THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 42/2016

In the matter between:

eTHEKWINI MUNICIPALITY **Appellant**

and

BREAKERS SHARE BLOCK LIMITED **Respondent**

Neutral citation: *EThekwini Municipality v Breakers Share Block Limited* (42/2016) [2016] ZASCA 140 (29 September 2016)

Coram: Mpati AP, Shongwe, Swain and Mocumie JJA and Potterill AJA

Heard: 30 August 2016

Delivered: 29 September 2016

Summary: Contract – Lease agreement - Interpretation of – Reference in original lease agreement to 'floor area' being determined, for calculating rental payable – amendment to relevant clause providing 'floor area' to be calculated in accordance with town planning scheme – whether amendment indicates change in method of calculating 'floor area'.

ORDER

On appeal from: KwaZulu-Natal Local Division, Durban (Mbatha J, sitting as a court of first instance):

1 The appeal succeeds, with costs, which shall include the costs of two counsel.
2 The order of the court a quo is set aside and for it is substituted the following:
'The plaintiff's action is dismissed, with costs, which shall include the costs of senior and junior counsel where employed.'

JUDGMENT

Mpati AP (Shongwe, Swain and Mocumie JJA and Potterill AJA concurring):

[1] This appeal involves the interpretation of certain clauses in two, almost identical, written lease agreements. On 21 May 1985 the respondent took cession of the two lease agreements that had been concluded on 21 August 1975 and 27 January 1981 respectively, between the appellant's predecessor, the Borough of Umhlanga (the Borough), which was then owner of certain property described as Lot 1066 Umhlanga Rocks Township (the property), and Sycol Properties (Pty) Ltd (Sycol). In terms of the lease agreements Sycol leased two portions of the property at agreed rentals, subject to revision periods of 10 years after the initial agreed periods of four and a half years. The lease agreements were referred to in the papers as 'Lease 1' and 'Lease 4' respectively. I shall, for convenience, continue to refer to them individually as such. Following the cession the respondent operated a share block scheme on the leased portions of the property.

[2] In November 2008 the appellant, as the Borough's successor-in-title, and the respondent entered into discussions with the view to the latter purchasing the

property from the former. Subsequently, a detailed measurement of the floor area of the buildings on the property was undertaken at the respondent's instance. The discussions led to a disagreement between the parties on the actual floor area in respect of which the rental had been calculated in terms of the lease agreements. The respondent contended that the rental ought to have been calculated upon a floor area that was much less than that upon which the rental had hitherto been calculated. On 23 August 2013 it instituted action against the appellant in the KwaZulu-Natal Local Division, Durban seeking, amongst others, an order directing the appellant 'to forthwith recalculate the rental currently payable by [it] . . . upon a floor area of 12,079.10 m²'. It sought a further order directing the appellant 'to refund to [it] all amounts paid by [it] *sine causa* subsequent to the 1st September 2013 in an amount determined by this Honourable Court upon the hearing of this action'.

[3] After close of pleadings the parties agreed that the issue pertaining to the proper interpretation of the relevant clauses (clause 6(b)) of the respective lease agreements be determined separately, in terms of rule 33 of the Uniform Rules, prior to the adjudication of all the other issues in the action. For this purpose the following statement of facts was agreed upon[1]:

'

4.

At all material times hereto the Borough of Umhlanga, and subsequently the [appellant], owned the property described as "*lot, 1066 Umhlanga Rocks Township, situate in the Borough of Umhlanga in the North Coast Regional Water Services Area, County of Victoria, Province of Natal, in extent four, five one nine two (4,5192) hectares*" (hereinafter referred to as "*the property*").

5.

On the 21st of August 1975, the Town Council of the Borough of Umhlanga (hereinafter referred to as "*the Council*") and Sycol Properties (Pty) Ltd (hereinafter referred to as "*Sycol*") executed a Notarial Deed of Lease (hereinafter referred to as "*Lease 1*"), which was

[1] Paragraphs not relevant to the issue have been omitted.

registered in the offices of the Registrar of Deeds, Pietermaritzburg, with reference number K1541/1975.

. . .

8.

