October 2010 and which agreement was made an order of court under the above case number;

2. Failing agreement on all outstanding issues being reached between the parties at the aforesaid meeting:

2.1 requiring the parties to compile a list of issues which the parties are unable to resolve at the aforesaid meeting; and

2.2 directing that the matter is referred back to the trial court for the determination of those issues.

3. Pending the final determination of the relief sought in paragraphs 1 and 2 above, interdicting the respondent from taking any steps to procure or execute upon a warrant of execution in relation to any judgment issued in these proceedings.'

Background

[2] The circumstances giving rise to the application can be summarised in the following manner: the respondent sued the applicant in this court for a judgment sounding in money, claiming that it had overpaid the applicant in respect of quantities of fuel and related products during the years 2005 to 2007. It thus claimed the amount of N\$ 4 609, 940.72, in respect of which it averred it had overpaid the applicant.

[3] This suit culminated in a settlement agreement which was reached on the eve of the commencement of the trial on 27 October 2010. It is unnecessary, for present purposes to reproduce the entire contents of the said agreement. The court was requested to postpone the trial *sine die* and to also incorporate the agreement as part of the order it would make.

[4] The parties' accountants were, in terms of the agreement, to verify all the transactions underlying the current account of the respondent with the applicant. The process would ultimately result in a meeting of the parties' legal representatives, at which meeting, the outstanding issues, if any, which would

have proved insoluble being compiled and submitted to the court for determination. The court would accordingly be called upon to determine those contentious issues in the trial.

[5] A dispute appears to have arisen between the parties regarding what source documents were to include in the context of the case. This dispute was submitted to this court, which found in favour of the respondent, namely that source documents included delivery notes. An appeal to the Supreme Court by the appellant yielded no joy for the applicant as its appeal on that issue was dismissed.¹

[6] Purporting to rely on the settlement agreement referred to above, the respondent intimated to the applicant, *vide* a letter dated 2 December 2015, that it was in the process of obtaining a writ of execution based on the agreement.

Applicant's position

[7] The applicant contends that the intended actions of the respondent are premature as the issues outstanding have not been settled. Furthermore, no amount certified to be owing to the respondent by the applicant was determined. The applicant also holds the view that the process of trying to resolve the matter in terms of the agreement has not been exhausted and remains pending as the reconciliation process envisaged in clause 16 of the agreement had not taken place.

[8] The applicant contends that although a meeting was held in line with clause 11 of the said agreement between the parties' representatives on 12 April 2011, the process envisaged in the agreement was not followed, for instance because a list of issues that remained in contention were not compiled to be submitted to the court for determination.

Respondent's position

¹ Case No. SA 9/2013.

[9] The respondent opposes the application and in its opposing affidavit raises a few legal issues. First, and chiefly, it argues that the settlement agreement led to a conclusion of the *lis* between the parties, which resulted in the *lis inter partes* becoming *res judicata*. In this regard, the respondent contended that the settlement agreement contained a default clause in terms of which if the agreement was not complied with by either party, it took effect and would result in finality of the matter. I should add, in this regard, that this, it would appear, the respondent contends, would be without the necessity to invoke the processes of this court

[10] It was further stated that the applicant defaulted in following some of the clauses of the settlement agreement. That being the case, the respondent further argued, it is entitled to accept the amount outstanding as determined by its own expert which was annexed and marked "H3". This document shows that the respondent's verification places the amount due by the applicant to the respondent at N\$ 6 584, 143.37. This is the amount it claims is due to it and which it can enforce payment of by issuing a writ of execution it further contends.

Observation

[11] I find it pertinent to observe and mention at this juncture, and for purposes of completeness, that the present application served before Mr. Justice Miller previously. In a judgment dated 14 June 2016, under the current case number, the question that the learned Judge was called upon to answer, as appears from a reading of the judgment, was whether the respondent should be called upon to file any papers in opposition to the current application in view of the settlement agreement, which it seems it had been argued before him that the application was incompetent in the light of the settlement agreement which should be placed on the same footing as judgment of the court which is binding on the parties.

[12] The learned Judge does not seem to have been enamoured to the respondent's argument and held as follows at para [18] of his judgment:

'The true dispute between the parties remains alive. Although the agreement we are concerned with is called a Settlement Agreement, it is not one in the true sense of the word. It is therefore important to note:

- (a) That the trial was postponed *sine die* pending the finalisation of the steps and requirements contemplated in the Settlement Agreement.
- (b) Conceivably if the parties have met as contemplated by Clause 11 of their Settlement Agreement and resolved at such meeting who owes who and what amount, the matter might then be regarded as having been settled.
- (c) Conversely, if that did not happen, the parties could have been at liberty to return to Court to adjudicate on any issues then outstanding.'

