



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

Case No: 644/18

In the matter between:

**LIBERTY GROUP LIMITED**

**First Appellant**

**LIBERTY TWO DEGREES**

**Second Appellant**

**PARETO LIMITED**

**Third Appellant**

**JHI RETAIL (PTY) LTD**

**Fourth Appellant**

**EXCELLERATE BRAND  
MANAGEMENT (PTY) LTD**

**Fifth Appellant**

and

**MALL SPACE MANAGEMENT CC t/a  
MALL SPACE MANAGEMENT**

**Respondent**

**Neutral citation:** *Liberty Group Ltd v Mall Space Management CC t/a Mall Space Management* (644/18) [2019] ZASCA 142 (1 October 2019)

**Coram:** Leach, Tshiqi, Swain, Zondi and Mocumie JJA

**Heard:** 20 August 2019

**Delivered:** 1 October 2019

**Summary:** Under the common law a mandate is in general terminable at the will of the principal – notice of intention to terminate unnecessary – principles of Ubuntu and fairness not the correct bases to determine propriety of termination of mandate – issues of good faith, fairness and equity not applicable – against public policy to coerce a principal into retaining individual as agent – unlawful competition not established – requirements of final interdict not met.

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## ORDER

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

- 1 The appeal is upheld with costs including costs of two counsel where employed.
  - 2 The order of the high court is set aside and replaced by the following:  
'The application is dismissed with costs.'
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## JUDGMENT

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### **Zondi JA (Leach, Tshiqi, Swain and Mocumie concurring)**

[1] Two issues arise in this appeal. The first, is whether the first to fourth appellants, as principals, were obliged in terms of the contract of mandate they concluded with the respondent to give the respondent six months' notice before terminating its mandate to manage the promotional mall space and exhibition courts so as to market, plan and co-ordinate promotional events at their shopping centres. The second, is whether the fifth appellant's assumption of the respondent's mandate in relation to the shopping centres concerned, constituted unlawful competition.

[2] The issues arise from an application brought by the respondent against the first to fourth appellants in the Gauteng Division of the High Court, Johannesburg (high court) in which the respondent sought an order (a) directing the first to fourth appellants to permit the respondent access to rental court space at the relevant shopping centres

in order to carry out its mandate; (b) interdicting the first to fourth appellants from terminating the agreement concluded in April 2013 between the respondent and the first to fourth appellants for a period of six months from the date of the order and (c) restraining the fifth appellant from competing unlawfully with the respondent by wrongfully interfering with the rights of the respondent in the marketing, planning and co-ordinating of promotional events and exhibitions at the shopping centres concerned.

[3] The high court (Shangisa AJ), applying the constitutional values of Ubuntu and fairness, granted the interdictory relief as sought by the respondent. The appeal to this court is with the leave of that court.

[4] The issues must be considered against the following factual background. The first appellant, Liberty Group Limited is the owner of Eastgate Shopping Mall, Liberty Midlands Mall, Liberty Promenade Mall. It co-owns Sandton City with the third appellant, Pareto Limited. The fourth appellant, JHI Retail (Pty) Ltd (JHI Retail) is the authorised managing agent of Liberty Group Limited, Liberty Two Degrees and Pareto Limited in respect of the commercial property portfolio within which the four relevant malls fall. For convenience, I will refer to the first to fourth appellants collectively as Liberty Group.

[5] Up until 4 September 2017 the respondent, Mall Space Management CC (Mall Space) acted as an agent for the Liberty Group facilitating the conclusion of contracts with the exhibitors for the rental of mall space or exhibition courts at the four shopping centres for which it was paid commission.

[6] It is common cause that the parties never signed a written agreement to regulate their contractual relationship. As it could be expected in a matter such as the present one, in the absence of a written agreement regulating their contractual relationship, the parties would give different versions regarding what the exact terms of the contract were. According to Mall Space it provided services for a number of years to Liberty Group in accordance with the terms and conditions of the draft agreement which Mall Space prepared during April 2013. In terms of the draft agreement Liberty Group granted Mall Space the right to operate as an agent to hire and manage the

promotional mall space and exhibition courts at the relevant shopping centres at a fee. Mall Space alleges that initially its responsibilities under the agreement included invoicing the exhibitor and upon receipt of payment from the exhibitor, pay it over to Liberty Group.

