REPUBLIC OF NAMIBIA

LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LCA 4/2017

In the matter between:

ELSIE KUTEEWE	**FIRST APPELLANT**
PAULUS NANGOLO	**SECOND APPELLANT**
MATHEUS SHIKONEKA	**THIRD APPELLANT**
GETRUDE TJIUEZA	**FOURTH APPELLANT**

and

LIDA CLEANING SERVICES (PTY) LTD	**FIRST RESPONDENT**
IMMANUEL HEITA N.O	**SECOND RESPONDENT**
LABOUR COMMISSIONER N.O	**THIRD RESPONDENT**

Neutral citation: *Kuteewe v Lida Cleaning Services (Pty) Ltd* (LCA 4/2017) [2018] NALCMD 6 (13 April 2018)

Coram: ANGULA DJP
Heard: **6 October 2017**
Delivered: **13 April 2018**

Flynote: Labour Law – Unfair Dismissal – Appellants (employees) contending that they were misled by the employer in signing the letters of resignation while under the impression that they were signing letters of demotion – Respondent

(employer) contending that the appellants resigned voluntarily – Duty to begin – Arbitrator ruled that the appellants had a duty to begin in leading evidence to show that the purported resignations were not done voluntarily – Appellants proving on a balance of probabilities that they were misled by the respondent in signing letters of resignation – Resignations not voluntarily made.

Summary: The respondent operates a dry cleaning business – It is managed by a family: husband, wife and a son – Three of the appellants occupied positions of supervisors – On a particular day a bundle of clothing in a plastic bag was discovered, by one of the managers, behind a washing machine operated by one of the appellants, who was not a supervisor – The discovery raised a suspension that staff members were conducting private laundry at the expense of the respondent.

An investigation was launched by management to establish whether the suspicion was correct. A criminal charge was laid with the police. The appellants were interrogated by a police detective. The male appellant was subjected to polygraph test. The other male appellant refused to undergo polygraph test. He was arrested and spent two days in police holding cells.

Meanwhile the remaining three appellants have had a discussion with one of the managers and discussed measures to curb private laundering by staff members. At the end of that discussion, on the appellants' version, the manager decided that they would be demoted to which the appellants acceded.

The following day, the appellants were taken to the head office where they were made to sign documents prepared by one of the managers. The appellant who was locked up was fetched from the police cells by one of the mangers and joined the other three appellants to sign documents. The documents consisted, for each appellant, a letter of resignation, an acknowledgement guilt, and an acknowledgment of debt in the sum of N$150 000 in respect of the three appellants who were supervisors. The non-supervisor appellant was not made to sign an acknowledgement of debt, but instead he was made to pay in respect of the clothing found behind the machine, he used to operate.

*Held tha*t: the appellants had proved on the balance of probabilities that their purported resignations were not voluntarily made and that they were made to sign the letters of resignation under a coercive and intimidating atmosphere. Furthermore that the appellants were misled into believing that they were signing letters of demotion in respect of the three supervisor appellants, and in respect of the non-supervisor appellant, a letter to be taken back and transferred to another branch.

Held further that: The appellants, in view of the evidence they adduced, managed to discharge the evidential burden to prove that they had not voluntarily resigned. In the circumstances, the only reasonable conclusion is that the appellants were constructively dismissed by the respondent.

ORDER

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1. The appeal is upheld.

2. The first respondent is ordered to pay the appellants the severance benefits due to them in terms of the Labour Act, No 11 of 2007, without any deductions.

3. There is no order as to costs.

4. The Registrar is ordered to send a copy of this judgment to the Secretary General of the Namibian Employers' Federation to bring to the attention of their members, particularly para 58.

5. The matter is removed from the roll and considered as finalised.

JUDGMENT

ANGULA DJP:

Introduction:

[1] The appellants are appealing against the arbitrator's award on a preliminary point raised by the first respondent against the appellants' claim for unfair dismissal. The preliminary point was that the appellants were not dismissed but resigned on their own accord and that therefore the appellant had the duty to begin leading evidence to prove that they did not resign. The appellants then led their evidence where after the first respondent led its evidence. In the end the arbitrator ruled that the appellants were not dismissed but resigned on their own accord. The arbitrator then dismissed the appellants' claim. It is against that ruling that this appeal is directed.

The parties

[2] The appellants were employed by the first respondent. The first appellant was employed as a washing machine operator. The second, third and fourth appellants were employed as supervisors. Their employment with the respondent were terminated on 31 October 2014.

[3] The first respondent is a dry cleaning family business owned and managed by Mr Marius Winterbach, his wife Vanessa Winterbach and his son Lloyd Winterbach. A certain Ms Annelie Andreas, is employed as a Human Resource manageress. The second and the third respondents did not oppose this appeal. For the sake of brevity, in this judgment, I will only refer to the 'respondent' instead of 'first respondent' as the second and third respondents did not oppose the appeal.

Background

[4] It all began when Mr Marius Winterbach found a plastic bag, containing clothes, hidden behind a washing machine. He formed a suspicion that some of the staff members were doing private laundry business as the clothes found in the plastic were unmarked, meaning they did not go through the company's system. He launched an investigation. A member of the Windhoek City Police was called to the business and questioned the appellants whether they were aware of the 'fraudulent

activities' that had been going on in the business concerning private laundry. In the end the second appellant was arrested and taken to the police holding cells. He was released three days thereafter.

[5] What happened after the investigation and what ultimately led to the appellants leaving the respondents employment forms the subject matter of the dispute between the appellants and the respondent. What is not in dispute is the fact that after the appellants left the respondent's employment they filed a joint complaint with the Office of the Labour Commissioner, alleging that they had been unfairly dismissed by the respondent and claiming payment of severance packages from the respondent.

Proceedings before the arbitrator

[6] As indicated in the introductory part, at the commencement of the proceedings before the arbitrator, the respondent raised a preliminary point to the effect that the appellants were not dismissed but resigned on their own accord therefore the appellants had to prove that their resignations were not voluntary; that the resignations were made under duress or tainted by fraud. The arbitrator then ruled that the appellants had to first make out a case that their resignations were not voluntary. The effect of such a finding would amount to the fact that the appellants were constructively dismissed.

Case for the appellants

[7] The parties' respective versions appears from the record of the proceedings and their evidence was summarised by the arbitrator in her award. However, for the sake of convenience, I will briefly summarise the facts.

