IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA 74/16

In the matter between:

NATIONAL UNION OF METALWORKERS

OF SOUTH AFRICA (NUMSA) **First Appellant**

RAMOREI AND 16 OTHERS **Second and Further appellants**

and

PAINT & LADDERS (PTY) LTD **First Respondent**

SUPERMOVE TRADING (PTY) LTD **Second Respondent**

Heard: **18 May 2017**

Delivered: **28 June 2017**

Summary: In the application in terms of Rule 11 for the dismissal of the appellants' statement of claim for want of timeous and diligent prosecution - The Labour Court finding - the appellants' explanation of the 15 year delay in the prosecution of the claim inexcusable and resultantly - dismissing the statement of claim.

On appeal - the Labour Appeal Court – finding that the slovenly fashion in which the appellants went about prosecuting their alleged unfair dismissal dispute deserved to be censured - finding that the Labour Court properly exercised its discretion in dismissing the appellants' claim.

The decision of the Labour Court confirmed -The appeal dismissed with costs.

Coram: Tlaletsi AJP, Landman JA and Phatshoane AJA

JUDGMENT

PHATSHOANE AJA

[1] This is an appeal against the whole of the judgment and the order of the Labour Court (per Whitcher J) upholding the application in terms of Rule 11[1] by Paint & Ladders (Pty) Ltd, the first respondent, for the dismissal of the appellants' statement of claim filed under Case No: J4106/00 for want of timeous and diligent prosecution. The appeal is with leave of that Court.

[2] Almost 17 years ago, on 23 October 2000, the National Union of Metalworkers of South Africa (NUMSA) on behalf of Ms Colleen Ramorei and 16 other employees, the appellants,[2] served and filed a statement of claim with the Labour Court. The claim is predicated on the alleged unfair dismissal of the individual appellants from the services of Paint & Ladders, their employer, on account of its operational requirements. On 04 December 2000, Paint & Ladders filed its statement of response to the claim. The minutes of the pre-trial conference were filed on 26 November 2003, almost three years later. On 24 May 2004, the matter was set down for trial but was postponed *sine die* in consequence of an agreement between the parties following an application for a postponement by Paint & Ladders.

[3] Subsequent to the postponement of 24 May 2004, the matter laid dormant until on 06 August 2010 when Molahlehi J, in chambers, certified that the dispute between the parties was trial ready. In April 2015, some 11 years later

[1] Rule 11 sets out the procedure for interlocutory application and procedures not specifically provided for in other Rules for the conduct of proceedings before the Labour Court. It provides in part that interlocutory applications, applications incidental to, or pending, proceedings referred to in those Rules that are not specifically provided for in the Rules must be brought on notice and supported by an affidavit.

[2] Ms Ramorei's full particulars, as well as the particulars of the 16 other appellants, cited as the second and further appellants do not appear from the records of this appeal. I had the liberty to peruse through the records of the statement of claim they filed on 30 October 2000 at the Labour Court under Case No J4106/2000 to establish their identity. They were not identified in the statement of claim. On 22 June 2004, almost four years following the filing of the statement of claim, separate affidavits of 12 of the appellants were filed in respect of the relief they sought. They identify themselves as follows in these affidavits: Colleen Ramorei; Ruth Ntala; Piet Sebelebele; John Molantoa; Charles Kekana; Jacob Madubye; Adam Modiba; Monica Mashilo; Lefie Mabowa; Lucky Maisela; Lefty Shaku; and DS Mathebula

calculated from the date the dispute was referred to the Labour Court for adjudication, the Court *mero motu* issued the Notice of set down of the trial for 03 August 2015.

[4] On 03 August 2015, the morning of the trial, Paint & Ladders served on the appellants a Notice of Motion in terms of Rule 11 in which it sought an order that the appellants' claim be dismissed in consequence of their failure to expeditiously and/or diligently prosecute same. Coetzee AJ adjourned the proceedings to the following day, 04 August 2015, to afford the appellants the opportunity to file their answering papers. On the scheduled day, the Court postponed the matter *sine die* and ordered Paint & Ladders to once more serve and file its Rule 11 application within 10 days of the order if it elected to proceed with the application to dismiss the appellants' claim.

