REPORTABLE

CASE NO.: SA 11/2013

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

TRANSWORLD CARGO (PTY) LTD	**Appellant**
And	
AIR NAMIBIA (PTY) LTD	**First Respondent**
DIAZ FISHING CC	**Second Respondent**
ROLLEX FREIGHT FORWARDING NAMIBIA (PTY) LTD	**Third Respondent**
BINVIS INVESTMENTS ONE HUNDRED AND FORTY SIX (PTY) LTD	**Fourth Respondent**

Coram: MAINGA JA, ZIYAMBI AJA and GARWE AJA

Heard: **31 March 2014**

Delivered: **15 July 2014**

APPEAL JUDGMENT

ZIYAMBI AJA (MAINGA JA and GARWE AJA concurring):

[1] This is an appeal from a judgment of the High Court in which it dismissed an application by way of notice of motion made by the appellant for review of a decision taken by the first respondent (Air Namibia).

[2] The second, third and fourth respondents did not participate in the appeal.

[3] In the court below the appellant sought an order:

‘1. Calling upon the respondents to show cause why the decision taken by the first respondent on or about 5 November 2008 –

1.1 to enter into an agreement with fourth respondent to permit the second respondent to pre-book 12 tons of cargo space for fresh fish on every international flight operated by first respondent departing from Windhoek to Frankfurt Airport in the Federal Republic of Germany and to Gatwick Airport in the United Kingdom, to the exclusion of all other freight forwarders;

1.2 alternatively, to enter into an agreement with fourth respondent to outsource its fresh fish exporting operations to second respondent;

should not be declared in conflict with the Constitution of Namibia and accordingly null and void, alternatively be reviewed and set aside in terms of Rule 53(1).

In the alternative to prayer 1:

2. Declaring that the agreement(s) aforesaid entered into between the first respondent and the fourth respondent is in contravention of section 23 and 26 of the Competition Act No 2 of 2003, and accordingly null and void and of no force and effect.

3. Ordering that the first respondent and such further respondents who may oppose this application, to pay the costs of this application jointly and severally, the one paying the others to be absolved.’

The alternative relief was not pursued at the hearing.

The factual background

[4] Air Namibia is a private company duly incorporated and registered in terms of the company laws of the Republic of Namibia and operates an airline which is the national airline. Although it is not incorporated by statute, the State is the sole shareholder. Its cargo services division is a component of its commercial operations.

[5] The appellant is a private company with limited liability, and is incorporated in terms of the company laws of Namibia. It is a cargo and freight company. Its business involves exporting mainly refrigerated fresh fish on Air Namibia's flights from Windhoek to Frankfurt airport as well as Gatwick airport in the United Kingdom. It has, for 15 years, been involved with Air Namibia in the export of fresh fish to Europe.

[6] The quantity of fresh fish exported by the appellant varied in respect of each flight. This was because the fishing industry is unpredictable due to sudden changes in the weather and catch rates. There was no formal agreement between the appellant and Air Namibia. Previously, all shipments had taken place on the basis of bookings made by the appellant with Air Namibia prior to the respective flights. In 1992, the appellant erected a cold room at Hosea Kutako International Airport in order for the cold chain to be maintained in the exportation of the fresh fish from Namibia by air. The cold room was the only cooling facility at the airport.

The appellant sublet a portion thereof to Air Namibia for freight purposes at a monthly rental of N$95 386,75. This business relationship between the parties did not prove profitable to Air Namibia. It incurred considerable losses on its cargo operations.

[7] As a result of these losses, Air Namibia engaged expert consultants from the International Air Transport Association (IATA) for advice as to how to improve the financial performance of its cargo operations as well as that of its other departments. This process was completed during December 2007 and in January 2008, Air Namibia appointed Mr van Vuuren (Van Vuuren) to lead a group of senior employees assigned to implement the recommendations. Prior to 2005, a South African entity called Morgan Cargo (Pty) Ltd (Morgan Cargo) operated as principal freight forwarders for the transportation of fresh fish exported from Namibia to European markets on Air Namibia flights. These operations were performed on the basis of what is known in the industry as block space agreements. In 2005 negotiations for the renewal of the block space agreement failed and it was not renewed.