[8] As mentioned earlier, the incident which gave rise to this matter, happened on a certain Saturday in October 2014 when Mr Marius Winterbach and the fourth appellant, Getrude Tjiueza found a plastic bag with clothes under a washing machine which used to be operated by the second appellant, Mr Paulus Nangolo. Mr Winterbach took the plastic bag with clothing to his office. The following Monday

Getrude Tjiueza and Elsie Kuteewe were called to the office by Mr Marius Winterbach. Mr Shikoneka, the third appellant, was on leave. He asked them to inspect the clothing in the plastic bag to ascertain whether there was a name as to whom the clothing belonged. They inspected the clothes but there were no name tags.

[9] In the meanwhile, Paulus Nangolo was summoned to the office by Mr Lloyd Winterbach. He was handed forms to complete so that he could undergo a polygraph test. He refused to sign the forms. Shortly thereafter members of the City Police arrived. They interrogated Mr Nangolo thereafter, he was handcuffed and taken to the police holding cells where he was locked up for two days.

[10] The day when Matheus Shikoneka returned to work from leave, he was summoned to the office by Mr Lloyd Winterbach who informed him that he has information that he, Matheus Shikoneka and Paulus Nangolo were providing private laundry services for some people. He was then informed by Mr Lloyd Winterbach that he was going to undergo polygraph test. He underwent polygraph test and was thereafter informed by Mr Lloyd Winterbach that he had failed the test. He was instructed to go to the police station to give a statement to the investigating officer who was investigating the alleged fraud case. He did.

[11] It was the first, third and fourth appellants' case that on the morning of 30 October 2014 shortly after they commenced work, they were summoned to Mr Marius Winterbach's office. He asked them to suggest ways to prevent theft or staff members from doing private laundry. They suggested that he installs surveillance cameras. He rejected the idea saying that it was expensive. They then suggested the appointment of a security guard to search the staff members when they enter and leave the premises. Mr Winterbach also rejected the idea saying that 'security guards are blacks and the staff members are also blacks; and that all black people are thieves'. They then suggested that he appoints a white person. He rejected the idea saying that a white person will have his own agenda; that he will steal alone. Mr Winterbach then stated that he was going to demote all three of them to which they indicated that they did not have a problem to be demoted. He mentioned that he was first going to consult his family members.

[12] It was further the second, third and fourth appellants' case that the following day 31 October 2014, they reported for duty and went about to work waiting to be demoted. At around 11 o'clock they were taken in a motor vehicle to the head office by Mr Marius Winterbach. On arrival they were taken to the boardroom. Mr Lloyd Winterbach then entered the board room and confiscated their cellphones. He instructed them not to leave the board room not even to go the toilet.

[13] Thereafter, Mr Lloyd Winterbach and Mrs Vanessa Winterbach entered the board room. Then Mrs Winterbach asked them why they were doing such things to them while they (the Winterbach) had been kind to them. The appellants did not respond. Mrs Winterbach then left the boardroom. Mr Marius Winterbach also left saying he was going to fetch the second appellant, Mr Paulus Nangolo, from the police station.

[14] It was further the first, third and fourth appellants' case that they were then called from the boardroom by Mr Lloyd Winterbach, one by one, to Ms Annelie Andreas's office, the HR manageress. They were ordered by Mr Lloyd Winterbach to sign documents without first reading them or him explaining the contents of the documents to them. Mrs Vanessa Winterbach and Ms Annelie Andreas were present and signed as witnesses. The appellants say that they were under the impression that the documents they were asked to sign were in respect of their demotions as supervisors, as they had been informed by Mr Marius Winterbach the previous day. They were not given copies of the document they had signed.

[15] The first, third and fourth appellants' case was further that, after they had signed the documents, Mr Lloyd Winterbach then explained to them that what they had signed were resignations letters; admissions of guilt and acknowledgements of debt that that each owed the company N$150 000. He further told them that they were expected to commence with the payment of the debt in monthly instalments starting the following month, which was November 2014. He further told them that they should sell their furniture and houses so that they can repay the money owed to the company. Thereafter Mr Marius Winterbach took them back to their workplace where they handed back the company's keys and left the company's premises.

[16] The second appellant, Mr Paulus Nangolo, was not a supervisor. He was dealt with differently. He was fetched from the police cells by Mr Marius Winterbach who took him to the office. He was left in the reception area and instructed to sit facing the wall. A short while thereafter he was called from the reception area by Mr Lloyd Winterbach and taken to the boardroom where he was given documents to sign so that he could resume work but that he would be transferred to the Katutura branch. After he had signed the documents Mr Lloyd Winterbach informed him that the document he had signed was his resignation letter. It was his case that Mr Winterbach then demanded that he should first pay N$718 ostensibly in respect of the clothing found in the plastic bag. He was taken to an ATM machine by Mr Winterbach where he withdrew N$700. They drove back to the office where he handed the N$700 to Mr Winterbach. Mr Winterbach wanted him to sign a document as proof for his payment of the N$700 but he refused.

Case for the respondent

[17] The version on behalf of the respondent was that, after the plastic bag of clothes was found, an internal investigation was launched during which, Mr Marius Winterbach received information that the plastic bag belonged to the second appellant, Mr Paulus Nangolo, and as a result a member of the City Police was brought in to interrogate the second appellant. The police officer also interrogated the supervisors.

[18] It was the respondents' case that while the second appellant was under police custody, he made a statement to the police implicating the other three appellants that they were involved in fraudulent activities. It was then decided that the appellants be served with notices of suspension and that they be subjected to disciplinary hearings. However on the day when the appellants were called to the boardroom, they apologised for their conduct and promised not to do it again. They were then informed that because of the activities and their conduct, they would be issued with suspension letters and be subjected to disciplinary proceedings. Thereupon the appellants decided rather to resign. The three documents that appellants, in the end signed, were prepared by Mr Lloyd Winterbach and consisted of the resignation letters, the admission of guilt, and the acknowledgements of debt.

[19] It was further the respondent's case that the contents of the documents were explained to the appellants both in Afrikaans and English before they were presented to them for signature.

[20] In regard to the second appellant, after he was fetched from the police cells he was also informed that he would be subjected to a disciplinary hearing. He, however, opted to also resign rather than face a disciplinary hearing. A resignation letter was also prepared for him by Mr Lloyd Winterbach, which the second appellant signed. It was demanded that he should pay for the clothing found in the plastic, which he did.

