THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 1000/2020

In the matter between:

AFRIFORUM NPC **APPELLANT**

and

THE PREMIER, GAUTENG PROVINCE **FIRST RESPONDENT**

CITY OF TSHWANE METROPOLITAN MUNICIPALITY **SECOND RESPONDENT**

MPHO KEBITSAMANG NAWA N.O. **THIRD RESPONDENT**

MEC OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG **FOURTH RESPONDENT**

THE EXECUTIVE COUNCIL, GAUTENG PROVINCE **FIFTH RESPONDENT**

THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS **SIXTH RESPONDENT**

Neutral citation: *Afriforum NPC v The Premier, Gauteng Province and Others* (1000/2020) [2021] ZASCA 185 (24 December 2021)

Coram: ZONDI, VAN DER MERWE, MAKGOKA and MBATHA JJA and MEYER AJA

Heard: 10 November 2021

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for the hand-down of the judgment is deemed to be 09h45 on 24 December 2021.

Summary: Section 139(1)*(c)* of the Constitution – dissolution of a Municipal Council – power of administrator to approve a budget – not legislative function – not precluded by s 139(4).

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Phahlane AJ sitting as court of first instance):

1 The application for condonation of the late filing of the first respondent's heads of argument is granted and the first respondent is directed to pay the costs of opposition thereof.

2 The application for condonation of the late filing of the third respondent's heads of argument is granted.

3 The appeal is dismissed.

JUDGMENT

Mbatha JA (Zondi, van der Merwe and Makgoka JJA and Meyer AJA concurring):

[1] On 28 October 2020, the Gauteng Division of the High Court, Pretoria (the high court), dismissed with costs, an application by the appellant, Afriforum NPC, in which it had sought to set aside the approval of the 2020/21 annual budget of the second respondent, the City of Tshwane Metropolitan Municipality (the municipality) by the third respondent (the administrator). The appellant contended that such approval was unconstitutional and therefore, invalid. This appeal before us is with leave of the high court.

[2] There was an application by the first respondent for the late filing of its heads of argument, which should have been filed by no later than

10 March 2021, but were only filed on 4 May 2021. The appellant opposed the application on the basis that the application was fundamentally flawed for several reasons. It is not necessary to restate the submissions made by the appellant in this regard. The factors which a court considers when exercising its discretion to grant condonation are trite.[1]

[3] In the circumstances the delay was satisfactorily explained and there was no prejudice to the appellant. The application should therefore be granted. Nonetheless the first respondent should be ordered to pay the appellant's costs as its opposition to the condonation application was not unreasonable.

[4] Secondly, there was the third respondent's application for condonation for the late filing of its heads. The appellant did not oppose the application for condonation and sought to abide by the court's decision. Accordingly, the third respondent's non-compliance should be condoned with no cost order.

The issue on appeal

[5] Returning to the merits of the appeal, the central issue in the appeal is whether an administrator appointed in terms of s 139(1)(*c*) of the Constitution has the power to approve an annual budget of a municipality to which he or she is appointed. The determination of the issue inter alia requires an interpretation of s 139(1)*(c)* of the Constitution. That

[1] *Uitenhage Transitional Local Council v South Africa Revenue Services* [2003] 4 All SA 37 (SCA); 2004 (1) SA 292 (SCA) para 6; See also *Turnbull-Jackson v Hibiscus Municipality* [2014] ZACC 24; 2014 (6) SA 592; 2014 (11) BCLR 1310 (CC) para 25 to 26 and *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited and Others, National Director of Public Prosecutions and Another v Mulaudzi* [2017] ZASCA 88; [2017] 3 All SA 520 (SCA); 2017 (6) SA 90 (SCA).

interpretive exercise takes place against the following background. As mentioned already, the budget which had previously been approved by the administrator on 30 June 2020, was ratified by the council upon its reinstatement by the full court. The third respondent submitted that this rendered the appeal moot. Section 16(2)*(a)* of the Superior Court Act provides as follows:

'(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

[6] This Court in *Mabotwane Security Services CC v Pikitup Soc (Pty) Ltd and Others*[2] referred with approval the following statement in *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*:[3]

'A case is moot and therefore not justiciable 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.'

