REPORTABLE

CASE NO.: SA 14/2010

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

TRUSTCO INSURANCE LIMITED	
t/a LEGAL SHIELD NAMIBIA	**FIRST APPELLANT**
KRÜGER, VAN VUUREN & CO	**SECOND APPELLANT**
and	
DEEDS REGISTRIES REGULATION BOARD	**FIRST RESPONDENT**
REGISTRAR OF DEEDS	**SECOND RESPONDENT**
MINISTER OF LANDS & RESETTLEMENT	**THIRD RESPONDENT**
ATTORNEY-GENERAL, GOVERNMENT OF	
THE REPUBLIC OF NAMIBIA	**FOURTH RESPONDENT**
LAW SOCIETY OF NAMIBIA	**FIFTH RESPONDENT**
GOVERNMENT OF THE REPUBLIC OF	
NAMIBIA	**SIXTH RESPONDENT**

CORAM:	Shivute CJ, Langa AJA *et* O'Regan AJA
Heard on:	04/04/2011
Delivered on:	15/07/2011

APPEAL JUDGMENT

O'REGAN AJA:

[1] The first appellant, Trustco Insurance Limited t/a Legal Shield Namibia, is a short-term insurer registered in terms of the Short Term Insurance Act, 1998 and the second appellant, Krüger, Van Vuuren and Co, is a partnership of legal practitioners, duly authorized to act as legal practitioners in terms of the Legal Practitioners Act, 1995. The dispute upon which this appeal is based arises from the fact that the first appellant wishes to offer to its clients a free conveyancing service as part of its insurance package and to that end has entered into an agreement with the second appellant in terms of which the second appellant will provide conveyancing services at an hourly rate, rather than at the compulsory tariffs fixed by regulation for conveyancing work.

[2] The appellants launched proceedings in the High Court seeking an order, amongst other things, declaring that the relevant prescribed conveyancing tariffs are inconsistent with Article 21(1)(j) of the Constitution (the right to practise a profession and carry on any occupation, trade or business) as well as Article 18 of the Constitution (the right to fair and reasonable administrative action).

[3] The first respondent is the Deeds Registries Regulations Board ("the Board"), established in terms of section 9 of the Deeds Registries Act, 47 of

1937 ("the Deeds Registries Act"). The second respondent is the Registrar of Deeds. The third is the Minister of Lands and Resettlement ("the Minister"). The fourth is the Attorney General of the Republic of Namibia. The fifth is the Law Society of Namibia and the sixth is the Government of the Republic of Namibia.

[4] The Board is established to make the regulations authorized under section 10(1)(c) of the Deeds Registries Act.[1] The second respondent, the Registrar of Deeds, is required to approve the regulations after determining that they will be effective. The Board is also authorized under section 40 of the Sectional Titles Act, 66 of 1971,[2] to determine the fees to be charged for conveyancing work done in respect of property held under sectional title.

[5] Two sets of regulations are thus challenged in these proceedings: schedules 1 and 2 of the Tariff of Conveyancing and Notarial Fees contained in Annexure II to the Deeds Registries Regulations 1996, made in terms of section 10(1)(c) of the Deeds Registries Act, which were published in 1996 and substituted with amended schedules in 2004 (the Deeds Registries' Tariff);[3] and schedules 1 and 2 of similar regulations published in

[1] Section 10(1) of the Deeds Registries Act provides that: "The board established under section 9 may make regulations prescribing –
(c) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration in a deeds registry and the fees and charges of any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document and the fees and charges in connection with the taxation of any such fees or charges."

[2] The Sectional Titles Act, 66 of 1971, is to be repealed in full by the Sectional Titles Act, 2009, when that Act comes into force.

[3] Published in *Government Gazette* 1343 on 1 July 1996, Government Notice 180 of 1996, as substituted

terms of section 40(1)(d) of the Sectional Titles Act, 1971 (the Sectional Titles' Tariff).[4] In the course of this judgment, when referring to both the Deeds Registries' Tariff and the Sectional Titles' Tariff together, they shall be referred to as "the Tariffs". The Deeds Registries' Tariff was made by the first respondent, the Board, with the approval of the Minister, and the Sectional Titles Tariff was made by the Minister, after consultation with the Board.