[21] That concludes the summary of facts.

[22] The questions of law in terms of section 89(1) read with Rule 17(1)*(c)* have been formulated by the appellants as follows:

> '1.1 Whether or not, based on the fact that the arbitration award was delivered in violation of Rule 21 of the Rules relating to Conduct of Conciliation and Arbitration, such award is valid in law.
>
> 1.2 Whether or not, and based on evidence on record, the Arbitrator's finding that the appellants opted to resign before they could be served with Disciplinary Hearing Notice by the first respondent was correct.
>
> 1.3 Whether or not, and regard being had to the evidence on record, appellants willfully and freely signed the resignation letters (agreement) or separation agreement with/from the respondent.
>
> 1.4 Whether or not, and based on the evidence on record, appellants knew that they were signing separation/resignation letters or agreements with the first respondent on 31 October 2014.
>
> 1.5 Whether or not, and regard being had to the record of the arbitration proceedings, the arbitrator was correct in finding that the appellants opted to resign

given the seriousness of the misconduct against them and the fact that they would face disciplinary action might have led to their dismissal.

1.6 Whether or not the arbitrator's approach was correct when he ordered the appellants to begin in adducing evidence in order to prove that they freely and voluntarily resigned from their employment with the first respondent.

1.7 Whether or not, and with due regard to the evidence on record of the arbitration proceedings, appellants could seek legal assistance/guidance before signing the separation (resignation) agreements/letters as was determined by the arbitrator?

1.8 Whether or not, the arbitrator's approach was correct when he completely ignored the appellants' version events of what transpired on 31 October 2014 and rather agreed into with the first respondent's witness' version.

1.9 Finally whether or not the Arbitrator was correct, considering evidence on record, in dismissing appellant's claims.

Wherefore the grounds of appeal are:

2.1 The arbitrator erred in law when he delivered the Arbitration Award in violation with Rule 21 of the Rules Relating to the Conduct of Conciliation and Arbitration;

2.2 The Arbitrator erred in law by unreasonably finding that the appellants could seek legal assistance before signing the separation (resignation) agreements/letters;

2.3 The arbitrator erred in law by unreasonably finding that appellants were not forced, unduly influenced or induced or misrepresented in any manner to resign and further that they were aware of the content of what they were saying;

2.4 The Arbitrator erred in law when he ordered the appellants to begin in adducing evidence in order to prove that they were not unfairly dismissed. It is a basic principle of our law that he who alleges must prove. Thus, when the first respondent alleged that appellants voluntarily and freely resigned from their employment, same respondent bore the onus to prove the alleged fact(s);

2.5 The arbitrator erred in law by unreasonably and completely ignoring the evidence adduced by all Appellants in respect of what transpired on the 31 October 2014. Which evidence is more probable that that of first respondent; and

2.6 The arbitrator erred in law by unreasonably dismissing the appellants' claim/dispute.'

[23] It is the appellants' prayer that the appeal should, for those reasons be upheld and the arbitrator's award be set aside.

[24] The respondent then filed a Statement of Grounds of Opposition to the appeal as prescribed by Rule 17(16)*(b)*. It reads:

'1.1 The appeal is in terms of the provisions of section 89(1)*(a)*, which must read with Labour Court Rule 17(1)*(c)*, Labour Court Rule 17(2) and Labour Court Rule 17(3), read with Rule 23(2) of the Conciliation and Arbitration Rules, with a result that:

1.1.1. The appeal is allowed against question of law only;

1.1.2. The notice of appeal must set out the questions of law appealed against; and

1.1.3. The notice of appeal must set out the ground upon which the appeal is based, establishing the basis upon which the questions of law should be upheld.

1.2 The paragraphs referred to in the notice of appeal do not set out the questions of law and the grounds of appeal establishing the basis upon which the questions of law should be upheld.

2. Paragraph 2.1 read with paragraph 3.1:

The fact that the award by the arbitrator was delivered later than 30 days from date of arbitration does not lead the award being ineffective, it remains binding between the parties.

3. Paragraphs 2.9 read with paragraph 3.6:

The allegations in these paragraphs are vague and overbroad in the sense that the point upon which the award is appealed against is not clear.

4. Paragraphs 2.8 read with paragraph 3.5:

The award by the arbitrator was arrived at after the valuation of the evidence for the appellants and the evidence for the respondent and thereafter dealing with the different versions. The decision to prefer the version on behalf of the respondent above that on behalf of the appellant is borne out by the record and is in accordance with the burden of proof.

5. Paragraph 2.6 read with paragraph 3.4:

5.1. In terms of the provisions of section 86(7) of the Labour Act 2007, subject to the specific Rules of Arbitration and Conciliation, in proceedings before an arbitrator the arbitrator:

5.1.1 May conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly;

5.1.2 Must deal with the substantial merits of the dispute with the minimum of legal fraternity; and

5.1.3 May determine the dispute without applying strictly the rules of evidence.

5.2 The agreed issue before the arbitrator was whether the first respondent dismissed the appellants or not. The presumption in terms of the provisions of section 36(4) of the Labour Act 2007 arises only once it has been established that a dismissal occurred. The appellant lodged the complaint and had to prove their case upon a balance of probabilities. The case for the first respondent, that there was no dismissal but in fact a resignation, does not shift the onus. The

arbitrator was with respect correct in determining that the appellants had to commence proceedings.

6 General

The finding by the arbitrator that the appellants resigned and that there was no dismissal is borne out by the facts on record and the finding cannot be faulted. In the alternative, the finding by the arbitrator on the issue whether there was a dismissal or not is a finding of fact and not subject to appeal.

7. Wherefore the honourable court is requested to dismiss the appeal.'

[25] I should first mention that the first ground of appeal was not persisted with at the hearing. I find it appropriate to first consider the ground of appeal that the arbitrator erred in law when he ordered the appellants to begin in adducing evidence in order to prove that they did not voluntarily resign. In motivation of this ground, Mr Bangamwabo, who appeared for the appellants, submitted in his heads of argument, that once an employee-employer relationship has been established and the employee alleges that he or she was dismissed, the *onus* then shifts to the employer to prove the lawfulness of the dismissal. Counsel accordingly submitted that, in the present matter the arbitrator wrongly ruled that the appellants should first adduce evidence to prove the lawfulness or otherwise of their dismissal.

[26] In support of his submission counsel referred the court to the judgment in *Dr Jurgens v Fanuel Geixob*[1]. I have read the judgment but in my view it does not support counsel's proposition.

