



**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING ON APPLICATION FOR RECOGNITION OF FOREIGN
LIQUIDATORS**

CASE NO. I 2182/2010

In the matter between:

REUBEN MILLER N.O.

FIRST PLAINTIFF

ENVER MOHAMMED MOTALA N.O.

SECOND PLAINTIFF

LINDIWE KAABA N.O.

THIRD PLAINTIFF

and

PROSPERITY AFRICA HOLDINGS (PTY) LTD

DEFENDANT

Neutral citation: Miller N.O. v Prosperity Africa Holdings (Pty) Ltd (I 32182/2010) [2017] NAHCMD 62 (8 March 2017)

CORAM: MASUKU J.

Heard: 13 February 2017

Delivered: 8 March 2017

FLYNOTE: INSOLVENCY LAW – Appointment of Foreign Liquidators by a Foreign Court – Recognition by a Local Court – Effect of not obtaining such

recognition on summons – *LOCUS STANDI IN JUDICIO* – To institute proceedings on behalf of an insolvent foreign company.

SUMMARY: The plaintiffs were appointed as foreign liquidators of Renaissance Medical Health Scheme (a South African Company in liquidation) by a South African High Court. The Company (in liquidation) entered into a guarantee and suretyship agreement with the defendant, a Company incorporated in terms of the Company laws of this Republic. The claim against the defendants was an amount of N\$ 5 million in respect of the said agreement and in terms of which the liquidators issued a summons against the defendant in this Republic.

The plaintiffs instituted the summons in 2010 but only moved the application for recognition as liquidators and ratification of the proceedings already instituted under the current case number in 2016.

The plaintiffs' contention was that recognition by the local Court in this Republic of their appointment as liquidators of a foreign company in liquidation was not a legal requirement for institution of legal proceedings herein. Such a recognition they further contended was only done *ex abundante cautela*. The defendant on the other hand argued that recognition was necessary to clothe the plaintiffs with the necessary *locus standi* to institute legal proceedings in this Republic, and failure to obtain same had the effect of nullifying the already instituted legal proceedings and which could not be cured *ex post facto*.

Held – that since defendant is domiciled within this court's jurisdiction, its property, whether movable or immovable, is subject to this court's jurisdiction and a foreign liquidator may not deal with it willy-nilly.

Held further – that the plaintiffs, must, before dealing with the property of an insolvent company in a foreign jurisdiction, seek recognition as a matter of law and may choose not to do so to their own peril.

Held – that recognition in this context is necessary to establish *locus standi*. Furthermore, the appointment of a person, either as a trustee in a sequestrated estate or an insolvent one, as the case may be, serves the legal purpose of clothing the appointee with the legal authority to litigate on behalf of or represent the insolvent or the sequestrated person's estate. In legal parlance, the appointment clothes the appointee with *locus standi in judicio* to sue or be sued in the stead of the person or company concerned.

Held further – that where a liquidator or trustee has not been recognised as such in a foreign jurisdiction, he or she does not, until recognition, have the authority to deal with assets in a foreign jurisdiction.

Held – that the plaintiffs in this case had no *locus standi* to sue the defendant in the absence of a prior application for recognition and which the local court granted. The summons issued by the plaintiff against the defendant in this matter was thus declared a nullity.

Held further – that the issue of standing to sue is a matter of substance and of law, therefore, failure to show that a party has standing results in a nullity and, the court, has no power to condone or repair same. The said proceedings are invalidated.

In conclusion, the Court held that the manner in which plaintiffs went about this matter was not only not in keeping with the normal procedures that enhance the spirit of comity among nations but may be prejudicial to local creditors, the very harm, the Court reasoned, is sought to be forestalled by the issuance of a rule *nisi* before the confirmation of the liquidators as such on the return date.

The Plaintiff's application for recognition and ratification thereof, was therefore dismissed with costs.

ORDER

1. The application for recognition filed by the plaintiffs is refused.

2. The application for the authorisation of the plaintiffs to deal with Renaissance Health Medical Scheme (In Liquidation's) assets in Namibia, including the claim under Case No. I 2182/2010 is refused.
3. The application for ratification of the proceedings initiated by the plaintiffs under Case No. I 2182/2010 is refused.
4. The plaintiffs are ordered to pay the costs of the application, consequent upon the instruction of one instructing and two instructed counsel.