Clause 6 of Lease 1 read as follows:

"REVISION OF RENTAL:

(a) The said rental shall, during the period of this lease or any renewal thereof, be subjected to revision at the expiry of the initial period set out in paragraph 5 (a) above and thereafter at the commencement of each ten (10) year period;

(b) The annual rental for each revision period of ten (10) years as aforesaid shall be computed as to seven per centum (7%) of the valuation of an area of foreshore land equivalent to the floor area of the buildings on the lot, based on ruling market prices per square metre of foreshore land, provided that the rent shall in no case be less than TWENTY THOUSAND RAND (R20,000.00) per annum. Floor area shall be defined in the draft Town Planning Scheme as amended from time to time.

. . .

9.

Lease 1 contemplated (in clause 8) the erection of buildings within approximately three and a half years. It also contemplated rental in a fixed amount for a period of four and a half years (clause 5) and that rental would thereafter be revised in accordance with the floor area of buildings on the lot.

10.

On the 27th of January 1981, the Council and Sycol executed a Notarial Deed of Amendment of Lease (hereinafter referred to as "*the amendment*") which was registered in the offices of the Registrar of Deeds, Pietermaritzburg, with reference K790/1981.

12.

In terms of the amendment, clause 6 of Lease 1 was amended to read as follows:

"REVISION OF RENTAL

(a) On the 1st day of July 1978 and at the expiry of every 10 years thereafter the aforesaid rental shall be subject to revision as hereinafter provided.

(b) When the annual rental becomes due for revision same shall be computed at 7% of the valuation (which valuation shall be based on the current market price per square metre of Lot 1066 Umhlanga Rocks Township of an area of foreshore land which area shall be equivalent to the floor area (calculated in accordance with the provisions of the Umhlanga Town Planning Scheme No.1 as it was at the date of signature hereof) of the buildings on the Lot."

. . .

13.

On the 27th of January 1981, the Council and Sycol executed a further Notarial Deed of Lease (hereinafter referred to as *"Lease 4"*) which was registered in the offices of the Registrar of Deeds, Pietermaritzburg, with reference number K792/1981.

. . .

16.

Save for clause 6 (b) reading as follows:

"When the annual rental becomes due for revision same shall be computed at seven (7%) per cent of valuation (which valuation shall be based on the current market price per square metre of Lot 1066 Umhlanga Rocks Township of an area of Foreshore land) which area shall be equivalent to the floor area (calculated in accordance with the provisions of the Umhlanga Town Planning Scheme No. 1 as it was at the date of signature hereof) of the buildings on the Lot."

the remaining provisions of clause 6 of Lease 4 are identical to those contained in the amendment of Lease 1, (para 12) above.

17.

Lease 4 contemplated the construction of additional buildings within approximately three years (clause 8), and provided for rental in a fixed amount to continue provided the lessee submitted plans for development of the land (clause 5).

18.

The parties agree that the relevant wording of Umhlanga Town Planning Scheme No. 1 is as it appears from annexure "D" which is filed evenly herewith.

19

On the 21st of May 1985**,** Sycol and the [respondent], then known as Breakers Properties Limited, executed two Notarial Deeds of Cession of Lease (with reference K752/85 and K753/85, respectively) in terms of which Sycol ceded, assigned and transferred all its right, title and interest in and to both Lease 1 and Lease 4 to the [respondent].

20.

On the 11th of June 2002**,** the [respondent] and the [appellant] agreed, pursuant to an exchange of correspondence between them between the 23rd of April 2001 and the 11th of June 2002, upon a revised rental in the sum of R900,553.50 per annum or R75,046.13 per month.

. . .

23.

On the 22nd of October 2008**,** the [respondent] and the [appellant] agreed, pursuant to an exchange of correspondence between the parties between the 3rd of March 2008 and the 22nd of October 2008**,** a further revised rental in the sum of R 4,093,514.00 per annum, or R 341,126.00 per month.

. . .

25.

The [respondent] has paid the aforesaid revised rental to the [appellant] from the 1st of July 2008 to present date.

26.

In or about November 2008 the [respondent] and the [appellant] entered into discussions with the view of the [respondent] purchasing the property from the [appellant].

27.

During or about 2009 professional land surveyors L.D. Baker & Associates were instructed by the [respondent] to prepare plans for the possible conversion of the shareblock scheme on the property to sectional title. In order to do so, a detailed measurements of the actual floor area of the buildings constructed upon the property was undertaken.

. . .

29.

