

**IN THE COURT OF APPEAL OF THE REPUBLIC
OF BOTSWANA HELD AT LOBATSE**

**COURT OF APPEAL CASE NO. CACLB-051-09
HIGH COURT CASE NO. MAHLB-000326-09**

IN THE MATTER BETWEEN:

LOUIS GOODWILL NCHINDO	1ST APPELLANT
TOURISM DEVELOPMENT CONSORTIUM (PTY) LIMITED	2ND APPELLANT
LOUIS GARVAS NCHINDO	3RD APPELLANT
JOSEPH MALOPE MATOME	4TH APPELLANT
GOLCONDA HOLDINGS (PTY) LIMITED	5TH APPELLANT
JACOB DOMMY SESINYI	6TH APPELLANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS	1ST RESPONDENT
ATTORNEY-GENERAL OF BOTSWANA	2ND RESPONDENT
CHIEF MAGISTRATE LOT MOROKA N.O.	3RD RESPONDENT

**CORAM: McNALLY AJP
RAMODIBEDI JA
FOXCROFT JA
HOWIE JA
LORD ABERNETHY JA**

**HEARD: 19 JANUARY 2010
DELIVERED: 29 JANUARY 2010**

J U D G M E N T

RAMODIBEDI JA:

- [1] The dispute which lies at the heart of this appeal arose out of a criminal charge preferred against the appellants in the Subordinate Court of the First Class of the Gaborone Magisterial District presided over by the third respondent. They were charged on 21 December 2007.
- [2] It must be said at the outset that the charge sheet, annexure “E”, itself is a formidable one by any standards, comprising as it does 36 counts. These in turn traverse the following criminal offences alleged against the appellant, namely, giving false information to an official of the Public Service, forgery, obtaining registration of a title deed by false pretences, conspiracy to defraud, conspiracy to prevent lawful disposal of property for its fair value, obtaining by false pretences, prohibition of loans to a director, stealing by a servant, receiving unlawfully obtained property, making a false statement by officers of a company, fraudulent appropriation by a director, knowingly making a false statement in an affidavit and cheating of public revenue.
- [3] Not surprisingly, having regard to the apparent complex nature of the charge sheet in question, the appellants made a request to the first respondent as early as 10 January 2008 for a list of witnesses which the prosecution

intended to call. They also requested all witness statements and certified copies of all documentary evidence in the possession of the prosecution.

[4] Crucially, the following chronology of the relevant events as set out by the appellants is either common cause or it is not disputed. In particular, on 14 January 2008, the first respondent wrote to the appellants' attorneys, acknowledging her obligation to provide the documents requested. She also confirmed that these would be provided "*timeously to enable you to prepare [for your] client's defence.*"

[5] On 17 March 2008 the first respondent's office delivered certain witness statements to the appellants' attorneys with an undertaking that "*additional witness statements and documents will be dispatched to you in the near future.*"

[6] On 16 October 2008 the first respondent's office delivered a file of documents to the appellants' attorneys.

[7] On 31 October 2008 the first respondent's office delivered a further list of prosecution witnesses together with some 44 witness statements with a

promise that documentary exhibits would only be furnished on 4 November 2008 due to a breakdown in photocopying equipment.

[8] On 25 November 2008 the appellants' attorneys once again wrote to the first respondent requesting access to State witnesses. They also renewed their request for all witness statements. Furthermore, they recorded the fact that the first respondent had undertaken to provide the witness statements of Messrs. Oppenheimer, Walters, Moseki and O'Ferrall by 26 November 2008.

[9] On 23 December 2008 the appellants' attorneys wrote to the first respondent complaining of her failure to honour her undertaking to provide the statements of the witnesses referred to in the preceding paragraph.

[10] On 19 January 2009 the appellants delivered to the first respondent a request for further particulars.

[11] On 9 February 2009 the appellants brought an application in the Gaborone Subordinate Court where their criminal trial was due to begin. In effect the appellants sought relief, *inter alia*, directing the first respondent to provide

the further particulars requested on 19 January 2009, directing her to provide signed witness statements for all State witnesses, directing her to furnish the appellants with all the documents referred to in the witness statement of one Michael Keenan dated March 2008 and permitting the appellants and their legal representatives to consult with various specified persons for the purposes of preparing for trial.

