IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA122/2017

In the matter between:

IMVULA QUALITY PROTECTION (PTY) LTD	**First Appellant**
PERSONS LISTED IN ANNEXURE "A"	**Second to Further Appellants**
RED ALERT TSS (PTY) LTD	**Third Appellant**
PERSONS LISTED IN ANNEXURE "B"	**Fourth to Further Appellants**

and

UNIVERSITY OF SOUTH AFRICA	**Respondent**

Heard: **23 August 2018**

Delivered: **25 September 2018**

Summary: Meaning and interpretation of s197 of the LRA – distinctive feature of this case from normal transfer of business as a going concern in that employer (university) insourcing security personnel previously employed by appellants. University also concluded a shared service agreement with appellants. Appellants contend that the absence of a transfer of tangible assets to the university was immaterial to the application of s 197, given that the employment

of their employees by the university amounted to a transfer which triggered the operation of s 197.

Held that

What occurred was that following its response to "fees must fall" by way of the recommendations of the multi-stakeholder task team, the university took in a range of people who had previously been employed by the appellants as security guards and entered into employment contracts with them. At the same time, it did not seek to run a security business, whether in whole or in part; hence the significance of the shared service agreement. The business of providing security at the campuses of respondent constituted more than simply the existence of a group of guards patrolling the campus without more; that is without management, equipment or strategy with regard to their responsible deployment. None of these tasks was taken over by the university.

It follows that, if the words "transfer of a business as going concern" have to be given justifiable meaning, it cannot, in this case and on these facts, be concluded that the transfer of a significant portion (but not all) of the security guards without more was the transfer of a business as a going concern, so that once the "taking in" of the security guards at the workplace occurred, the business without any outside party operated seamlessly. Apart from equipment, if necessary the outside party which had entered into the shared service agreement would supply more guards. This arrangement cannot be said to fall within the meaning of a transfer of a business as a going concern, as contemplated by s 197 of the LRA.

Coram: Phatshoane ADJP, Davis JA and Murphy AJA

JUDGMENT

DAVIS JA

Introduction

[1] This case turns upon the meaning of a transfer of a business as a going concern as set out in s197 of the Labour Relations Act 66 of 1995 ('LRA'). Although, as will become evident from the legal analysis set out in this judgment, s197 of the LRA has been examined in many cases, a distinctive feature of this case is that it involves a university (respondent) which embarked on a programme of insourcing when it employed two third of personnel rendering security services at respondent's premises, who had previously been employed by first and third appellants. In other words, this case is somewhat different from the standard s197 case, in which company A is alleged to have purchased or otherwise acquired a business as a going concern from company B.

The factual background

[2] On 05 May 2015, first appellant and respondent concluded an agreement for the provision of security services at the various campuses of respondent. Clause 1 of annexure A to this agreement contained a description of the services which were to be provided by first appellant:

> 'The Services will include, but not be limited to the following:
>
> 1.1 The Service Provider shall provide the University with high level access control, security and patrol services in order to protect and secure the University's staff, students, visitors, property, assets and reputation.
>
> 1.2 The Service Provider shall provide a sufficient number of on-site properly pre-trained, efficient and competent employees and supervisors/managers (hereinafter collectively referred to as its "personnel") in order to provide the required Services. The number and qualification of personnel as well as the time and premises where the Services must be rendered are set out in Annexure "B" attached hereto"

[3] In terms of Clause 9.1, read with Clause 4 of annexure A, the agreement was to subsist for five years, although Clause 9.2 permitted respondent to terminate the

agreement after 12 months, by providing first appellant with one-month calendar notice.

[4] During 2015, South Africa witnessed unprecedented and widespread student protests across university campuses under the banner of “fees must fall”. Among the demands made by the “fees must fall” movement was that universities should insource a host of functions which hitherto had been outsourced, including security services. Respondent reacted to these protests by constituting a multi-stakeholder task team which included trade unions and political parties to address many of the issues which had been raised by the “fees must fall” movement, including its demand for insourcing.

