THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 041/2024

In the matter between:

AUCKLAND PARK THEOLOGICAL SEMINARY **APPELLANT**

and

WAMJAY HOLDING INVESTMENTS (PTY) LTD **RESPONDENT**

Neutral citation: *Auckland Park Theological Seminary v Wamjay Holding Investments (PTY) Ltd* (041/2024) [2025] ZASCA 65 (20 May 2025)

Coram: MOCUMIE, KGOELE and BAARTMAN JJA, and BLOEM and MOLITSOANE AJJA

Heard: 12 March 2025

Delivered: 20 May 2025

Summary: Unjustified enrichment – s 12(3) of the Prescription Act 68 of 1969 (Prescription Act) – commencement of the running of prescription – whether the exception applicable to claims against legal practitioners to the effect that knowledge of legal conclusion for the purposes of s 12(3) of the Prescription Act should be extended to non-legal practitioners.

ORDER

On appeal from: Gauteng Local Division of the High Court, Johannesburg (Friedman AJ, sitting as court of first instance):

1 The appeal is upheld with costs, which costs shall include the costs of two counsel where so employed.

2 The order of the high court is set aside and substituted with the following order:

'The application is dismissed with costs, which costs shall include the costs of two counsel where so employed.'

JUDGMENT

Molitsoane AJA (Mocumie, Kgoele and Baartman JJA and Bloem AJA concurring):

Introduction

[1] This is an appeal against the judgment and order of the Gauteng Division of the High Court, Johannesburg (the high court) per Friedman AJ with leave of this Court. The issues for determination are essentially: (a) when did prescription begin to run for the purposes of s 12(3) of the Prescription Act 68 of 1969 (the Prescription Act); (b) whether the exception to s 12(3) of the Prescription Act, in professional negligence claims against practitioners, finds application in this case; and (c) whether the enrichment claim based on the *condictio indebiti* has been proven.

Factual background

[2] The University of Johannesburg (UJ), formerly known as the Randse Afrikaanse Universiteit (RAU), is the owner of the erf situated at 51 Richmond Avenue, Auckland Park. UJ entered into a long-term lease agreement with Auckland Park Theological Seminary (ATS), which was registered against the title of the property on 20 December 1996.

[3] On 28 March 2011, ATS concluded a cession agreement with Wamjay Holding Investments (Pty) Ltd (Wamjay) in respect of this property. This property was vacant at the time of the conclusion of the agreement between UJ and ATS. It was intended to be used for building a religious based primary and high school. Instead of building the religious school, ATS concluded a cession. In terms of this cession, ATS ceded its rights and title and interest in and to the notarial long-term lease K4963/1996L effective from the date of the registration of the notarial deed of cession of the lease. This contract thus had a specific purpose, hence the restriction that made the cession prohibitive. This cession agreement was executed against payment of a consideration of R6.5m by Wamjay to ATS. On 13 October 2011 the notarial deed of cession of the lease between ATS and Wamjay was registered with the Registrar of Deeds. It is not disputed that when ATS and Wamjay concluded the cession agreement, UJ was not informed of the cession. It follows that UJ did not consent to the cession.

[4] As time went on, UJ came to learn about the cession. It held the view that the rights in the lease were personal to ATS and were thus incapable of being ceded without its prior consent. Its further view was that, since it had not granted such consent, the purported cession amounted to a repudiation of the long-term lease agreement it had with ATS. It thus held the view that the cession agreement between ATS and Wamjay was invalid. For this reason, it also held the view that ATS had repudiated the agreement between them (UJ and ATS). It conveyed to ATS that it accepted such repudiation. It cancelled the agreement by sending a

letter dated 5 October 2012 to ATS and Wamjay. I will deal with the letter later in the judgment. Both ATS and Wamjay refused to accept that UJ had a right to cancel the long-term lease agreement it had with ATS. This led to UJ instituting eviction proceedings against ATS and Wamjay and also sought relief to cancel the registration of the long-term notarial lease against its title deed.