[12] On 26 February 2009 the third respondent handed down a written judgment in the matter. He granted the following order in favour of the appellants:-

- “1. *The State must provide all witness statements to the defence within 30 days from today. These include statements from all individuals specifically referred to above. The cut off date is 26th March 2009.*
2. *That the State is ordered to make available to the defence all those persons in the Mogae Cabinet and others it chooses not to call. This must be communicated to the Defence not later than 26th March 2009.*
3. *That the State is ordered to avail to the Defence all documents it seeks to rely on as annexures to the Keenan report not later than 30th April 2009.*
4. *That the trial shall proceed on the 6th of July and shall proceed for the entire month of July excluding weekends ...”*

[13] The parties are on common ground that the third respondent effectively dismissed the appellants’ application for further particulars save for counts 8 and 9. In respect of the latter counts the State was directed to provide the

further particulars requested “*by way of amendment of the charge to disclose by what conduct the conspiracy to prevent free and lawful disposition of Plot 3084 was carried out.*” It is common cause that such particulars have not been furnished to date. More about this later.

[14] Relying on their constitutional right to a fair trial and the contention that it was being infringed by the third respondent’s refusal to order production of the particulars and documents requested, the appellants approached the High Court. Their notice of motion encompassed prayers for relief based on review and on the provisions of s18 (1) of the Constitution. The matter came before Dibotelo J.

[15] The learned Judge held that the matter was not properly before the High Court. His grounds for so holding were that in the absence of the record of proceedings before the third respondent there had been non-compliance with the procedure required for review; and that the appellants ought to have invoked section 18 (3) of the Constitution, not section 18 (1). The application was accordingly dismissed.

[16] I shall proceed to state my reasons for the conclusion, to which I have come, that the appeal must succeed.

[17] Although the notice of motion in the High Court contained a prayer for review the appellants made it abundantly clear that they were not pursuing a review. Accordingly nothing further need be said about review in this matter and I therefore turn to the case brought under s 18 (1) of the Constitution.

[18] Against the foregoing background, it was the appellants' case as pleaded in the High Court proceedings that the third respondent's orders precluded them from having a fair trial in the pending criminal trial as provided for in s10 of the Constitution. They seek to avoid the trial in question "*being vitiated by the unconstitutional unfairness that would otherwise result.*"

[19] It is convenient at this stage to record the respondent's defence as set out in the answering affidavit of Mr. Matlhogonolo Phineas Phuthago and as forcefully articulated by Mr. Ngakaagae for the first respondent in his submission before this Court. It is their case that the prosecution has "*generously*" furnished the particulars in the indictment with respect to each

count. They maintain that “*nothing has been wilfully and unduly held back by the prosecution with respect to disclosure.*” Furthermore, they submit that all evidence is contained in the more than 1000 documents furnished to the appellants’ legal representatives. In any event, as submitted in their heads of argument in this Court, the respondents maintain the position that “*the further particularity sought by the Appellants is not in terms of any written law or procedure and that it is unwarranted regard being had to applicable provisions of the Criminal Procedure and Evidence Act*” (“*the Act*”).

[20] In my view, the respondents’ contention that the further particularity sought by the appellants is not sanctioned by any written law or procedure can quickly be disposed of as it is plainly untenable. Firstly, s146 (1) and (2) of the Act covers the point in no uncertain terms. It provides as follows:-

- “146. (1) *The Court may either before or at the trial, in any case if it thinks fit, direct particulars to be delivered to the accused [on] any matter alleged in the indictment or summons, and may, if necessary, adjourn the trial for the purpose of the delivery of such particulars.*
- (2) *Such particulars shall be delivered to the accused or to his counsel or attorney without charge, and shall be entered in the record; and the trial shall proceed in all respects as if the indictment or summons had been amended in conformity with such particulars.*”

As can be seen, s146 is primarily concerned with ensuring a fair trial.