In the *Centre for Child Law v Hoërskool Fochville & Another*,[4] this Court held as follows:

'This court has a discretion in that regard and there are a number of cases where, notwithstanding the mootness of the issue as between the parties to the litigation, it has dealt with the merits of an appeal (see, inter alia, *Natal Rugby Union v Gould* 1999 (1) SA 432 (SCA) ([1998] 4 All SA 258); *The Merak S: Sea Melody Enterprises SA v Bulktrans (Europe) Corporation* 2002 (4) SA 273 (SCA); *Land en*

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[2] *Mabotwane Security Services CC v Pikitup Soc (Pty) Ltd and Others* [2019] ZASCA 164 para 15.
[3] *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1; 2000 (1) BCLR 39 CC para 21 footnote 18.
[4] *Centre for Child Law v Hoërskool Fochville & another* [2015] ZASCA 155; 2016 (2) SA 121 (SCA) para 11. (Emphasis added.)

Landbouontwikkelingsbank van Suid-Afrika v Conradie 2005 (4) SA 506 (SCA) ([2005] 4 All SA 509); and *Executive Officer, Financial Services Board v Dynamic Wealth Ltd* 2012 (1) SA 453 (SCA)). With those cases must be contrasted a number where the court has refused to enter into the merits of the appeal.[5] The broad distinction between the two classes is that in the former a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required, whilst in the latter no such issue arose (see *Qoboshiyane NO & others v Avusa Publishing Eastern Cape (Pty) Ltd & others* 2013 (3) SA 315 (SCA) para 5).'

[7] In my view, this Court should exercise its discretion and determine the appeal despite the fact that the budget was subsequently adopted by the re-instated council, as it concerns the interpretation of s 139(1)*(c)* of the Constitution and the lawfulness of a decision taken by an administrator to approve an annual budget, which are both discrete questions of law of public importance which are likely to arise in the future. There may be various circumstances under which a municipality may be placed under administration. Certainty is therefore required. The dictum of this Court in *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* therefore finds application:[6]

'This court has a discretion to entertain the merits of an appeal, even where the matter is moot. Where a case poses a legal issue of importance for the future that requires adjudication that may incline the court to hear the appeal.'

Summary of the facts

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[5] See *Radio Pretoria v Chairman, Independent Communications Authority of South Africa above*; *Rand Water Board v Rotek Industries (Pty) Ltd* 2003 (4) SA 58 (SCA); *Minister of Trade and Industry v Klein NO* [2009] 4 All SA 328 (SCA); *Clear Enterprises (Pty) Ltd v CSARS* [2011] ZASCA 164 (SCA); *The Kenmont School & another v DM & others* [2013] ZASCA 79 (SCA); and *Ethekwini Municipality v South African Municipal Workers Union & others* [2013] ZASCA 135 (SCA); *Legal Aid South Africa v Magidwana & others* [2014] 4 All SA 570 (SCA); and *Deutsches Altersheim Zu Pretoria v Dohmen & others* [2015] ZASCA 3 (SCA).

[6] *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA) para 19. (Footnote omitted.)

[8] On 5 March 2020, the first respondent (the Premier of Gauteng Province) announced a resolution of the Gauteng Executive Council to dissolve the City of Tshwane Metropolitan Municipality Municipal Council (the Council) because it was dysfunctional and placed it under administration in terms of s 139(1)*(c)* of the Constitution and s 35(1) of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA), with effect from 23 March 2020 until a new Municipal Council has been declared elected. The administrator's powers were determined as contemplated by s 35(2) of the MFMA. This gave rise to an urgent application in the high court by the Democratic Alliance (the DA), a political party which governed the municipality, to set aside the decision to dissolve the Council.

[9] A specially constituted full court declared the decision to dissolve the council invalid and set it aside.[7] Leave to appeal against the full court judgment was pursued to the Constitutional Court, thereby suspending the operation of the judgment. This was followed by the full court order on 29 April 2020, subsequently confirmed by this Court on 27 October 2020, that the order remains in operation and should be given effect to, pending an application for leave to appeal to the Constitutional Court. On 4 October 2021 the Constitutional Court found the dissolution of the council unlawful and issued an order compelling the MEC to invoke his powers in terms of item 14(4) of the Schedule of the Local Government: Systems Act, 32 of 2000 (Systems Act), appointing a person or committee to investigate the cause of the deadlock of the municipal council.[8]

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[7] *Democratic Alliance and Others v Premier for the Province of Gauteng and Others* [2020] 2 All SA 793 (GP).