JUDGMENT

MASUKU J.;

Introduction

[1] At the heart of this ruling is a towering question – what is the consequence on proceedings instituted at the instance of a foreign liquidator in Namibia without the said liquidator having first sought and obtained recognition by Namibian courts?

[2] Tied to this is a secondary question, namely, if the answer to the poser above is that the said proceedings are a nullity, can the court, on application, give the said proceedings *ex post facto* validity?

[3] The defendant contends that the fate of the said proceedings is one and it is unmistakeable – the summons are a nullity and are fatally defective. The defendant accordingly moves that these proceedings must be dismissed therefor.

[4] The plaintiffs argue *au contraire* that formal recognition is not a prerequisite for the plaintiffs to be entitled to act in these action proceedings. The plaintiffs claim that they move for formal recognition in the circumstances, not because they are obliged to do so but only *ex abundanti cautela*, namely out of the abundance of caution.

Background

[5] The question arising for determination arises in the following circumstances: The plaintiffs are joint liquidators who were appointed as such in the Republic of South Africa by the then Witwatersrand Local Division. Their appointment was a sequel to the liquidation of an entity known as Renaissance Health Medical Scheme, (Renaissance).

[6] Renaissance was registered in South Africa as a medical scheme in terms of that country's laws. Its main business was to defray expenditure incurred by its members in respect of health care rendered to the said members.

[7] It would appear that Renaissance and the defendant, a company duly registered and incorporated with limited liability in terms of the Company Laws of this Republic, concluded a written agreement in terms of which the defendant is alleged to have bound itself as guarantor and co-principal debtor for the due execution by Renaissance of all its liabilities under the Medical Schemes Act 1988 of the Republic of South Africa. The said agreement, it is averred, was to take effect from 1 January 2007 and was to endure until December 2007.

[8] As at the end of December 2007, it is averred that Renaissance's liabilities were in the excess of R62 million. As a result of the agreement referred to in the immediately preceding paragraph, the plaintiffs made demand to the defendant to pay an amount of R 5 million.

[9] As a result of the defendant refusing to make the payment claimed, the plaintiffs sued out a combined summons out of this court, seeking payment of the said amount of R5 million, interest thereon and costs of suit. Needless to say, the defendant denies liability on grounds that need not be investigated or traversed for present purposes.

The issues

[10] It is not in dispute that the plaintiff in this matter initiated the proceedings in this court without having first sought and obtained recognition by this court. The defendant, as early as 2010, raised the issue of the plaintiffs not having sought and obtained recognition but it would appear that the plaintiffs rested on their laurels and only filed the application, which appears to be one geared towards ratifying the proceedings already instituted.

[11] By application initiated in September 2016, the plaintiffs approached this court seeking the following relief:

- (a) that the applicants (the plaintiffs), as foreign liquidators of Renaissance Health Medical Scheme (In Liquidation), be recognised as such by this court for the purposes of the proceedings under case No. I 2182/2010
- (b) that the plaintiffs, in their aforesaid capacities be authorised to deal with Renaissance Health Medical Scheme (In Liquidation's) assets in Namibia including the claim under Case No. I 2182/2010;
- (c) that the plaintiffs be authorised, in so far as it may be necessary, ratify all proceedings and/or actions taken or instituted on their behalf in the institution and the prosecution of the action in Case No. I 2182/2010.

Needless to say, the defendant strongly opposes the granting of the application.

The applicable law

[12] The parties in this matter referred the court to a local decision that deals with recognition of provisional trustees. This was the case of *Johannes Nicolaas Bekker V Johannes Phillip Kotze and Six Others*.¹ In that case Strydom JP dealt with the question of sequestration of the 1st and 2nd respondents' (husband and wife, it would seem) movable property by an order of the Transvaal Provincial Division. The 1st respondent had moved from South Africa to this jurisdiction, leaving his wife behind. He brought with him various movable assets and money.

[13] A reading of the judgment suggests that the critical question for determination was the domicile of the said respondents, whose estate was sought to be sequestrated. In that case, it became clear to the court that the aforesaid respondents were, at the time the sequestration order was issued, domiciled in the Republic of South Africa and the 1st respondent's *ipse dixit* that he was domiciled in this Republic and had sought to make it his permanent home rang very hollow and with loud echoes, it would seem. The court accordingly discarded them and correctly so, in my view.

