THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable
Case no: 495/11

TECMED AFRICA (PTY) LTD — Appellant

and

THE MINISTER OF HEALTH — First Respondent
CANCARE (PTY) LTD — Second Respondent

Neutral citation: *Tecmed Africa v The Minister of Health* (495/11) [2012] ZASCA 64 (21 May 2012)

BENCH: NAVSA, PONNAN and SNYDERS JJA and BORUCHOWITZ and NDITA AJJA

HEARD: 3 MAY 2012

DELIVERED: 21 MAY 2012

CORRECTED:

SUMMARY: **Appeal – s 21A(1) of the Supreme Court Act – power of court to dismiss appeal where judgment or order sought would have no practical effect or result.**

ORDER

On appeal from: North Gauteng High Court, Pretoria (Southwood J (Ledwaba J and Hiemstra AJ concurring) sitting as court of appeal):

1. The appeal is dismissed.
2. The appellant is to pay all costs in relation to the appeal incurred after 14 February 2012, such costs to include those consequent upon the employment of two counsel.

JUDGMENT

PONNAN JA (NAVSA and SNYDERS JJA and BORUCHOWITZ and NDITA AJJA concurring):

[1] On 3 May 2012 this appeal was heard and dismissed in terms of s 21A(1) of the Supreme Court Act 59 of 1959. The following order issued:

'1. The appeal is dismissed.

2. The appellant is to pay all costs in relation to the appeal incurred after 14 February 2012, such costs to include those consequent upon the employment of two counsel.'

It was intimated when so ordering that reasons would follow. These are the reasons.

[2] Section 21A(1) of the Supreme Court Act 59 of 1959 provides:

'When at the hearing of any civil appeal to the Appellate Division or any Provincial or Local Division of the Supreme Court the issues are of such a nature that the judgment or order sought will have no practical effect or result, the appeal may be dismissed on this ground alone.'

The primary question therefore, to which I now turn, is whether the judgment or order sought in this appeal will have any practical effect or result. It arises against the backdrop of the following facts.

[3] The appellant, Tecmed Africa (Pty) Ltd (Tecmed), carries on business at Midrand, Gauteng, inter alia, as the importer and distributor of medical equipment. During 2005 Tecmed imported a second hand Varian Clinac 2100 C linear accelerator with serial number 791 (the machine) into the country. Thereafter Tecmed stored the machine until the second half of 2007 when it, purportedly acting in terms of an agency agreement with the manufacturer of the machine, Varian Medical Systems International, a Swiss-based company, refurbished the machine. In so doing and consistent with the practice in the industry, Tecmed brought about a change in the model number of the machine to that of a Clinac 2000 CR, thereby indicating that it was now a refurbished model.

[4] The first respondent, the Minister of Health (the Minister), acting in terms s 2 of the Hazardous Substances Act No 15 of 1973 (the Act) had declared linear accelerators, such as the machine in question, which is used in the treatment of cancer, to be a Group III hazardous substance. By virtue of that classification no person is entitled in terms of the Act, to sell, let, use operate or apply the machine (s 3(1)(*b*)) or install or keep installed the machine on any premises (s 3(1)(*c*)) unless such person has been issued with a licence by the Director-General: National Health and Population Development (the DG) under s 4.

[5] After having refurbished the machine and pursuant to an agreement of sale with the second respondent, Cancare (Pty) Ltd (Cancare), which carries on business as the Durban Oncology Centre, Tecmed delivered the machine to the latter. On 20 November 2007 Cancare applied for a licence in terms of s 4 to use the machine as a therapeutic device in the treatment of cancer. In the licence application form Cancare described the machine as a Clinac 2100 with serial number 7071 manufactured in 2007. On 11 December 2007 and apparently on the mistaken understanding, based on the licence

application form, that the machine was new, the DG issued a licence for the installation of the machine at the Durban Oncology Centre.

[6] On 10 March 2008 Mr Karel Johannes Smit, a Deputy-Director in the Department of Health stationed at its radiation control unit, visited Cancare's premises to conduct an acceptance inspection. During the inspection Mr Smit discovered that the machine was not new. After making enquiries Mr Smit ascertained that the machine was in fact a 2100 C model with the serial number 791 and had been manufactured in 1995. Mr Smit then contacted Ms Hester Burger of Cancare and informed her that a licence would not be issued to them for the use of the machine. The next day he despatched an e-mail to her in which he explained that as Tecmed was only licensed to import new Clinac 2100 C machines, the machine in question had been illegally imported into the country by the former. Accordingly, so he asserted, the Department of Health would require that the machine be exported or sold as scrap.