[5] At all material times, ATS and Wamjay jointly resisted the eviction. In resisting the eviction, these two parties contended that the cession agreement between them was valid. The high court, per Victor J, disagreed and granted, inter alia, an order of eviction and cancellation of the registration of the notarial long-term lease agreement registered against the property in favour of UJ.[1] For the purposes of this judgment, it is unnecessary to consider the protracted litigation history that followed from the high court up to the Constitutional Court on issues raised before the high court, especially on the validity of the cession agreement, save to indicate that the Constitutional Court ultimately held that the rights of UJ were personal in nature and not freely cedable.[2] In essence, the Constitutional Court held that the cession agreement was invalid, and the judgment and order of the high court thus remained extant.

[6] The judgment and order of the Constitutional Court, which was delivered on 11 June 2021, prompted Wamjay to institute proceedings against ATS before the high court claiming the repayment of the R6.5m. Its claim was based on unjustified enrichment. The high court held that ATS was liable to Wamjay in the amount of R6.5m together with interest and costs.

Submissions by parties

[1] *University of Johannesburg v Auckland Park Theological Seminary (Pty) Ltd* 2017 JDR 1991(GJ).
[2] *University of Johannesburg v Auckland Park Theological Seminary and Another* [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (CC).

[7] Wamjay contended in the high court and in this court that it was entitled to repayment of the amount paid in terms of the cession since the Constitutional Court declared the cession invalid. It further contends that it has been impoverished in that it made a payment to ATS but does not have possession or occupation of the property, while ATS, on the other hand, has been enriched. Wamjay submits that once it proved a payment recoverable by *condictio indebiti*, the onus shifted to ATS to prove non-enrichment.

[8] Wamjay further contends that a limited real right accrued to it upon the registration of a notarial deed of cession in its name. It holds the view that it was only divested of this limited right once the Constitutional Court delivered its decision. The delivery of the judgment effectively reinstated the order of the high court, which resulted in the cancellation of the registered long-term lease and the order of eviction of ATS from the property. Prescription, according to Wamjay, thus only started to run once the Constitutional Court delivered its judgment.

[9] During the hearing before us, counsel for Wamjay urged us, with reference to *Le Roux and Another v Johannes G Coetzee & Seuns and Another*[3] *(Le Roux)*, to find that the circumstances of this case favour the view that the exception, as discussed in that case to the effect that knowledge of facts may include knowledge of a legal conclusion, found application in this case. Such a legal conclusion, so Wamjay submitted, only came to its knowledge when the apex court handed down its judgment.

[10] ATS disagrees with the contentions of Wamjay that prescription only started to run when the Constitutional Court delivered its judgment. It contends that in at least three dates, prior to the delivery of the judgment of the

[3] *Le Roux and Another v Johannes G Coetzee & Seuns and Another* [2023] ZACC 46; 2024 (4) BCLR 522 (CC); 2024 (4) SA 1 (CC).

Constitutional Court, which dates, according to ATS are relevant for the purposes of deciding when prescription began to run, Wamjay had knowledge of all the material facts from which it could be said that prescription began to run. The applicable dates are: (a) 5 October 2012, when Webber Wentzel, acting for UJ, wrote a cancellation letter to ATS and Wamjay communicating UJ's election to accept the repudiation of the long-term lease agreement with ATS; (b) 10 March 2017, when the judgment of the high court was delivered; and (c) 4 July 2018, when the full court delivered its judgment in the appeal against the judgment of the high court.

[10] ATS contends that the invalidity of the cession of the agreement was a fact known by Wamjay on at least one of the above dates, but in spite of its knowledge, it proffered no explanation as to why it did not institute an action against ATS at the time it acquired the knowledge. According to ATS, such knowledge comprised all the material facts Wamjay needed to institute an action against it. It was also submitted on behalf of ATS that Wamjay's reliance on *Le Roux* was misplaced as, so the submission went, *Le Roux* dealt with legal practitioners, an issue which does not arise in these circumstances.

[11] To counter the question of enrichment, ATS argues that Wamjay has placed insufficient evidence before the court for it to sustain the claim of enrichment. ATS submitted that it no longer had the money and therefore was not enriched as Wamjay contends. This contention was in dispute. ATS thus contends for that reason, that the high court erred in not applying the *Plascon-Evans*[4] rule and if it had done so, it would have decided the case on its (ATS's) version and found that it had not retained the R6.5m. This argument, concerning the *Plascon*

[4] *Plascon Evans Paints Ltd v Van Riebeek Paints (Pty) Ltd* 1984(3) SA 623(A).