[5] On 19 October 2016, respondent’s executive council passed a series of resolutions, including one in which “insourcing of workers at UNISA is supported”. The agreement which was reached by the multi-stakeholder task team on insourcing included the provision that 910 of a total of 1413 outsourced staff members would be insourced as part of respondent’s permanent staff compliment. The current contracts of various service providers would be terminated as soon as was practically possible. A new business model was developed which was called the “shared services model”. This model envisaged that, while the majority of staff engaged in the provision of security services would be employees of respondent, security services would continue to be provided by outsourced service providers but personnel, as far as possible, they would employ staff of respondent as the security.

[6] Pursuant to this decision, on 18 November 2016, respondent wrote to first appellant in which it stated the following:

> ‘1. This serves to inform you that in terms of clause 9.2 of the above mentioned agreement UNISA gives notice of termination of the agreement to be effective from 3 March 2017.

2. The aforementioned decision has been taken in light of issues encountered by a number of universities concerning the outsourcing of services.'

[7] I should add that a similar agreement to that concluded (and then terminated) between first appellant and respondent had existed between third appellant and respondent, in which the former provided security services to respondent on one of its campuses and certain of its satellite offices in Pretoria. A third security company Reshebile, which is not a party to the litigation, also provided certain security services to respondent.

[8] The key differences between the agreements entered into between respondent and first appellant and third appellant respectively and the new shared services agreement can be summarised thus: In the earlier agreements, the first appellant and third appellant provided high level access control security and patrol services, pre-trained employees and supervisors and managers provide security services, developed high level monitoring systems and risk analysis relating to the provision of all the security services and training management and supervision of staff, provided security vehicles, mobile phones and radios and rain coats to all of the staff. In terms of the new agreement, the obligations of the independent service provider were to provide equipment and infrastructure, torches, radios, guard tracking and monitoring equipment registers, vehicles and staff uniforms. By contrast, respondent would employ the human resources required for the security service. The obligation of a new service provider would include the provision to respondent of managers and supervisors employed by the service provider to ensure the overall management of the security service.

[9] The dispute between the parties was whether respondent's termination of the contracts with both first appellant and third appellant, taken together with its decision to employ the majority of those who had previously been employed by first appellant and third appellant constituted a transfer of a business as a going concern for the purposes of s197 of the LRA.

[10] Van Niekerk J, sitting in the court *a quo,* held that s197 of LRA was not applicable. After analysing the relevant agreements, the learned judge came to the following conclusion:

> 'The true position therefore is that the contract for the provision of services concluded between UNISA and iMvula and Red Alert respectively have come to an end, and that no part of the infrastructure for the conducting of the business of providing a security service is to be transferred to UNISA. In those circumstances, UNISA's decision to insource in terms of the shared services model and the offers of employment consequently made to some of iMvula and Red Alert's staff does not trigger s197.'

[11] With leave of the court *a quo*, appellant has approached this Court on appeal.

Section 197 of the LRA

[12] Section 197, to the extent relevant, reads thus:

'(1) In this section and section 197 A –

(a) "'business' includes the whole or a part of any business, trade, undertaking or service; and

(b) 'transfer' means the transfer of a business by one employer ('the old employer') to another employer ('the new employer') as a going concern.

(2) If a transfer of a business takes place, unless otherwise agreed in terms of subsection (6) –

(a) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer;

(b) all the rights and obligations between the old employer and an employee at the time of the transfer continue in force as if they had been rights and obligations between the new employer and the employee;

(c) anything done before the transfer by or in relation to the old employer, including the dismissal of an employee or the commission of an unfair labour practice or act of unfair discrimination is considered to have been done by or in relation to the new employer; and

(d) the transfer does not interrupt an employee's continuity of employment, and an employee's contract of employment continues with the new employer as if with the old employer.'

[13] Stripped to its essentials, the requirements for the application of s197 are:

(i) there must be a transfer by the old to the new employer,

(ii) what must be transferred is the whole or part of the business; and

(iii) the whole of part of the business must be transferred as a going concern.

[14] This section, as indicated earlier, has received considerable judicial attention. See in particular *City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd and Others (City Power*);[1] *Rural Maintenance (Pty) Ltd and another v Maluti'a 'Phofung Local Municipality* (*Rural Maintenance).*[2] .