[7] During March 2008 a fresh licence application was submitted on behalf of Cancare for the use of the machine. In a letter in support of that application Tecmed apologised for the fact that the earlier application had contained incorrect information. Tecmed alleged that in importing the machine it had acted in accordance with the conditions attaching to its licence and that the machine had accordingly not been imported illegally. In the new application Cancare described the machine as a 'Clinac 2000 CR (refurbished)'; manufactured in '1995/ Refurbished 2008'; with unit serial number '791'. Neither Tecmed nor Cancare saw fit to explain how it came to pass that the earlier application had incorrectly described the machine.

[8] On 18 March Smit despatched an e-mail to Tecmed which was headed:

'NOTICE OF EMBARGO ON THE IMPORTATION OF VARIAN LINEAR ACCELERATORS IN THE TERMS OF THE HAZARDOUS SUBSTANCES ACT, (ACT 15 OF 1973), WITH IMMEDIATE EFFECT.'

The notice read:

'Notice is hereby given that an embargo has been placed on the licences listed below for the importation of Varian Linear Accelerators, with immediate effect:

. . .

This action has been taken for the following reasons:

1. On the 5th December 2007 we received an application for the installation of a new Varian Clinac 2100 (year of manufacture 2007 and that the unit will be supplied by TECMED) at Durban Oncology.
2. TECMED is currently licensed to import new Clinac 2100's.
3. During an acceptance inspection by KG Smit on 10 March 2008 at Durban Oncology Centre, it was established that this is a pre-owned Varian Clinac 2100 unit (date of manufacture 1994 or early 1995, serial no. 791) that was imported and rebuild by TECMED in SA (this was confirmed by Mr. Begeré on 11/03/2008 in my office at Louville Place, Belville).
4. TECMED has therefore illegally imported the pre-owned Clinac 2100 and provided false information on form RC003-1.

The Department of Health will only consider withdrawing the embargo if:

1. TECMED export the Varian Clinac 2100 C (serial no. 791) installed at Durban Oncology Centre, or
2. Dismantle the above-mentioned unit.

Please note that under an embargo, you may not import or install any Group III Hazardous Substances listed on the above-mentioned licences. The term sell in the Hazardous Substances Act, 1973 (Act 15 of 1973) is defined to include offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or exchange, or dispose of to any person in any manner, whether for a consideration or otherwise, or manufacture or import for use (for own use, in the Republic; and "selling" and "sale" have a corresponding meaning.'

[9] On 5 May 2008 Tecmed lodged an appeal with the Minister against Smit's decision to place an embargo on its licences. Its primary legal contention was that Smit in doing so had acted ultra vires. It accordingly sought the lifting of the embargo. That appeal was dismissed by the Minister on 23 May 2008.

[10] Two applications by Tecmed to the North Gauteng High Court – each by way of urgency – followed. The first, on 2 June 2008 sought an order reviewing and setting aside the Minister's decision to dismiss its appeal (the embargo application). The second, on 15 July 2008, sought the review and setting aside of the DG's refusal to issue Cancare (who was cited in that application as the second respondent) with a

licence to use, operate or apply the machine and for an order directing the former to issue a licence as contemplated in s 4(1) to Cancare (the licence application).

[11] Both applications came to be heard by RD Claassen J. In respect of the embargo application Claassen J held –

'The Applicant's contention regarding this issue was that the DG was not in law entitled to issue the embargo in respect of licences. He could only do so in respect of objects, etc. If he wanted to stop the importation or selling of machines he had to give notice in terms of Section 7 with 20 days' notice. He did none of this. The embargo was thus illegal. The DG realised this himself eventually when a proper notice was given in respect of certain licences as referred to already, and he withdrew the abovementioned embargo.

In respect of the appeal to the Minister the same issues were raised by Applicant but the appeal was still refused by the Minister. This clearly shows that the embargo application must at least to that extend succeed.'