[8] *Premier, Gauteng and Others v Democratic Alliance and Others; All Tshwane Councillors who are Members of the Economic Freedom Fighters and Another v Democratic Alliance and Others; African National Congress v Democratic Alliance and Others* [2021] ZACC 34; 2021 (12) BCLR 1406 (CC).

[10] By 30 June 2020, the administrator had approved the municipality's annual budget for the 2020/21 financial year. This raised the issue of whether the administrator's appointment in terms of s 139(1)*(c)* of the Constitution, read with the powers and functions set out in the terms of reference, vested him with power to approve the budget.

The legal framework

[11] It is necessary to set out the relevant provisions of the Constitution and other statutory instruments within which the issue in the appeal must be determined. Section 151(2) of the Constitution vests the executive and legislative authority of a municipality in its Municipal Council. This provision is echoed in ss 4(1)*(b)* and 4(2)*(a)* of the Systems Act. The powers and functions of a municipality are regulated by the provisions of s 156 of the Constitution. Section 156(2) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

[12] Section 160(1)*(a)* of the Constitution empowers a Municipal Council to make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality. In terms of s 160(2) of the Constitution, the following functions may not be delegated by a Municipal Council: the passing of by-laws; the approval of budgets; the imposition of rates and other taxes, levies and duties; and the raising of loans. Section 229 of the Constitution deals with the municipal fiscal powers and functions. It provides that a municipality may impose –

'(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and

(b) if authorised by national legislation; other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.'

[13] The process for approval of the annual budget by a council of a municipality is this. In terms of s 16(1) of the MFMA, the council must for each financial year approve an annual budget for the municipality before the start of that financial year. In order to comply with s 16(1), the mayor of the council must in terms of 16(2) of the MFMA, table the budget at a council meeting at least 90 days before the start of the budget year. The entire process is initiated by the mayor, who co-ordinates the process for preparation of the budget. Once the budget has been published and tabled, the council must consider approval of the annual budget in terms of s 24(1), at least 30 days before the start of the budget year.

[14] Section 24(2)*(a)* of the MFMA provides that the annual budget must be approved before the start of the budget year. If a municipality has not approved an annual budget or any revenue raising measures necessary to give effect to the budget by the first day of the budget year, the mayor must immediately comply with s 55 of the MFMA, which enjoins the mayor to make a report to the provincial executive in such a case. Section 26 provides for the consequences of failure to approve the budget before the start of the budget year. In terms of s 26(1), the executive council of the relevant province is entitled to intervene in the municipality in terms of s 139(4) of the Constitution by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the council and –

'*(a)* appointing an administrator until a newly elected council has been declared elected; and

(b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.'

[15] It behoves me to mention that the process followed by the Gauteng Executive Committee (the provincial executive) did not arise from the process envisaged in s 55 of the MFMA. In considering the impugned decision, one needs to consider the empowering provision that was relied upon by the provincial executive when it dissolved the council and appointed the administrator. It acted in terms of s 139(1)*(c)* of the Constitution, which provides as follows:

'When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including –

. . .

(c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.'

Appellant's submissions

[16] The appellant relied on *Mnquma Local Municipality and Another v Premier of the Eastern Cape and Others*, in which the court found that the approval of a budget is not an executive obligation in terms of s 139(1). The argument was that, by analogy, the approval of a budget was not an executive function as envisaged in the third respondent's terms of reference. The court stated as follows in paragraph 58:[9]

[9] *Mnquma Local Municipality and Another v Premier of the Eastern Cape and Others* [2009] ZAECBHC 14 (Footnotes omitted.)

'Neither sub-section (1) nor any of the other provisions of chapter 7 pertinently specify the executive obligations of a municipal council. What is clear from a reading of section 139 as a whole is that it does not include an obligation to approve a budget or any revenue raising measures, or a material breach of an obligation to provide basic services, or to meet its financial commitments which is "as a result of a crisis in its financial affairs." These matters are specifically dealt with in sub-sections (4) and (5).'"

[17] In support of its construction of s 139(1) of the Constitution, the appellant referred to s 1 of the MFMA, which defines 'approved budget' to mean 'an annual budget – *(a)* approved by a municipal council; or *(b)* approved by a provincial or national executive following an intervention in terms of s 139 of the Constitution and includes such an annual budget as revised by an adjustments budget in terms of s 28.'