[7] Mall Space points out that this was the position up until May 2015 in relation to the Eastgate Mall and March 2016 in relation to the Liberty Midlands Mall when the invoicing function was taken over by the fifth appellant, Excellerate Brand Management (Pty) Ltd (Excellerate). On 16 November 2016 Liberty Group and Pareto represented by JHI Retail concluded a written marketing service level agreement in terms of which Liberty Group and Pareto granted Excellerate the right from 1 January 2017, to operate as an agent to rent and manage the promotional mall space and/or exhibition courts at the relevant four shopping malls. The effect of this was that the invoicing function in respect of contracts relating to all four shopping malls was taken over by Excellerate.

[8] Shortly before its contract was terminated, some of Mall Spaces' employees left its employ to join Excellerate after they were offered better employment prospects. Mall Space contends that these developments and changes were not effected for operational reasons, but were made in order to facilitate an unlawful competition between it and Excellerate.

[9] Mall Space rejects Liberty Group and Excellerate's suggestion that it failed to account properly to Liberty Group for the rental income it received from the tenants and that this conduct had anything to do with the reason for terminating its contract. While Mall Space admits that as at the end of February 2017 it was indebted to Liberty Group and Pareto in the amount of R566 274.76 and R3 634 491 respectively for which it signed acknowledgements of debt, it, however, denies that this indebtedness resulted because of its alleged poor management of the contract. Mall Space avers that the source of its indebtedness was as a result of the inefficiency of the accounting system used by JHI Retail, Liberty Group's managing agent.

[10] It is common cause that on 29 August 2017 JHI Retail, on behalf of Liberty Group, wrote a letter to Mall Space informing the latter that its services to lease rental court space to tenants in the relevant shopping centres would no longer be required

with effect from 4 September 2017. In response to the termination notice, on 4 September 2017, Mall Space's attorneys addressed a letter to JHI Retail in which they contended that the termination of Mall Space's services constituted summary cancellation, 'which is unconstitutional and bad in law'. The letter went further to state that JHI Retail was indebted to Mall Space 'for the unlawful cancellation in excess of R2.5 million, and as such once quantified with certainty, we shall proceed against yourself.'

[11] Aggrieved by the termination of its services, on 11 September 2017, Mall Space launched an application against Liberty Group and Excellerate in the high court, in which it sought interdictory relief, the terms of which have been set out in para 2 above.

[12] The essential bases of Mall Space's claim against Liberty Group are first, that as a result of termination of its mandate it was prevented from performing functions and earning commission on the contracts it facilitated to the value of R5 026 749. Secondly, Mall Space contended that the deprivation by Liberty Group of its right to contract for rental space at the four shopping centres impacted significantly upon its income and the scope of its business.

[13] Mall Space submitted that should the interdictory relief not be granted, it would not obtain legal redress in the ordinary course of litigation. Mall Space further contended that it had the right to be protected from the unlawful competition it faced from Excellerate. Lastly, Mall Space contended that it was a tacit term, alternatively an implied term of the agreement between it and Liberty Group that, based on trade usage, any termination of the agreement between the parties would require at least a six month notice period. Mall Space also contended that the constitutional values of Ubuntu and fairness required the Liberty Group to grant it six months' notice of termination of the mandate.

[14] The allegations underpinning Mall Space's application against Excellerate are set out in para 25 of its founding affidavit as follows:

'25. In terminating the right of the applicant at the four shopping centres as well as repudiating the agreement, the respondents are facilitating Excellerate in going into unlawful

competition with the applicant. The entire stratagem which has been employed by the respondents is as follows:

25.1 The respondents have cancelled the contract between them and the applicant and have denied the applicant the right to utilise the exhibition space in the four shopping centres.

25.2 Excellerate, which performs precisely the same functions as the applicant has now sprung boarded into the four shopping centres which were previously utilised by the applicant and in so doing has capitalised on the model employed by the applicant in facilitating the rental of the space and will now benefit from placing exhibitors in the same areas which were previously utilised by the applicant....'

[15] Liberty Group opposed the application. They denied that the matter was urgent. Liberty Group contended that Mall Space's reliance on the principles of Ubuntu and good faith was fundamentally unsound as their propositions do not reflect the principles of the law of contract. They averred that the mandate given to Mall Space and to which the common law applies, is revocable. Liberty Group argued that they, as principals, were free to terminate Mall Space's authority as their agent if they wished to do so, without first having to give any notice to Mall Space. Liberty Group accordingly submitted that Mall Space's application had to be dismissed as it had failed to meet the requirements for the final interdict.