[8] In February 2008, Van Vuuren approached the appellant and Morgan Cargo with a view to increasing Air Namibia's base freighting rates. At that time, the rates were low and had remained unchanged for 5 years. According to Air Namibia, both the appellant and Morgan Cargo, who then enjoyed an effective monopoly of the market (of freighting fresh fish), resisted the increases in the base rate. Both

expressly indicated that they would not be prepared to accept any increase beyond N$0,20 per kg.

[9] Therefore, Air Namibia explored further alternatives to reduce the loss-making nature of its cargo operations. Consultations were conducted by its Chief Executive Officer with members of the fishing industry including the appellant.

[10] During one of these consultations in early 2008, the Chief Executive Officer raised Air Namibia's intentions to secure better and more effective utilization of cargo space on its European flights with one Sidney Martin, a prominent Namibian businessman and a member of the local fishing industry. Mr Martin conducted his own market research and engaged the assistance of Adolf Burger, a South African expert in export and transportation of fish products as well as Paul de Robillard, the Chief Executive Officer of the leading South African freighting and forwarding company, Rollex (Pty) Ltd. An agreement to enter into a joint venture was concluded and as a result, the fourth respondent was then incorporated. In due course, the fourth respondent approached the Chief Executive Officer of Air Namibia expressing its interest in doing business with Air Namibia and its willingness to enter into a block space agreement in terms of which it would be liable for penalties if space reserved was not fully utilised. It would, further, pay a better rate than that being paid by the appellant. I might mention here that the appellant's managing director Mr Liebich (Liebich) averred that he had advised Van Vuuren that the appellant 'was not prepared to enter into a block space agreement

of 12 tons per flight with Air Namibia for the simple reason that Namibia does not produce 12 tons of fresh fish of export quality per day'.

[11] On 29 October 2008 the appellant made a booking for Air Namibia's entire cargo capacity for each day of the months of November and December 2008. The appellant failed to take up at least 90 tons of the space reserved for the first week of November. The explanation given by the appellant was that there was no fish to export because the Ministry of Fisheries had imposed a moratorium (the appellant did not state when it became aware of the moratorium) on catches for October 2008. The unused space was not paid for by the appellant and indeed there was no contractual obligation requiring it to do so. The result of that booking was that other potential clients of Air Namibia were effectively prevented from utilising the booked space. This resulted in further losses to Air Namibia which could not penalise the appellant nor in any way recover any financial losses suffered as a result of the non-utilization of the space booked by the appellant.

[12] On 4 November 2008 Van Vuuren informed the appellant that Air Namibia would not honour the appellant's further cargo space booking for November and December 2008. He also advised that the appellant would no longer be able to reserve all cargo space on Air Namibia's flights. However, he offered the appellant a 50% share of the cargo space to accommodate other players in the market. The offer was rejected by the appellant who suggested that the 50-50 split be introduced after six months.

[13] After various negotiations, and on or about 5 November 2008, Air Namibia took a decision to enter into an agreement, a block space agreement, with the fourth respondent (Binvis) to permit Binvis to pre-book 12 tons of cargo space for fresh fish on every international flight operated by Air Namibia departing from Windhoek to Frankfurt Airport and to Gatwick in the United Kingdom. In terms of the agreement, the rates to be paid by Binvis were higher than those then being paid by the appellant and Binvis would be liable for penalties if the space booked was not fully utilised. It was also agreed that Binvis would make prepayments. This agreement was to endure for one year, subject to a possibility of renewal on terms to be agreed between the parties. It is Air Namibia's claim that the implementation of the agreement resulted in a considerable increase in its revenue from cargo flown to Europe.

[14] The appellant was aggrieved by the decision. It took the view that the negotiations leading up to the agreement and the agreement itself were conducted by Air Namibia in secret without the appellant or any other freight forwarder, such as Morgan Cargo, being given an opportunity to bid for the contract. Furthermore, Air Namibia, being the national airline and the only scheduled airline operating on 'these routes' with the capacity to carry fresh fish was under a duty to act in the national interest and to exercise its considerable powers for the public benefit. It criticised the process by which the decision was taken as being not only unfair and

unreasonable and in conflict with Art 18[1] of the Constitution of Namibia but also in contravention of the Competition Act No 2 of 2003, in that it constitutes restrictive practice in violation of s 23 thereof as well as an abuse of Air Namibia's dominant position in the market in contravention of s 26 of that Act.