It is agreed between the parties, based upon the measurements taken by L.D. Baker Associates that:

(a) if the interpretation of clause 6 contended for by the [respondent] is correct, the rental ought to be calculated upon a floor area of 12,079.10 m^2; and

(b) the floor area of all parts of the building under roof at each floor level to the external wall is 15,594.34 m^2 and if the interpretation of clause 6 as contended for by the [appellant] is correct, the rental ought to be calculated upon this floor area.

. . .

36.

In the event of this Court determining the said issue in favour of the [appellant], it is agreed between the parties that it would be proper for this action to be dismissed, with costs, including the costs of senior and junior counsel where employed.'

[4] The contention of the respondent, as contained in the statement of facts was that on a proper interpretation of clause 6 of both lease agreements, read with the provisions of the Umhlanga Rocks Township Scheme No 1 (the Scheme) and taking into account the actual use of the buildings constructed on the leased portions of the property, the floor area ought to be determined by excluding the area of all public access corridors, public stairways and public entrances or hallways. The appellant disagreed with this interpretation and contended, inter alia, that the relevant provisions of the Scheme are those contained in the definitions clause (clause 1.2), where the 'floor area' of a building is defined as 'the sum of the roofed areas of the buildings at each floor level measured over and including wall thickness'.

[5] The matter came before Mbatha J (the court) who, after hearing argument on behalf of both parties, granted an order in accordance with the respondent's contentions, with costs, including the costs of senior counsel. The court further declared that 'the floor area, for the purposes of calculating any revision of the rental payable in respect of clause 6(b) of the . . . leases is 12,079.10 square meters' and directed the appellant to forthwith recalculate the rental payable accordingly. The court subsequently granted leave to the appellant to appeal to this court against its order.

[6] In considering the question of the correct method of calculating the rental payable by the respondent to the appellant in terms of the provisions of clause 6(b) of the leases, the court placed much store on what it referred to as 'a change of wording' when the amendment to Lease 1 was effected on 27 January 1981.[2] Before the amendment clause 6(b) of Lease 1 stipulated that '[f]loor area shall be as defined in the draft Town Planning Scheme as amended from time to time'. After the amendment the words 'floor area' are qualified by the words in brackets: 'calculated in accordance with the provisions of the Umhlanga Town Planning Scheme No. 1 as it was at the date of signature hereof'. The court observed that in the amended version the word 'calculated' was introduced, while the words 'as defined', which were used before the amendment, had been abandoned. This led the court to the conclusion that the change in the wording indicated 'a change of intention between the parties'. In this regard reliance was placed on the decision of this court in *Port Elizabeth Municipal Council v Port Elizabeth Electric Tramway Co. Ltd* 1947 (2) SA 1269 (A) at 1279.

[7] As to the definition of 'floor area' in clause 1.2 of the Scheme the court reasoned that it 'is too wide for any sustainable interpretation'; that it 'is vague and not clear' and that it is clear from the use of the word 'calculated' (in clause 6(b)) that

[2] Save for minor discrepancies such as the numeral '7' being in brackets; the word 'Foreshore' being spelt with a capital 'F' and the closing of the bracket after the words 'Foreshore land' in Lease 4, the contents of clause 6(b) in both leases are identical.

no reference is made to that definition. With reference to clause 5 of the Scheme the court said:

'Section 5.1(ii)(b) (iii) a) and b) of Part 5 of the Scheme starts as follows:

"For the purpose of calculating the total permissible floor area in terms of Table D".

The words "calculate" and "floor area" as used in part 6(b) of the Lease are used here. They complement the wording in clause 6(b) of the Leases. It is clear to me that the references with regard to the calculation of the floor area were made in the light of the provisions of Section 5.1 of the Scheme.'[3]

Accordingly, and moving from the premise that it did not accept that the definition of 'floor area' in the Scheme 'should be accepted as the applicable method of calculating rental in this matter', the court concluded thus:

'I am persuaded by the submissions made on behalf of the [Respondent] that the place is a residential [building] and that the rent had to be calculated in terms of clause 5 of the Scheme.'[4]

[8] The relevant parts of clause 5.1 of Part 5 of the Scheme read:

'**5.1 Bulk, Coverage And Height**

(i) No site may be covered by buildings to a greater extent than the maxima listed in Table D hereto and all buildings when erected shall be within the said maxima.