[15] In *City Power*, a tender was awarded by the appellant to first respondent for the supply of prepaid metering electricity services in Alexandra township. The original tender contracts lapsed in 2010. Subsequently, additional service delivery agreements were concluded between the parties for the installation of more prepaid meters and for the maintenance of meters previously installed. In 2012, the appellant informed the respondent that it had terminated the contracts with immediate effect by reason of the respondent having allegedly submitted a fraudulent tax certificate. Eventually, the parties agreed to terminate the contracts. It was further agreed that the appellant would continue to render the services previously provided by the respondent with a new service provider who was appointed and, in doing so, it would use respondent's infrastructure. It did,

[1] 2015 (6) BCLR 660 (CC).
[2] 2017 (1) BCLR 64 (CC).

however, refuse to take over respondent's employees. Respondent contended that its business had been transferred as a going concern as contemplated by s197 of the LRA. On this basis, it argued that appellant was obliged to take over its employees upon the termination of the service delivery agreement.

[16] In a judgment, on behalf of a unanimous court, Tshiqi AJ confirmed the correct nature of the earlier test for determining whether a business is transferred as a going concern, as laid out in *National Education Health and Allied Workers Union (NEHAWU) v University of Cape Town and Others* (*NEHAWU)*[3]:

> 'In deciding whether a business has been transferred as a going concern regard must be had to the substance and not the form of the transaction. A number of factors will be relevant to the question whether a transfer of a business as a going concern has occurred, such as the transfer or otherwise of assets both tangible and intangible, whether the workers are taken over by the new employer, whether customers are and whether or not the same business is being carried on by the new employer. What must be stressed is that this list of factors is not exhaustive and that none of them is decisive individually.'

[17] On the facts of *City Power,* and having applied the test set out in *NEHAWU, supra,* the court held that the appellant had taken over the "full business "as is" with all the complex network infrastructure, assets, knowhow and technology required to install and operate the pre-paid electricity system.".[4] It had done so "with the clear intention of maintaining uninterrupted electricity services to Alexander township. The project continued after termination of the service level agreements and completion of the handover process. The business is identifiable and it is discrete. Ultimately a business of providing a system of prepaid electricity to residents of Alexandra Township continued, save that it was now conducted by a different entity."[5]

[3] 2003 (3) SA 1 (CC) at para 56.
[4] At para 39.
[5] At para 39.

[18] More recently, in *Rural Maintenance, supra,* respondent's electricity services had fallen into disrepair. It concluded an agreement with applicant, for the outsourcing to applicant of the management, operation, administration, maintenance and expansion of the municipalities electricity supply for a period of 25 years. In terms of this agreement, 16 municipal employees were transferred to applicant which then commenced performing its obligations under the agreement. Two years later, respondent informed applicant that, because its previous municipal manager had lacked the authority to conclude the agreement on its behalf, respondent did not regard itself as bound by the terms of the agreement. By this time applicant had incurred considerable expense in expanding the operation and had increased the workforce to 127 employees. It then handed back to applicant what it claimed was "the entire electricity distribution infrastructure of the municipality that Rural Maintenance utilised, maintained, upgraded and was in control of". In its view, this amounted to a transfer of the business as a going concern in terms of s197 of LRA.

[19] The dispute between the parties, in this case, turned on two issues, namely whether the agreement was null and void from the outset and, secondly, whether, at a factual level, applicant's business had been transferred to respondent as a going concern. In the majority judgment,[6] Froneman J contrasted the factual situation of *City Power supra* with that which confronted the court in *Rural Maintenance* by stating the following:

> 'The difference between the two factual situations is important in the context of the transfer of service businesses to municipalities. As noted above, *City Power* did not find that the mere termination of a service contract triggered the application of s197 of the LRA. In that case there was a transfer of a fully functional business in its expanded form to *City Power*. Without that kind of "as is" transfer, the termination of the service contract may literally mean only a termination of the business, not its transfer back to the Municipality. The employment obligations of employees must then be dealt with by the erstwhile

[6] I have not canvassed the two minority judgments in Rural Maintenance, neither of which have relevance to the present dispute.