[18] This was so, it was submitted on behalf of the appellant, because the approval of an annual budget entails a legislative function, which the administrator was not afforded. It was contended that a budget can only be approved by either a municipal council or provincial executive only in the case of a temporary budget in terms of s 139(4) and 139(5) of the Constitution. For this contention, the appellant relied on the judgment of this Court in *Premier of the Western Cape and Others v Overberg District Municipality and Others*, where this Court held as follows:[10]

'The real question is thus whether there is anything in the MFMA which excludes a directive by the provincial executive that compels approval of the budget by the council after 1 July, from the wide ambit of 'any appropriate steps'. The answer to this question, I believe, is that the MFMA imposes no such limitation on the powers of the provincial executive. At the risk of repetition, I point out that, as I see it, 'any appropriate steps' in s 139(4) clearly include a directive by the provincial executive that enables the

[10] *Premier of the Western Cape and Others v Overberg District Municipality and Others* 2011 (4) SA 441 (SCA); [2011] 3 All SA 385 (SCA) para 30. (Footnotes omitted.)

council to approve the annual budget. Any exclusion of that power in the MFMA would therefore impose a limitation on the powers bestowed upon the provincial executive by the Constitution itself. Since the MFMA contains no express limitation to that effect, it would have to be implied. Needless to say, in my view, that one could hardly imply a limitation into legislation that would be unwarranted by the Constitution.'

The appellant further submitted that the Constitution did not intend that an administrator should approve a budget where the council has been dissolved. The appropriate steps to approve the budget can, so it submitted, only be taken by the provincial executive in terms of s 139(4). It was further submitted that s 139(4) provides a twofold process, namely, interim caretaking measures and the approval of the budget only by the provincial executive to provide for the continued functioning of the municipality until the elected council takes over.

[19] Furthermore, for its contention that the approval of the budget is a legislative function falling beyond the administrator's competence, the appellant relied on the decision in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*,[11] and the views expressed by Woolman and Bishop.[12] It asserted that the provincial council could have approved a temporary budget in terms of s 139(4).

Evaluation of the merits

[20] At the outset, I must state that the appellant conflated s 139(1) and s 139(4). These sub-sections cater for different scenarios under which the provincial executive may intervene. In this case, the provincial executive

[11] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 CC; 1998 (12) BCLR 1458 para 45.
[12] Stu Woolman and Michael Bishop *Constitutional Law of South Africa* 2ed (2012) pages 22-123 and 22-124.

proceeded in terms of s 139(1)*(c)* by dissolving the council and appointing the administrator. The s 139(1)*(c)* intervention occurs when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. In relevant parts, s 139 reads:

'**Section 139 Provincial intervention in local government**

1. When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;

(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to-

(i) maintain essential national standards or meet established minimum standards for the rendering of a service;

(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or

(iii) maintain economic unity; or

(c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.'

It is thus left to the discretion of the provincial council which process it will follow, as long as it is appropriate. These powers are distinguishable from the powers set out in s 139(4), which provides as follows:

'4. If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council . . .'.

Thus, the intervention depends on the nature of the failure to execute an obligation, and the appropriateness of the internvention.

[21] Section 139(1)*(c)* is a broad provision, aimed at a failure by a municipality to 'fulfil an executive obligation in terms of the Constitution or legislation'. It gives a discretion to the provincial executive whether to intervene or not. On the other hand, s 139(4) is specific. It is triggered by a Municipal Council's failure to approve a budget or any revenue raising measures to give effect to the budget. It is couched in peremptory terms, making it mandatory that the provincial executive intervene by taking appropriate steps to ensure that the budget or revenue raising measures are approved. A simple reading of s 139(4) makes it plain that the failure to approve a budget or revenue raising measures is the only trigger for an intervention by the provincial executive in terms of s 139(4). Therefore, s 139(4) read with the provisions of s 26 of the MFMA, caters only for the consequences of failure to approve a budget before the start of a budget year.

[22] In the present case, the administrator was not appointed as a consequence of a failure by the municipality to approve a budget but in terms of s 139(1)*(c)*. His terms of reference were to:

'(i) undertake all executive functions of a municipal council;

(ii) undertake all statutory executive functions of the Mayor;

(iii) undertake all fiscal and financial management functions at the municipality, including being signatory on the municipal primary banking account;

. . .

(vi) ensure implementation of financial systems, policies and procedures.'