[5] The 10-day period within which Paint & Ladders ought to have filed its Rule 11 application lapsed on 18 August 2015. The time-frame stipulated in the Court order was not adhered to but the application was served and filed on 25 August 2015, five days late. At that stage, no application had been made to condone the late filing thereof. Paint & Ladders states that it was unaware that its application was late because it erroneously diarised the service and filing of the application for "the incorrect week". It says that upon perusal of the appellants' answering affidavit, it became apparent to it that its application was late. It therefore sought, in its replying affidavit, condonation on the basis that the delay was minimal and its prospects of success propitious.

[6] To demonstrate that it stood to suffer prejudice, occasioned by the inordinate delay, Paint & Ladders maintain that during the retrenchment process it was represented by its National Operations Manager, Mr Johan Conradie. He is no longer in its employ and had reported to Mr Neels Potgieter, Paint & Ladders' General Manager and its deponent, that he had very little recollection of the matter and would have to be subpoenaed should his attendance be required. A certain Mr C Khoza of Henry Holland and Associates was a facilitator during the retrenchment exercise. Mr Potgieter says that Mr Khoza's whereabouts are unknown.

[7] By quirk of coincidence, on the same day in which the Rule 11 application was filed by Paint & Ladders, 25 August 2015, the appellants had also filed a Notice of enrolment of their claim for trial. In an effort to demonstrate that they were not remiss in prosecuting their claim timeously the appellants state that around September 2010 they approached the Labour Court with a request that they be allocated a trial date. They claim that the registrar informed them that their file was mislaid and would be allocated a trial date once it was found. They also apportioned blame for the delay to Paint & Ladders and contended that the company ought to have facilitated the finalisation of the case by setting it down for trial or placed them on terms to bring their claim to conclusion.

[8] The Rule 11 application to dismiss the appellants' claim came before Whitcher J on 30 November 2015. At that stage, the claim spanned some 15 years since it was launched with the Labour Court for adjudication. Having succinctly dealt with the parties' arguments the Court *a quo* found that the appellants took ages to prosecute each stage of the litigation and took no further steps to facilitate that their matter be set down for trial. The Court found the argument by the appellants preposterous and their conduct inexcusable.

[9] The Court *a quo* was further of the view, regard being had to the 15 years' delay, that even with the aid of the pleadings and minutes of the retrenchment process the witnesses' memories would be unreliable. It remarked that:

> '(T)here comes a point in time where, on account of the effluxion of time, excuses and explanation for delays become irrelevant and a party loses its right to continue to litigate because the case becomes obsolete and the quality of litigation inevitably compromised. In my view this situation has arisen in this case.'

[10] The Court *a quo* concluded that Paint & Ladders made out a case for the dismissal of the appellants' statement of claim. As adumbrated earlier, it granted the Rule 11 application and made no order as to costs.

[11] The grounds of appeal boiled down to this. The Court *a quo* erred:

11.1 In disregarding that the appellants were ready to proceed with the trial on 24 May 2004 when the matter was postponed *sine die* at the behest of Paint & Ladders;

11.2 In not finding that Paint & Ladders failed to comply with the order of Coetzee AJ to deliver its Rule 11 application within 10 days. The opportunity afforded to Paint & Ladders, so it was contended, had lapsed and therefore its application ought not to have been entertained;

11.3 In not finding that Coetzee AJ erred in granting leave to Paint & Ladders to bring a Rule 11 application which was not before him at the time. This opportunity, it was argued, had the effect of disregarding the order by Molahlehi J to the effect that the matter was ripe for trial;

11.4 In taking judicial notice, without admissible evidence, that the memories of Paint & Ladders' witnesses had become unreliable with the passage of time. It was contended that the Court *a quo* inadvertently substituted assumptions for judicial assessment;

11.5 In not rejecting Paint & Ladders evidence of its inability to locate Mr Khoza. It was contended that the Court ought to have found that Paint & Ladders failed to demonstrate the significance of Mr Khoza's evidence;

11.6 Insofar as it deviated from authoritative jurisprudence by imputing blame for the delay solely on the appellants and not considering Paint & Ladders' contribution to the delay.

11.7 By failing to take cognisance that the Court file was lost for a considerable period of time which delayed the set down of the trial.