[27] Mr Barnard, for the respondent, submitted that the arbitrator was correct in ruling that the appellants bore the burden to establish that they were in fact dismissed. I agree with counsel's submission on this point. Where there is a written resignation like in the present matter the appellants must first establish why the resignations were not binding upon them. That they can do by for instances proving duress, deceit or misrepresentation by the employer, which vitiates the element of voluntariness in the act of resignation.

[1] (LCA 22/2015) [2017] NALCMD 2 (27 January 2017) at page 19 para 5.3.

[28] My finding is therefore that the arbitrator was correct in ruling that the appellants should first begin to lead evidence in order to establish that their resignations, which *prima facie* were voluntary, but that they were in actual fact not voluntary due to duress or misrepresentation. Having found that the ruling by the arbitrator on the incident of burden and the duty to begin was correctly made, I now proceed next to consider whether, the appellants had discharged the evidential burden that their resignations were not voluntarily made.

[29] The legal position is that the trial court is not required to give a ruling after it has heard the evidence of the party ruled to have borne the burden to begin. After such party has led its evidence, however the court will give its ruling 'after it has heard all the evidence, and then it will simply decide whether the party who bore the onus has discharged it[2]'. The arbitrator therefore correctly adopted the correct procedure in this regard.

[30] The legal position is clear. An appeal to this court is limited to questions of law alone. On factual findings by the arbitrator, a question of law arises where the factual findings by the arbitrator are so wrong that no reasonable arbitrator could have come to the decision, or where the finding is so much perverse that no reasonable arbitrator, applying the applicable legal principles, would have arrived at that finding or conclusion. The court will proceed to interrogate this aspect.

[31] This aspect is captured in paragraphs 2.2, 2.3, 2.5, 2.7 and 29 of the grounds of appeal read with paragraphs 3.2, 3.3 and 3.6 of the questions of law.

[32] The single issue for decision before the arbitrator was whether the appellants had resigned voluntary or not. Having analysed the evidence led by the parties, the arbitrator concluded that the appellants 'failed to prove that they were forced, induced or misrepresented in any manner to resign'.

[33] The question of law is therefore whether the factual finding made by the arbitrator is one to which no reasonable arbitrator could have arrived at 'on all the

[2] Hoffmann: South African Law of Evidence, Second Edition, page 353.

available evidence and applying the legal principles relevant to the evaluation of evidence'. I proceed to consider the question below.

[34] Counsel for the appellants referred the court to the matter of *Newton v Glyn Marais Inc.*[3], where the court dealt with the question whether or not the employee resigned and said at para 49:

'[R]esignation is a unilateral act by the employee. If the employer has a hand in the decision to resign, then that might well constitute a constructive dismissal and be the overt act by the employer that constitutes the proximate cause for termination.'

[35] Counsel further referred the court to the matter of *Khulekile Dyokhwe v De Kock and Others*[4], which dealt with the legal principle of *caveat subscriptor* (let the signer be aware*),* where the court stated as follows with regard to the instance if the contract has been inadequately or inaccurately explained to an ignorant signatory.

'Our law recognises that it would be unconscionable for one party to seek to enforce the terms of an agreement where he misled the other party, even where it was not intentional. When the misrepresentation results in a fundamental mistake (*iustus error*), there is no agreement and the "contract" is *void ab initio*. The purpose of this principle is to protect a person if he or she is under a justifiable misapprehension, caused by the other party or requires his or her signature, as to the effect of the document he or she is signing (*Brink v Humphries and Jewel (Pty) Ltd* 2005 (2) SA 419 (SCA); [2005] 2 All SA 343 (SCA). It has also been held that the *caveat subscriptor* principle will not be enforced if the terms of the contract have been inadequately or inaccurately explained to an ignorant signatory. (*Katzen v Mguno* [1954] 1 All SA 280 (T)).'

[36] Before proceeding to apply the law to the facts, it is necessary to make an observation which I deem important when it comes to the analysis of the respective parties' versions, in particular the credibility aspect. On reading the record of the arbitration proceedings I observed that the version of the respondent was not put to the appellants when they testified. In this connection it has been held to be 'an elementary and standard practice for a party to put to each opposing witness so much of his own case or defense as it concerns that witness and if need be, to

[3] [2009] 1 BALR 48 (CCMA).
[4] [2012] 10 BLLR 1012 (LC) at para 59.

inform him, if he has not been given notice thereof, that the other witness will contradict him, so as to give him fair warning and an opportunity of explaining the contradiction in defending his own character'[5].

[37] Furthermore, 'when it is intended to suggest that a witness is not speaking the truth on a particular point, (the cross-examiner must) direct the witness's attention to the fact by questions put in cross-examination showing that the imputation is intended to be made and to afford the witness an opportunity, while still in the witness-box, of giving any explanation open to the witness and of defending his or her character'. If a point in dispute is left unchallenged in cross-examination, the party calling the witness is entitled to assume that the unchallenged witness's testimony is accepted as correct[6].

[38] In the present matter the whole version as to what respondents witnesses would come to testify, in particular the crucial evidence by Mr Lloyd Winterbach, was not put to the appellants. One extract will suffice to demonstrate the point when Mr Winterbach was asked whether he had explained the contents of the documents to the appellants before they were requested to sign. It went like this:

'Representative for the applicants: Alright we will come to that Mr Lloyd if you were so kind to explain the polygraph test to Mr Shikoneka to complete the form why were [you] not kind enough to explain the documents of debt and those called voluntary resignation to them? Let alone asking someone to speak the language they understand?

Mr Lloyd Winterbach: The documents were explained to them. They are blatantly telling you a lie.'

It was clearly grossly unfair for the appellants to be labelled as liars without them having been afforded an opportunity to comment on what the respondent's witnesses would say, while the appellants were testifying.

[39] Equally the evidence as to what Mr Marius Winterbach would come to testify was not put to the appellants when they testified. He testified that he confirmed that

[5] *Small v Smith* 1954 (3) SA 434at 438 E-F
[6] *The President of the RSA & Other v SA Rugby Football Union & Others* 2000 (1) SA 1 at para 61.

he had a discussion with Mr Shikoneka, Ms Kuteewe and Ms Tjiueza regarding the possible measures to be taken to prevent fraud and private laundry by the staff members, including appointing a security guard or installing surveillance cameras and the like. He was then asked whether he proposed demotion of those three appellants. The extract from his evidence-in-chief reads as follows:

'Representative for the respondent: During this discussion as you state did you at any point propose that you will demote the applicants rather than anything else?