(ii) (a) . . .

(b) . . .

(iii) For the purpose of calculating the total permissible floor area in terms of Table D:

a) In a residential building, the area of all public access corridors, public stairways and public entrances or hallways whether open or closed shall be excluded, provided that in the case of a block of flats the area of any portion of a public thoroughfare or public waiting space shall be included, and provided that in the case of a hotel the total area of public entrances and hallways shall be included.

[3] Para 12 of the judgment.
[4] Para 16 of the judgment.

b) In a residential building, the area of any roofed verandah, balcony or terrace which is intended for the private use of one flat in a block of flats or of one room or one suite of rooms in a hotel, shall be included in the calculation of the total floor area.'

The term 'residential building' is defined under Table A of the Scheme and under the sub-heading 'Types of Buildings And Land Use' as:

'a building or portion of a building other than a dwelling house, duplex flat, semi-detached house, terrace house or maisonette used for human habitation together with such outbuildings as are ordinarily used therewith and includes an hotel, a block of flats, a boarding house, a residential club or hostel, which building, in the case of an hotel, may include a restaurant or restaurants for the sale and consumption of food and drink.'

[9] The interpretation of clause 6(b) of the lease agreements requires that consideration be given to the language used in the document in light of the ordinary rules of grammar and syntax; the context in which the clause appears; the apparent purpose to which it is directed and the material known to those responsible for its production. And where more than one meaning is possible each possibility must be weighed in light of all the factors. Where that is the case, that is, where more than one meaning is possible, a sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.[5]

[10] I agree with the submission advanced on behalf of the appellant that the real dispute between the parties is whether 'floor area' (calculated in accordance with the provisions of the Scheme) is to be interpreted in accordance with (a) the definition of 'floor area' in the Scheme, or (b) the provisions of clause 5.1 (b)(iii) a),[6] in terms of which certain areas in the building must be excluded. The starting point, it seems to me, is the purpose to which the documents (Leases 1 and 4) are directed, which is to

[5] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18*; Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* [2013] ZASCA 176 2014 (2) SA 494 (SCA) paras 10–12.
[6] Quoted in para 8 above.

regulate the conditions upon which the leased portions of the property were to be hired. The respondent's intention was to erect buildings on the land. The purpose of clause 6(b) is directed at the manner in which the rental payable in respect of the hired piece of land is to be determined or calculated at the time the rental would be due for revision. The rental for the initial period of four and a half years was fixed (in clause 5) at R10 100 per annum, payable in 12 equal monthly instalments.

[11] At the first revision period - at which stage it was clearly envisaged that a building or buildings would already have been erected - and thereafter, the floor area of the building/s had to be determined for purposes of calculating the rental payable, which was to be computed at 7% of the valuation of an area of foreshore land equivalent to such floor area (clause 6(b) before the amendment). For what was meant by 'floor area' one had to have regard to the definition thereof in the draft Town Planning Scheme at the time. It is not clear from the papers when the Scheme was approved, but it was in operation when the original clause 6(b) was amended to its current form. This is clear from the wording of the amended clause, which no longer speaks of a 'draft' Town Planning Scheme.

[12] In terms of clause 6(b) (in its amended form) rental payable at the revision thereof must still be computed at 7% of the valuation, at current market price per square meter, of an area of foreshore land which shall be equivalent to the floor area of the buildings that have been erected on the leased portions of the property (leased land). And floor area, for purposes of fixing rental payable, must be calculated in accordance with the provisions of the Scheme. Before us counsel accepted that the definition of 'floor area' in the Scheme forms part of the provisions of the Scheme and can therefore not be ignored. At the risk of repetition I reproduce it. It reads:

'**Floor Area**
of a building shall be taken as the sum of the roofed areas of the building at each level measured over and including wall thickness.'

What is significant about this definition is that it makes no distinction in relation to the type of building at issue or to what use a building is put. Its language is clear and permits of no ambiguity. Counsel did not argue otherwise. It clearly directs one as to how the floor area of a building is measured for purposes of the Scheme. I disagree, therefore, with the finding of the court a quo that the definition is vague and unclear.