[6] Regulation 65(1) of the Deeds Registries' Regulations provides that:

> "The fees and charges as mentioned in subsection (1)(c) of section 10 of the Act shall be those specified in the tariff of Conveyancing and Notarial Fees set out in Annexure II to these regulations: Provided that the Registrar may tax a bill for wasted costs, and the fees allowed in connection with such wasted costs shall be in the discretion of the Registrar."

Conveyancers are thus obliged to charge the tariffs fixed in the regulations, and may not charge other rates.

[7] The Tariffs determined in both sets of regulations provide for a fixed sliding-scale tariff for conveyancing services, calculated on the basis of the value of the property concerned. The higher the value of the property, the higher is the tariff. So, for example, the Deeds Registries Tariff, as amended in 2004, provides at the bottom of the scale, for a property valued at less than N$20 000, that the prescribed tariff for attending to transfer is

by Regulation 20, published in Government Notice 26 of 2004, published in *Government Gazette* 3155 of 17 February 2004.

[4] Published in *Government Gazette* 3824 of 13 April 2007.

N$800. The same Tariff provides, at the top of the scale, for a property valued at N$500 000 or more, a tariff for transfer of N$6 000 for the first N$500 000, plus N$800 per N$100 000 or part thereof up to N$1 000 000, and a further N$400 per N$100 000 up to N$5 000 000, whereafter the tariff is N$200 per N$ 100 000.

High Court

[8] The High Court dismissed the application. It found that the first appellant did not have standing to pursue that challenge as it is neither a legal practitioner nor able to establish that its ability to carry on business as a short-term insurer has been impaired by the regulations. It also found that Article 21(1)(j) of the Constitution does not protect the right of a professional person "to compete on price" and thus concluded that the Tariffs did not constitute an infringement of Article 21(1)(j). The Court also rejected the appellants' argument that in promulgating the regulations, there had been an infringement of Article 18. Finally, the High Court rejected the argument that the Deeds Registries' Tariff was *ultra vires* its empowering provision, section 10(1)(c) of the Deeds Registries' Act. The appellants have now appealed to this Court.

Issues in the appeal

[9] The four issues which arise for decision are: Whether the first appellant has *locus standi*; whether the Tariffs constitute an infringement of

Article 21(1)(j) of the Constitution, and if they do, whether the infringement is nevertheless justifiable in terms of Article 21(2); whether the Tariffs are unreasonable administrative action in breach of Article 18; and whether the Deeds Registries' Tariff is *ultra vires* the empowering provision, section 10 of the Deeds Registries Act, 1937.

Relevant constitutional provisions

[10] Article 21(1) of the Namibian Constitution provides:

"All persons shall have the right to –
…
(j) practise any profession, or carry on any occupation, trade or business."

Article 21(2) provides that:

"The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

[11] Article 18 of the Constitution provides that:

"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and

officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal."

Standing

[12] The respondents took issue with the first appellant's standing to pursue the challenge based on Article 21(1)(j) because, they argue, the first appellant is not a legal practitioner and accordingly has no direct and substantial interest in the challenge. Instead, the respondents argued, the first appellant only has a financial interest in the matter, which is not sufficient to provide it with standing.

[13] Both appellants assert that the first appellant has standing to launch the constitutional challenge. They assert that this standing arises from the requirement that the law requires everyone to use the services of a conveyancer for the purposes of deeds registration coupled with the agreement between the appellants in terms of which the second appellant agrees to provide conveyancing services to customers of the first appellant at an hourly rate rather than according to the prescribed Tariffs. The appellants argue that the first appellant has the right of freedom to contract with the second appellant and that the Tariffs infringe this right.

[14] The appellants also rely on Articles 25(2) and (3) of the Constitution which provide that:

"(2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom ...

(3) Subject to the provisions of this Constitution, the Court referred to in sub-article (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of the Constitution should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated…"

[15] Should the first appellant not have standing at common law, the appellants argue that "aggrieved persons" within the meaning of Article 25 of the Constitution is a broader class of potential litigants than the class created by the common-law concept of "direct and substantial interest".

[16] The ordinary common-law principle is that a litigant must have a direct and substantial legal interest in the outcome of the proceedings.[5] A financial interest will not suffice. There are exceptions to this rule to prevent the injustice that might arise where people who have been wrongfully deprived of their liberty are unable to approach a court for relief.[6]

[5] See, for example, *Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia* 2009 (2) NR 596 (SC); 2011 (1) BLLR 15 at para [30]; *Clear Channel Independent Advertising (Pty) Ltd v TransNamib Holdings Ltd* 2006 (1) NR121 (HC) at 138 G - I.