[13] The learned Judge concluded in para [19] of the judgment by finding and holding that the applicant was entitled to bring the application on the papers then before court, which as I have intimated earlier, relate to the very application up for determination in the current matter. Mr. Justice Miller, accordingly put the parties to terms regarding the filing of the answering and replying affidavits, which affidavits are the ones I have considered in determining whether the applicant is entitled to what is essentially a claim for specific performance.

Main question for determination

[14] I am of the considered view that the major question to determine, and which might be dispositive of the current application, is whether the process for the possible settlement of the dispute enshrined in the settlement agreement has run its course. Clearly, the applicant says it has not and has, to this end, pointed out that neither this nor the Supreme Court has made a finding in that regard.

[15] The respondent, it must be stated, is of the view that the applicant did not act within the time limits set out in the settlement agreement and that for that reason, the default clause kicked in. There is, for that reason, the

respondent contends, nothing for this court to decide or seek to enforce as the agreement had, for lack of a better word, self-executing mechanisms in case of default, without a need for recourse to the court.

Relevant clauses of the agreement

[16] In order to cut this proverbial Gordian Knot, it is, in my view important to refer to certain relevant clauses of the settlement agreement. The first is clause 2, which reads as follows:

‘The accountants for the parties will be instructed to verify all transactions underlying the current account of the plaintiff with the defendant (with reference to the source documents) in order to determine, by agreement, any liability of defendant to plaintiff or *vice versa* in accordance with the following: . . .’

[17] Clause 8 to 11 provide the following:

‘8. Plaintiff requires time until 30 November 2010 to reconsider its verification as summarised in annexure “A” to the summary filed in respect of Mr. Dreyer’s expert summary.

9. The defendant’s legal practitioner will deliver to plaintiff’s legal practitioner on or before 31 January 2011 defendant’s response to the plaintiff’s said verification.

10. Both plaintiff’s amendment, if any, and defendant’s response, shall be valid only insofar as supported by verified source documents.

11. On or before 15 February 2011, or such later date as may be requested by plaintiff on reasonable notice, a meeting will be held between that parties’ legal practitioners in Windhoek at a venue and time to be agreed for the following purpose:

11.1 To debate any issues raised in defendant’s response (to be provided to defendant at least seven (7) calendar days prior to such meeting, if any).

11.2 To compile a list of issues, if any which the parties are unable to resolve.

11.3 The trial will continue for the purpose of adjudicating any remaining issues, including the costs of such litigation.’

[18] Importantly, there are, what the respondent regards as default provisions at para 11 and 12, which are couched as follows:

'12. [If] . . . The plaintiff does not deliver its additional verification on or before 30 November 2010, annexure "A" will stand as plaintiff's verification.

13. If defendant does not deliver its response on or before 31 January 2011, plaintiff's verification shall be accepted.'

[19] The first question to determine, is whether the meeting envisaged in clause 11 was held and if so, what effect it had on the compliance with the agreement. Another related question is whether if the said meeting did not take place, as envisaged, the default clause kicks in. If it does kick in, the next question will be what its effect on the matter is, particularly whether a certain amount is thereby determined to be owing to one protagonist by the other.

Did the agreement in question have the same effect as a court judgment?

[20] It was strenuously argued by Mr. Heathcote, on the respondent's behalf, that the agreement in question has the effect of a final judgment of the court. He submitted that in the circumstances, the finality of the agreement, in the circumstances, had the effect of the matter being properly regarded as being *res judicata*. Is this contention correct and supportable in the circumstances?

[21] As intimated earlier in this judgment, Mr. Justice Miller, in his judgment, acknowledged that there are certain circumstances in which an agreement such as the one under scrutiny can have the finality associated with a court order or judgment. In dealing with the question whether the respondent should file answering papers, the learned Judge concluded that the agreement could not have the same effect on the proceedings as does an order of court or a judgment of the court.

[22] In dealing with this issue, the learned Judge expressed himself in very clear and unambiguous terms already quoted in para [12] of this judgment, which I will not repeat. That is not all. It is also important, in this regard, to also consider what the Supreme Court stated regarding this agreement in its aforesaid judgment in which it upheld Mr. Justice Miller's judgment, although I must of necessity point out, not necessarily on the issue quoted above.