[12] It is apparent *ex facie* the judgment of the Court *a quo* that it did not deal with Paint & Ladders' application for condonation of the late filing of its Rule 11 application which, as already alluded to, was one week late. However, I am in serious doubt that the judgment of the Court *a quo* would have been any different even if it had expressed itself on the application as the delay was

insignificant. In light of the Court's findings and conclusion on the merits of the application, Paint & Ladders had good prospects of success. The degree of lateness was relatively negligible and the explanation therefor plausible. I am unpersuaded that Paint & Ladders' opportunity to be heard lapsed by reason of its failure to file its application within 10 days as ordered by Coetzee AJ. The argument that the order by Coetzee AJ had the effect of disregarding the order by Molahlehi J to the effect that the matter was ripe for trial is misconceived. This Court held in *Windybrow Theatre v Maphela and Others*[3] that the Labour Court does have an inherent power to protect and regulate its processes which, in my view, includes calling upon the parties to account for the wanton delays in the finalisation of their claims. On a conspectus of all these considerations, I am of the view that the late filing of the Rule 11 application should have been and is hereby condoned.

[13] The general drift of the appellants' argument is that the Court *a quo* did not consider the Labour Court's authoritative jurisprudence when dismissing their claim. They contended that the principle established through case law was that the aggrieved party ought to place the dilatory party on terms to issue the Notice of enrolment prior to moving an application to dismiss a claim. Mr Lengane, for the appellants, in support of his argument, referred to *Karan t/a Karan Beef Feedlot and Another v Randall*[4] which concerned the dismissal of the statement of claim on the basis of an unreasonable delay in pursuing a claim. In that case, subsequent to the closing of the pleadings, there had been a delay of approximately two years and three months in delivering the pre-trial minutes. Van Niekerk J pronounced that Rule 6 of the Rules for the Conduct of Proceedings before the Labour Court established a model of case management in terms of which cases referred to the Labour Court, at least after the conclusion of a pre-trial conference or the lapse of the period allocated for a pre-trial conference, are to be managed by a judge rather than the registrar, the parties, or their representatives. The Court further held that the clear intention was to ensure that judges assumed control of matters at an early stage, and that they actively managed cases to ensure that they were

[3] (2016) 37 ILJ 2641 (LAC) at 2645 para 11.
[4] (2009) 30 ILJ 2937 (LC).

expeditiously and efficiently dealt with during the pre-trial phase and beyond. Van Niekerk J further held[5]:

> '[14] In summary: despite the fact that the rules of this court make no specific provision for an application to dismiss a claim on account of the delay in its prosecution, the court has a discretion to grant an order to dismiss a claim on account of an unreasonable delay in pursuing it. In the exercise of its discretion, the court ought to consider three factors:
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> - the length of the delay;
> - the explanation for the delay; and
> - the effect of the delay on the other party and the prejudice that that party will suffer should the claim not be dismissed.
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> This is subject to the consideration that an application to dismiss is a drastic remedy, and should not be granted unless the dilatory party has been placed on terms, and when appropriate, after any further steps as may have been available to the aggrieved party to bring the matter to finality have been taken. Theoretically, in the case of referrals to this court in terms of Rule 6, matters ought never to get to this point - unlike the rules of other courts, the Labour Court Rules contemplate a system of active case management by a judge in the pretrial phase. Properly applied, Rule 6 ought to ensure that tardy parties and representatives are held to account, and that matters are prepared and enrolled for trial without delay.'

[14] The view expressed by Van Niekerk J in *Karan Beef Feedlot* (supra) was echoed in *Member of the Executive Council, Department of Sport, Recreation, Arts & Culture, Eastern Cape v General Public Service Sectoral Bargaining Council and Others*[6] where Prinsloo AJ held that an application to dismiss a review application is a drastic remedy and should not be granted unless the dilatory party has been placed on terms, and where appropriate, after any further steps as may have been available to the aggrieved party to bring the matter to finality, have been taken.

[5] At 2943-2944 para 14.
[6] (2015) 36 ILJ 2893 (LC) at 2899 para 27.