Mr Marius Winterbach: No I will, I am a firm believer all people that I have given a second chance all of them at the end of the day is not with me anymore. It does not help to give a guy a demotion after I knew he was stealing from me and he would continue stealing. I am a businessman.

Representative for respondent: So you never offered?

Mr Marius Winterbach: No.'

[40] This aspect was not put to the appellants when they testified namely that Mr Marius Winterbach would deny that he proposed that they be demoted despite the fact that it was crucial to their defense. It was further not put to the appellants, when they testified, that Mr Marius Winterbach would testify that he questioned Ms Getrude Tjiueza in the presence of two other supervisors and she confirmed to him that all three of them had been involved in an illegal laundry scheme.

[41] The events which preceded the signing of the documents, in my view, constitute a relevant consideration to objectively determine whether the circumstances under which the appellants ended up signing the documents were conducive to a person exercising a free and voluntary will. In other words the events prior to the signing of the documents cannot be ignored because they set the stage under which the signature of the documents took place. I proceed to interrogate those events.

[42] It is common cause that a day before the resignation, the appellants were subjected to what appeared to be an intense interrogation not only by the employer but also by a police detective.

[43] In respect of Mr Shikoneka, in addition to being interrogated by Mr Lloyd Winterbach and the detective, the police officer, he was further subjected to a polygraph test which he allegedly failed. He was sent to the police station to make a statement about his colleague Paulus Nangolo, the second appellant. He was confronted with allegations that a certain Linus who allegedly informed Mr Marius Winterbach that he and Mr Nangolo were conducting fraudulent laundry business. It is to be noted that the said Linus was never called to testify at the arbitration hearing and his evidence appeared to have been taken into account by the arbitrator in rejecting the appellants' version and her accepting the respondent's version.

[44] According to the record of the proceedings, a day before the signature of the documents, the three supervisors, that is to say Ms Elsie Kuteewe, Ms Getrude Tjiueza and Mr Matheus Shikoneka were again questioned by Mr Marius Winterbach about their alleged fraudulent activities. It was on that occasion, on the appellants' version, that he would have informed them that they would be demoted.

[45] In respect of Mr Paulus Nangolo, he testified that when Mr Lloyd Winterbach first interrogated him and he, Mr Nangolo, refused to sign a consent form to undergo polygraph test, Mr Winterbach was angry to the extent that he threatened him by clapping his hands in front of his eyes or face but did not hit him. He was also subjected to police interrogation; he was hand-cuffed on the premises and locked up at the police holding cells for trial awaiting detainees, for two days. It is not apparent from the record whether he was charged and if so with what offence.

[46] It is common cause that he was fetched from the holding cells B, Mr Marius Winterbach and taken straight to the boardroom. No explanation was given why it was necessary for him to be made sitting facing the wall. In my view, the act on causing him to sit facing the wall, objectively viewed, was an abuse of Mr Nangolo, and his dignity. It further constituted an intimidation aimed, so to speak, at softening him, so as that he could succumb to signing the documents.

[47] It does not appear from the record how was it possible for Mr Marius Winterbach, a private person, to remove Mr Nangolo from police custody to take him to his business place. And taking into account that no mention was made of the fact that Mr Nangolo was granted bail. In my view, it constitutes a questionable conduct, viewed in a labour environment. The locking up of Mr Nangolo appeared to have been done so as to apply pressure on Mr Nangolo and to instill fear in the mind of his fellow appellants. I am of the considered view that such conduct was undesirable and was designed to intimidate and cowed the appellants from exercising their employments rights

[48] In my considered judgment, having regard to what took place before the signature, an atmosphere of fear and intimidation was created and, as will become apparent, persisted when the actual signing of the documents took place. In my opinion, the atmosphere negated any claim of freedom of choice and acts of voluntariness on the part of the appellants. The court is left with the distinct impression that the decision had been taken by the respondent to get rid of all the appellants because they, according to the respondent's version, were guilty of fraud and of unlawfully utilising the respondent's resources in advancing their private business of laundry. If that deductive reasoning is not correct, an officious bystander would ask why was it necessary to fetch Mr Nangolo from the police holding cells if it was not so that he could sign the documents with his co-appellants so that the company could get rid of them on the same day. In my view, it is a legitimate question which requires a legitimate and honest answer. The basis of this question is that, unlike in the case of the other appellants, in the case of Mr Nangolo, he had already been charged and did not opt at the time he was charged, to rather resign.

[49] I am satisfied that the only reasonable inference that can be drawn from the proven facts is that the respondent had made a decision to get rid of the appellants *en masse*.

[50] The next stage which, in my view, requires closer consideration is the signature stage. On the appellants' version which, as pointed out earlier, was not put or even suggested to the appellants when they testified, that it would be denied by

the respondent's witnesses when they would come to testify, in respect Paulus Nangolo, he had been told he was going to be reinstated. And in respect of other three appellants they were promised or told by Mr Marius Winterbach the previous day that they would be demoted and on the basis of which they approached the signing of the documents.

[51] The arbitrator found it 'astonishing' that the three appellants Ms Kuteewe, Ms Tjiueza and Mr Shikoneka, did not ask Mr Lloyd Winterbach or the two ladies who witnessed their signatures, as to whether they were signing letters of demotion. In making such an observation or finding, it would appear to me that the arbitrator failed to give any or sufficient consideration to the evidence of the appellants regarding the hostile atmosphere which prevailed when, for instance, the three appellants entered the board room. It is common cause that the cellphones of the appellants were confiscated from them. And that the boardroom door was closed; and that the appellants were ordered not to leave the boardroom even in the event they required to go to the toilet. In my view, those admitted facts in themselves were intimidating. For instance the confiscation of the cellphones was done without any explanation. It no doubt, constituted a blatant invasion of privacy.

[52] Mr Marius Winterbach testified that his wife Mr Vanessa Winterbach was emotional and scolded the appellants for what she perceived as disloyalty, for them to have fraudulently conducted private laundry business at the expense of the respondent while in the mean time she had being kind to them. Assuming that the appellants' version is correct, the conduct by Mrs Winterbach must have been disconcerting and hurting to the appellants. There is evidence that Ms Elsie Kuteewe in fact cried or wept. It would appear that the respondent accepted or viewed the weeping as an act of contrition, but in my view, it is not the only reasonable inference e to be drawn from such conduct. I mentioned that the Ms Kuteewe might felt hurt and saddened and filled with a sense of injustice being perpetrated upon her: the fact being that she was being accused based on a collective guilty allegations.