The Right to a Fair Trial

[21] It is of fundamental importance, in my view, to recognise at the outset that the appellants' entitlement to the relief sought needs to be tested against s10 (1) and (2) of the Constitution which guarantees a fair hearing. This section provides in relevant parts as follows:-

“10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognized by law.

(2) Every person who is charged with a criminal offence —

(a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his or her defence”.

[22] It is now well-established that a constitutional provision which guarantees fundamental human rights such as s10 requires a generous and purposive construction. This is so in order to allow for the full enjoyment of the fundamental human rights thereby guaranteed. It is not disputed that the right which is guaranteed to an accused person under s10 is the right to a fair hearing. See, for example, **Attorney General v Ahmed [2003] 1 BLR 158 (CA)**. Indeed, as this Court held in that case, no relevant limitations are contained in s10 (2) of the Constitution. The Court arrived at this conclusion after meticulously analysing s3 of the Constitution. This section in turn provides as follows:-

“3. “Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely —

- (a) *life, liberty, security of the person and the protection of the law;*
- (b) *freedom of conscience, of expression and of assembly and association;*
and
- (c) *protection for the privacy of his or her home and other property and from deprivation of property without compensation,*

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to

ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

Indeed, as this Court held in **Attorney General v Dow [1992] BLR 119 (CA)**, s3 is the “*key or umbrella*” provision in Chapter II rights. All rights and freedoms guaranteed must be “subsumed” under it. They are subject only to such limitation as can be found in the provision creating each right.

Procedural Issues

[23] Before dealing with the merits of this appeal, it is necessary to determine briefly the respondent’s point *in limine* that the Subordinate Court’s decision in the matter was interlocutory and, therefore, not appealable. In this Court the parties spent a considerable amount of time arguing the point. The appellants relied on s18 (1) and 18 (2) for the proposition that the High Court sat as a court of first instance and that they did not pursue an appeal or review before it. The respondents on the other hand maintained that constitutional points arising in criminal proceedings in the Subordinate Courts fall to be dealt with under s18 (3) of the Constitution. They contended, therefore, that the matter was wrongly brought before the High

Court. In order to analyse these competing submissions it is convenient to quote the relevant sections relied upon by both parties.

Section 18 (1), (2) and 18 (3) of the Constitution

[24] Section 18 (1) and (2) provides as follows:-

“18. (1) *Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 3 to 16 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.*

(2) *The High Court shall have original jurisdiction —*

(a) *to hear and determine any application made by any person in pursuance of subsection (1) of this section; or*

(b) *to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,*

and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 16 (inclusive) of this Constitution.”

Section 18 (3) in turn reads as follows:-

“(3) *If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 3*

to 16 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.”

[25] It is strictly not necessary in these proceedings, in my view, to determine whether s18 (3) provides an exclusive avenue for constitutional redress in criminal matters in the Subordinate Courts as was submitted by Mr. Ngakaagae. This is so because this matter falls to be determined on its own peculiar facts. In this regard it is important to mention that neither party took the opportunity to make use of s18 (3). The third respondent did not refer the appellants’ constitutional point to the High Court. Nor did he make a determination on whether or not the raising of the constitutional question was merely frivolous or vexatious. Similarly, the appellants did not request the third respondent to refer their constitutional question to the High Court. In these circumstances, it cannot be seriously disputed that the only avenue open to the appellants in defending their constitutional rights was to proceed under s18 (1) of the Constitution. And so they did, correctly so in my judgment, since s18 (1) is plainly not subject to any section except s18 (5).

[26] I conclude, therefore, that the High Court was wrong in non-suiting the appellants on the grounds it did.

Sections 128 and 131 of the Criminal Procedure and Evidence Act Cap. 08:02 viz.a.viz the request for further particulars.

[27] It is common cause that the third respondent approached the question of whether further particulars should be furnished, as he said, “*through the prism*” of sections 128 and 131 of the Criminal Procedure and Evidence Act Cap. 08:02 (“the Act”). It is accordingly necessary to refer to the relevant parts of these sections in order to determine the correctness or otherwise of the third respondent’s approach. It is convenient to reproduce s 128. The section reads as follows:-

“128. Every indictment or summons shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

Section 131 sets out rules for the framing of indictments or summonses.