[15] Mr Lengale also referred to *Cassimjee v Minister of Finance (Cassimjee)*[7] to buttress his argument that the Court *a quo* had no proper regard to the *dicta* of the very precedents it relied on in dismissing the appellants' statement of claim. *Cassimjee* concerned an appeal against the decision of a High Court to dismiss an action for want of prosecution. In that case, 32 years had passed between the date of the institution of the action and the delivery of the judgment appealed against. Included in this was a period of some 20 years that elapsed during which no steps were taken by either party to advance the action. The dismissal of the appellant's action was sought on the ground that it had been dormant for an extended period and that to permit its revival would give rise to irremediable prejudice amounting to an abuse of the process of Court. The Supreme Court of Appeal (SCA) held that the High Court has the inherent power, both at common law and in terms of the Constitution of the Republic of South Africa (s 173), to regulate its own process. This includes the right to prevent an abuse of its process in the form of frivolous or vexatious litigation. It further held that an inordinate or unreasonable delay in prosecuting an action may constitute an abuse of process and warrant the dismissal of an action. In exercising a discretion to dismiss an action for want of prosecution, the SCA laid down the principles as follows[8]:

> '[11] There are no hard-and-fast rules as to the manner in which the discretion to dismiss an action for want of prosecution is to be exercised. But the following requirements have been recognised. First, there should be a delay in the prosecution of the action; second, the delay must be inexcusable; and, third, the defendant must be seriously prejudiced thereby. Ultimately, the enquiry will involve a close and careful examination of all the relevant circumstances, including the period of the delay, the reasons therefor and the prejudice, if any, caused to the defendant. There may be instances in which the delay is relatively slight but serious prejudice is caused to the defendant, and in other cases the delay may be inordinate but prejudice to the defendant is slight. The court should also have regard to the reasons, if any, for the defendant's inactivity and failure to avail itself of remedies which it might

[7] *Cassimjee v Minister of Finance* 2014 (3) SA 198 (SCA).
[8] At 201-202 paras 11 and 12.

reasonably have been expected to use in order to bring the action expeditiously to trial.

[12] An approach that commends itself is that postulated by Salmon LJ in the English case of *Allen v Sir Alfred McAlpine & Sons Ltd*; *Bostik v Bermondsey and Southwark Group Hospital Management Committee; Sternberg v Hammond* [1968] 1 All ER 543 (CA), where the following was stated at 561*e* – *h*:

> 'A defendant may apply to have an action dismissed for want of prosecution either *(a)* because of the plaintiff's failure to comply with the Rules of the Supreme Court or *(b)* under the court's inherent jurisdiction. In my view it matters not whether the application comes under limb *(a)* or *(b)*, the same principles apply. They are as follows: In order for such an application to succeed, the defendant must show:
>
> (i) hat there has been inordinate delay. It would be highly undesirable and indeed impossible to attempt to lay down a tariff — so many years or more on one side of the line and a lesser period on the other. What is or is not inordinate delay must depend on the facts of each particular case. These vary infinitely from case to case, but it should not be too difficult to recognise inordinate delay when it occurs.
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> (ii) that this inordinate delay is inexcusable. As a rule, until a credible excuse is made out, the natural inference would be that it is inexcusable.
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> (iii) that the defendants are likely to be seriously prejudiced by the delay. This may be prejudice at the trial of issues between themselves and the plaintiff, or between each other, or between themselves and the third parties. In addition to any inference that may properly be drawn from the delay itself; prejudice can sometimes be directly proved. As a rule, the longer the delay, the greater the likelihood of serious prejudice at the trial.'

[16] As correctly argued by Mr Lengane, Rule 6(5) to (8) contemplates a system of judicial case-flow management by a judge in respect of matters referred to the

Labour Court for trial. However, case-flow management does not divest the *dominus litis* of its responsibility to ensure speedy finalisation of its case. A litigant cannot remain supine and allow years to go by in the hope that the Court would in the unknown future date put its matter through judicial case-flow management. The fact that the appellants were ready for trial 2004 is no excuse for a period of a decade-and-a-half of inertia which followed thereafter. There is a dearth of explanation of what the parties did between 2004 when the trial was postponed to April 2015 when the Court decided, on its own accord, to set the matter down for trial. The exception is the appellants' unsubstantiated claim that in September 2010, upon an enquiry at the registrar's office, they were informed that the file had been misplaced. They do not say who had attended the Court and neither did they attach any formal Notice of enrolment. They also did not detail any steps they took to trace the file; what enquiries (if any) they directed to the Registrar in a quest to obtain her assistance; or whether they at any stage attempted to compile a duplicate file. There is no semblance of a credible excuse proffered for the delay.