[15] The court *a quo* identified the issue to be decided as whether when Air Namibia entered into the block space agreement with fourth respondent, it was exercising a public power and performing a public function constituting reviewable administrative action. It concluded that the decision in question did not constitute administrative action and was, therefore, not susceptible to review in terms of the Constitution and the common law. It dismissed the application with certain orders as to costs. It is this decision which forms the subject of the present appeal.

Application for condonation

[16] As is commonly the case in appeals before this Court, the appellant made an application for condonation in terms of rule 18 for the late filing of its notice of appeal. The notice was filed with this Court 21 days late. The explanation proffered by the appellant's legal representative is that although service of the notice had been effected timeously on the Registrar of the High Court and the first and third respondents, he inadvertently omitted to serve the notice on the Registrar of the Supreme Court. When the matter came to his notice, he immediately filed the

[1] Art 18 provides: 'Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal'.

notice of appeal but by then it was 21 days late and, due to an oversight, he omitted to file, as he ought to have done, an application for condonation.

[17] Mr Corbett, for the appellant, submitted that the explanation for the delay should be accepted because neither the appellant nor its legal representative was the cause of it; that the appellant would suffer prejudice if the doors of the Court were shut to it whereas, the respondent has not suffered any prejudice since the appeal has not been delayed by the late filing of the notice; for the aforestated reasons, this non-compliance has not caused inconvenience to this Court nor caused unnecessary delays in the administration of justice; that the application was *bona fide* and the prospects of success on appeal were good.

[18] We are satisfied that in this case the indulgence of condonation may be granted. The application was brought as soon as the legal representative became aware of the oversight. The explanation for the non-compliance with the rules has not been disputed nor is the application for condonation opposed by Mr Frank. There was no inconvenience to the Court or any prejudice to the respondent occasioned by the late filing of the notice with this Court, since the notice had been filed with the Registrar of the High Court and the necessary appeal processes were not delayed.

[19] The issue of costs relating to the application for condonation was not argued before us but we are of the view that each party should bear its own costs.

[20] Accordingly we would grant the order for condonation with each party bearing its own costs.

The appeal

The appellant's submissions

[21] The main argument advanced by Mr Corbett in his heads of argument and in oral argument, is as follows: Air Namibia is an organ of the Government, exercising a public power and performing a public function which includes the provision of air transport services in the public interest. Although it is constituted as a private company it is also identified as a State-owned enterprise in terms of Schedule 1 (para 46) of the State-Owned Enterprises Governance Act No 2 of 2006. One of the objectives of this Act is to make provision for the efficient governance of state-owned enterprises and the monitoring of their performance. Also the State, as the sole shareholder, can control the appointment of the directors who run the company. It is, he submitted, a public authority both because it is under the control of a recognised public authority and also because Cabinet has a constitutional prerogative to supervise its activities. He submitted that, as a parastatal, Air Namibia is also an agency for the purposes of Art 5 of the Constitution of Namibia which provides that the fundamental rights enshrined in Chapter 3 'shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies . . . '.

[22] Accordingly, its decisions are subject to review where the specific decision itself involved the exercise of a public power.

[23] Counsel for the appellant was mindful of the difficulty which arises in determining whether the decision involved the exercise of a public power. He referred the Court to the remarks of Langa CJ in *Chirwa v Transnet Ltd and Others* 2008 (4) SA 367 (CC) p 430D that:

> 'Determining whether a power or function is "public" is a notoriously difficult exercise. There is no simple definition or clear test to be applied. . . . '.

[24] He also referred to the remarks made by Strydom AJA in *Permanent Secretary of the Ministry of Finance and Others v Ward* 2009 (1) NR 314 (SC) p 320 which reiterated the difficulty involved in such an exercise stressing that each case must be judged on its own facts and circumstances. At para 22 the learned Acting Judge of Appeal said:

> '. . . The basis on which this distinction is drawn depends on whether the functionary's decision amounts to administrative action or, as was alleged in this instance, he acted purely in terms of his contractual rights. To decide whether a decision by a functionary amounts to administrative action is not always easy and a reading of the cases on this issue bears out this difficulty. Certain guidelines have crystallised out of judgments of the courts in Namibia, and also in South Africa, but it is clear that <u>the courts are careful not to lay down hard and fast rules and each case must be judged on its own facts and circumstances. There is also no doubt that in deciding the issue courts must have regard to constitutional provisions which, in certain instances, have broadened the scope of reviewable action.</u>' (Emphasis as in the original.)