Evans, was not persisted with during the submissions before us and in light of the finding I later make in this judgement, it is unnecessary to consider it.

Analysis and Prescription

[12] In its pleaded case, ATS relied on s 12(3) of the Prescription Act. Wamjay also held the view that the adjudication of its dispute with ATS centred around the question as to when prescription began to run, as envisaged in s 12(3)[5] of the Prescription Act. The high court, however, contrary to the pleaded case, relied on s 12(1) of the Prescription Act to come to its findings and order. To illustrate the approach of the high court, it held that 'everything turns on when ATS's debt to Wamjay should be considered to have been immediately claimable (as envisaged by section 12(1)) *and not whether Wamjay knew, or ought to have known, all of the facts underlying its claim by a particular date (as envisaged by section 12(3)).'* (Emphasis added.)

[13] I do not decry the approach of the high court in dealing with the issue with reference to s 12(1), but my observation is that it failed to appreciate the interplay between ss 12(1), 12(2) and 12(3) of the Prescription Act.[6] Section 12(1) provides that prescription shall commence to run as soon as the debt is due. This, however, is subject to the provisions of ss (2) and (3). While the court was entitled to interrogate the issue of when the debt became due for the purposes of s 12(1), it

[5] In the replying affidavit the following is said: 'Should the Court interpret the section 12(3) of the Prescription Act in a way that renders Wamjay's enrichment claim as being prescribed, on account of Wamjay's decision to await the outcome of the Constitutional Court's judgment before issuing its claim against ATS, then that interpretation is unconstitutional because it limits Wamjay's right to access to court under section 34 of the Constitution.'

[6] Section~~s~~ 12 provides:
'12**.** When prescription begins to run
(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.
(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.
(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.'

was also obliged to have regard to the deeming provisions contained in s 12(3), more so that the parties had specifically pleaded it and the crisp issue before it was the time when prescription commenced to run. The high court thus erroneously found that only s 12(1) was implicated in these proceedings and it further erred in finding that s 12(3) was not applicable.

[14] This disregard of the pleaded case based on s 12(3) led the high court to find that ATS's debt to Wamjay was not due. That approach, caused the high court to find that such a debt could not be due until *virilis defensio*[7] failed and Wamjay was actually evicted. Based on this reasoning, the high court held that this period had to be when the Constitutional Court handed down its judgment. For this reason, the high court found that Wamjay's claim had not prescribed. This finding of the high court is at the heart of the dispute between the parties as to when prescription began to run.

When did prescription begin to run?

[15] The Constitutional Court in *Links v Department of Health*[8] (*Links*) referred with approval to *Truter and Another v Deysel*[9] that a '"debt due" means a debt, including a delictual debt, which is owing and payable,. . . that is, when the entire set of facts which the creditor must prove in order to succeed with his or her claim against the debtor is in place or'.' It follows that a debt is due in this case when the creditor acquires a complete cause of action for the recovery of debt, that is, according to *Truter* 'when everything has happened which would entitle the creditor to institute and pursue his or her claim.'[10]

[7] 'A *virilis defensio* involves putting forward a proper legal contention and in a proper case would involve the prosecution of an appeal, e.g., a judgment given by a court which had no jurisdiction.: -*York & Co (Pvt) Ltd v Jones NO (2)* 1962 (1) SA 72 (SR).
[8] *Links v Department of Health* [2016] ZACC 10; 2016 (5) BCLR 656; 2016 (4) SA 414 (CC) para 17.
[9] *Truter and Another v Deysel* [2006] ZASCA 16; 2006 (4) SA 168 (SCA) para 16.
[10] Ibid.