[6] See *Woods and Others v Ondangwa Tribal Authority and Another* 1975 (2) SA 294 (A) at 311 – 312 which concerned the locus standi of a person to apply for an interdict *de libero homine exhibendo*. The court held "… if a person who has neither kith nor kin in this world is illegally deprived of his liberty, and a person who comes to hear of this were to apply for an interdict *de libero homine exhibendo*, he could hardly fail to be consider the prisoner's friend..". (at 311 A)

This line of authority cannot assist the first appellant.

[17] The first appellant argues that its freedom to contract is impaired by the Tariffs and that therefore it has a legal interest in the outcome to the proceedings. For the purposes of this argument, the first appellant asserts, correctly, that the Court must proceed on the assumption that the Tariffs are void.[7] The respondents seek to rebut this argument on the ground that the first appellant is seeking "to raise itself up by its own bootstraps" by concluding an agreement with the second appellant that is unenforceable for the reason of the regulatory restriction on the second appellant. This argument is similar to the conclusion of the High Court that the first appellant has sought "to hitch-hike a ride on the back of the second appellant" and "to approach the Court through the backdoor".

[18] I cannot agree. These proceedings will determine whether the contract entered into between the first and second appellants is void, so the outcome of the proceedings will determine the first appellant's legal obligations *vis à vis* the second appellant. In my view, the first appellant thus does have a direct and substantial legal interest in the outcome of these proceedings. I have not overlooked the respondents' argument that by entering into an agreement that will be unenforceable if these proceedings fail, the first appellant has created its own legal interest in the

[7] See *Kerry McNamara Architects Inc and Others v Minister of Works, Transport and Communications* 2000 NR 1 (HC) at 3 – 4 relying on *Jacobs en 'n Ander v Waks en Andere* 1992 (1) SA 521 at 535 J – 536 A.

proceedings, but in my view there is nothing undesirable in such conduct. In a constitutional state, citizens are entitled to exercise their rights and they are entitled to approach courts, where there is uncertainty as to the law, to determine their rights. If the appellants are correct, and the Tariffs are in conflict with Article 21(1)(j) or Article 18 of the Constitution, then their contract will be valid and they will have successfully vindicated their rights. If they are incorrect, then they will have obtained clarity on their legal entitlements. The rules of standing should not ordinarily operate to prevent citizens from obtaining legal clarity as to their legal entitlements.

[19] I conclude, therefore, that the first appellant did have standing to launch these proceedings. This conclusion means that it is unnecessary to consider the argument raised by the appellants concerning the scope of the phrase “aggrieved persons” in Article 25 of the Constitution.

Article 21(1)(j)

[20] The second appellant argues that the Deeds Registries’ Tariff and the Sectional Titles’ Tariff constitute infringements of its right under Article 21(1)(j). It argues that Article 21(1)(j) includes the right to engage in free, economic activity and that the scope of the right includes within it, the right to compete on price. As the Tariffs prevent the second appellant from competing on price with other legal practitioners, the second appellant argues, its right under Article 21(1)(j) is infringed.

[21] The respondents argue that the right in Article 21(1)(j) protects the right to practise a profession, but does not seek to constrain the regulation of professions. In determining the proper ambit of Article 21(1)(j), the respondents point to Namibian history and in particular the racist practice of job reservation. This history is important to an understanding of Article 21(1)(j) as the High Court recognized in *Hendricks and Others v Attorney-General and Others*[8] in which Maritz J reasoned as follows:

"The inclusion of that right [article 21(1)(j)] in our Constitution must be seen against a shameful history of job reservation for the privileged few and the exclusion of a large number of disadvantaged persons from access to certain provisions, occupations, trades and business in South West Africa under South African rule. .... Those who founded this country's constitutional future were determined to eradicate those practices by providing, amongst others, for equal accessibility to and a free choice to pursue a career in any profession, occupation, trade or business. They never contemplated or intended to create a constitutional right to be or become a professional paedophile, assassin, kidnapper or drug lord."[9]

[22] There can be no doubt, as the above reasoning indicates, that the history of job reservation is one of the important purposes of Article 21(1)(j). Equally important, as the reasoning also indicates, is the recognition that when Article 21(1)(j) speaks of professions, trades, occupations and

[8] 2002 NR 353 (HC).
[9] At 357J – 358B.

businesses, it does not protect the right of citizens to participate in activities that by their very nature involve the commission of common-law crimes such as murder, robbery, rape or assault, even if citizens refer to those activities as "professions, trades, occupations or businesses".