[14] The court, relying on the works of Mars² said the following at p4 to 5 of the cyclostyled judgment:

'At common law, therefore, a sequestration order has no effect per se on immovable property situated in a foreign country. Such property remains vested in the insolvent. But in regard to movables, the situation is different. A sequestration order granted by the Court of the debtor's domicile ipso facto divest the insolvent of all his movable property, wherever situated, but a sequestration order granted by any other Court has per se no operation on the debtor's assets, whether movable or immovable, situated out of such Court's jurisdiction.'

¹ Case No. 270/94.

² The Law of Insolvency, 8th ed. P 133 para 7.5.

[15] In that case, the court held that because the respondent was domiciled in the Republic of South Africa at the time of the issuance of the sequestration order, the property of the respondent, both movable and immovable, vested in the trustee from the issue of the sequestration order. It accordingly held that it was, in the circumstances, unnecessary to have had the court to recognise the trustee as a provisional trustee in this Republic.

[16] The court further held that because the respondent's property vested in the trustee by operation of the law, it was not necessary to recognise the trustee but that once the provisional sequestration order was made final, and the applicant in the case was made a trustee, he would then apply for recognition in order to deal with the assets of the respondent.³

[17] In the instant case, it is clear that the defendant is domiciled within this court's jurisdiction and its property, whether movable or immovable, is subject to this court's jurisdiction and a foreign liquidator may not deal with it willy-nilly. It therefore follows that the liquidation order of the Witwatersrand Local Division could not, without recognition, extend and be operative in this jurisdiction over the property of the defendant.

[18] The necessity of foreign liquidators to seek and obtain recognition before dealing with property of a liquidated company was stated as follows by Mars (*op cit*):⁴

'A foreign representative of a company who seeks to deal with company assets located in South Africa (whether these are movable, incorporeal) is required to apply for recognition to the High Court of South Africa before dealing with the assets. Thus the rule that foreign administrators seeking to issue summons for money payments require prior recognition from South African courts has been applied to foreign liquidators. It is submitted that, before a final order recognising a foreign representative is granted, the appropriate rule *nisi* should usually be issued, calling upon all persons to show cause why the final order should not be granted. The court

³ *Bekker case (op cit)* at p.7-8.

⁴ *Op cit* at p668-669.

order is endorsed by the Master if satisfied, amongst other things, that the foreign representative has furnished appropriate security.’ (Underlined for emphasis).

[19] From the foregoing, it appears to me that there is no need to depart from the practice followed in South Africa, as stated by Mars above. I am of the view that the issue of recognition of foreign liquidators or trustees, as the case may be, is not really new to this jurisdiction. That this is the case can be seen from the *Bekker* case (*supra*), save that the court took the view that recognition, in those peculiar circumstances, was unnecessary.

[20] This then leads me to conclude that for a foreign liquidator to deal with assets of an insolvent company in a foreign jurisdiction, should first seek recognition from the court where the property is situate. This, I should emphasise, must be done before any action on that score is undertaken. I am, accordingly, of the considered view that the plaintiff’s position that it does not need to seek recognition from our courts before dealing with the assets alleged to belong to the liquidated South African company is totally misplaced and finds no company in legal precedent.

[21] A similar view was held by Hefer J in *Moolman v Builders & Developers (Pty) Ltd*⁵ when he said that the appellant or the commissioner would not be able to perform their functions in South Africa without the active assistance of the court, which he held was what recognition entailed. The learned judge further held that where a foreign representative such as an executor, liquidator or receiver wished to deal with assets in South Africa, in his representative capacity and by virtue of his foreign authorization, he must first be recognized in his appointment by a court of law or person of competent jurisdiction in South Africa before he was entitled to act.

[22] Equally liable to dismissal, is the argument by the applicants that the application is being sought *ex abundanti cautela*. I am of the view that the authorities suggest that a person in the position of the plaintiffs in this case, must, before dealing with the property of an insolvent company in a foreign

⁵ 1990 (1) SA 954 at G-J.

jurisdiction, seek recognition as a matter of law and may choose not to do so to their own peril. This application, I hold, should have been moved many years ago, not as a cautionary but as a necessary legal measure, which may, to an extent, have served to clothe the plaintiffs with the necessary legal standing to sue in their representative capacities in this jurisdiction, following their appointment as such by a foreign court.