Section 139(1)*(c)* of the Constitution imposes no obligation on the provincial executive to pass an interim budget when it dissolves the council. It refers to the dissolution of the council and the appointment of an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

[23] The clear purpose of the appointment of an administrator is to ensure the continued functioning of the municipality. The administrator does so as the legal substitute of the Municipal Council. This leads to two important consequences. First, the administrator could hardly fulfil this function without an approved budget. It follows that if an administrator is in office when the aforesaid legislative provisions oblige the approval of a budget, the approval thereof by the administrator would accord squarely with the very purpose of the appointment of the administrator. Secondly, a reference to a Municipal Council in provisions such as s 160 of the Constitution and the definition of 'approved budget' in s 1 of the MFMA, must be understood as including a reference to the duly authorised legal substitute of the Municipal Council for the time being.

[24] A proper analysis of the appellant's contention reveals that it comes down to saying that s 139(4) and 139(5) of the Constitution provide for a blanket prohibition against the approval of a budget by an administrator. Such an intention could easily have been clearly expressed, but cannot be found in the text of these provisions. And as I have said, their context points the other way.

[25] The fundamental flaw in the appellant's case is that it assumed that whenever a municipal council is dissolved, regardless of the basis for the dissolution or the power invoked, it is only the provincial executive that is empowered to adopt the budget.

[26] I agree with the first respondent that budget approval is not a legislative function. As I have said, s 151(2) of the Constitution provides that the executive and legislative authority of a municipality is vested in its

Municipal Council. The Constitution does not define these terms. They should accordingly bear their ordinary meanings. A legislative function relates to the making of laws, as envisaged in, inter alia, s 156 (2) read with s 162 of the Constitution or the imposition rates and taxes in terms of s 229 read with, inter alia, s 6 and 14 of the Rates Act 6 of 2014. The fact that it is preceded by a debate in the municipal council does not mean that the act of passing a budget is a legislative function. The interpretation of the budget process should be considered in the context of its purpose, which is executive in nature. The budget essentially facilitates service delivery.

[27] The appellant's reliance on *Fedsure*[13] was incorrect. The first respondent correctly pointed out that *Fedsure* is no authority for the proposition that the approval of the budget is law-making. The fact that s 151(2) vests the council with executive and legislative powers does not confer to the council the same powers as envisaged in the national and provincial governments, the Constitution limits the council's power to legislate only to the passing of by-laws. In fact, only a resolution is required to adopt a budget. Most significantly, the *Fedsure* judgment concerned the legality of rates imposed by the Municipal Council on its residents. The majority in *Fedsure* found that when power is exercised to raise rates and taxes or appropriation of public funds, the National, provincial or local government exercises a power under the Constitution peculiar to legislative bodies. It further concluded that it did not seem to the Court that the action of municipal legislatures, in resolving to set the rates, can be classified as administrative action as contemplated by s 24 of the interim Constitution.

[13] Ibid fn 11.

[28] It remains to deal with the appellant's reliance on para 58 of *Mnquma*. It will be recalled that the court held that the obligations to approve a budget or to provide basic services are not executive obligations within the meaning of s 139(1), because these matters, amongst others, are specifically dealt with in s 139(4) and (5). This interpretation is not correct. Section 139(4) and (5) simply do not purport to define executive obligations or to differentiate between executive and legislative obligations. This is particularly illustrated by the fact that the obligations of a Municipal Council to provide basic services and to meet its financial commitments are clearly of executive nature. The reliance on *Mnquma* was thus misplaced.

[29] In conclusion, the executive powers given to the third respondent included the power to approve the budget. The appeal has to fail.

[30] With regard to costs, since the appeal was on a constitutional issue against an organ of state, in line with the *Biowatch*[14] principle, the appellant should not be saddled with the state respondents' costs.

The order

[31] Accordingly, the following order is made:

1 The application for condonation of the late filing of the first respondent's heads of argument is granted and the first respondent is directed to pay the costs of opposition thereof.

[14] *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

2 The application for condonation of the late filing of the third respondent's heads of argument is granted.

3 The appeal is dismissed.

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Y T MBATHA

JUDGE OF APPEAL

Appearances

For appellant:	A T Lamey (with him C van Schalkwyk) Hurter Spies Inc., Pretoria Rossouw & Conradie Inc., Bloemfontein
For first respondent:	T Ramogale The State Attorneys, Pretoria The State Attorneys, Bloemfontein
For third respondent:	T J Bruinders SC (with him M Motlogelwa) Malebye Motaung Mtembu Inc., Pretoria JL Jordaan Attorneys, Bloemfontein