[23] It does not follow, however, that the mere fact that a law prohibits certain forms of profession or trade means that such trade or profession falls outside the protection of Article 21(1)(j).[10] Such a conclusion would remove nearly all the protection provided by the constitutional provision. Such a conclusion was not intended by the reasoning in *Hendricks*.[11] If a law prohibits a trade, profession, occupation or business, a court must consider whether the prohibition constitutes a breach of the constitutional right. In determining the scope of the right, the court will give effect to the principle in *Hendricks*, that the right does not protect trades or business that involve the commission of common-law crimes or other similar conduct. This case is concerned with the profession of conveyancing, which is clearly a profession that ordinarily falls within the scope of the constitutional right.

[24] This case, however, does not involve a prohibition on conveyancing but a challenge to legal rules determining the fees that conveyancers may charge. The question that arises is whether, to the extent that the Tariffs

[10] See, in this regard, *Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia and Others*, above n 5, at para [51] and paras [54] – [56].
[11] Above n 8.

regulate the profession by determining the fees that may be charged for conveyancing, they infringe the Article 21(1)(j) right. The fifth respondent argued that in determining whether the regulation of a profession was constitutionally permissible, the approach adopted by a full bench of the High Court in *Namibia Insurance Association v Government of the Republic of Namibia*[12] should be followed. In that case, the High Court found that only the right to practise is protected by Article 21(1)(j) and that any regulation of the practicing of a trade, profession or business need only be rationally connected to its purposes for it to be compliant with the Constitution.

[25] In my view, a slightly different approach should be followed. That approach must recognize, as this Court did, in *Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia and Others* that the right in Article 21(1)(j) does not "imply that persons may carry on their trades or businesses free from regulation".[13] This approach must be correct for nearly all trades, professions and businesses are regulated by law. Article 21(1)(j) thus does not mean that regulation of a profession will, without more, constitute an infringement of the right to practise a profession that will require justification under Article 21(2), because professions are regulated and regulation will often constitute no barrier to practicing the profession at all.

[12] 2001 NR 1 (HC).
[13] Cited above n 10, at para [97].

[26] As the High Court observed in *Namibia Insurance Association*, any regulation of the right to practise must be rational but that is not the end of the enquiry. Even if the regulation is rational, if it is so invasive that it constitutes a material barrier to the right to practice the profession, the regulation will be an infringement of the right to practice that will have to be justified under Article 21(2). In determining whether a regulation that does constitute a material barrier to the right to practise is permissible under Article 21(2), a court will have to approach the question as set out in *Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia*.[14]

[27] The approach, thus has three steps: the first is to determine whether the challenged law constitutes a rational regulation of the right to practice; if it does, then the next question arises which is whether even though it is rational, it is nevertheless so invasive of the right to practice that it constitutes a material barrier to the practice of a profession, trade or business. If it does constitute a material barrier to the practice of a trade or profession, occupation or business, then the government will have to establish that it is nevertheless a form of regulation that falls within the ambit of Article 21(2).

[28] The respondents argue that the Tariffs constitute a rational regulation of the right to practise as a conveyancer. They argue that the purpose of

[14] Cited above n 5 at paras [65] – [68].

providing fixed tariffs is to provide certainty as to the costs associated with property transfers and the registration of mortgage bonds. This, the government states, helps those engaged in the property market to determine what costs they will incur in advance. There is no doubt that the purpose identified by the respondents is a legitimate government purpose and that, by providing compulsory fees for conveyancing, the Tariffs meet this purpose. The Tariffs cannot therefore be said to be irrational. Do the Tariffs nevertheless constitute a material barrier to the practice of the profession?

[29] There was no evidence on the record that the Tariffs did constitute a barrier to the practice of the profession, such that legal practitioners withdrew from the practice of the profession because of the Tariffs. What does appear from the record, is that the second appellant would like to increase their share of conveyancing work by competing with other legal practitioners in relation to the price they charge for performing conveyancing work. The inability to compete on price, however, has not been shown to be a material barrier to the right to practise. In the circumstances, the appellants have not established that the Tariffs constitute an infringement of Article 21(1)(j).