> service provider under s 189 of the LRA if the business comes to an end for operational reasons. It cannot seek to transfer those obligations to the Municipality under the guise of s197, but nevertheless seek to retain for itself the means it used to conduct the service business as is the case here. It is not only the interests of employees that must be protected in the interpretation of application of s197, but even if their protection is of primary concern it needs to be kept in mind that the protection of workers is not solely governed by s197 in these kinds of situations. Employees are also protected by the retrenchment provisions in s189. The choice here is which employer should be responsible for the workers affected by the change in circumstance.'[7]

[20] Of equal relevance is a further passage from the judgment of Froneman J in which the learned judge writes:

> 'I agree that for a transfer of a business as a going concern to occur, not all the assets of the business have to be transferred and that it depends on the nature of the business. That factual application of a flexible test has long been at the heart of our going-concern business transfer jurisprudence. The onus rested on Rural to set out what work the more than hundred additional employees it employed were involved in and what means were provided to them to do that work. It is common cause that certain equipment was not transferred to the Municipality, but it appears improbable that at least some of the newly employed employees did not need and use the equipment in order to do their work. Without the transfer of the means to do the work they did as part of Rural's business, there could be no transfer of the business to the Municipality as a going concern. The assets that Rural did not transfer back to the Municipality were essential to the profitability and operation of the business. Without those crucial assets, the Municipality could not have carried on the business without any major difficulties.'[8]

[21] Although this judgment eschewed laying down clearly demarcated guidelines, it is clear that the inquiry is fact driven. To constitute a transfer of a business as a

[7] At para 36,
[8] At para 37.

going concern, not all the asset of the business need to be transferred, nor do all the relevant employees. But what must be transferred are those assets and personnel that are essential to the business as it was operated by the transferor. The transfer allows the actual business or a clearly demarcated portion thereof to operate seamlessly after the transfer.

Comparative law

[22] In the cases cited in *Rural Maintenance*, attention was devoted to European law, particularly owing to two foreign statutory instruments, being the Acquired Rights Directive (ARD) which applies in the European Union and the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) which incorporated the requirements of the ARD into the law of the United Kingdom

[23] Reference was made, in particular, to the decision in *Abler v Sodexho MM Catering Gesellschaft GmbH (Sodexho),*[9] where the European Court of Justice had to determine whether the then applicable ARD applied to a change of catering service providers at a hospital, despite the absence of the sale of assets and transfer of staff between the old and new service providers. Having stressed that the importance to be attached to each criterion for determining whether there has been a transfer will necessarily vary according to the activity carried on, the court held: "[c]atering cannot be regarded as an activity based essentially on manpower since it requires a significant amount of equipment".[10] Thus, the failure to transfer the staff was not determinative of the enquiry to the application of the ARD. As the court held, in effect, the transfer of the right of use of the hospital's premises and equipment rendered the ARD applicable.

[24] In *Rural Maintenance,* Froneman J at para 34 cited a passage from *Sodexho* as follows:

> 'The national court, in assessing the facts characterising the transaction in question, must take into account the type of undertaking or business concerned.

[9] [2004] IRLR 168 (ECJ).
[10] At para 36.

> It follows that the degree of importance to be attached to each criterion for determining whether or not there has been a transfer within the meaning of Directive 77/87 will necessarily vary according to the activity carried on, or indeed the production or operating methods employed in the relevant undertaking, business or part of a business (Süzen, paragraph 18, and Hidalgo, cited above, paragraph 31).'

He concluded that "This approach accords with the approach in our law, set out in *NEHAWU* and *Aviation Union*."

[25] Given this *dictum*, it was unsurprising that Mr Myburgh, who appeared together with Mr Boda and Mr Itzkin on behalf of the appellant, referred to more recent decisions of the European Court of *Justice,* including *Securitas v ICTS Portugal ECLI*: C: 2017: 780. This case concerned whether a change of the security guard service provider, without the transfer of the guards, fell within the scope of the 2001 ARD. The court made the following findings:

> 'It follows that the degree of importance to be attached to each criterion for determining whether or not there has been a transfer within the meaning of Directive 2001/23 will necessarily vary according to the activity carried on, or indeed the production or operating methods employed in the relevant undertaking, business or part of a business…
>
> The court has therefore held that, in a sector where the activity is based essentially on manpower, the identity of an economic entity cannot be retained if the majority of its employees are not taken on by the alleged transferee … Where, however, the activity is based essentially on equipment, the fact that the former employees of an undertaking are not taken over by the new contractor to perform that activity, as in the case in the main proceedings, is not sufficient to preclude the existence of a transfer of an economic entity which retains its identity, within the meaning of Directive 2001/23.' (paras 28-30)

[26] In effect, the appellants' argument, following upon this finding of the ECJ and similar judgments (see, for example *Abler, supra*, and *CLECE SA v Valor* [2011] IRLR 251 (ECJ)), was that the absence of a transfer of tangible assets from first

appellant to respondent was inconsequential to the application of s 197, given that the transfer of an organised group of appellants human capital, constituting the majority of its employees at respondent, amounted to a transfer of an economic entity which retained its identity which triggered the operation of s 197.