[53] In my view, under the prevailing hostile atmosphere as described by the appellants, viewed objectively, it was reasonably possible that the appellants felt intimidated. I further find it reasonably possibly true that the appellants did not feel

free to exercise their legal rights to refuse signing the documents, demanding the presence of the representative of their Union before they could sign the documents. In my considered view, it is not reasonable for any person to expect the appellants under the prevailing atmosphere as described, to still be possessed with the spirit of voluntariness and the freedom to exercise a freedom of choice. It is therefore highly improbable that the appellants signed the documents voluntarily. In my view, the role played by Mr Lloyd Winterbach was significant. I proceed to consider his role in the matter.

[54] In my view, the role played by Mr Lloyd Winterbach was way too much domineering. He was literally a judge in his own cause. He drafted the documents. On his own version, which is disputed by the appellant, he then proceeded to explain the documents to the appellants both in English and Afrikaans, which to me is a clear indication that he was aware the appellants were not *au fait* with any of the two languages. The fact that the appellants did not or could not understand the contents of the documents is further borne out, in respect of Mr Shikoneka, when he was asked to sign a consent form in order to undergo polygraph, Mr Winterbach had asked one Taimi, a co-employee of Mr Shikoneka, to explain the content of the form to him in his home language. It was only then that Shikoneka could sign the form. The evidence is further that Mr Lloyd Winterbach withheld the documents when the appellants signed the documents, and that he retained the documents after the appellants had signed and did not give copies to the appellants for their own record.

[55] Having regard to the foregoing facts, I am of the considered view that the conduct by Mr Lloyd Winterbach from the moment the appellants entered the boardroom through to the stage when they were signing the documents, viewed objectively, was oppressive and intimidating which rendered the acts by the appellants in signing the documents not voluntary.

[56] The further undisputed evidence is that the appellants were called out of the boardroom one by one to go to the office of Ms Annelie Andreas where they were asked to sign the documents and where Mrs Vanessa Winterbach and Ms Andreas signed as witnesses. I think it is fair to say that a reasonable and a fair-minded bystander would wonder, as the court does, why the appellants were not made to

sign the documents, in the boardroom in the presence of each other, acting at the same time, as witnesses for each other. It further begs the question, what was the reason for the secrecy, if the appellants had indeed informed Mr Lloyd Winterbach, in the presence of each other, that they had opted to resign, as claimed on behalf of the respondent why were they required to sign the documents in isolation from each other. That, in my view, made the process not transparent but devious and highly suspicious.

[57] With the exception of Mr Paulus Nangolo, the second appellant, it was the appellants' evidence that when they were asked to sign the documents, the documents were covered and held together like they were stapled. Both Ms Kuteewe and Ms Tjiueza testified that Mr Lloyd Winterbach was angry at the time they were instructed to sign the documents. Ms Kuteewe testified that the atmosphere was tense and hostile to the extent that she believed that Mr Winterbach would beat her if she did not sign the documents. It was the appellants' case that the contents of the documents were not explained to them before they were made to sign. Their evidence was not contradicted when the appellants testified neither were the appellants given a warning that their evidence that their documents were covered when they were made to sign, would be disputed by the respondents' witnesses.

[58] This court is of the considered view, having regard to the appellants' version of events, as corroborated by Mr Lloyd Winterbach's evidence, namely the confiscation of cellphones, the instructions not to leave the boardroom even to go to the toilet and the witnessing by the appellants of Mr Nangolo, and the experience by himself being ordered to face the wall and not to look and freely speak to his co-appellants were, viewed objectively, oppressive, intimidating and negated any sense of freedom of choice. In years gone by, being ordered to sit facing the wall in the class-room, was a form of a punishment. Mr Nangolo is an adult person. It is denigrating and inhuman for Mr Lloyd Winterbach to treat an adult person in that manner. Clearly Mr Winterbach did not have the right to punish Mr Nangolo. As a matter of fact Mr Llyod Winterbach, on the admitted facts, did willingly or unwillingly contravene the provisions of article 8*(b)* of the Constitution which stipulates that 'no person shall be subject to [inter alia] inhuman or degrading treatment or punishment'.

It follows therefore that Mr Lloyd Winterbach appeared to have committed a serious Constitutional misdeed for which he might be liable to Mr Nangolo. In the circumstances I propose to refer a copy of this judgment to the Namibian Employers' Federation in order to bring it to the attention of its members that they are not allowed by law to treat their employees in degrading manner or meet out punishment in any from whatsoever, to their employees as it happened in this matter; and that such conducts or behaviours cannot be countenance by the courts and will be severely dealt with.

[59] The arbitrator found that the appellants' assertion that they were tricked into signing the documents, in that they were under the impression that they were signing demotion letters was 'an afterthought'. This finding was made in the face of and notwithstanding the appellants' explanations.

[60] The appellants gave reasons why they were prepared to sign what they believed were letters of demotion. In respect of Mr Shikoneka he explained that when he was promoted to the position of a supervisor, he had signed a document but did not read it. Therefore when he signed what he assumed to be a demotion letter, he did not see the need to read it. Furthermore, in his view, a promotion to a position of a supervisor was the employer's prerogative and conversely the demotion too. In my view the explanation is reasonable and plausible.

[61] In respect Ms Kuteewe, she explained that she signed the documents because of her assumption based on the discussion they had with Mr Marius Winterbach, the previous day, which ended up with an undertaking that he would rather demote them but he was first to consult his family members. Similarly, in my view, it is a reasonable and plausible explanation.

[62] Ms Tjiueza, on the other hand, explained that she was prepared to accept the demotion because even if she were to refuse the demotion, the respondent in any event had the power to demote her. Furthermore, she considered herself to be too old and did not want to go sit at home without a job, therefore a demotion was a viable option to her. Again, in my view, the explanation is credible and makes sense to me as reasonable and logically sound.

