REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 31739/2017

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED.

15.VIII.19
DATE

SIGNATURE

In the matter between:

ERIC ACHUKO **APPLICANT**

And

ABSA BANK LTD , (ABSA)	**FIRST RESPONDENT**
FIRSTRAND BANK LTD, (FNB)	**SECOND RESPONDENT**
FINANCIAL SERVICES BOARD , (FSB)	**THIRD RESPONDENT**
JOHANNESBURG STOCK EXCHANGE, (JSE)	**FOURTH RESPONDENT**
SPOUTH AFRICAN RESERVE BANK, (SARB)	**FIFTH RESPONDENT**
BANKING ASSOCIATION OF SOUTH AFRICA, (BASA)	**SIXTH RESPONDENT**
MINISTER OF FINANCE, ("THE MINISTER")	**SEVENTH RESPONDENT**
MINISTER OF JUSTICE, ("THE MINISTER")	**EIGHTH RESPONDENT**

J U D G M E N T

UNTERHALTER J

INTRODUCTION

1. The Applicant, Mr Achuko, brings an application seeking to declare the conduct of two banks, the first and second respondents, ABSA Bank Ltd ("ABSA") and FirstRand Bank Ltd ("FirstRand") unconstitutional. That conduct references a settlement agreement concluded between ABSA and FirstRand in August 2014 with the Commodity Futures Trading Commission (" the Commission") in the United States. The Commission is a statutory regulator. It regulates the trading of commodity futures

in the United States. The Commission investigated certain prearranged non-competitive trades in corn and soybeans that ABSA and First Rand had undertaken on the Chicago Board of Trade ("CBOT").

2. The Commission found that ABSA and FirstRand were in violation of legislative provisions of United States law that are of application to commodity trading.

3. The summary of the Commission's findings is set out in the order made by the Commission, attached to the founding affidavit as "EA2". ABSA and FirstRand, on several occasions from June 2009 to August 2011, prearranged non-competitive corn and soybean futures trades on the CBOT. They agreed upon the product, quantity, price, direction and timing of these trades. The prearranged trades negated market risk and price competition and constituted fictitious sales, amounting to noncompetitive transactions (" the infringing conduct ")

4. ABSA and FirstRand submitted offers of settlement to the Commission. The Commission ordered that ABSA and First Rand cease violating the provisions of the Commodity Exchange Act they were found to have infringed. They were ordered to pay a civil monetary penalty.

5. Mr Achuko alleges in his founding affidavit that ABSA and FirstRand failed to take into account that the infringing conduct would or could create the risk to Mr Achuko, his family and most South African families that the price of food would be compromised, especially the price of maize meal. In addition, a risk would or could be created in

respect of food security. The infringing conduct would or could influence the price of food paid by South Africans. ABSA and FirstRand also failed to observe market conduct by failing to take account of the interests of the public, given the high level of poverty and unemployment in South Africa.[1]

6. These failings, Mr Achuko alleges, give rise to an infringement of section 27 of the Constitution. Basic food, such as pap that is made from maize, is relied upon by millions of poor South Africans, but is no longer affordable as a result of the banks' price manipulation and prearranged trading. In consequence, millions of South Africans go hungry. This offends against section 27 (1) (b) which accords to everyone the right to have access to sufficient food.[2]
7. Mr Achuko took up the infringing conduct of ABSA and FirstRand with the Financial Services Board ("FSB", now the Financial Sector Conduct Authority, " the Conduct Authority, " the Third Respondent) and the Johannesburg Stock Exchange ("the JSE," the Fourth Respondent). The FSB and JSE responded. They take the position that the Financial Markets Act 19 of 2012 ('FMA') is silent on the issue of prearranged trades and does not render such trades unlawful. On this basis, the FSB declined jurisdiction to investigate Mr Achuko's complaint against ABSA and FirstRand.
8. Mr Achuko does not share this view and contends that the infringing conduct does contravene the FMA, constituting prohibited trading practices. Mr Achuko seeks a declarator that it is unlawful in terms of section 80 of the FMA to participate in non-

[1] FA paragraph 30
[2] FA paragraphs 33 - 35

competitive prearranged trades. But if this is not so, then the relevant provisions of section 80 of the FMA are inconsistent with section 27 (1)(b) of the Constitution.

9. The application seeks in addition wide-ranging remedies. First, a declarator that the infringing conduct is unconstitutional and unlawful. Second, that ABSA and FirstRand pay back some of the money earned unlawfully by building a high school and a primary school in each province. And publish an unconditional apology to South Africans through all the mainstream media.

10. ABSA and FirstRand oppose the application. The central features of their defence may be summarized as follows. First, the infringing conduct had no effect upon the price of maize in South Africa. (' the causal issue "). Second, the infringing conduct occurred in the United States and was regulated in that country. A South African court has no jurisdiction to entertain a case predicated upon infringements of the law of the United States. Third, prearranged trades are not unlawful under the FMA, nor its predecessor, the Security Services Act 36 of 2004, (" the SS Act"). Fourth, the FMA can be of no application to the conduct of ABSA and FirstRand because the FMA was not enacted at the time that the trades took place, that is in the period June 2009 to August 2011. The FMA can have no retrospective application. Fifth, the relief sought is not competent.