[23] O'Regan AJA, writing for the majority of the Supreme Court, stated as follows about the agreement in question at para [3] of the said judgment:

'It is clear therefore that the agreement provides a process to define and narrow issues in dispute between the parties, and possibly, but not necessarily, resolve them.'

[24] In the premises, I am of the considered view that because the agreement had no air of finality about it and that it consigned the matter to a postponement *sine die*, with the real prospect that the legal fires could be reignited or rekindled on the unresolved issues that would be raised in the meeting envisaged in clause 11, I am of the considered view that it cannot be properly held that the agreement had the same effect as a judgment of the court. In the premises, I am of the view that it cannot be said that agreement resulted in the *lis* becoming *res judicata*, as contended by the respondent.

[25] It is worth pointing out that although the respondent was aware of the holding, particularly by this court, per Mr. Justice Miller, that the agreement cannot, in the circumstances, and for the reasons stated above, be catapulted to the same pedestal as a judgment, it did not appeal that decision, which on the authorities cited by the respondent itself, appears to me to eminently correct and I align myself with it in any event.

[26] In this regard, and only to quote a few examples, the respondent referred to *Government of the Republic of Namibia and Others v Katjizeu and Others*² and *Karson v Minister of Public Works*.³ In the latter case, a quotation

² 2015 (1) NR 45 (SC).

³ 1996 (1) SA 887 (E).

was extracted from the Canadian case of *George v 1008810 Ontario Ltd.*⁴ There, the court expressed itself as follows on this matter:

‘At common-law, the effect of a settlement agreement was to put an end to the underlying cause of action: Halsbury’s Laws of England, 4th ed., vol. 37, para 391:

“Effect of settlement agreement or compromise. Where the parties settle or compromise pending proceedings, whether before, at or during the trial, the settlement or compromise constitutes a new and independent agreement between them made good for consideration. Its effects are (1) to put an end to the proceedings, for they are thereby spent and exhausted, (2) to preclude the parties from taking any further steps in the action except where they are provided for liberty to apply to enforce the agreement terms, and (3) to supersede the original cause of action altogether. A judgment or order made by consent is binding unless and until it has been set aside in proceedings instituted for that purpose and it acts, moreover, as an estoppel by record.’

[27] Having regard to the foregoing, it is, in my considered view, abundantly obvious, as pointed out by Mr. Justice Miller, that the facts of the instant case do not admit of application fully to the above quotations as the agreement did not put an end the entire proceedings. I cannot, in the circumstances, agree with the respondent’s position on this aspect and for reasons previously espoused. I accordingly hold that the agreement did not result in the *lis* between the parties becoming *res judicata* as contended by the respondent.

[28] In any event, what is also clear from the settlement agreement (which was later incorporated into a court order), as stated earlier, is that the matter would in any event, even if it settled pursuant to the agreement, have had to be brought back to court to record the final order. I say so because the matter, as will be recalled, was postponed *sine die*, an *inducium* that if the matter settled without the need to refer any portions of it to court for determination, an appropriate order would have had to be made by the court removing the matter from its roll, having been settled. This conclusion, is, in my considered view irresistible.

⁴ 2004 CanLii 33763 (ON LRB) at para 23.

[29] The matter could not indefinitely stand as one postponed *sine die*. In this way, I posit, a final judgment regarding the amount determined to be owing in terms of the settlement agreement would have had to be recorded and entered and by the court before removing the matter from its roll, and from which order, a party could have been able to levy an execution in terms of the rules of court.

[30] From my reading of the respondent's opposing affidavit,⁵ it appears that the respondent adopts the position that the judgements of both the Supreme Court and this court had the effect of granting a monetary judgment and that a warrant of execution that can therefor be issued, merely with reference to the settlement agreement. It is further stated that the court sanctioned the verification by the respondent. In my considered view, I do not find a basis for holding that any of the said judgments do in any manner, shape or form support such a conclusion, whether directly or indirectly. I will deal with this issue in due course when I turn to deal with the respondent's argument relating to the default clause kicking in when the applicant failed to comply with clause 13.

[31] In my view, an amount claimed that is the subject of a writ of execution must be *ad pecunium solvendum*, namely, one in which the court orders the debtor to pay a certain sum of money.⁶ There is, in my reading of the papers, no basis upon which the amount in the excess of N\$24 million is claimed. I say so for the reason that if the default alleged by the respondent is the basis for the amount sought from the applicant, I can mention, although *obiter*, that the agreement does not state that the acceptance of the calculations of the respondent translates to proof or computation of the amount of indebtedness by the applicant to the respondent. The agreement does not state how the amount owed, if the meeting envisaged in clause 11 does not take place, is to be arrived at.