[28] In my view, the third respondent committed the following three fundamental errors in his judgment:-

- (1) He incorrectly assumed that the test whether further particulars should be furnished under s146 is to determine whether the summons or indictment complies with s 128 as read with s 131. As Mr. Hodes S.C. for the appellants correctly submitted, in my view, the fact that a summons complies with s 128 does not mean that an accused is not entitled to further particulars under s146. I consider that the correct approach is to have regard to the peculiar circumstances of each individual case.
- (2) Again, as was correctly submitted on the appellants' behalf, the third respondent wrongly approached the matter on the basis that any further particulars should actually be incorporated in the charge sheet and that the charge sheet should be amended every time further particulars are requested. Section 146 (2) caters for this situation. The charge sheet is regarded as having been amended in conformity with the further particulars.
- (3) In holding the view that the question whether further particulars needed to be furnished should be approached "*through the prism*" of sections 128 and 131, the third respondent erred fundamentally. In

my view the correct approach is to determine the question through the prism of the Constitution as the supreme law. In particular, the correct approach in the instant case is to apply s 146 of the Act in the context of subsections 10 (1) and 10 (2) of the Constitution. That, as I see it, is the litmus test in a matter such as this.

[29] It follows from the foregoing considerations that the third respondent failed to apply the correct test when assessing whether the further particulars requested by the appellants should be furnished.

[30] Regrettably, the court a quo followed the same approach as the third respondent. With respect, it erred in so doing. Thus, for example, the court said the following in paragraphs 44 and 45 of its judgment:-

“In terms of these provisions [ss 128 and 131], an indictment is not open to attack if each count in the indictment commences with the statement of offence followed by the particulars of the offence set out in clear language; there is no suggestion that the indictment containing the 36 counts the Applicants are facing does [not] comply with these guidelines.” [par 44]

“It is only where the indictment is deficient in its particulars of offence, i.e. where the elements of the offence charged are not clearly set out in ordinary language, that the Court may order further particulars in terms of section 146(1) of the C.P.& E. ...Where the indictment discloses the elements of the offence charged, the accused, in my view, is not entitled to any further particulars in respect of the charge.” [par 44]

“In the present case, I do not think there is a serious contention by the Applicants that the charges do not disclose the elements of the offence creating sections of the Penal Code. After examining the charges the Applicants are complaining about, I take the view that the further particulars which the Applicants submit they are entitled to are, in fact, matters of evidence to be led at their trial. ... I am satisfied that the particulars in respect of each count the Applicants are complaining about comply with the provisions of sections 128, 131 and 146 (1) of the Criminal Procedure and Evidence Act and give reasonable information to enable the Applicants to plead ... Therefore, the application for an order to direct the DPP to furnish the Applicants with the further particulars which have been sought has no merit and stands to be dismissed.” [par 45] (Emphasis added.)

[31] It is not seriously disputed that as a consequence of the High Court’s judgment the first respondent has refused to provide even the limited further particulars which the third respondent had ordered on 26 February 2009. This, despite the fact that that part of the order was not the subject of an appeal or cross-appeal.

[32] The record shows that the appellants’ request for further particulars originally consisted of a total of 133 questions in relation to the 36 counts. These have since been whittled down by the appellants and their legal representatives to 85, with a further 6 questions falling away as a result of the first respondent’s recent withdrawal of count 3.

[33] Astonishingly, in my view, it is common cause that the first respondent failed to reply formally to the appellants’ request for further particulars. No

attempt was made to address particular aspects of the request issuably or at all. Nor was there any analysis whether the specific enquiries by the appellants were necessary for the purposes of preparing their defence and thus enabling them to receive a fair trial. Instead, the first respondent's consistent approach has been to ignore the request for further particulars in its entirety. That, in my judgment cannot be right.