And in respect of the licence application the learned Judge reasoned:

'. . . reading the provisions of the Act, the relevant conditions and the importation documents all together, it is clear that the relevant unit was not imported illegally as alleged by the DG and the Minister. It is therefore clear that the imposition of the embargo (already dealt with) and the refusal to grant a licence for the installation and use thereof at Cancare was unlawful, it being the main reason to refuse the licence.

Another ground for refusing the licence is that Applicant is only allowed to import new and refurbished machines. . . . The Respondent's attitude is that Applicant needs to be licensed as a manufacturer to do so. However, when one reads the definition of sell and/or manufacture and the dictionary meaning of refurbished, it is clear that as it stands, the licence to sell includes manufacture (the nouns and verbs have corresponding meanings in terms of the definitions section). It is difficult to see how the restrictive meaning proposed by the Respondents fit into those definitions. This point can therefore not succeed.'

Both applications accordingly succeeded with costs before Claassen J.

[12] The Minister sought and obtained leave to appeal to the full court against the whole of Claassen J's judgment. In heads of argument which had been filed shortly before the hearing of the appeal on behalf of the Minister, she abandoned the appeal against the judgment and order in the embargo application but appeared to persist in the contention that the abandonment of that appeal did not affect the question of costs.

The full court (per Southwood J (Ledwaba J and Hiemstra AJ concurring)) dealt with that aspect thus:

'At the hearing the appellant's counsel confirmed that their clients abandoned the appeal in the embargo application and tendered the costs of the appeal insofar as it related to that application. He also confirmed that the imposition of the embargo was clearly unlawful and that the application should not have been opposed. Tecmed is obviously entitled to the costs of that part of the appeal. However Tecmed's counsel asked for a costs order on the scale as between attorney and client because of the lateness of the abandonment. As I understood their argument a special costs order is justified because of the vexatious manner in which the appellants conducted this appeal.

Despite lifting the embargo on 5 August 2008 – which rendered the issues in the embargo application academic – the Minister persisted in seeking to overturn the judgment and order in the embargo application. The Minister obtained leave to appeal against that judgment and order, prepared a record which included all the affidavits filed in the embargo application and forced Tecmed to prepare for an appeal involving both applications. In these circumstances the Minister's conduct caused Tecmed to go to unnecessary trouble and expense and for that reason can be characterised as vexatious. That justifies a costs order on the scale as between attorney and client. . .'

The Minister was accordingly ordered to pay the costs of the embargo appeal on the scale as between attorney and client, such costs to include those consequent upon the employment of two counsel.

[13] Insofar as the Minister's appeal against the conclusion reached by Claassen J in the licence application is concerned, the full court held:

'The learned judge in the court *a quo* considered these documents and concluded that they show that the machine was imported into South Africa on 7 October 2005, i.e. before the licence was issued on 11 October 2005, and consequently that the new licence conditions did not apply. Neither side has sought to attack this finding which is obviously crucial to the outcome of this appeal.

. . .

If the machine arrived in South Africa on 6 or 7 October 2005 Tecmed could not rely on the conditions in the 2005 licence. Tecmed's counsel conceded this to be the case. That conclusion, strictly speaking, is decisive of this appeal but Tecmed's counsel contended that the licence issued to Tecmed on 21 June 2001 permitted the importation of the machine. They

sought to adopt the reasoning of the court *a quo* where, after considering the conditions of the licence issued in June 2001, the court *a quo* found that the relevant condition was "somewhat ambiguous" but it did permit the sale (as defined) of refurbished units, whether old or new.
As already mentioned the relevant condition of the licence clearly permits the sale of a new unit but expressly prohibits the sale of used units that have not been refurbished. Since the extended meaning of "sale" includes importation for use in the Republic, the importation of the machine (a used unit which had not been refurbished) was prohibited. The importation of the machine was therefore illegal. For the same reason so was its refurbishment. Tecmed's counsel conceded that this was so.'

The full court accordingly concluded:

'Tecmed's attack on Smit's decision to refuse to grant a licence to Cancare should not have succeeded and the appeal must be upheld with costs. The costs of the appeal and the ancillary costs orders will now be considered.'