⁵ P29 para 70.

⁶ Herbstein & Van Winsen, The Civil Practice of the High Courts of South Africa, 5th ed, vol 2 at p1022.

[32] Furthermore, one fact that cannot be wished away, is that the respondent's claim is N\$6 584 143. 37 million, as reflected in the particulars of claim. The amount which is sought to be executed upon by the respondent in the writ, as previously mentioned, is N\$ 24 713, 101.38, an amount almost five times the initial claim. This undoubtedly raises eyebrows as the court should not close its eyes to the initial claim and the exponential growth of the amount now sought to be executed by writ threatened.

[33] This exponential growth in the amount sought to be executed, would clearly need an explanation as it would also seem to transgress the *in duplum* rule in any event. It would be precipitous to issue a writ on the basis of such a document, considering that it does not appear that there was, in the interregnum, an amendment of the amount claimed, either agreed upon or granted by the court.

Interdict

[34] From what I have said above, it appears to me that the applicant has certainly made a case for the granting of an interdict regarding the issuance of the writ of execution. In this regard, it has been shown that the applicant has a *prima facie* right; that it has a well-grounded apprehension of irreparable harm if the interim relief is not granted; that the balance of convenience favours the granting of the interim relief. In this regard the applicant has put up security for the amount claimed⁷ in any event to show its *bona fides* and that it has no other satisfactory remedy at its disposal.⁸

Holding of meeting envisaged in clause 11

[35] According to the agreement, the meeting was supposed to be held on or before 15 February 2011 or on such later date as may be requested by the respondent on reasonable notice to the applicant. The particular items on the agenda were identified in the agreement. It would appear on the version of both parties that this meeting was held on 12 April 2011, although I must point

⁷ See annexure "FA12" dated 12 July 2015

⁸ C.B. Prest, The Law and Practice of Interdicts.

out that the respondent alleges that it attended the said meeting on a 'without prejudice' basis, a contention rejected outright by the applicant.

[36] The applicant claims that the process envisaged in the agreement was not complied with because a list of issues remaining in contention were not identified. They claim further that the respondent's purported verification did not comply with the clause in question. The applicant claims that this was brought to the respondent's attention by a letter they addressed dated 21 April 2011, marked "FA11."⁹

[37] A reading of the respondent's answering affidavit shows that the respondent did not at all deal with the applicant's contention in this regard. It must be mentioned in particular, that the applicant, in its affidavit annexed correspondence in which it drew to the respondent's attention the defects it alleges in the documentation provided by the respondent. As indicated, there is no response to these specific allegations made by the applicant.

[39] In this regard, I am of the considered view that the position adopted by the applicant and the reasons it advances for alleging that the meeting, though held did not meet the prescripts set out in the agreement, must be held to stand. The meeting, that was held, it would seem, did not achieve its purpose as recorded in the settlement agreement.

[40] The respondent addresses this issue in its heads of argument and takes the position that because the applicant did not comply with clause 9, there could, in the circumstances, be no meeting envisaged in clause 11 of the agreement.¹⁰ I am of the view that the effect of the alleged non-compliance with clause 11 as alleged by the applicant should have been squarely met in the affidavit and cannot be merely and glibly sought to be dealt with in heads of argument.

[41] The respondent, as I understand it, takes the view that the applicant did not comply with the provisions of clause 13 of the agreement, namely, that

⁹ See paras 40 – 43 of the Applicant's founding affidavit

¹⁰ See p. 3 of the respondent's heads of argument.

it should have delivered its response to the respondent's additional verification which was to be filed on or before 30 November 2010, and the applicant's response thereto by 31 January 2011. It is the applicant's case that because the applicant failed to do so, the respondent's verification should for that reason be accepted and therefor stand in terms of clause 13, which has been cited above.

[42] I do not agree with the respondent's position that because the applicant failed to comply with clause 11, as alleged (and assuming that the respondent is correct in that view), then the amount alleged by the respondent in its verification becomes the amount of the claim that the applicant becomes liable to pay. A reading of both clauses 12 and 13, does not, in my view convey the conclusion that the 'acceptance' of the verification because of failure to comply with clauses 8 and 9 necessarily leads to the conclusion that the said accepted amount becomes the amount determined to be owing by the defaulting party and thereby brings the dispute to an end.