[16] The question as to when prescription begins to run has been grappled with in a number of cases in the past by our courts. The golden link in numerous decisions is that legal conclusions do not form part of material facts to constitute a cause of action. Recently, this Court in *Van Heerden & Brummer Inc v Bath*[11]*(Van Heerden)* referred with approval to a passage in *Fluxmans Inc v Levensons*[12] (*Fluxmans*) in which the following was said:

'Knowledge that the relevant agreement did not comply with the provisions of the Act is not a fact which the respondent needed to acquire to complete a cause of action and was therefore not relevant to the running of prescription. This Court stated in *Gore NO* para 17 that the period of prescription begins to run against the creditor when it has minimum facts that are necessary to institute action. The running of prescription is not postponed until it becomes aware of the full extent of its rights nor until it has evidence that would prove a case "comfortably". The "fact" on which the respondent relies for the contention that the period of prescription began to run in February 2014, is knowledge about the legal status of the agreement, which is irrelevant to the commencement of prescription. It may be that before February 2014 the respondent did not appreciate the legal consequences which flowed from the facts, but his failure to do so did not delay the date on which the prescription began to run. Knowledge of invalidity of the contingency fee agreement or knowledge of its non-compliance with the provision of the Act is one and the same thing otherwise stated or expressed differently. That the contingency fees agreements such as the present one, which do not comply with the Act, are invalid is a legal position that obtained since the decision of this court in *Price Waterhouse Coopers Inc* and is therefore not a fact which the respondent had to establish in order to complete his cause of action. Section 12(3) of the Prescription Act requires knowledge only of the material facts from which the prescriptive period begins to run – it does not require knowledge of the legal conclusion (that the known facts constitute invalidity) (*Claasen v Bester* [2011] ZASCA 197; 2012 (2) SA 404 (SCA).'[13] (Footnotes omitted.)

[17] As mentioned earlier in this judgment, on 5 October 2012, Webber Wentzel Attorneys, acting for UJ, addressed a letter to ATS and Wamjay

[11] *Van Heerden & Brummer Inc v Bath* [2021] ZASCA 80; 2021 JDR 1200 (SCA).
[12] *Fluxmans Inc v Levensons* [2016] ZASCA 183; [2017] 1 All SA 313; 2017 (2) SA 520 (SCA) para 42.
[13] Op cit fn 13 para 18.

communicating its acceptance of the repudiation of the long-term lease agreement between it and ATS. I reproduce only the relevant paragraphs of this long letter that are necessary for the adjudication of the dispute before us:

'7. The provisions and purpose of the Lease were, in the circumstances, personal to UJ and the ATS and as such the rights under the Lease were not cede-able by the latter.

8. UJ was not notified by the ATS of its intention to cede its rights under the Lease or of the conclusion of Cession Agreement or the Notarial Cession. No consent was sought or obtained from UJ, the Minister of Education or the Curatorium of the Apostolic Faith Mission of South Africa.

9. It first came to UJ's attention on 31 August 2012 that ATS had purported to cede to Wamjay the rights that ATS derived from the Lease. The full content of the Cession Agreement only came to UJ's attention on 2 October 2012 when the answering affidavit in the application under case number 53214/12 was filed.

19.4. The joint actions of the ATS and Wamjay in seeking to enforce rights which they do not enjoy under the Lease, even under the threat of an order of court, is an unequivocal demonstration of the intent not to be bound to the terms of the lease.

19.5. UJ does not recognise the validity of the Cession Agreement, or the Notarial Cession concluded between the ATS and Wamjay. UJ, after appropriate consideration, has taken the view that the attempt on the part of the ATS to cede its rights in the lease and its conduct recorded above constitutes a repudiation by the ATS of the Lease and an unambiguous communication to UJ that the ATS no longer intends to utilise the leased premises for the express purposes intended.

19.6 UJ has elected to accept the repudiation of the lease by ATS. The purpose of this communication is to notify you of UJ's acceptance of that repudiation and to communicate to you that consequent upon that repudiation and the breaches that cannot be remedied, UJ has elected to cancel the Lease.'

[18] The letter from UJ sets out the basis for the repudiation and cancellation of the purported cession and notarial agreements between ATS and Wamjay. UJ specifically communicated its view that it did not 'recognise the validity of the cession agreement or Notarial Cession concluded between ATS and Wamjay.' These are the facts that came to the knowledge of Wamjay when the contents of

the letter from UJ's attorney were communicated to it. As a result, this triggered the running of prescription.