[34] Indeed, as was pointed out to Mr. Ngakaagae during submissions in this matter, we have come a long way from the days when the prosecution used to consider it their prerogative to withhold from the accused relevant information such as State witness statements and thereby hope to spring a surprise on the defence. Such a practice was infamously known as trial by ambush. Very often this led to miscarriage of justice of alarming proportions. By contrast, the Constitution has now ushered in a new culture of fairness, openness, justification and transparency ever so important in a just democratic society such as Botswana. This, as I see it, is the sum effect of s10 of the Constitution. As this Court held in Attorney General v Ahmed (supra) at p162, it is not the State's function to "ambush" the accused or to conceal evidence in its possession. Furthermore, I discern the

need to draw attention to the following salutary remarks made by the Court at p 164:-

“It is also the duty of the prosecutor to ensure that even an accused person’s constitutional rights are not infringed.”

[35] Equally of concern is the first respondent’s attitude that the appellants do not need the further particulars requested because they should know what the charges relate to. Similarly, the first respondent has taken the view that the further particulars sought need not be given because they can purportedly be found in the witness statements or documents furnished.

[36] It seems to me that the first respondent’s approach overlooks the fundamental fact that in terms of s10 (2) (a) of the Constitution the appellants are presumed to be innocent at this stage of the proceedings. In this regard I am mainly attracted by the following remarks in **S v National High Command And Others 1964 (1) SA 1 (T)** at 2 D - F:-

“In the present case there is a broad allegation that the accused conspired with certain named persons and with certain organisations, and full and precise details were required of the date when and place and manner in which each of the accused is alleged to have commenced acting in concert with alleged co-conspirators. The reply is that this is a matter peculiarly within the knowledge of

the accused, and is a matter of evidence. I have never come across a criminal case where a reply of that nature has been given to a question of this nature.

The accused are assumed to be innocent until they are proved guilty, and it is most improper, in my opinion, when an accused asks for particulars in regard to an offence which is alleged to have been committed to say to him 'This is a matter that you know all about'. That presupposes that he is guilty, and he will not be told anything about the offence.' (Emphasis supplied.)

These remarks are decidedly apposite to the instant case. Insofar as the conspiracy charges are concerned, namely, counts 8 and 9, it will indeed be recalled that the third respondent ordered that further particulars be furnished. The first respondent has simply stonewalled to date, to the apparent prejudice of the appellants.

[37] As this Court held in **Monageng v The State [1987] BLR 355 (CA)** it is not enough that the statement of the offence charged is itself adequate. The Court went further at p 360:-

“But where the prosecution’s case is that the appellant himself did not do the act but did it through somebody else, failing to give the actual particulars of the offence charged cannot constitute the giving of reasonable information.”

The same approach has been followed in cases over the years in South African courts. Those cases justify the view that where the prosecution

seeks to hold an accused liable for the wrongful act of another on the basis of common purpose or concerted action or for participation in, or action pursuant to, a conspiracy, detail is required to be given as to the particular conduct of the accused which renders him liable as alleged. See for instance **S v National High Command And Others**, supra; **R v Adams And Others 1959 (1) SA 646 (S.C.)** at 669 D – F; **S v Mpetha And Others (1) 1981 (3) SA 803 (C)** at 809 F – 810H.

[38] It is also settled law that an accused is entitled to at least a reasonable degree of clarity, if not precision, where the information in the charge is sought to specify a prosecution allegation of fraud by misrepresentation: **S v Hugo 1976 (4) SA 536 (A)** at 540 E – H; **S v Rosenthal 1980 (1) SA 65 (A)** at 89 F – G. In the former case it was said that the accused ought not to be left to speculate as to the true nature of the misrepresentation.

[39] As can be seen from the authorities, the bottom line is fairness to the accused person. Viewed in this way, each accused is ordinarily entitled to further particulars in addition to the information contained in the charge sheet. Each case will, of course, turn on its own facts.

[40] Having regard to the foregoing considerations, including the magnitude and complexity of the prosecution case, I have come to the inescapable conclusion that the appellants are entitled to replies to certain of the further particulars requested in order to enable them to prepare for their defence at the trial. As certain passages in the respondents' heads of argument show, the State has been able to provide greater particularity. However the proper way to provide it (other than by furnishing documents) is by means of a formal reply to the appellants' request or a statement on oath.