[16] Excellerate denied that it competed unlawfully with Mall Space. It contended that it was appointed to take over the roles and responsibilities of Mall Space pursuant to the marketing service level agreement it concluded with Liberty Group. It pointed to the fact that at the time of the conclusion of the relevant marketing service level agreement, Mall Space enjoyed no exclusive right to offer the relevant 'mall space intermediary/agency service'.

[17] The high court correctly found that, on the common cause facts, the parties had concluded a contract of mandate. Pursuant to this finding the high court then formulated the issue before it to be whether Liberty Group were entitled to give Mall Space five days' notice of termination. In other words, the issue was whether Mall Space was entitled to a reasonable notice period of six months which it contended for.

[18] Relying on *Mohamed's Leisure Holdings (Pty) Ltd*<sup>1</sup> and *Nyandeni Local Municipality*,<sup>2</sup> the high court stated that the matter cried out for the application of the constitutional values of Ubuntu and fairness. Citing a passage in para 71 of the judgment of the Constitutional Court in *Everfresh Market Virginia (Pty) Ltd*,<sup>3</sup> the high court held that 'in the development of the common law, it is highly desirable and in fact, necessary to infuse the law of contract with constitutional values, including values of Ubuntu which inspire much of our constitutional compact'.

[19] The high court rejected Liberty Group's contention that Mall Space had raised the constitutional values of Ubuntu and fairness as mere distractions. It found that in the circumstances of the contract between the parties, the notice period of five days was not only unreasonable, but offended the constitutional values of fairness, Ubuntu and dignity. In coming to that conclusion the high court had regard to the fact that the parties had a long standing contractual relationship and that Mall Space had a number of employees who were likely to be affected by the termination of the contract.

[20] As regards the case of unlawful competition against Excellerate, the high court held that the assumption by Excellerate of some of Mall Space's functions and its employment of some of Mall Space's employees before its mandate was terminated, constituted an unlawful competition. This finding by the high court also formed the basis of its conclusion that the matter was urgent.

[21] The high court granted the relief as sought by Mall Space in the notice of motion, the terms of which are set out in para [2] of this judgment. The high court's findings and conclusions are challenged both by Liberty Group and Excellerate in their grounds of appeal. The points they raised in their grounds of appeal mirror the defences they advanced in the high court in opposing Mall Space's application.

[22] The law in regard to the grant of a final interdict is settled. An applicant for an interdict must show the clear right; an injury actually committed or reasonably

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<sup>1</sup> *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd* 2017 (4) SA 243 (GJ).

<sup>2</sup> *Nyandeni Local Municipality v Hlazo* 2010 (4) SA 261 (ECM).

<sup>3</sup> *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd* [2011] ZACC 30; 2012 (1) SA 256 (CC).

apprehended; and the absence of similar protection by any other remedy.<sup>4</sup> It was held by this court in *Hotz v University of Cape Town*<sup>5</sup> that once the applicant has established the three requisite elements for the grant of an interdict the scope, if any, for refusing relief is limited and that there is no general discretion to refuse relief.

[23] In argument before us counsel for Liberty Group submitted that the high court erred in granting Mall Space interdictory relief. He correctly pointed out that the relationship between the parties was one of agent and principal. Relying on the judgment of this court in *Stupel & Berman Inc*<sup>6</sup> he submitted that Liberty Group, as principals, were free to terminate Mall Space's authority if they wished to do so, without notice to Mall Space. He argued that the mandate having been revoked, there was no basis for Mall Space's application; and that being the case it was not open to the high court to apply the principle of Ubuntu, which is not a self-standing rule, to create a basis for Mall Space's application to succeed.