[23] In *Bekker N.O. v Kotze And Another*, Teek J. held that recognition in this context is necessary to establish *locus standi*.⁶ In this regard, the learned judge had the following to say:

‘As a foreign provisional trustee he cannot exercise these powers in Namibia without this Court recognising his appointment as such and granting him the necessary permission in terms of the Act. Such recognition gives the provisional trustee *locus standi* to come before this Court and take legal proceedings and make the necessary application.’

[24] It must be mentioned that in relation to the appointment of a person, either as a trustee in a sequestrated estate or an insolvent one, as the case may be, is not just a decorative process adorning the appointee with a costume that has a fancy name at the end, namely, *N.O. (nominee officio)*. This appointment serves a legal purpose of clothing the appointee with the legal authority to litigate on behalf of or represent the insolvent or the sequestrated person’s estate. In legal parlance, the appointment clothes the appointee with *locus standi in judicio* to sue or be sued in the stead of the person or company concerned.

[25] In this regard, I must add, the appointment, when granted by a court in a certain jurisdiction, like its effectiveness, does not ordinarily have extra territorial application or effect. It is in a sense the same with a court order or judgment obtained from another country. For the said order or judgment to be executed in a foreign jurisdiction, there are legal processes that must be followed to give it recognition and then enforcement as though it was a local

⁶ NR 345 (HC) at 349E.

order or judgment. In most jurisdictions, there is legislation normally referred to as the Recognition of Foreign Judgments Act. In this jurisdiction, the relevant law is the Enforcement of Foreign Judgments.⁷

[26] Scott JA in *Ward and another v Smit and others: in re Gurr v Zambia Airways Corporation*⁸, had the following to say in this connection:

‘The appointment of a liquidator to an external company in the country of its incorporation and the authority conferred by foreign legislation on the liquidator to deal with the assets of that company have no extra-territorial application. Such a liquidator, until he or she is recognised by a South African Court, will accordingly have no power to deal with assets of the company situated in this country, regardless of whether those assets are movable or immovable; nor will creditors be precluded from attaching such assets and proceeding to execution. When an external company is being wound up in the country of its incorporation a competent South African Court, will, however, on application and in the exercise of its discretion, grant an order recognising the foreign liquidator and ordinarily by so doing declare the liquidator to be entitled to deal with local assets (subject of course to local law) as if those assets were situated in the country in question. Such an order will be founded not only on upon considerations of comity, but also convenience and equity.’

I fully embrace these remarks as equally applicable in this jurisdiction and are in consonance with my own view I have expressed elsewhere in this judgment.

[27] In this wise, an appointment of a trustee or liquidator made by a foreign court extends only within the precincts of that court’s territorial jurisdiction. In other words, the appointee cannot exercise those powers outside the appointing court’s jurisdiction. Only once they are recognised by a foreign court can they have the powers of appointment extended to the new

⁷ Act 28 of 1994.

⁸ 1998 (3) SA 175 (SCA) at 179D.

jurisdiction which has recognised their appointment and authorised them to deal with the property of an insolvent in that foreign jurisdiction.

[28] This leads me to conclude inevitably, if not ineluctably, that where a liquidator or trustee has not been recognised as such in a foreign jurisdiction, he or she does not, until recognition, have the authority to deal with assets in a foreign jurisdiction. For that reason, only once he or she has had the appointment issued by his or her local court endorsed by the foreign jurisdiction can he or she have the legal standing to sue or litigate on behalf of the company or person concerned. In other words, the recognition by the foreign court of the appointment serves, in a sense, to extend the appointment and validate it to operate in that foreign jurisdiction even though it does not emanate from there.

[29] In *African Apostolic Mission v Dlamini*,⁹ Ota J, described *locus standi* in the following terms:

‘The term *locus standi* denotes legal capacity to institute proceedings in a court of law and is used interchangeably with terms like “standing” or “capacity to sue”. It is the right or competence to institute proceedings in a court for redress or assertion of a right enforceable at law.’

I agree. All I can add, to the above, is that the concept of standing does not only apply to the capacity to institute proceedings, but also to defend proceedings.

[30] It is in the above context that I find that the plaintiffs, although they may have had the capacity to institute legal proceedings or defend them in South Africa, do not have that capacity in this jurisdiction and for reasons I have advanced above.