[27] To the argument that the new service provider would provide management and supervision of the staff, albeit employed by respondent as well as physical assets and infrastructure needed to render the security service, the appellants referred to the tender specification document which stipulated the following:

> 'The security service provider will be required to assist UNISA with management and supervisory services to ensure that the security function at UNISA in Gauteng is effectively implemented, monitored and sustained. It is compulsory that the security provider, after perusal of the site specific detail, to provide UNISA with a detail security plan, indication [sic] the proposed management structure, equipment and processes which will be used to effectively provide the required security service. This should form part of the tender response.'

[28] On this basis appellants contended that the same economic activity, as was rendered by the first and third appellants, was to continue with largely the same workforce in respect of the same premises and pursuant to the same activities. In further support of this submission, further reference was made to the tender specification document in which the service provider was required to provide the following assets.

> 'All the relevant equipment to render a professional security service must be provided and maintained by the security service provider, such as:
>
> - Quality torches in working order.
> - All the relevant registers, for example:
>
> - Occurrence Book
> - Visitors Book

- Asset control registers
- Security Incident report register (SR)
- Post Allocation sheets/forms
- Information Book.

And:

- Provision of two-way radios (repeaters and base stations were required) on each site.
- Provision of guard monitoring systems (database and panic alarm) for site. Electronic reports to be made available to the client representative on a daily basis.'

[29] In the view of appellants, the paucity of assets required, showed that it could not be contended realistically, as had been suggested by respondent, that the provision of security services was an asset-intensive undertaking. Once the majority of the employees previously employed by the appellants had become employees of respondent with the specific task of ensuring security on the campuses of respondent, there had been a transfer of an economic entity which retained its identity and, accordingly, which triggered the operation of s197 of the LRA.

Evaluation

[30] It again needs to be emphasised that, from the jurisprudence which has engaged with the wording of s197, the enquiry is a fact specific one. Two central issues must be borne in mind in the application of s197 to the facts placed before this Court. In the first place, unlike *Securitas v ICTS Portugal, supra,* this case does not deal with the circumstances where contracting entity A has terminated a contract concluded with an undertaking for the provision of security services at its facilities and then concluded a new contract for the supply of those services with independent entity, B which refuses to take on the employees of entity A. In this

case, owing to its particular facts, the respondent was compelled through the intense political protest which it encountered, to directly employ a group of security guards who had previously been employed by first and third appellants. A further issue, of which consideration must be taken, is that even if the court is prepared to interpret the shared services agreement in the manner urged upon us by appellants, the court would still be required to answer the question as to whether what has taken place was, in the express words of s197 "a transfer of a business by one employer to another employer as a going concern". In other words, could it be said that what occurred in respect of respondent's conduct was that it was engaged in the transfer of a business to it by appellants (or at least part of a business) as a going concern?

[31] In order to determine whether a business is transferred as a going concern, as befits a fact-intensive enquiry, the facts of this case become crucial. The business of both first and third appellants did not simply comprise of a group of security guards who were assigned to safeguard the premises of respondent.

[32] The model in which appellants were critical players and, in terms of the agreement entered into, between appellants and respondent, included the following:

> 'The Services will include, but not be limited to the following:
>
> 1. The Service Provider shall provide the University with high level access control, security and patrol services in order to protect and secure the University's staff, students, visitors, property, assets and reputation.
>
> 2. The Service Provider shall provide a sufficient number of on-site properly pre-trained, efficient and competent employees and supervisors/managers (hereinafter collectively referred to as its "personnel") in order to provide the required Services. The number and qualifications of personnel as well as the time and premises where the Services must be rendered are set out in Annexure "B" attached hereto.'