He submitted that although the focus in such an exercise is on the nature of the action, the identity of the actor is not irrelevant. The easiest organ of the State to identify, he submitted, is one that operates within the central government structures and which is established under the Constitution or in terms of applicable legislation. More controversial is an actor which does not fit into this box but exists at the fringes of the State. There is, he submitted, considerable authority that parastatals, given their nature and functions, can be classified as organs of Government. In this context, Art 40(f) of the Constitution provides that it is a function of Cabinet to establish-

> '. . . economic organisations, institutions, and parastatal enterprises on behalf of the State . . .'

and for the Cabinet in terms of Art 40(a):

> 'to direct, co-ordinate and supervise the activities of Ministries and Government departments including parastatal enterprises . . . '

He submitted that, constituted as it is, as a state-owned enterprise and parastatal, Air Namibia is thus inherently part of the executive.

First respondent's submissions

[25] On behalf of Air Namibia, Mr Frank submitted that the decision to allocate the cargo freight rights to Binvis was a purely commercial decision taken in a contractual context and is not a reviewable administrative act. In any event, the

agreement had expired by the time of commencement of the trial and any action taken by this Court in respect of the agreement would be a *brutum fulmen,* there being no averment by the appellant that the agreement was renewed after, or extended beyond, the date of its expiry. Mr Corbett, however, countered that whilst the agreement may have expired by effluxion of time, and considering that Air Namibia might be inclined to conduct itself in the same fashion in future, the issue was really one of principle so that it is made clear as to what Air Namibia can or cannot do.

[26] Mr Frank submitted further that the fact that Air Namibia was considered a parastatal for purposes of the State-Owned Enterprises Act does not assist the appellant since Air Namibia is not an administrative body or organ and its decision was not an exercise of public power. The selling of cargo space is essentially a commercial business activity and cannot constitute the exercise of a public power but is merely an incident, and part and parcel, of operating an airline in accordance with business principles. The power thus exercised in entering into the agreement is a contractual power, as opposed to a public power, which arises from the commercial activity engaged in by Air Namibia.

[27] He submitted that, as found by the court *a quo*, the starting point is the meaning of administrative action for the purposes of the Constitution and that useful guidelines to determining whether any given conduct constitutes administrative action, have been provided by the South African Constitutional Court

in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC)[2] (SARFU).

[28] He submitted that even where entities established by statute exercise powers conferred by statute, the courts have held that the exercise of contractual powers would not be reviewable. In support of this submission he referred to *Cape Metropolitan Council v Metro Inspection Services (Western Cape) CC and Others* 2001 (3) SA 1013 (SCA) where the Supreme Court of Appeal of South Africa held that :

> '[16] The section (section 33 of the South African Constitution) is not concerned with every act of administration performed by an organ of State. It is designed to control the conduct of the public administration when it performs an act of public administration i.e. when it exercises public power . . . (Brackets are mine.)
>
> [17] It follows that whether or not conduct is "administrative action" would depend on the nature of the power being exercised (SARFU at para [141].) Other considerations which may be relevant are the source of the power, the subject-matter, whether it involves the exercise of a public duty and how closely related it is to the implementation of legislation (SARFU at para [143]).'

[29] In essence the submission on behalf of Air Namibia is this: it is not an administrative body or organ of Government; it is an economic organisation as contemplated by Art 40(f); it has no special powers created by statute beyond those ordinarily applicable to companies; the decision in question was not taken by an administrative body but by the managing director of a private company; and the

[2]Paras 141-143 set out in para 34.

source of the power exercised by Air Namibia is not statutory but is to be found in its Memorandum of Association and Articles of Association as in the case of any company.

[30] As to the nature of the contract, so submitted Mr Frank, it was a decision taken by Air Namibia to increase the revenue it achieved on a then loss-making division. It was a decision based on ordinary business principles following an investigation and subsequent recommendations by IATA.