[24] It was not disputed by Mall Space that the contract between it and Liberty Group was one of mandate in terms of which Mall Space facilitated the conclusion of the agreements for the hire of the exhibition courts at the request or on the instruction of Liberty Group.<sup>7</sup> It was also accepted by Mall Space that under the common law Liberty Group as principals, were free to terminate their mandate.<sup>8</sup>

[25] Mall Space's submission was, however, that since the agreement did not provide for a notice to be given for its termination, it was subject to an implied or tacit term that it was terminable on reasonable notice, which Mall Space contended would require at least six months' notice. In other words, Mall Space's argument was that it had a right to be given six months' notice before its contract was terminated and this is the right which it sought to protect by way of an interdict. This was so, it was argued, because it took six months to finalise the entire process. As counsel for Mall Space was unable to point to any authority from which such a term was to be implied as a

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<sup>4</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227. These requisites have been restated by this court, most recently in *Hotz & others v University of Cape Town* (730/2016) [2016] ZASCA 159; [2016] 4 All SA 723 (SCA); 2017 (2) SA 485 (SCA) (20 October 2016).

<sup>5</sup> *Ibid* fn 4.

<sup>6</sup> *Stupel & Berman Inc v Rodel Financial Services (Pty) Ltd* [2015] ZASCA 1; 2015 (3) SA 36 (SCA).

<sup>7</sup> LAWSA vol 17(1) 2 ed para 2.

<sup>8</sup> *Ibid* fn 4 para 17; A J Kerr *The Law of Agency* 4ed p 194.

matter of law or trade usage, he contended that the implementation of the cancellation or termination of the mandate in terms of the common law principle must be infused with the constitutional values of Ubuntu, fairness and human dignity which imposed an obligation on Liberty Group to act reasonably when it decided to terminate the mandate. Counsel for Mall Space relied on *Mohamed's Leisure Holdings*<sup>9</sup> as authority for this proposition. He argued that Liberty Group acted in breach of these values when they terminated Mall Space's mandate by giving it five days' notice.

[26] In *Mohamed's Leisure Holdings* the owner and lessor in terms of a written lease agreement, had applied in the Gauteng Local Division of the High Court, Johannesburg for the eviction of its lessee, Southern Sun Hotel Interests (Pty) Ltd, from the property. The eviction was sought on the basis that Southern Sun Hotel had breached the agreement by failing to make payment of the rental on due date. Although the high court accepted that Southern Sun Hotel had breached the agreement, it declined to grant an eviction order on the basis of the reasoning that the implementation of the cancellation clause would be manifestly unreasonable, unfair and offend the public policy. Applying the value of Ubuntu to the facts of the matter, the high court concluded that an order for the eviction of Southern Sun Hotel would offend the values of the Constitution and dismissed the application.

[27] The high court's judgment in *Mohamed's Leisure Holdings* was overturned on appeal by this court.<sup>10</sup> This court pointed out at para 28, that the terms of the contract were not on their face inconsistent with public policy, the relative position of the parties was one of bargaining equality and the parties could have negotiated a clause in terms of which the respondent was given notice to remedy a breach before the contract was cancelled. Timeous performance had not been impossible, because the respondent could have diarised well ahead of time to ensure the important monthly payment was punctually made. Against this background it could not be against public policy to apply the principle of *pacta sunt servanda*. This court then added the following at para 30: 'The fact that a term in a contract is unfair or may operate harshly does not by itself lead to the conclusion that it offends the values of the Constitution or is against public policy. In some

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<sup>9</sup> Ibid fn 1.

<sup>10</sup> *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd* [2017] ZASCA 176; 2018 (2) SA 314 (SCA).

instances the constitutional values of equality and dignity may prove to be decisive where the issue of the party's relative power is an issue. There is no evidence that the respondent's constitutional rights to dignity and equality were infringed. It was impermissible for the high court to develop the common law of contract by infusing the spirit of Ubuntu and good faith so as to invalidate the term or clause in question.'

[28] Similar sentiments were expressed by this court in *Roazar CC*.<sup>11</sup> The issue that formed the focus of the proceedings in that case was whether the respondent was correct in arguing that the agreement imposed upon the parties a binding duty to negotiate in good faith. What stood in the way of such a conclusion was the established principle that an agreement that the parties would negotiate to conclude another agreement was not enforceable, unless there existed a deadlock breaking mechanism. The SCA held that no such mechanism existed in that case. The respondent, however, relying on s 39(2) of the Constitution which called for the infusion of contract law with constitutional principles like Ubuntu, argued that the common law should be developed to recognise the validity of an agreement to negotiate, even where there existed no deadlock breaking mechanism. It was held that the facts in that case demonstrated the complications of developing the common law to compel parties to negotiate in good faith. It would be against public policy to coerce a lessor to conclude an agreement with a tenant who he did not want to have as tenant any longer. It then held at para 24 that it was difficult to conceive how a court, in a purely business transaction, could rely on 'Ubuntu' to 'import a term that was not intended by the parties to deny the other party a right to rely on the terms of the contract to terminate it'.