[33] Significantly, when Mr Kruger in his founding affidavit on behalf of first appellant described what respondent required when it sought to terminate its agreements with first and third appellants, he stated as follows:

> 'Each security service provider was asked to provide a breakdown of the pricing associated with the remainder of the Agreement. The breakdown of the pricing included, amongst other things:
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> 1. Equipment and operational costs, namely machine radios, guard monitoring systems and an amount to take into account the depreciation of equipment;
>
> 2. The salaries of the security officers, including travel allowances;
>
> 3. The costs associated with providing the security officers with vehicles including petrol and fuel;
>
> 4. Administration costs, including, amongst other things, bank charges, insurance and licenses, stationary, rent, telephone; and
>
> 5. The costs associated with managing the live patrols and managing nightshift operation (control room costs).'

[34] In his founding affidavit, Mr Kruger described the shared service model as follows:

> 'The insourced security officers will be making use of the same assets which are presently used by iMvula to provide the same services. In this regard, iMvula has placed a sophisticated guard patrol system called "Bloodhound" at UNISA's sites which is monitored by iMvula's National Operations Control Room. To ensure an effective transition of the security services, and in order to maintain the same quality of security services, UNISA will need to make use of "Bloodhound". Hence, the infrastructure that iMvula uses to discharge it obligations will pass to UNISA and/or the shared services service provider.'

[35] It does not, on these papers, appear to be the case that the costs of infrastructure and administration admit of a description of as *de minimis*. Mr Kruger attached a copy of an e-mail which had been received by respondent, setting out an estimation of the pricing for the remainder of the agreement which included pricing for assets and administration costs. The value as stated was R 11 040 000.00 per annum. See the e-mail of Mr S Aubrie Deputy Director: Physical Security and Investigation Service of respondent of 18 February 2016.

[36] Unfortunately, the exact, breakdown of the costs of the entire business of providing security to respondent's campuses was never made clear in the papers or in argument. What emerges however from this e-mail is that the services which have been provided by first appellant and third appellant constituted more than the provision of security guards. What was taken over by respondent was a significant portion of those guards previously employed by the appellants. What respondent then sought to do, pursuant to its shared services model, was described in the answering affidavit deposed to by Dr Marchia Socikwa:

> 'I reiterate, and wish to state this as clearly as possible, that UNISA does not intend at any stage to take on the service itself, or to provide any part of the service itself. It does intend to offer employment to a suitable number of security staff that will be needed to provide the service, but as is apparent from the terms of which it proposes to appoint a new service provider, all of the necessary business infrastructure, including much of the work necessary to roster and secure the performance of by UNISA staff where necessary, will be provided by the newly appointed service provider. There will be no transfer of business infrastructure from iMvula to UNISA, from UNISA to a new service provider, or from iMvula to a new service provider.'

[37] In short, what occurred was that following its response to "fees must fall" by way of the recommendations of the multi-stakeholder task team, respondent "took in" a range of people who had previously been employed by the appellants as security guards and entered into employment contracts with them. At the same time, it did not seek to run a security business, whether in whole or in part; hence

the significance of the shared service agreement. The business of providing security at the campuses of respondent constituted more than simply the existence of a group of guards patrolling the campus without more; that is without management, equipment or strategy with regard to their responsible deployment. None of these tasks was taken over by respondent.

[38] It follows that, if the words “transfer of a business as going concern” have to be given justifiable meaning, it cannot, in this case and on these facts, be concluded that the transfer of a significant portion (but not all) of the security guards without more was the transfer of a business as a going concern, so that once the “taking in” of the security guards at the workplace occurred, the business without any outside party operated seamlessly. Apart from equipment, if necessary the outside party which had entered into the shared service agreement would supply more guards. This arrangement cannot be said to fall within the meaning of a transfer of a business as a going concern, as contemplated by s197 of the LRA.

[39] For these reasons, therefore, the appeal is dismissed with costs.

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Davis JA

I agree

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Phatshoane ADJP

I agree

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Murphy AJA

APPEARANCES:

FOR THE FIRST AND THIRD APPELLANTS:	A Myburgh SC, F Boda SC, Adv R Itzkin Instructed by Stein Scop Attorneys
FOR THE RESPONDENT:	C Todd Instructed by Bowman Gilfillan Attorneys