[17] What can be observed from the long line of decisions in the Labour Court on applications for dismissal of the claims for want of timeous prosecution is that although the rules of the Labour Court make no specific provision for an application to dismiss when a party fails diligently to pursue a claim referred to it for adjudication, the court has recognised and adopted the rule based on the maxim *vigilantibus non dormientibus lex subveniunt.* In terms of this maxim, a party may in certain circumstances be debarred from obtaining the relief to which that party would have been entitled to on account of an undue delay in prosecuting its claim because: Firstly, an unreasonable delay may cause prejudice to the other parties. Secondly, it is both desirable and important that finality be reached within a reasonable time in respect of judicial administrative decisions.[9]

[9] See in this regard *Sishuba v National Commissioner of the SA Police Service* (2007) 28 *ILJ* 2073 (LC); *Karan t/a Karan Beef Feedlot and Another v Randall* (2009) 30 *ILJ* 2937 (LC); *BP Southern Africa (Pty) Ltd v National Bargaining Council for the Chemical Industry and Others* (2010) 31 *ILJ* 1337 (LC) *; National Education Health & Allied Workers Union on behalf of Leduka v National Research Foundation* (2017) 38 ILJ 430 (LC).

[18] An aggrieved party's conduct is a factor to be taken into account in the exercise of the discretion whether to dismiss a statement of claim. In *National Construction Building & Allied Workers Union & others v Springbok Box (Pty) Ltd t/a Summit Associated Industries,*[10] Molahlehi J correctly held, in my view, that the contribution to the delay by the party seeking to have the matter dismissed for delay in prosecution must be objectively assessed with a view to evaluating the extent to which the inaction of the applicant contributed towards the excessiveness or otherwise of the delay. The inaction has to be weighed against the objective facts that may point towards loss of interest in pursuing the matter by the party opposing such an application. It may well be that the facts and the circumstances objectively point to a case where the dilatory party can be said to have abandoned or lost interest in the matter.

[19] There had been in this case no reaction from Paint & Ladders to put the appellants on terms to expedite finalisation of their claim up until 03 August 2015, the morning of the trial, when it suddenly brought the application to dismiss the appellants' claim. Its conduct is therefore not above reproach. However, it is clear that in the situations such as the present, where the delay spans some 15 years, Paint & Ladders' conduct ought not to be viewed in isolation from the appellants' failure to expeditiously prosecute their claim.[11] In *Cassimjee,* (supra) reference was made to the following seminal *dictum* in *Allen v Sir Alfred McAlpine & Sons Ltd*; *Bostik v Bermondsey and Southwark Group Hospital Management Committee; Sternberg v Hammond* [1968] 1 All ER 543 (CA) by Diplock LJ (at 556c – g):

> 'Since the power to dismiss an action for want of prosecution is only exercisable on the application of the defendant his previous conduct in the action is always relevant. So far as he himself has been responsible for any unnecessary delay, he obviously cannot rely on it. Moreover, if after the plaintiff has been guilty of unreasonable delay the defendant so conducts himself as to induce the plaintiff to incur further costs in the reasonable belief that the defendant intends to exercise his right to proceed to trial notwithstanding the plaintiff's delay, he cannot obtain dismissal of the action

[10] (2011) 32 ILJ 689 (LC) at 695-696 para 28.
[11] See *Cassimjee v Minister of Finance* ibid at 204 para 21,

> unless the plaintiff has thereafter been guilty of further unreasonable delay. For the reasons already mentioned, however, mere non-activity on the part of the defendant where no procedural step on his part is called for by the rules of court is not to be regarded as conduct capable of inducing the plaintiff reasonably to believe that the defendant intends to exercise his right to proceed to trial. It must be remembered, however, that the evils of delay are cumulative, and even where there is active conduct by the defendant which would debar him from obtaining dismissal of the action for excessive delay by the plaintiff anterior to that conduct, the anterior delay will not be irrelevant if the plaintiff is subsequently guilty of further unreasonable delay. **The question will then be whether as a result of the whole of the unnecessary delay on the part of the plaintiff since the issue of the writ, there is a substantial risk that a fair trial of the issues in the litigation will not be possible**.' (My own emphasis)

[20] In the end, it all comes down to the question of whether, in light of the delay, there would be a fair trial of the issues in this case. Put differently, whether on account of the delay there would be any prejudice to the parties which would impede the fair determination of the issues.