[31] He suggested that the approach of this Court in the *Permanent Secretary v Ward* matter would find application in this matter and submitted that the appeal ought to fail on the basis that Air Namibia's decision did not constitute administrative action.

Determination

[32] The question to be determined is whether the conduct of Air Namibia in taking the decision in question involved the exercise of a public power and therefore constitutes administrative action for the purposes of Art 18 of the Constitution of Namibia.

[33] The approach of the Constitutional Court of South Africa where an enquiry of this nature, involving an act of an organ of Government, public body or authority, has been to focus not on the arm of Government to which the actor belongs, but on the nature of the power which is exercised by him or her. Determining the nature of

the power would involve considerations such as the source of the power, the subject matter, for example whether or not it involves the exercise of a public duty, and how closely it is related on the one hand to policy matters, which are not administrative, and on the other hand to the implementation of legislation, which is.

[34] The approach is articulated thus in SARFU matter para 141-143[3]:

> '[141] In s 33[4] the adjective "administrative" not "executive" is used to qualify "action". This suggests that the test for determining whether conduct constitutes "administrative action" is not the question whether the action concerned is performed by a member of the executive arm of government. What matters is not so much the functionary as the function. The question is whether the task itself is administrative or not. It may well be, as contemplated in *Fedsure*, that some acts of a legislature may constitute "administrative action". Similarly, judicial officers may, from time to time, carry out administrative tasks. The focus of the enquiry as to whether conduct is "administrative action" is not on the arm of government to which the relevant actor belongs, but on the nature of the power he or she is exercising.
>
> [142] As we have seen, one of the constitutional responsibilities of the President and Cabinet Members in the national sphere (and premiers and members of executive councils in the provincial sphere) is to ensure the implementation of legislation. This responsibility is an administrative one, which is justiciable, and will ordinarily constitute "administrative action" within the meaning of s 33. Cabinet Members have other constitutional responsibilities as well. In particular, they have constitutional responsibilities to develop policy and to initiate legislation. Action taken in carrying out these responsibilities cannot be construed as being administrative action for the purposes of s 33. It follows that some acts of members of the executive, in both the national and provincial spheres of government will

[3]The judgment has been cited with approval by this Court in *Mbanderu Traditional Authority and Another v Kahuure and Others* 2008 (1) NR 55 (SC).
[4]Constitution of the Republic of South Africa (Act No 108 of 1996).

constitute “administrative action” as contemplated by s 33, but not all acts by such members will do so.

[143] Determining whether an action should be characterised as the implementation of legislation or the formulation of policy may be difficult. It will, as we have said above, depend primarily upon the nature of the power. A series of considerations may be relevant to deciding on which side of the line a particular action falls. The source of the power, though not necessarily decisive, is a relevant factor. So, too, is the nature of the power, its subject-matter, whether it involves the exercise of a public duty and how closely it is related on the one hand to policy matters, which are not administrative, and on the other to the implementation of legislation, which is. While the subject-matter of a power is not relevant to determine whether constitutional review is appropriate, it is relevant to determine whether the exercise of the power constitutes administrative action for the purposes of s 33. Difficult boundaries may have to be drawn in deciding what should and what should not be characterised as administrative action for the purposes of s 33. These will need to be drawn carefully in the light of the provisions of the Constitution and the overall constitutional purpose of an efficient, equitable and ethical public administration. This can best be done on a case by case basis.’ (Emphasis provided.)

[35] In the *Cape Metropolitan Council* case the appellant was an organ of State as defined in s 239 of the South African Constitution. It had cancelled a contract with the respondent (with whom it had contracted to identify non–paying levy payers and to collect outstanding levies) on grounds of material breach of contract involving substantial fraudulent claims. The respondent had successfully applied to the High Court for the setting aside of the termination of the contract on the ground that its constitutional right to lawful and procedurally fair administration had been violated by such termination. On appeal, Streicher JA remarked:

> '[18] The appellant is a public authority and, although it derived its power to enter into the contract with the first respondent from statute, it derived its power to cancel the contract from the terms of the contract and the common law. Those terms were not prescribed by statute and could not be dictated by the appellant by virtue of its position as a public authority. They were agreed to by the first respondent, a very substantial commercial undertaking. The appellant, when it concluded the contract, was therefore not acting from a position of superiority or authority by virtue of its being a public authority and, in respect of the cancellation, did not, by virtue of its being a public authority, find itself in a stronger position than the position it would have been in had it been a private institution. When it purported to cancel the contract it was not performing a public duty or implementing legislation; it was purporting to exercise a contractual right founded on the consensus of the parties in respect of a commercial contract. In all these circumstances it cannot be said that the appellant was exercising a public power. Section 33 of the Constitution is concerned with the public administration acting as an administrative authority exercising public powers, not with the public administration acting as a contracting party from a position no different from what it would have been in had it been a private individual or institution.' (Emphasis provided.)