The appeal in that matter accordingly succeeded, with Tecmed being ordered to pay one half of the Minister's costs on appeal, such costs to include those consequent upon the employment of two counsel. In that regard Claassen J's order was set aside and in its stead was substituted an order dismissing the licence application with costs.

[14] The present appeal against that conclusion is with the special leave of this court. In essence Tecmed attacks the conclusion reached by the full court that the machine was imported into South Africa on 7 October 2005 and the consequent finding that the relevant conditions attaching to its 2005 licence therefore did not find application to its importation. As interesting a debate as those issues are likely to generate, they hardly need detain us. For, it is at a preliminary hurdle – namely, whether the appeal and any order made thereon would, within the meaning of s 21A, have any practical effect or result – that the appeal must fail. It is to that issue, which was considered by us at the outset of the hearing of the appeal that I now turn.

[15] On 14 February 2012 a notice was served and filed in which it was contended on behalf of the Minister that the appeal would have no practical effect or result. In an affidavit filed on behalf of the Minister in support of that contention the relevant assistant State Attorney stated:

‘3. This affidavit is made to bring to the attention of this Honourable Court that the relief sought by the Appellant will have no practical effect or result. I say so for the following reasons:

3.1 On 16 March 2011 the Appellant and Tecmed (Pty) Ltd instituted action proceedings against the Respondent and 3 others. A copy of the summons issued are annexed hereto marked “**TM1**”;

3.2 In paragraph 24 of its particulars of claim the Appellant avers that it secured a new machine for installation at the Durban Oncology (Cancare). The new machine replaced the machine which is a subject matter in this appeal.

3.3 On the other hand the relief that the Appellant sought is the review and setting aside of the decision of the Respondent refusing Cancare to use the machine supplied to it by Tecmed;

3.4 As a result of the foregoing and in view of the fact that the Appellant has now supplied Cancare with a new machine the relief that it seeks has no practical effect. If the appellant is successful the respondent cannot be directed to allow Cancare to use the machine which is the subject matter of this appeal.

4. It is submitted that this Honourable Court should dismiss the appeal on this ground alone.’

The response it elicited from Tecmed was, inter alia:

’10.1 First, Tecmed has suffered damages of almost **R15, 000,000** (fifteen million rand). A summons has been issued against the Minister in which Tecmed is seeking to recover its loss in the North Gauteng High Court, under case number: 16980/11. Tecmed is confident that, at a trial, it will be able to establish *mala fides* on the part of the Minister’s representative and, indeed, the administrative functionaries implicated. That evidence is, however, yet to be led. But what is critical is that Tecmed be afforded its constitutionally entrenched right to have its civil claim for damages adjudicated by a Court.

10.2 A threshold requirement, in order for the civil claim to succeed, is that the administrative action implicated is unlawful. At this juncture the Full Bench has ruled that it was ***not* unlawful**. A statement is therefore required, from *this* Court, to the effect that the administrative decision was indeed unlawful. Therein lies the importance of this matter being dealt with by the above Court on appeal. If it is not dealt with, there can be no civil claim for damages and Tecmed will be prejudiced to the extent of approximately **R15, 000,000** (fifteen million rand). A ruling by the Supreme Court of Appeal in this regard is of massive importance to Tecmed.

10.3 Secondly, and of great significance, it is a criminal offence to import a Group III hazardous substance without a licence. As things currently stand, Tecmed have been found to have behaved criminally. This is inaccurate and Tecmed ought to have an opportunity to "set the record straight", from a reputational and commercial perspective. Further argument and authority in this regard will be presented at the hearing of this matter.

10.4 Thirdly, Netcare, a large hospital group, are reluctant to do business with Tecmed on account of the fact that it perceives Tecmed to be a company that illegally imports medical equipment. Netcare have already indicated their unwillingness to be placed at risk of the kind to which Cancare was exposed. Tecmed has lost business as a result of this perception and it will continue to lose business until that perception is corrected. Therein lies another practical benefit of this appeal.

10.5 Fourthly, as a result of the perception created in relation to the legality or otherwise of the importation of the machine, Tecmed has been forced to enter into a settlement agreement with Cancare, in the amount of **R4 000 000.00** (four million Rand) and in so doing took cession of Cancare's claim for the damages sustained as a result of the unlawful administrative action. This was done without any acknowledgement of wrongdoing and with a view to salvaging the damaged relationship with Netcare and in an effort to repair the reputation of Tecmed.'