[63] In respect of Mr Nangolo, his explanation was that he signed the letter of resignation because he believed that he was going to be taken back. The arbitrator found his explanation 'questionable and hard to believe'. Mr Nangolo was already on suspension. He had refused to sign the notice of suspension. It is in my view, questionable why he was in the first place fetched from the police holding cells, where he spent two days in custody, to go to sign documents. On his version he was told that he was going to be taken back. It is fair to assume that he did not know what had happened in the meantime. Exculpating evidence might have come to light, while he was in custody, that he was not doing laundry at the company and therefore the company could not dismiss him hence he was going to be relocated to the Katutura branch.

[64] In my view, the appellants' explanations, viewed objectively and taking into account, their version, that what was discussed between the appellants and Mr Marius Winterbach the previous day, appears to be plausible under the then prevailing circumstances. I am saying this because it is common cause that there had been a discussion between the appellants and Mr Marius Winterbach. The only dispute is whether the issue of demotion was discussed. I am of the considered view that, on the appellants' version, which I accept, the issue of demotion was discussed. I am of the view that Mr Marius Winterbach's memory was either selective on this point or he was deliberately untruthful. This finding is made, keeping in mind that Mr Marius Winterbach's version was not put to the appellants when they testified.

[65] On the appellants' version, if the discussion between the appellants and the Mr Marius Winterbach had not taken place the previous day, the appellants would not have an assumption upon which they would have based their conduct of signing the documents. It is further, in my view, improbable that the appellants would have signed the documents, willy-nilly without first establishing the contents. The fourth appellant, Ms Getrude Tjiueza in her testimony, on this point stated that she would have read the documents herself before signing it or, if she did not understand she would have requested the assistance of a family member to help her to explain the contents of the documents. In my view the explanation by the appellants, appears to be plausible, given the fact that, on the appellants' version they were faced with

unproven allegations of fraud and theft. In my view, the arbitrator's finding in this regard, is so perverse such that no reasonable trier of the same facts before him or her, would have arrived at such a finding.

[66] The arbitrator found it 'strange' that the appellants did not ask for copies of the letters of demotion for them to know to which positions they have been demoted. It would appear that she drew an adverse inference against the appellants in this regard in arriving at her conclusion. In my view, a reasonable trier of facts would not have drawn an adverse inference from such insignificant conduct. The finding is perverse. I would have thought that it stands to reason that the appellants would have been demoted to the positions of ordinary workers as opposed to supervisors. Furthermore the employers would have advised them orally when they go back to their work stations. Lastly, the newly appointed supervisors would direct the appellants to their new positions. In my view, the criticism amounts to nothing more than an arm-chair critic being wise after the fact.

[67] The arbitrator found that the appellants' 'defense' that they could not ask copies or refuse to sign because Mr Lloyd Winterbach was angry that day, the defense 'lacks the truth to say the least'. The appellants' evidence was not contradicted by any of the respondents' witnesses. When Mr Lloyd Winterbach testified it was not put to him whether he was angry or not. The version of the appellants thus remained undisputed. Mr Lloyd Winterbach was known to the appellants, he was one of their managers, it is therefore reasonable to say that in the scheme of things, the appellants would be expected to know when he is angry and when not. In any event it is not clear on the basis of what evidence the arbitrator questioned the credibility of the appellants' version on this point. In my view this finding cannot be sustained.

[68] The arbitrator found that the appellants knew what they were signing but due to the seriousness of the misconduct and that fact that they would face disciplinary action that might have led to their dismissal, they opted to resign. There is no evidence to indicate that the appellants knew, at that stage, how serious their alleged misconduct was perceived because the charges had not been drawn up. In this connection Mr Winterbach testified during his evidence-in-chief as follows:

'I informed them that this would have to go through the internal remedies and that I would start drawing up the Notice of Suspension and there was the Notice for Disciplinary Hearing, once I confirmed the date with our labour consultant. I informed them that they would be suspended with pay and that on Monday they should return to the office to come to collect their disciplinary hearing, the Notice of Disciplinary Hearings.'

The arbitrator's finding on this point is therefore not supported by any evidence and amounts, at best, to speculation and at worst, is plainly wrong.

[69] I did earlier find that the prevailing atmosphere, objectively viewed, was oppressive, intimidating and was not free and transparent. What the arbitrator appears to have lost sight of, is an important consideration in her assessment of the evidence, and that is the fact that in addition to the atmosphere as described by the appellants, is the unequal relationship between the appellants and their employer's representative. It is fair to say that the respondent's representatives stood over the appellants in a position of authority whereas the appellants were in a subservient or subordinate position vis-à-vis their employer. Under such an unequal relationship the appellants' courage to assert their rights such as demanding copies of the signed documents was limited and on their version felt not free to assert their rights. This, in my view, is a credible explanation.

[70] The arbitrator reasoned that the appellants could have gone to the Union so that the Union's officials could explain the contents of the documents to them before they could sign the documents. This reasoning is flawed because, in the first place Mr Lloyd Winterbach testified that in the past they never called in the Union when an employee resigns. In the second place, it appears from the record, that the respondent's representative knew that they had to have the Union involved. I say this for the reason that, according to the record, Mr Marius Winterbach sent an email at around 07h36 am to one Mr Tjiramba of the Namibia Wholesale & Retail Workers Union office, in which he asked Mr Tjiramba to go and see him because of the alleged theft at the respondent's business. There is no explanation why it was not thought to be fair and prudent to rather wait for the Union representative to come and represent their members that is the appellants. There is no evidence to indicate that the matter was urgent so much so that it could not wait for the Union's representative

to be present and assist the appellants with allegations levelled against them. The respondent persistence to forge ahead with the signing of the documents in the absence of the Union representative was, in my view, unconscionable, oppressive and unfair.

[71] I am of the considered view, that under those circumstances, there was a legal obligation on the respondent, arising from the agreement with the Union not to unilaterally deal with Union's members without the involvement of the Union. It was unconscionable for the respondent's representative to have unilaterally proceeded to subject the appellants to what appeared to be, a proverbial, a kangaroo court, where Mr Lloyd Winterbach was, so to speak, the prosecutor, the interpreter, the judge and the executioner.

[72] It is therefore my considered view that, taking into account the facts and considerations, as outlined above, the arbitrator's finding in this regard is so unreasonable that no reasonable arbitrator would have arrived at such a conclusion. My conclusion is that the appellants were under extreme duress and were deliberately placed under the wrong misapprehension, if not outright hoodwinked that they were signing demotion letters.