[36] The reasoning in the *SARFU* and *Cape Metropolitan* cases was adopted and applied by this Court in the *Permanent Secretary v Ward* matter.

[37] The appellant therein had cancelled a contract concluded with the respondent, a medical doctor who practised for his own account, to become a service provider to the Public Service Employees Medical Aid Scheme (PSEMAS). The scheme provided for by the agreement was that a service provider would render his professional services to members of PSEMAS at a prescribed professional tariff. For these services the service provider would then be remunerated by the administrator of the scheme on behalf of the second appellant,

the Minister of Finance. The termination was on grounds that the respondent had been guilty of dishonest conduct in breach of a clause of the agreement. At paras 59 to 61 of the *Ward* judgment, the Court said:

> '[59] In the present instance there can be no doubt that the first appellant is a public authority and that the power to enter into the agreement was derived from statute. However, the terms of the agreement are not statutorily prescribed, in fact nowhere is there even any direct mention of an agreement. Clause 11.5, in terms whereof the first appellant had cancelled the agreement, contained only common-law grounds on which the agreement could be cancelled. Correctly, in my view, the respondent did not deny the right of the first appellant to cancel the agreement if such grounds in fact existed. These grounds existed in the common law and the fact that they were contained in the agreement did not alter that fact. These were therefore not terms which the first appellant imposed by virtue of one or other superior position in which he found himself *vis-à-vis* the respondent. In cancelling the agreement the first appellant was also not implementing legislation.
>
> [60] Furthermore, the subject-matter of the agreement between the parties was the rendering of medical services to members of the medical-aid scheme. Seen in this context the subject matter of the agreement was a service agreement and purely commercial.
>
> [61] For the above reasons I conclude that the first appellant, when he cancelled the agreement, was not performing a public duty or implementing legislation but was acting in terms of the agreement entered into by the parties and that it could not be said that the first appellant, in doing so, was exercising a public power.'

[38] In my view, the court *a quo* correctly found that the decision complained of did not constitute administrative action. Air Namibia is a State-owned enterprise. It is a private company and operates as such. The day to day decisions (for example the purchase of light bulbs or stationery or entering into contracts) necessary for

the efficient running of the company are taken by its directors acting in terms of its Memorandum and Articles of Association which is the source of their power. The decision*, in casu*, was such a decision.

[39] The fact that the Government is its sole shareholder and that it is regarded as a parastatal for purposes of the State-Owned Enterprises Act, is insufficient to elevate its decisions, made in the ordinary course of business for the efficient and profitable running of the company, to administrative action.

[40] In the present case, the decision to enter into the agreement with Binvis was taken with a view to moving the company from a loss-making position to one of profitability. It did not, as the court *a quo* correctly found, arise from any statutory provision nor did it relate to the exercise of any statutory power. I agree with the court *a quo* that the power exercised in entering into the challenged agreement is not a public power but a contractual power which arises from the commercial activity by Air Namibia to increase its revenue.

[41] I conclude, therefore, that the decision taken by Air Namibia to enter into the agreement with Binvis is not susceptible to review in terms of Art 18 of the Constitution of Namibia or the common law. In view of this conclusion, it becomes unnecessary to determine the secondary issue raised by Mr Frank regarding the expiry of the agreement.

[42] I would therefore dismiss the appeal.

[43] Accordingly the following order is made:

The appeal is dismissed with costs, such costs to include the costs of one instructing and two instructed counsel.

_____
ZIYAMBI AJA

_____
MAINGA JA

_____
GARWE AJA

APPEARANCES

APPELLANT:	A W Corbett
	Instructed by Engling, Stritter & Partners
1ST RESPONDENT:	T J Frank, SC (with him R L Maasdorp)
	Instructed by AngulaColeman