Article 18

[30] The next question that arises is whether the Tariffs constitute

"unreasonable" administrative conduct within the ambit of Article 18. The appellants argue that the Tariffs set fees that may be unreasonably high in certain circumstances; and also that the Tariffs are unreasonable because the fees that may be charged under the Tariffs may bear no correlation to the time spent on the work.

[31] What will constitute reasonable administrative conduct for the purposes of Article 18 will always be a contextual enquiry and will depend on the circumstances of each case. A court will need to consider a range of issues including the nature of the administrative conduct, the identity of the decision-maker, the range of factors relevant to the decision and the nature of any competing interests involved, as well as the impact of the relevant conduct on those affected. At the end of the day, the question will be whether in the light of a careful analysis of the context of the conduct, it is the conduct of a reasonable decision-maker. The concept of reasonableness has at its core, the idea that where many considerations are at play, there will be often be more than one course of conduct that is acceptable. It is not for judges to impose the course of conduct they would have chosen. It is for judges to decide whether the course of conduct selected by the decision-maker is one of the courses of conduct within the range of reasonable courses of conduct available.

[32] In determining whether the fixed sliding scale tariff for conveyancing

fees is reasonable, I commence by observing that both Tariffs were set after consideration by the Board: the Deeds Registries' Tariff was made by the Board with the approval of the Minister and the Sectional Titles' Tariff was made by the Minister after consultation with the Board.[15] The Board is a specialist body with expertise in the field of conveyancing. Its members include the Chief Registrar of Deeds, another registrar of deeds, as well as two conveyancers.[16] Quite clearly, there was a range of other options that the Board and the Minister could have chosen when they determined the Tariffs. They could have set the rates differently, or they could have, as the appellants argue they should have, imposed a guideline or an hourly rate. That there is a range of other policy choices, however, does not mean that the route adopted is unreasonable.

[33] The question remains whether the sliding scale Tariffs as adopted are unreasonable. In supporting the reasonableness of the Tariffs, the respondents tendered evidence of two members of the Board who point to the fact that the sliding scale means that the lower the value of the property, the lower the cost of conveyancing. The respondents admit that expensive properties will attract high conveyancing fees but argue that this cannot be said to be either unfair or unreasonable, because purchasers of valuable properties are almost invariably those most able to cover conveyancing charges.

[15] See footnotes 3 and 4 above.
[16] See section 9(2) of the Deeds Registries Act.

[34] The respondents admit that the effect of compulsory tariffs is to prevent conveyancers competing on price. This effect is inevitable if certainty as to conveyancing charges is to be achieved. Although there may be circumstances where preventing competition on price would be unreasonable, there are considerations relevant to this case that suggest the converse. These include the following. First, the effect of a fixed tariff has not been shown to be a material barrier to the practise of the profession of conveyancer. Secondly, the service performed by conveyancers is a service that must be used by all those who wish to own property, as it is only conveyancers who are permitted to arrange for the transfer of ownership of property and the registration of other rights against property in the deeds office. Accordingly, it is appropriate that the service be regulated in the public interest. Thirdly, although there may be other advantages were competition on price to be permitted, a fixed set of tariffs also has advantages. It permits people who are calculating whether they can afford to buy a property to know at the outset what the conveyancing charges will be. The sliding scale fixed Tariffs also ensure that those who buy properties of the lowest value have least to pay in conveyancing fees, whereas those who buy more expensive properties, will pay more. Fourthly, the Board that sets the tariff in the case of the Deeds Registries' Tariff and which is consulted by the Minister in respect of the Sectional Titles' Tariff, is a committee of experts in conveyancing, well placed to make the decision as

to the approach to be followed in setting the Tariffs.

[35] In conclusion, then, while it may be that it would be reasonable to permit competition on price, it cannot be said that to prohibit it is, in the circumstances of this case, an unreasonable course. Accordingly, the appellants have not established that the Tariffs constitute an infringement of Article 18 of the Constitution.

Is the Deeds Registries' Tariff ultra vires *section 10(1)(c)?*

[36] The final question to be considered is whether the Deeds Registries Tariff is *ultra vires* the empowering provision, section 10(1)(c) of the Deeds Registries Act. Section 10 provides that:

> "(1) The board established under section nine may make regulations prescribing –
>
> ....
>
> (c) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration of deeds in a deeds registry and the fees and charges of any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document and the fees and charges in connection with the taxation of any such fees or charges."