[29] Aware of the problem posed to his case by the *Mohamed's Leisure Holdings* and *Roazar CC* decisions, counsel for Mall Space submitted that the present case was significantly distinguishable, because unlike in *Mohamed's Leisure Holdings* and *Roazar CC*, this court is not called upon to determine whether a clause in an agreement should or should not be enforced. In this appeal, he argued, the court is not concerned with such a question, but whether within the particular circumstances of the facts of this appeal, five days' notice was objectively reasonable in order for it to be valid and whether the effect is subjectively reasonable in the particular circumstances. I

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<sup>11</sup> *Roazar CC v The Falls Supermarket CC* [2017] ZASCA 166; 2018 (3) SA 76 (SCA).

disagree. What these two cases establish is the principle that the concepts of good faith, justice, reasonableness and fairness are not self-standing rules which can justify the avoidance of performance under a contract. They are underlying values that are given expression through existing rules of law.

[30] In *South African Forestry Co Ltd*<sup>12</sup> para 27, Brand JA puts it this way:

'In these cases it was held by this Court that, although abstract values such as good faith, reasonableness and fairness are fundamental to our law of contract, they do not constitute independent substantive rules that courts can employ to intervene in contractual relationships. These abstract values perform creative, informative and controlling functions through established rules of the law of contract. They cannot be acted upon by the courts directly. Acceptance of the notion that judges can refuse to enforce a contractual provision merely because it offends their personal sense of fairness and equity will give rise to legal and commercial uncertainty. After all, it has been said that fairness and justice, like beauty, often lie in the eye of the beholder. In addition, it was held in *Brisley and Afrox Healthcare* that – within the protective limits of public policy that the courts have carefully developed, and consequent judicial control of contractual performance and enforcement – constitutional values such as dignity, equality and freedom require that courts approach their task of striking down or declining to enforce contracts that parties have freely concluded, with perceptive restraint.'

[31] In addition, writing in the *South African Law Journal*,<sup>13</sup> Brand JA said the following at 89:

'... imprecise and nebulous statements about the role of good faith, fairness and equity, which would permit idiosyncratic decision-making on the basis of what a particular judge regards as fair and equitable, are dangerous. They lead to uncertainty and a dramatic increase in often pointless litigation and unnecessary appeals. Palm-tree justice cannot serve as a substitute for the application of established principles of contract law.'

It follows on the principles laid down by this court in *Mohamed's Leisure Holdings*, that the high court erred in this matter.

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<sup>12</sup> *South African Forestry Co Ltd v York Timbers Ltd* 2005 (3) SA 323 (SCA).

<sup>13</sup> *Juta* 2009 Volume 126 p 71 'The role of good faith, equity and fairness in the South African Law of Contract: The influence of the common law and the Constitution'.

[32] Liberty Group terminated their mandate for a good reason. There was no unlawful infringement of Mall Space's rights. The evidence established that Mall Space failed properly to account to Liberty Group for the rental income it received from the tenants. Mall Space was substantially in arrears with its payment of the monies due to them as its principals and this was not disputed. In fact, it signed acknowledgements of debt. In my view, Liberty Group was quite entitled to terminate their mandate at any time on giving notice to that effect to Mall Space. I do not think that any question on length of notice arises. The mandate did not impose an obligation on Liberty Group to give Mall Space six months' notice if they wanted to terminate it. Mall Space has not shown that it had the right to be given six months' notice before its contract could be terminated. In these circumstances, it was not competent for the high court to grant an order interdicting Liberty Group from cancelling the contract. In any event, if Mall Space had incurred any expense or suffered any damage or was entitled to be paid commission before the revocation it was entitled to be indemnified because its right would have arisen while the mandate existed<sup>14</sup> which therefore means that Mall Space was not without an alternative remedy. I am not satisfied that that alternative remedy would not have afforded Mall Space a remedy that would give it similar protection.

[33] Mall Space's case against Excellerate was based on unlawful competition. This court held in *Schultz*<sup>15</sup> that, as a general rule, every person is entitled freely to carry on his trade or business in competition with his rivals. But the competition must remain within lawful bounds. If it is carried on unlawfully in the sense that it involves a wrongful interference with another's rights as a trader that constitutes an injuria for which the Aquilian action lies if it has directly resulted in loss.