[19] The submission by Wamjay and the finding by the high court, that prescription only started to run in 2021 when the Constitutional Court delivered its judgment, is not supported by the facts. Wamjay conflates knowledge of material facts with legal certainty and/ or legal conclusion. The pronouncement of the Constitutional Court in 2021 only settled a legal conclusion to the effect that the rights between UJ and ATS were personal in nature. The letter from UJ's attorney provided all the material facts necessary for Wamjay to establish its debt. While the relationship between ATS and Wamjay might have discouraged them from litigating against each other, nothing precluded Wamjay from seeking a declaratory order to interrupt prescription. Thus, by 5 October 2012, action should have been taken to interrupt prescription. I therefore find that, on the said date Wamjay had the entire set of facts it needed to institute its claim against ATS. It is unnecessary to consider the remaining two dates that ATS contends could be relevant for the purposes of the interruption of prescription.

Is *Le Roux* applicable to the case before us?

[20] A brief overview of the following cases on professional negligence is necessary to consider the question posed. In *Links* the court dealt with a delictual claim based on medical negligence. The claimant had attended Kimberley Hospital for treatment following a thumb dislocation. He received treatment which entailed a plaster of paris on his left forearm on 26 June 2006. Within days he experienced pain which necessitated his return to hospital. He then underwent various operations, and this led to the amputation of his left thumb. The claimant reported that he was never told of either the decision to amputate his thumb or the reason for it. As a result, he served a summons on the MEC of Health (the MEC) on 6 August 2009, to which the MEC pleaded prescription.

[21] The Constitutional Court held that the MEC had to prove: (a) what facts the claimant had to prove before prescription began to run; and (b) that he had knowledge of those facts on or before 5 August 2005.The Constitutional Court held that the high court and the full court erred in overlooking that on or before 5 August 2006 the claimant did not have the full facts necessary to institute the claim. In this regard the Constitutional Court held that the claimant was unable to acquire knowledge of the material facts while in confinement at the hospital.

[22] The Court in *Links* held that '… in cases of this type, involving professional negligence, the party relying on prescription must at least show that the plaintiff was in possession of sufficient facts to cause them on reasonable grounds to think that the injuries were due to the fault of the medical staff. Until there are reasonable grounds for suspecting fault so as to cause the plaintiff to seek further advice, the claimant cannot be said to have knowledge of the facts from which the debt arises.'[14] The Court thus found that the claimant did not have knowledge of the facts from which the debt arose until he obtained independent medical advice and it ruled that his claim had not prescribed.

[23] In a later judgment, the Constitutional Court distinguished the case of *Loni v MEC for Health, Eastern Cape Bisho* (*Loni*)[15] from *Links.* In *Loni,* the claimant was admitted at Cecilia Makiwane hospital on 6 August 1999 following a gunshot wound. The bullet was lodged in his body. He was given medication and X-rayed. The doctors who saw him the following day said nothing to him after they had perused his file. On 23 August 1999, an operation was performed putting a plate and screws on his femur. The bullet was not removed. He was later discharged after being given pain killers, crutches and medical supplies. After some time, the

[14] Op cit. fn 9 para 42.
[15] *Loni v MEC for Health, Eastern Cape Bisho* [2018] ZACC 2; 2018 (3) SA 335 (CC); 2018 (6) BCLR 659 (CC).

wound healed. The operation site, on the other hand, took time to heal. At some stage he developed an infection and went to hospital where a pin was removed. He later then removed the lodged bullet on his own, which made him develop a limp. In 2011 he sought assistance about his limp from an orthopaedic surgeon who informed him that his condition was attributable to medical negligence.

[24] Following his institution of the damages claim, the MEC countered the claim by raising a special plea of prescription. The Constitutional Court adjudicated this case on the basis that the employees of the MEC acted in breach of a contractual relationship by failing to give the claimant appropriated care and treatment. In deciding when prescription began to run, the Court said the following:

'When the principle in *Links* is applied to the present facts, the applicant should have over time suspected fault on the part of the hospital staff. There were sufficient indicators that the medical staff had failed to provide him with proper care and treatment, as he still experienced pain and the wound was infected and oozing pus. With that experience, he could not have thought or believed that he had received adequate medical treatment. Furthermore, since he had been given his medical file, he could have sought advice at that stage. There was no basis for him to wait more than seven years to do so. His explanation that he could not take action as he did not have access to independent medical practitioners who could explain to him why he was limping or why he continued to experience pain in his leg, does not help him either. The applicant had all the necessary facts, being his personal knowledge of his maltreatment and a full record of his treatment in his hospital file, which gave rise to his claim. This knowledge was sufficient for him to act. This is the same information that caused him to ultimately seek further advice in 2011.'[16]

[25] The Constitutional Court, unlike in *Links*, dismissed his application for leave to appeal and this effectively confirmed the order of the court a quo that his claim had prescribed.