[16] Before us counsel was constrained to concede that securing a licence for the use of the machine by Cancare at the Durban Oncology Centre had indeed become academic. That notwithstanding, so he urged upon us, the appeal should nonetheless be entertained. His argument, consistent with the approach adopted in the affidavit filed on behalf of Tecmed on this aspect of the case, amounted to this: the approach and reasoning of the full court to the disputed factual issues on the papers would stand and were it not to be set aside by this court, would serve as an insurmountable obstacle in due course to the successful prosecution of its envisaged civil claim against the Minister. In my view for the reasons that follow counsel's submission lacks merit.

[17] First, appeals do not lie against the reasons for judgment but against the substantive order of a lower court. Thus whether or not a court of appeal agrees with a lower court's reasoning would be of no consequence if the result would remain the same (*Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353

(A) at 354). Second, counsel's argument must be evaluated with reference to the principles that govern the defence of *res iudicata* in general and issue estoppel in particular. In *Prinsloo NO v Goldex 15* (243/11) [2012] ZASCA 28 (28 March 2012) Brand JA (paras 23 -26) put it thus:

'In our common law the requirements for *res iudicata* are threefold: (a) same parties, (b) same cause of action, (c) same relief. The recognition of what has become known as issue estoppel did not dispense with this threefold requirement. But our courts have come to realise that rigid adherence to the requirements referred to in (b) and (c) may result in defeating the whole purpose of *res iudicata*. That purpose, so it has been stated, is to prevent the repetition of law suits between the same parties, the harassment of a defendant by a multiplicity of actions and the possibility of conflicting decisions by different courts on the same issue (see eg *Evins v Shield Insurance Co Ltd* 1980 (2) SA 815 (A) at 835G). Issue estoppel therefore allows a court to dispense with the two requirements of same cause of action and same relief, where the same issue has been finally decided in previous litigation between the same parties.

At the same time, however, our courts have realised that relaxation of the strict requirements of *res iudicata* in issue estoppel situations creates the potential of causing inequity and unfairness that would not arise upon application of all three requirements. . . .

Hence, our courts have been at pains to point out the potential inequity of the application of issue estoppel in particular circumstances. But the circumstances in which issue estoppel may conceivably arise are so varied that its application cannot be governed by fixed principles or even by guidelines. All this court could therefore do was to repeatedly sound the warning that the application of issue estoppel should be considered on a case-by-case basis and that deviation from the threefold requirements of *res iudicata* should not be allowed when it is likely to give rise to potentially unfair consequences in the subsequent proceedings (see eg *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* 1995 (1) SA 653 (A) at 676B-E; *Smith v Porritt* supra 2008 (6) SA 303 (SCA) para 10). That, I believe, is also consistent with the guarantee of a fair hearing in s 34 of our Constitution.'

Applying those principles here, it does not appear to me that the matter or questions that are likely to arise in the contemplated civil litigation have indeed been finally adjudicated upon by the full court in this matter. After all the expression *res iudicata* literally means that the matter has already been decided. I say 'likely to arise' because the picture that Tecmed has endeavoured to paint is far from complete. On such information as we do have though it would appear that the relief sought to be claimed in the contemplated civil action may well be different to that which forms the subject matter

of the present appeal. What does appear to be clear enough though is that in the claim sought to be prosecuted arising from the Cancare cession, the same person requirement can hardly be satisfied. Moreover, the assertion that 'Tecmed have been found to have behaved criminally' is entirely devoid of any substance. No such finding was made by the full court. Nor could such a finding have been made by that forum. The same holds true for Tecmed's complaint of reputational harm.

[18] Third, we do not know what stage has been reached in the pending civil case or precisely what is in dispute between the parties on the pleadings in that matter. What we are being asked to do therefore is to engage in speculation and conjecture. That we should be slow to do. In *Coin Security Group (Pty) Ltd v SA National Union for Security Officers & others* 2001 (2) SA 872 (SCA) para 9, Plewman JA quoted with approval from the speech of Lord Bridge of Harwich in the case of *Ainsbury v Millington* [1987] 1 All ER 929 (HL), which concluded at 930g:

'It has always been a fundamental feature of our judicial system that the Courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.'