[34] Counsel for Excellerate, while associating himself with the submissions made by counsel for Liberty Group, pointed out that the high court erred in finding that Excellerate's assumption of the roles and responsibilities which were provided by Mall Space to Liberty Group constituted an unlawful competition. This was so, he argued, because, first, the contract which it had with Liberty Group did not grant it an exclusive right. Secondly, Excellerate took over from Mall Space, pursuant to the service level

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<sup>14</sup> Kerr *The Law of Agency* at p 195.

<sup>15</sup> *Schultz v Butt* 1986 (3) AD 667 at 678F-G; [1986] 2 All SA 403 (A) at 407.

marketing agreement it concluded with Liberty Group, because they were not satisfied with the quality of services they received from Mall Space. The latter failed to account properly to Liberty Group as its principals, for the rental income Mall Space received from tenants, who hired space at their shopping malls.

[35] In order to succeed with a final interdict against Excellerate, Mall Space had to show that the contractual right it obtained from Liberty Group protects an interest that is also enforceable against Excellerate with which it has no contractual relationship; that Excellerate unlawfully infringed or threatened to infringe that right and that there was no adequate alternative remedy. In my view, Mall Space failed to establish a clear right. First, the mandate it obtained from Liberty Group did not give it an exclusive right to operate at the relevant shopping malls and it claims no entitlement to exclusivity. Secondly, Excellerate was duly appointed by Liberty Group to assume the functions and responsibilities which were hitherto performed by Mall Space after termination of its mandate. There is no ground upon which the alleged interference with Mall Space's rights can be said to be unlawful. And I do not know how an interdict can be granted where there is no actual or threatened unlawfulness in the infringement of a right.

[36] It must be emphasised that in the present case we are not dealing with a term of a contract which is alleged to be contrary to good faith, fairness and equity. We are dealing with a rule of the common law, namely, that a principal is entitled to revoke a mandate of agency. It would be against public policy, to coerce a principal into retaining an individual as his agent, when he no longer wishes to retain him as such. If the termination of the mandate has prejudiced the agent his remedy lies in a claim for damages and not in an order compelling the principal to retain him as his agent in the future.

[37] In this case, Liberty Group, as principals, terminated their mandate as they were not happy with the quality of services they received from Mall Space. There was no obligation on them to have given Mall Space six months' notice before doing so. They had a valid reason to cancel the mandate. Liberty Group, as principals, were entitled to terminate their mandate when it became clear to them that Mall Space could not deliver on their mandate. Mall Space failed to account properly to them and they could not be expected to wait for the worst to happen before taking action to protect their

own financial interests, which had been placed in jeopardy by Mall Space's mismanagement of the contract. The high court erred in applying directly the principle of Ubuntu to the law of contract as a basis to grant the relief. The high court erred in relying on the high court's judgment in *Mohamed's Leisure Holdings*<sup>16</sup> as the basis for its authority to deviate from applying the common law principle that the contract of mandate is terminable at the will of the principal. That judgment is no longer authority as it was subsequently overruled by this court as what was stated there do not reflect the principles of our law as they stand currently.

[38] In relation to Mall Space's cause of action based on unlawful competition, that claim should have failed because there was no case made out for it. Excellerate did not act wrongfully in assuming some of the roles and responsibilities which were hitherto performed by Mall Space in terms of the mandate. Mall Space's mandate was lawfully terminated and there was no obligation upon the principals to have given Mall Space six months' notice period before terminating their mandate.

[39] In the result it is ordered:

- 1 The appeal is upheld with costs including costs of two counsel where employed.
- 2 The order of the high court is set aside and replaced by the following:  
'The application is dismissed with costs.'

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**D H Zondi**  
**Judge of Appeal**

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<sup>16</sup> Ibid fn 1.

## Appearances

For first to fourth appellants: H C Bothma (with him M Muchenje)

Instructed by: Webber Wentzel, Johannesburg

Symington & De Kok, Bloemfontein

For fifth appellant: M Nowitz

Instructed by: Schindlers Attorneys, Johannesburg

Webbers, Bloemfontein

For respondent: S Cohen

Instructed by: Dempster McKinnon Inc, Sandton

Phatshoane Henney Attorneys, Bloemfontein