[16] Ibid para 34.

[26] The reason I highlight the two judgments is simply to illustrate that our courts recognise that in claims based on professional negligence, a creditor may have knowledge of facts but may, in certain instances, lack expert knowledge on reasonable grounds to deduce from those facts that something wrong or untoward has happened. The creditor's set of facts for the purposes of s 12(3) may thus require further expert information in order to be complete. These cases pertinently dealt with claims grounded on professional medical negligence. *Le Roux*, on the other hand, while it is also concerned with a claim based on professional negligence, is specifically geared towards a claim against legal practitioners. From a plethora of judgments of this Court, as a general rule, legal conclusions do not constitute facts and knowledge of legal conclusion is not required by a creditor for purposes of s 12(3).

[27] Contrary to the submission by counsel for Wamjay to the effect that the Constitutional Court in *Le Roux*, deviated from its precedent that facts do not include legal conclusions, what the Constitutional Court did was to carve a limited exception to this rule with reference to legal practitioners. *Le Roux* did not deviate from this Court's established jurisprudence on the interpretation of s 12(3). On the contrary, the Constitutional Court reaffirmed those decisions. The third judgment in *Le Roux*, however, only observed in passing without deciding, the question of whether in cases like *Claasen v Bester*[17], *Fluxmans*,[18] and I venture to add *McMillan*[19] *and Van Heerden*[20], which were claims against attorneys, would be decided the same way under the carved-out exception of the majority judgment in *Le Roux*.[21] That issue is not before us and thus does not require our attention.

[17] *Claasen v Bester* [2011] 197 ZASCA; 2012 (2) SA 404 (SCA).
[18] Op cit fn 13.
[19] *McMillan v Bate Chubb & Dickson Incorporated* [2021] ZASCA 45.
[20] Op cit fn 12
[21] Op cit fn 3 para 228.

[28] The Constitutional Court in *Le Roux* held as follows with reference to the exception against legal practitioners:

'In such instances, a limited exception to the rule is necessary and appropriate. The exception being*: for the purposes of section 12(3) of the Prescription Act, in professional negligence claims against legal practitioners, the facts from which the debt arises may include a legal conclusion, where that legal conclusion forms part of the cause of action or minimum facts in order to pursue the claim.* This view is advanced on three grounds: (a) the application of the general rule may result in an injustice; (b) an exception for negligence claims against legal practitioners would accord with our jurisprudence relating to other professions; and (c) the exception is limited in scope'[22](Emphasis added.)

[29] The reliance by Wamjay on *Le Roux* does not support its case. Wamjay did not allege that the relationship between it and ATS was professional, let alone one involving a legal practitioner. At all material times, ATS and Wamjay resisted the litigation involving UJ, holding each other's hands and pulling their weight together. Wamjay does not contend that there was any breach of a duty, negligence, or wrongdoing on the part of ATS in the conclusion of their contracts. There is nothing to bring the dispute between Wamjay and ATS within the realm of professional negligence, as in the case of legal practitioners.

Conclusion

[30] In my view, the delivery of the judgment of the Constitutional Court in the matter of UJ against ATS and Wamjay did not signal the commencement of the prescription period, same having begun to run on 5 October 2012. On this point alone, the appeal stands to be upheld and the application in the high court had to be dismissed. It is therefore unnecessary for me to deal with the issue of enrichment.

[22] Ibid para 79.

ORDER

[31] In the result, the following order is made:

1 The appeal is upheld with costs, which costs shall include the costs of two counsel where so employed.

2 The order of the high court is set aside and substituted with the following order:

'The application is dismissed with costs, which costs shall include the costs of two counsel where so employed.'

_____

PE MOLITSOANE

ACTING JUDGE OF APPEAL

Appearances

For the appellant:	J Both SC with A Louw
Instructed by:	Hirschowitz Van Der Westhuizen Inc., Johannesburg
	Honey & Partners Incorporated, Bloemfontein
For the respondent:	Y Alli with S Mohammed
Instructed by:	SLH Incorporated, Johannesburg
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