[43] I am of the considered view that had that been the intention of the parties for the default to have such effect, then the agreement would have said so in very clear and unambiguous terms. I say so for the reason that the determination of the amount due by either protagonist is so crucial and at the centre of the matter, such that the resolution of the nature and extent of the liability would not have been left to such a clause that is unclear in its language unclear and imprecise in its terms.

[44] If that were held to be the case, a party could possibly suck a figure from its thumb and present it and there would be no process of interrogating the manner of computation and the validity of the source documents used to reach the said verification. Despite those inadequacies, the said figure could still lead to a monetary judgment being entered with a degree of finality, a situation that smacks, in my view of impropriety and could result in unfairness to the other party at the receiving end of the stick, so to speak.

[45] In view of the foregoing, I am of the considered view that the applicant's position that the meeting envisaged in clause 11 was not properly held as the processes stipulated therein were not followed by the parties must be accepted. As I have indicated earlier, this is an issue the respondent did not address squarely notwithstanding the pointed landmarks the applicant flagged in its aforesaid letter and founding affidavit.

[46] Whatever else may be beneficial or convenient to any of the parties at a parochial level, I remain convinced that this is a matter that should not admit of short cuts. This dispute cannot, in my considered view, be properly resolved without calling in aid the full weight of the processes carefully laid down by the parties in the agreement so that whenever any amount is determined to be due by either party, it has been the subject either of a fully-fledged, albeit laborious process set out in the agreement.

[47] If that process fails and the contentious matters that cannot be resolved are submitted to this court for final determination, as envisaged in the agreement, it is my firm view that the court would stand to benefit enormously from the fruits of the processes set out in the settlement agreement as experts would possibly narrow down the issues that require expertise to determine.

Admonition

[48] It remains for me to issue a stern warning to the parties that the agreement relied upon in this matter was not one that ended between the parties as a private affair. The court's imprimatur was sought and obtained as the agreement was eventually made an order of court. Such agreements are not to be treated with levity. I call upon the parties this time around, to summon all their energies towards complying with the agreement and the new time table that will be set out in the order that follows below.

Conclusion

[49] Having regard to the foregoing, I am of the considered view that the applicant has made out a case for the prayers sought in the notice of motion, subject to what I say immediately after this. Mr. Heathcote argued that the prayer for the granting of an interdict has been couched in very wide and sweeping terms. I agree. It is important that orders sought in a notice of motion are clear and precise in their terms and are set within proper and reasonable limits and to properly cater for whatever harm is sought to be forestalled. Those that are wide and imprecise should be eschewed.

Costs

[50] I pertinently observe that the applicant did not, in its notice of motion, nor in its founding affidavit make out a case for the granting of costs at any scale. In the circumstances, I will not make an order for what has not been applied for. There shall, for that reason, be no order as to costs.

Order

[51] In the premises, I am of the view that having regard to all the issues canvassed above, the applicant has made out a case for the relief sought and I will accordingly issue an order in the following terms:

7. The parties herein are ordered to reconstitute the meeting contemplated in clause 11 of the settlement agreement which the parties concluded on 27 October and which agreement was made an order of court under the above case number.
8. Failing agreement on all outstanding issues being reached between the parties at the aforesaid meeting, the parties are:
 - 8.1 required to compile a list of issues they are unable to resolve at the aforesaid meeting;
 - 8.2 required to submit the said unresolved issues back to this court for determination.
9. Pending the final determination of the relief granted in para 1 and 2 above, the respondent is hereby interdicted and restrained from taking

any steps to procure or execute upon a warrant allegedly based on the terms of the settlement agreement, the Supreme Court judgment or that issued by Mr. Justice Miller referred to in the body of this judgment;

10. The parties are ordered, in the interregnum, to work out a time table for compliance with para 1 and 2 above.
11. The matter is postponed to 5 April 2017 at 15:15 for a status hearing whereat a report is to be made to the court, on the proposed time table contemplated in 1 and 2 above, for possible endorsement by the court.
12. The parties are ordered to file a status report in relation to the report referred to in para 5 above at least three (3) days before the hearing, namely 5 April 2017.

T.S. Masuku
Judge

APPEARANCES:

PLAINTIFF:

S. Du Toit SC (with him JJ Meiring)
Instructed by Fisher, Quarmby & Pfeifer.

DEFENDANT:

R. Heathcote SC, (with him B. De Jager)
Ellis Shilengudwa Inc.