[21] The statutory obligation in respect of expeditious resolution of labour disputes exists for a good reason: Any delay undermines the primary object of the Labour Relations Act, 66 of 1995. As illustrated in *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration and Others,*[12] failure to prosecute timeously labour disputes is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years. See also *Colett v Commission for Conciliation, Mediation & Arbitration and Others* (2014) 35 ILJ 1948 (LAC); *CUSA v Tao Ying Metal Industries and Others* 2009 (2) SA 204 (CC) at 223 para 63.

[22] In *Mohlomi v Minister of Defence,*[13] the Constitutional Court observed:

[12] (2016) 37 ILJ 313 (CC) at 316 para 1.
[13] 1997 (1) SA 124 (CC)at 129-130 para 11.

> '[11] Rules that limit the time during which litigation may be launched are common in our legal system as well as many others. **Inordinate delays in litigating damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can still be obtained may have faded and become unreliable. Documentary evidence may have disappeared.** Such rules prevent procrastination and those harmful consequences of it. They thus serve a purpose to which no exception in principle can cogently be taken.' (My own emphasis)

[23] It can hardly be argued that Paint & Ladders would not suffer prejudice due to the lack of timeous and diligent prosecution of the claim. As matters currently stand its deponent says it had not been able to locate one of its witnesses while the other witness is no longer in its employ and had allegedly reported that his memory or recollection of the facts or events has faded. The appellants' contention to the contrary about Paint & Ladders' witnesses is without substance. Mr Lengane also sought to argue that the Court *a quo* erred in not considering that Paint & Ladders, when it sought a postponement of the trial in 2004, submitted that a certain Mr Roy Fouche was its key witness whereas in its founding papers it submitted that Mr Conradie was the principal witness. He contended that Paint & Ladders proffered no explanation why Mr Fouche could not be called to testify. No basis for this argument was established by the appellants in their papers serving before us, save for counsel's submission in the heads of argument. The Court *a quo's* conclusion that the fair determination of the issues, in this case, will be severely compromised cannot be faulted. To my mind, the interest of justice will not be served.

[24] The appellants have a right of access to justice as contemplated in s 34 of the Constitution of the Republic of South Africa. However, that right is subject to

the limitation permitted in s 36 of the Constitution. In *Beinash and Another v Ernst & Young and Others,*[14] the Court held:

> '[17] The right of access to courts protected under s 34 is of cardinal importance for the adjudication of justiciable disputes. When regard is had to the nature of the right in terms of s 36(1)*(a)*, there can surely be no dispute that the right of access to court is by nature a right that requires active protection. However, a restriction of access in the case of a vexatious litigant is in fact indispensable to protect and secure the right of access for those with meritorious disputes. Indeed, as the respondents argued, the Court is under a constitutional duty to protect bona fide litigants, the processes of the Courts and the administration of justice against vexatious proceedings' (footnotes omitted).

[25] The slovenly fashion in which the appellants went about prosecuting their alleged unfair dismissal is deserving of censure. The court *a quo* was right in having nonsuited them. I am satisfied that Whitcher J properly exercised her discretion to dismiss the appellants' claim for want of timeous prosecution thereof. The upshot of all this is that the appeal must fail.

[26] The requirements of law and fairness dictate that costs should follow the result of this appeal. Resultantly I make the following order.

Order

1. The appeal is dismissed with costs.

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MV Phatshoane

Acting Judge of the Labour Appeal Court

Tlaletsi AJP and Landman AJA concur in the judgment of Phatshoane AJA

[14] 1999 (2) SA 116 (CC) at 123 para 17.

APPEARANCES:

FOR THE APPELLANTS:	Adv K Lengane
	Instructed by Phungo Incorporated
FOR THE FIRST RESPONDENT:	Adv AJ Nel
	Instructed by Eric Bryer Attorneys