In a similar vein, in *Western Cape Education Department v George* 1998 (3) SA 77 (SCA) at 84E, Howie JA stated:

'Finally, it is desirable that any judgment of this Court be the product of thorough consideration of, *inter alia*, forensically tested argument from both sides on questions that are necessary for the decision of the case.'

And in *Radio Pretoria v Chairman, Independent Communications Authority of South Africa* 2005 (1) SA 47 (SCA) (para 41), Navsa JA said:

'Courts of appeal often have to deal with congested court rolls. They do not give advice gratuitously. They decide real disputes and do not speculate or theorise (see the *Coin Security* case, *supra*, at paragraph [7] (875A-D)). Furthermore, statutory enactments are to be applied to or interpreted against particular facts and disputes and not in isolation.'

[19] Fourth, in effect what Tecmed seeks is legal advice from this court. But as Innes CJ observed in *Geldenhuys & Neethling v Beuthin* 1918 AD 426 at 441:

'After all, Courts of Law exist for the settlement of concrete controversies and actual infringements of rights, not to pronounce upon abstract questions, or to advise upon differing contentions, however important.'

In *National Coalition for Gay and Lesbian Equality & others v Minister of Home Affairs & others* 2000 (2) SA 1 (CC) para 21 footnote 18, the Constitutional Court echoed what the learned Chief Justice had stated over eight decades earlier when it said:

'A case is moot and therefore not justifiable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.'

[20] Finally, courts should and ought not to decide issues of academic interest only. That much is trite. In *Radio Pretoria* this Court expressed its concern about the proliferation of appeals that had no prospect of being heard on the merits as the order sought would have no practical effect. It referred to *Rand Water Board v Rotek Industries (Pty) Ltd* 2003 (4) SA 58 (SCA) para 26 where the following was said:

'The present case is a good example of this Court's experience in the recent past, including unreported cases, that there is a growing misperception that there has been a relaxation or dilution of the fundamental principle . . . that Courts will not make determinations that will have no practical effect.'

[21] The cumulative effect of all of the factors that I have alluded to is that no practical effect or result can be achieved in this case. And for those reasons the appeal was dismissed in terms of s 21A(1) of the Supreme Court Act 59 of 1959.

[22] That leaves costs: As long ago as 14 October 2008 Tecmed wrote to the Directorate Radiation Control:

‘. . . At the outset, we record that the events as recorded below were done so in an endeavour to mitigate the damages that Netcare and Tecmed continue to suffer as a result of the unlawful conduct perpetuated by Eljo Smit.

In your above letter, we have attended and hereby attend to Mr Smit’s requirements set forth in paragraphs 2a. and 2b.

In particular, we hereby declare that:

1. the Varian Clinac 2000CR (2100C), serial no. 791, has been removed from Durban Oncology and it has been warehoused at Schenker (S.A.) (Pty) Ltd. In confirmation of this, we annex hereto a letter by Schenker, the content of which is self explanatory; and
2. the Varian Clinac 2000 CR (2100C), serial no. 791 and the Varian Clinac 2000CR (23 EX), serial number 300, will be sold as spares.

We reiterate, we have done the above without us being under any legal obligation to do so. We have done so in order to assist Netcare and to maintain the relationship between Netcare and Tecmed (to the extent possible), which Mr Smit is successfully and arbitrarily eroding.'

That letter had been despatched before the matter had even come to be argued before Claassen J. And yet neither the parties nor the two courts below appeared to appreciate that it had rendered the licence application moot. It was only somewhat belatedly by notice served on Tecmed on 14 February 2012 that the Minister raised for the first time the point that the appeal will have no practical effect or result. By then the appeal had reached a fairly advanced stage. Until then neither was an unwilling participant. It was thus deemed appropriate that each party should bear its own costs until 14 February 2012 and that Techmed be ordered to pay the Minister's costs of appeal, inclusive of those of two counsel, beyond that date.

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V PONNAN
JUDGE OF APPEAL

APPEARANCES:

For Appellant:	JJ Brett SC K Hopkins Instructed by: Chindlers Attorney Johannesburg Webbers Bloemfontein
For Respondent:	VS Notshe SC N Makhubele Instructed by: The State Attorney Pretoria The State Attorney Bloemfontein