[13] The question to be considered now is whether there is any other provision in the Scheme in terms of which the floor area of a building must be calculated for purposes of determining rental payable, in this case, for the leased land. The court a quo held that clause 5 is such a provision. In their heads of argument counsel for the respondent supported this finding and submitted that the only means by which floor area is 'calculated' in terms of the Scheme is in terms of the provisions of clause 5.1 thereof. It is not necessary to say much on the use of the word 'calculating' in clause 5.1. This is because senior counsel who appeared for the respondent in this court and who did not take part in the drafting of the heads of argument moved away from his predecessor's contentions in this regard and followed a different line which I shall consider presently. Suffice it to say that clause 5.1 deals with the extent to which a building to be erected on a particular site may cover that site.

[14] The ratio between the size or extent of a site and the building which may be erected on it is referred to in the clause as 'the F.A.R', abbreviated for 'Floor Area Ratio', which, in turn, is defined in the Scheme as follows:

'**Floor Area Ratio**

means the ratio of the total floor area of the building or buildings on a lot, to the area of the lot, and is expressed as a decimal: e.g. a floor area ratio of 0.5 means that the permissible floor area of any building or buildings on the lot may not exceed half the lot area.'

The maximum extent to which a building may cover a site (permissible floor area) is listed in Table D of the Scheme (clause 5.1(i)), which also regulates the height of the building to be erected. For example, Table D, which is headed 'Density Zones', provides that in respect of a building categorised as 'special residential' the maximum permitted F.A.R is 0.35, with a coverage of 33½% and a height of three

storeys or 7.6 meters above the highest natural ground level, on a minimum lot area of 1000 square meters. Thus, when clause 5.1 (ii)(b)(iii) a) speaks of 'calculating the total permissible floor area in terms of Table D' it means nothing more than a calculation of the floor area of a building to be erected so as to determine 'the ratio of the total floor area of the building or buildings on a lot, to the area of the lot'. It has no relation, in my view, with the determination of the floor area of a building on a leased lot, such as in the present matter, for purposes of calculating rental payable in respect of the lot.

[15] As was correctly submitted on behalf of the appellant, the persons responsible for the production of the lease agreements were well aware of the distinction between the terms or concepts 'floor area', and 'floor area ratio'. Clause 10(b) of the lease provides that '[t]he Floor Area Ratio applicable to the lease [land] hereby leased shall be calculated on the total extent of the lease [land] including the area set aside on the Eastern portion to a depth of Seventy-Six comma Two Nought (76,20) meters for public open space or beach amenity reserve . . .'. Accordingly, were the intention of the drafters of the lease agreements that the calculation of the floor area of the buildings here at issue, for purposes of determining the rental payable in respect of the leased land, should be in accordance with the calculation of the permissible floor area in terms of Table D, that is the floor area ratio, they could easily have said so. They did not. It follows that the court erred in finding that 'the rent had to be calculated in terms of clause 5 of the Scheme'.

[16] But, as has been mentioned above, senior counsel who argued the matter in this court followed a different line of argument. He submitted that although the parties understood the provisions of clause 6(b) for more than 20 years and no doubt considered the floor area of the buildings on the leased land to be 15 594 square meters in total, it becomes evident from the correspondence that passed between them that they believed 'floor area' to be bulk area, which is not defined in the Scheme. It was contended that with the amendment, which cannot be ignored, the parties had in mind bulk area or floor area ratio (F.A.R.). The change or amendment to clause 6(b) indicates that the parties would now fix the rental based on the

potential income capacity of buildings, for example a hotel, which would be a potential for higher rental, so the argument continued. There was therefore a genuine common mistake on the part of both parties to the lease agreements in their understanding of the provision. The change brought about by the amendment, so it was argued, would allow for more flexibility in the determination of future rental revisions depending on whether the buildings constructed on the property were to be utilised as a block of flats or a hotel at the time of calculation.

[17] The correspondence in question, mainly in the form of letters, were referred to in the statement of facts and copies thereof annexed thereto. The letters contain evidence of the parties' subsequent conduct and are therefore admissible even though the language of clause 6(b) is, in my view, unambiguous.[7] It is true that, at least when the letters annexed to the statement of facts are considered, use of the term 'bulk' started to creep in through a letter dated 3 March 2008 from the appellant addressed to Mr I S Hume of the respondent. In the second paragraph of that letter the following is recorded:

'In terms of clause 6(c) of the leases, "the Council shall at least three (3) months prior to the revision, notify the Lessee of the proposed value per square metre of the said Lot that it considers shall apply for purposes of the revision." In this regard, the value per square metre I intend applying is R4 324.00/m² *bulk* and in terms of clause 6(b) of the leases, the floor area of the buildings to which this rate is intended to be applied is 15 594,34m². Accordingly, the annual rental computed at 7% of the valuation for the revision period is R4 720 100.' (My emphasis.)