[37] The appellants argue that this section does not contemplate or permit compulsory *ad valorem* fees, as such fees are not taxable, because

they are fixed and do not give rise to disputes such as must be resolved by way of taxation.[17] They argue that section 10(1)(c) permits the Board to prescribe, by way of regulation, three things: (a) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds; (b) the fees and charges of any other legal practitioners in connection with the preliminary work required; and (c) the fees and charges "in connection with the taxation of any such fees and charges". The appellants state that as the legislation indicates that the Board should provide for fees relevant to taxation, section 10(1)(c) does not contemplate an *ad valorem* fixed tariff.

[38] The respondents reply by saying that there is no bar to the taxation of *ad valorem* fixed tariffs. Taxation, they assert, is a form of process aimed at ensuring the correct amount has been charged for a service and it does not require the concept of a "reasonable fee" but can be necessary even in the case of fixed *ad valorem* fees. A dispute may arise, for example, as to the value of the relevant property, which may be determined by taxation. The respondents also argue that to the extent that section 10(1)(c) empowers the Board to "prescribe" fees, it empowers the Board to prescribe fixed tariffs and not only to set guidelines, or minimum or maximum fees.

[17] The appellants rely on *Benson and Another v Waters and Others* 1981 (4) SA 42 (C) at 49; and *Afshani and Another v Vaatz* 2007 (2) NR 381 (SC) at 390B.

[39] The answer to the appellants' challenge lies in the proper interpretation of section 10(1)(c). It is clear that the section empowers, but does not compel, the Board to make regulations governing the fees charged in connection with conveyancing ("The Board … may make regulations prescribing…"). If the Board does make regulations, the subject matter of the regulations are the fees and charges of conveyancers and notaries public in connection with conveyancing; the fees and charges of other legal practitioners for preliminary work; and the fees and charges in connection with the taxation of any such fees and charges. The ordinary meaning of "may" implies that the Board is not required to prescribe the relevant fees or charges. It has a discretion ("may prescribe") whether to do so. The words "may prescribe" relate to each of the three types of "fees" referred to in the subsection. So the Board "may prescribe" the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds; and it "may prescribe" the fees and charges of any other legal practitioners in connection with the preliminary work required; and it "may prescribe" the fees and charges "in connection with the taxation of any such fees and charges". The section, thus interpreted, empowers the Board, in the exercise of its discretion, to determine the first two categories of fees but not the third.

[40] Moreover, to interpret section 10(1)(c), as the appellants argue, to mean that the Board may not set a fixed *ad valorem* rate, as it has chosen

to do, would also be contrary to the ordinary meaning of the word "prescribe". To "prescribe", according to the Shorter Oxford English Dictionary means, amongst other things, "to write or lay down as a rule or direction to be followed". This meaning of "prescribe" would include setting a fixed tariff.

[41] For these reasons, the appellants' argument that the Deeds Registries' Tariff is *ultra vires* section 10(1)(c) of the Deeds Registries Act can therefore not be accepted.

Costs

[42] The appellants have failed in their appeal. In the circumstances, it is appropriate to order them to pay the costs of the first to fourth and sixth respondents, including the costs of one instructed and one instructing counsel; and the costs of the fifth respondent on the basis of two instructed and one instructing counsel.

Order

[43] The following order is made:

1. The appeal is dismissed.
2. The appellants are ordered to pay the costs of the appeal as follows: the costs of the first to fourth and sixth respondents, such costs to

include the costs of one instructed and one instructing counsel; and the costs of the fifth respondent, such costs to include the costs of two instructed and one instructing counsel.

_____
O'REGAN AJA

I agree.

_____
SHIVUTE CJ

I agree.

_____
LANGA AJA

COUNSEL ON BEHALF OF THE APPELLANTS:	Mr. S.F. Burger SC
Assisted by:	Mr. R. Heathcote
INSTRUCTED BY:	Van der Merwe-Greeff Inc
COUNSEL ON BEHALF OF 1ST, 2ND, 3RD, 4th, 6TH RESPONDENTS:	Mr. N.N. Marcus
INSTRUCTED BY:	Government Attorney
COUNSEL ON BEHALF OF 5TH RESPONDENT:	Mr. J.J. Gauntlett SC
ASSISTED BY:	Mr. R.L. Maasdorp
INSTRUCTED BY:	LorentzAngula Inc.