[31] I accordingly agree with Mr. Totemeyer that the plaintiffs in this case had no *locus standi* to sue the defendant in the absence of a prior application

⁹ (3117/2010) [SZHC 53] 10 June 2011

for recognition and which the local court granted. It follows therefore, that the summons issued by the plaintiff against the defendant in this matter is a nullity. The plaintiffs had not applied for and been recognised by this court as liquidators at the time they issued the summons in this case. In colloquial parlance, the plaintiffs may be accused of having 'gate-crashed' the party, by entering the portals of the court and attempting to do business therein without having been properly and formally received and permitted to do so.

[32] I should further add that the recognition is not just an idle requirement. Once the appointee has been recognised by the foreign jurisdiction, the normal procedure, is that the appointee is allowed to operate after endorsement by the Master of the High Court of the foreign jurisdiction. In most cases, as the appointees are dealing with estate property, they will usually be required to put up security with that office. This case is no different in my view. That the defendant is not an insolvent estate does not detract from the necessary involvement of the Master's office in my view because the claim, as it is apparent, deals with what is alleged to be estate property belonging to the liquidated Renaissance but presently in the hands of the defendant.¹⁰ I do not, however, lay much emphasis on this point as it was not addressed by the parties in argument.

[33] In my view, this situation is akin to the normal practice in most African traditional settings. A person who visits another man's home or compound has to announce him or herself at the entrance, except if he or she is a member of the family concerned. Once duly admitted into the homestead by or on at the command of the relevant person in authority, may he or she then address whatever issue with the head of the homestead at a place the latter will designate.

[34] If the visitor is owed by the latter, he or she may not just go to the latter's cattle byre and take the cattle they allege they are owed. To do so would amount to a desecration of the owner's authority over his home and also amount to an invasion and declaration of war against him. This is what, in

¹⁰ See in this regard, for instance, s. of the Insolvency Act

my view, recognition serves to do in the present context – to engender respect for the foreign jurisdiction and to promote comity between or among states.

Is it legally possible to validate what is a nullity *ex post facto*?

[35] The next question, having found that the summons issued by the plaintiffs was a nullity for the reason that they had not applied for and obtained recognition and therefor had no *locus standi* to initiate the proceedings in issue, the question is whether such a finding can be cured by the plaintiffs filing an application *ex post facto*?

[36] The defendants referred the court to a number of authorities and submitted that if an act or proceeding is a nullity, it cannot be resuscitated. In *China State Construction Engineering Corp v Pro Joinery CC*,¹¹ dealing with a breach of the rules of court and the question whether same results in a nullity, the court did not state a firm opinion on that issue. The court seems to have concluded that if there is a breach of the rules of court, which is not serious so as to result in a nullity, the court has plenary powers to condone that disregard.

[37] In this case, we are not dealing with the breach of the rules of court, which, as stated, the court has the wherewithal, granted to it by the law giver, to condone and therefore repair, in a sense. It is clear that the issue of standing to sue is a matter of substance¹² and of law.¹³ Failure to show that a party has standing, results in a nullity and this, the court, has no power to condone or repair. Even the medical procedure referred to as a mouth to mouth resuscitation, with all its successes cannot work to bring a nullity to life, I pause to observe.

¹¹ 2007 (2) NR 675

¹² Harms, *Civil Procedure in the Superior Courts*, Part A, A6.1, October 2016 – SI 57

¹³ *Ex Parte Johannesburg Congregation of the Apostolic Church* 1968 (3) SA 377 (W)

[38] In this regard, not a dissimilar situation confronted the High Court of Botswana in *Chindy and Another v Phala NO and Another*.¹⁴ Dealing with the issue, Nganunu J (later the Chief Justice) remarked as follows at page 129 G-H:

'The lack of locus standi in judicio is a matter of substance and a court cannot cure that by any condonation such as is referred to in Order 33 of the Rules of the High Court. Accordingly, therefore, I declare that the first respondent had no power to sue or be sued on behalf of the estate of Swaart-Boi Phala.'

Mr. Justice Nganunu's views and conclusion coincide with my own as recorded above in this judgment.

[39] To buttress the point further, the learned Judge in *China State Construction Engineering Corp* case¹⁵ said:

'It would, however, seem that, where the defect in the summons is so serious as to visit it with nullity, the Court has no power to condone, for nullity is a concept in law which carries within itself all the elements of irreparability. . .'