It is clear though that despite the fact that the value of land per square meter is described in terms of bulk, the extent of the building for purposes of calculating rent is correctly referred to as the floor area.

[7] *Telcordia Technologies Inc v Telkom SA Ltd* [2006] ZASCA 112; 2007 (3) SA 266 (SCA) para 91.

[18] In an earlier undated letter from the respondent addressed to the appellant, which letter was received by the latter on 16 July 2001, the following appears in the second paragraph thereof:

'It is confirmed that for purposes of the lease, the building area is 15 594m² (nett of parking), which can be compared with the municipal valuer's area of 15 559m².'

Clearly the reference to 'building area' is meant to be 'floor area'. The reference to the term 'bulk' was again used in a letter from the respondent addressed to the appellant, dated 22 April 2008, which appears to have been in response to notification of a proposed rental revision. The second sentence of the second paragraph reads:

'The land value divided by actual bulk of 15 594 gives a rate of R4 324 per square meter of bulk.'

I do not intend to deal with all the letters referred to in the agreed statement of facts, but the confusion was perpetuated in a report compiled by a valuer, Mr T B Richardson, who had been appointed by the appellant 'to assess the current market value applicable to Breakers resort property as at the due date for revision of rent, being 1 July 2008'. The instruction was contained in a letter dated 15 August 2008

[19] In his report dated 1 October 2008 Mr Richardson referred to the 'current developed FAR' being 'stated by the Municipality at 15 594m²', and 'bulk rate per m² of R3,173'. But nowhere in the letter of instruction did the appellant make mention of F.A.R. at 15 594m². It was only conveyed to Mr Richardson that '[t]he floor area to which the rate is to be applied is 15 594m² and there is no dispute in this regard'. In the letters it addressed to the respondent the appellant was consistent regarding the floor area being 15 594m². It never referred to the floor area as F.A.R. or bulk. After all, F.A.R. is a completely different concept expressed in decimals and not in square meters. Whatever mistake may have been there on the part of the appellant was only in relation to the value of the leased land per square meter. It was never mistaken about what constituted the floor area of the buildings. Counsel's contention

that there was a mistake common to the parties to Leases 1 and 4 regarding the calculation of floor area cannot be sustained.

[20] To sum up, whatever the intention may have been for the change in the wording of clause 6(b), it could never have been to change the meaning of 'floor area' to 'permissible floor area', a concept catered for in Part 5 of the Scheme. I therefore conclude that on a proper interpretation of clause 6(b) of Leases 1 and 4 the floor area of the buildings constructed upon Lot 1066 Umhlanga Rocks Township must be calculated by determining the total floor area in accordance with the definition of 'floor area' in clause 1.2 of the Scheme. This, in my view, is a sensible and businesslike interpretation of the clause considering that we have here to do with the determination of rental payable to a lessor, which, in instances of commercial purposes, is usually calculated in terms of square meters. It follows that the appeal must succeed.

[21] The parties agreed in their statement of facts that in the event of the court determining the issue in favour of the defendant (appellant) it would be proper for the action to be dismissed, with costs, including the costs of senior and junior counsel where employed. That is the order that I intend to issue.

[22] In the result, I make the following order:

1 The appeal succeeds, with costs, which shall include the costs of two counsel.
2 The order of the court a quo is set aside and for it is substituted the following:
'The plaintiff's action is dismissed, with costs, which shall include the costs of senior and junior counsel where employed.'

_____
L Mpati
Acting President

APPEARANCES

For the Appellant:	V I Gajoo SC (with him G D Goddard SC) Instructed by: Gcolotela & Peter Inc, Durban Lovius Block, Bloemfontein
For the Respondent	C J Pammenter SC (with him M Pitman) (Heads of argument prepared by I Topping SC) Instructed by: Tomlinson Mnguni James, Durban Claude Reid Inc, Bloemfontein