Consultation with State witnesses

[41] The first respondent has adopted a blanket refusal to allow the appellants any consultation with two particular State witnesses, namely, Mr. Justice Newman and Nicholas Oppenheimer, respectively. Such blanket refusal is undoubtedly in conflict with s10 of the Constitution. See, for example, **Shabalala And Others v Attorney-General of Transvaal And Another 1996 (1) SA 725 (CC)**. Once again, having regard to the magnitude and complexity of the present case, I consider it to be in the interests of a fair hearing as guaranteed in s 10 (2) (c) of the Constitution to allow the

appellants consultation with Mr. Justice Newman and Nicholas Oppenheimer respectively.

Costs

[42] In my view this is a fit case where the costs must follow the event. The appellants have succeeded in resisting a grave infringement of their constitutional rights to a fair trial. The State on the other hand has failed in its attempt to forestall these rights. This, in circumstances where, as mentioned earlier, this Court has laid down the principle that “*it is also the duty of the prosecutor to ensure that even an accused person’s constitutional rights are not infringed*”. See also **Sejammitlwa v The State [2002] 2 BLR 75 (CA)**. Although the appeal has involved a substantial record and important issues I do not think that the appellants’ request for costs consequent on the employment of three counsel was sustainable in the circumstances. I propose to make an order for the costs of two counsel.

Order

[43] In the result the appeal is upheld. The following order is made:-

- (1) The first respondent is ordered to furnish the appellants with a formal response setting out the further particulars as requested in respect of paragraphs 13, 15, 16, 18, 19, 36, 37, 39, 40, 42, 43, 52, 58, 64, 66, 71, 74, 75, 76, 78, 82, 85, 93, 98, 102, 103, 104, 107, 108, 109, 112, 113, 114, 118, 124, 128, 129 of the appellants' request dated 19 January 2009.
- (2) The first respondent is further ordered to furnish the appellants with a list of the witnesses the State intends, as at the date of this order, calling at the trial.
- (3) The first respondent is further ordered to furnish the appellants with the following documents or to state on oath that the State, whether through the first respondent or the Directorate on Corruption and Economic Crime or any other functionary does not possess them :-

- (i) The schedule referred to in the second last paragraph of page 10 of Michael Keenan's statement, together with any attachments thereto.
 - (ii) The entire report of Control Risks, finalised on 18 March 2008, including all annexures thereto.
 - (iii) Notes and/or transcripts of seventy interviews referred to on page 2 of Michael Keenan's statement.
- (4) The first respondent is directed to permit the appellants' legal representatives to consult with Mr. Justice Newman and Nicholas Oppenheimer for the purposes of preparing for trial as requested. Such consultation(s) shall take place in the presence of the legal representatives of the first respondent's office.
- (5) Orders (1), (2), (3) and (4) shall be carried out on or before 28 February 2010.

- (6) The respondents shall pay the appellants' costs including the costs consequent upon the employment of two instructed counsel and one instructing attorney.

**DELIVERED IN OPEN COURT AT LOBATSE THIS 29TH DAY
OF JANUARY 2010.**

**M.M. RAMODIBEDI
JUSTICE OF APPEAL**

I AGREE:

**N.J. McNALLY
ACTING JUDGE PRESIDENT**

I AGREE:

**J.G. FOXCROFT
JUSTICE OF APPEAL**

I AGREE:

**C.T. HOWIE
JUSTICE OF APPEAL**

I AGREE:

**LORD ABERNETHY
JUSTICE OF APPEAL**

FOR APPELLANTS: **ADV. P.B. HODES S.C.**
 ADV. A.C. WEBSTER S.C.
 ADV. B.J. FARLAM

FOR 1ST RESPONDENT: **MR K. NGAKAAGAE**
 MR M.P. PHUTHEGO
 MR. T. BALOI
 MR G.T. TLHABOLOGANG

FOR 2ND RESPONDENT: **MR T.J. BOGOSI**