[40] I am of the considered view that the absence of recognition and its deleterious impact on the plaintiffs' *locus standi* stood as an immovable object in the way of the plaintiffs. According to authorities,¹⁶ where proceedings are instituted and the party instituting same has no *locus standi*, the said proceedings are invalidated.

[41] To close the curtain on this matter, I refer to the legendary Lord Denning who made the following lapidary remarks regarding acts that are null in *McFoy v U.A.C.*:¹⁷

'If an act is void then in law it is a nullity. It is not only bad but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and

¹⁴ 1993 BLR 126 (HC).

¹⁵ Supra note 11 at p.681 C.

¹⁶ *Rapotsonyane v Sekhukhu* 2006 (2) BLR 607; *Morenane Syndicate and Others v Loeto* (2005) 2 BLR 37

¹⁷ [1961] 3 All E R 1169

void without more ado, though it is sometimes convenient to have the Court declare it so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.'

[42] In this context, the plaintiffs' failure to apply for recognition at the appropriate time means that the summons they issued was a nullity. For that reason, there is nothing before court which can be cured and *ex post facto* regarded as being validated from inception.

[43] I accordingly hold and find that the proceedings instituted by the plaintiffs were, in the absence of recognition, a nullity and this court does not have in its arsenal, an elixir to resuscitate the proceedings.

Public interest

[44] It must also be stressed that applications for recognition are not merely to serve the interests of the parties only. In that regard, the ordinary process is to grant provisional recognition and to issue a *rule nisi* with a return date upon which if there is no objection, the rule will be confirmed. This is an important safe-guard which serves to place the local body of creditors on a *qui vive* about the issue, whether relating to the liquidated company or a company in the position of the defendant in this case.

[45] In the *Ward* case (*supra*), Scott J said the following at p 719 H:

'The object of a creditors' winding-up is to ensure a fair division of the company's property among the creditors according to their rights. Where there is both a local *concursum* and a foreign *concursum* it may well be that one group of creditors will either be favoured or disadvantaged depending on the location of the company's assets. Nonetheless, a court faced with an application for the recognition of a foreign liquidator with plenary powers has a wide discretion and will be particularly concerned to protect as far as possible the interests of local creditors. In appropriate cases, therefore, it will refuse to grant such recognition if there are circumstances which render it undesirable to do so.'

I have found that there are, in this case, undesirable reasons that render it inappropriate to allow recognition so late in the day and in the form that the applicants applied for.

[46] I may well add that the defendant, in this regard, submitted that a further ground for refusing the relief sought on the applicants' behalf was that the recognition, particularly retrospectively, would deprive it of a valid and good defence it has against the plaintiff's claim, namely that of prescription, a situation that it prejudicial to it. I do not find it necessary to deal with this issue in this judgment though.

[47] I am of the considered opinion that the manner in which the plaintiffs went about this matter is not only not in keeping with the normal procedures that enhance the spirit of comity among nations but may be prejudicial to local creditors, the very harm sought to be forestalled by the issuance of a rule *nisi* as stated above, which must be published.

Conclusion

[48] In the premises, I am of the considered view that the plaintiffs are not entitled to the relief they seek, even as they claim it is *ex abundanti cautela*. I have found that that is not the case. I find it unnecessary to deal with the issue of the prejudice alleged by the defendant in the event an order as prayed for was granted, namely that the defendant would be unable to raise its defence of prescription of the plaintiffs' claim.

Order

[49] In the premises, I issue the following order:

1. The application for recognition filed by the plaintiffs is refused.
2. The application for the authorisation of the plaintiffs to deal with Renaissance Health Medical Scheme (In Liquidation's) assets in Namibia, including the claim under Case No. I 2182/2010 is refused.

3. The application for ratification of the proceedings initiated by the plaintiffs under Case No. I 2182/2010 is refused.
4. The plaintiffs are ordered to pay the costs of the application, consequent upon the instruction of one instructing and two instructed counsel.

T.S. Masuku
Judge

APPEARANCES:

PLAINTIFF: R Heathcote SC with him Ms. De Jager

Instructed by: Erasmus & Associates

DEFENDANT: R Töttemeyer SC with him D Obbes

Instructed by: Engling, Stritter and Partners