[73] Taking all the relevant facts into account, I have therefore arrived at the conclusion that the appellants had proved on the balance of probabilities that their purported resignations were not voluntarily made and that they were made to sign the letters of resignation under a coercive and intimidating atmosphere. Furthermore that the appellants were misled into believing that they were signing letters of demotion in respect of the three supervisor appellants, and in respect of the non-supervisor appellant, a letter to be taken back and transferred to another branch.

[74] Furthermore that through the evidence they adduced, the appellants managed to discharge the evidential burden to prove that they had not voluntarily resigned. In the circumstances, the only reasonable conclusion is that the appellants were constructively dismissed by the respondent.

[75] I next move to consider the two remaining aspects and those are the admission of guilt and the acknowledgement of debt documents also drafted by Mr Lloyd Winterbach and were made to be signed by the appellants.

[76] The record does not show, at least on Mr Lloyd Winterbach's evidence, that the signing of the two 'acknowledgments' documents were discussed with the appellants before they were presented to the appellants for signature. What was discussed, on Mr Lloyd Winterbach's version, was the letters of resignation. In this connection the record of the proceedings reads as follows:

> 'Mr Lloyd Winterbach: As I stood up Gertie [Getrude] then said we might as well just then resign. I asked her are you guys sure about this?
> ….
> Representative for the Respondent: Just a moment. When Gertie said we might as well resign what did the other applicants say?
> Mr Lloyd Winterbach: They just nodded.
> Representative for the Respondent: Carry on and then? You said what?
> Mr Lloyd Winterbach: I explained to them …
> Representative for the Respondent: When you said you said what?
> Mr Lloyd Winterbach: And I then informed them that they should stay in the board room while I prepare their resignation letters for them.
> Mr Lloyd Winterbach: And just before I left the boardroom, I collected everybody cell phone to ensure that they would not notify everybody else at the factory theta we knew of the theft and the ongoing fraud against the company.
> Interpreter: (Not translated)
> Mr Lloyd Winterbach: Before closing the door to the boardroom I asked them all to remain in the boardroom while I prepare all documentation for the resignation.
> Interpreter: (Not translated)
> Mr Lloyd Winterbach: I then went to my office and prepared all documents namely the acknowledgment of debt, the acknowledgment of quilt as well as the resignation letter.'

It is clear from the above extract that only the letter of resignation were discussed.

[77] I will first deal with the issue of the admission of guilt document. From the extract above, it is clear that the appellants were not informed that they would be

required to sign an admission of guilt. Furthermore, it was drafted without any charge sheet, first having been presented and explained to the appellants. Ordinarily a person signing an admission of guilt, pleads guilty to the allegations contained in the charge sheet. It is not apparent from the record how was it possible for Mr Winterbach to have drafted an admission of guilt without a charge sheet and how the appellants could have acknowledged guilt without first being charged and knowing the full particulars of the allegations against them.

[78] The arbitrator found that the documents were explained to the appellants but she did not specifically state how she found how the anomaly between the absence of a charge sheet and the admission of guilt was explained to the appellants. In my view, this is an important consideration. It is my considered view that in the absence of a finding how the anomaly was explained to the appellants, the conclusion reached by the arbitrator in this regard, is perverse that no reasonable arbitrator would have arrived at such a finding. I proceed next to consider the acknowledgement of debt.

[79] The arbitrator did not make any finding with regard to the evidence led on behalf of the respondent notwithstanding the glaring inherent improbabilities attended upon such evidence. She appeared to have accepted the evidence on behalf of the respondent, so to speak, lock stock and barrel. It is highly unacceptable and injudicious for a judicial officer to simply accept evidence of a party without giving a reason why he or she decided accept such evidence, especially when faced with conflicting versions from the opposing sides.

[80] One, such inherent improbability is the apparent willingness of the appellants to have freely acknowledged being indebted to the respondent for such an unsubstantiated and huge amount of money. First the calculation of the alleged amount owed was based on assumptions and not of facts. Second, the individual amounts owed by the three appellants are based on the principle of collective liability and not on precisely what each appellant had been found to have unlawfully consumed or utilised in respect of the respondent’s resources. I am of a considered view that no reasonable person acting freely, without fear or duress would sign the unsubstantiated debt amount. This document was signed together with the purported

letters of resignation. Therefore my finding with regard to the voluntariness of or otherwise applies to the signing the letters of resignation applies to the purported signing of the acknowledgments of debt. In short they were signed without the appellants knowing their contents and they were further not signed voluntarily.

[81] In my view, the whole calculation resultant acknowledgments of debt were a sham designed to form as basis for a set-off against the severance amounts due to the appellants. It would further appear to me that the so-called acknowledgments of debt were designed to serve as punishment consequent upon the admission of guilt.

[82] As mentioned earlier, it would appear to me that the arbitrator rejected the appellants' version and accepted the respondents' version, so to speak hook, line and sinker. I say this for the reason that, the arbitrator found that 'the applicants (appellants) were aware of what they were signing' and therefore not 'force(d)'. This finding, in my view means, that the appellants voluntarily admitted owing an unsubstantiated and huge amount of debt. In my considered view, this finding is so perverse that no reasonable arbitrator would have made it.

[83] In summation, the cumulative effect of my foregoing findings establishes that the conclusions made by the arbitrator are perverse and unreasonable so much so that no reasonable arbitrator, properly applying the applicable legal principles to facts before the arbitrator in the present matter, would have arrived at the conclusion that the appellants voluntarily resigned. In my view, a reasonable arbitrator would have found that the appellants did not voluntarily resign but were misled into believing that they were signing demotion letters. Furthermore the appellants were made to sign the documents under an oppressive and intimidating atmosphere which constituted duress and negated any freedom of choice on the part of the appellants. The inevitable conclusion in the circumstances is that the appellants were constructively dismissed.

[84] In the result I make the following order:

1. The appeal is upheld.

2. The first respondent is ordered to pay the appellants the severance benefits due to them in terms of the Labour Act, No 11 of 2007, without any deductions.

3. There is no order as to costs.

4. The Registrar is ordered to send a copy of this judgment to the Secretary General of the Namibian Employers' Federation to bring to the attention of their members, particularly para 58.

5. The matter is removed from the roll and considered as finalised.

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H Angula

Deputy-Judge President

APPEARANCES

APPELLANTS:	F X BANGAMWABO Of Clement Daniels Attorneys, Windhoek
FIRST RESPONDENT:	P BARNARD Instructed by Neves Legal Practitioners, Windhoek