11. The Conduct Authority also opposes the application. It contends that the FMA is not of application to the trades; and even if it was, there is no infringement. Nor has any proper basis been set out for declaring relevant portions of section 80 of the FMA inconsistent with section 27(1) (b) of the Constitution.

12. The Minister of Finance (the Seventh Respondent) also seeks the dismissal of the application. The Minister contends that section 80 of the FMA neither prohibits prearranged trades, nor is this provision constitutionally wanting for its failure to do so.

JURISDICTION

13. I commence with the question of jurisdiction. The infringing conduct, of which Mr Achuko complains, rests upon findings made by a regulatory authority in the United States, concerning trades on the CBOT that were found to have violated legislative provisions of United States law.

14. FirstRand submits that this Court has no jurisdiction to enquire into or make findings concerning conduct carried out in Chicago that was in breach of legislation of the United States.

15. Our Courts have recognized that territoriality is the traditional basis upon which jurisdiction is established, and that the extra-territorial assumption of jurisdiction may interfere with the sovereignty of other states. [3] However, the territorial principle of jurisdiction has a subjective and an objective aspect. The subjective aspect recognizes the power of the state to enact laws that govern conduct taking place within the territorial borders of the state. The objective aspect of territorial jurisdiction recognizes the power of the state to enact laws that concern conduct taking place outside of the borders of the state, the effects of which take place within the borders of the state.

[3] S v Okah 2018 (4) BCLR 456 (CC) at [43]

16. In *S v Basson*[4], the Constitutional Court accepted the general proposition that our courts have declined to exercise jurisdiction over person who commit crimes in other countries based upon a presumption against the extraterritorial operation of the criminal law. However that presumption does not invariably hold, and the Constitutional Court acknowledged that jurisdiction, in the context of the criminal law, may be assumed where there is a real and substantial link between the offence and the country in which the courts seek to exercise jurisdiction. One way in which that link may be established is where the harmful consequences of an offence committed in one country are felt in another.

17. The objective aspect of territorial jurisdiction is not confined to the criminal law. Justice Learned Hand put the matter this way in *Alcoa*[5],

"Any state may impose liabilities even upon persons not within its allegiance, for conduct outside its borders which has consequences within its borders that the state reprehends"

18. One area of the law in which the effects doctrine holds sway is competition law. Competition law, in many jurisdictions, including our own, makes provision for the regulation of anti-competitive conduct that takes place outside the territory of the state but has an effect within it.[6] While the United States has shown the greatest propensity to apply the effects doctrine to the assumption of jurisdiction, as ever

[4] 2005 (12) BCLR1192 (CC) at [223] – [227]
[5] US v Aluminum Co of America 148 F2d 419 at 443
[6] See section 3(1) of the Competition Act 89 of 1998.

more commerce has international dimensions, more jurisdictions have shown a willingness to entertain the doctrine. So too international crimes under multilateral treaties permit of wide jurisdictional powers.[7]

19. The question that arises in this case is whether our courts enjoy jurisdiction to consider a violation of the Bill of Rights in respect of conduct that took place outside the territory of South Africa that has had effects within its borders?

20. The Constitutional Court has taken an expansive approach to the question of jurisdiction where extra-territoriality features. In *National Commissioner*[8], the Court considered whether South Africa could assert jurisdiction to investigate alleged acts of torture perpetrated in Zimbabwe, by and against Zimbabwe nationals, even when none of the perpetrators was present in South Africa. The Court held that South Africa may, since torture is a crime against humanity, through universal jurisdiction assert prescriptive and, to some degree, adjudicative jurisdiction. In *S v Okah*[9], the Constitutional Court gave a wide interpretation to the extra-territorial provisions of legislation that confer jurisdiction on South African courts to prosecute terrorist offences that occur outside South Africa. So too, the Appellate Division would not permit an accused to suffer the violation of his fundamental rights when South African security forces executed a cross border kidnapping.[10]

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[7] See National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre 2014 (12) BCLR 1428 CC at [74]
[8] Cited above at [49]
[9] Cited above
[10] S v Ebrahim 1991 (2) SA 553 (A)

21. Section 8 of the Constitution is silent as to whether the Bill of Rights is of application in circumstances where the infringement of a right has its origins in conduct that takes place outside of South Africa. But in my view, the case sought to be made by Mr Achuko does not fall outside the jurisdictional purview of the courts.

22. This is so for the following reasons. First, if the effects of conduct undertaken abroad occur in South Africa and those effects give rise to an infringement of the rights guaranteed in the Bill of Rights, the infringement is no less significant because the effects have their origin abroad. This is not circular reasoning. If it was proven, for example, that actions taken by South Africans abroad gave rise to the wholesale infringement of the privacy of communications of persons within the country, the right to privacy has been compromised. That the surveillance originates abroad matters not at all to the privacy persons are entitled to enjoy and the actual diminution of their privacy rights. It is the effects that matter and their impact upon what it is that the right secures.

23. Second, as in this case, although the conduct may have taken place in the United States, the persons responsible for the conduct are companies established in South Africa that conduct a good deal of their business in this country. There is a substantial link between ABSA and FirstRand and South Africa. To use the language of Justice Learned Hand, ABSA and FirstRand are within the allegiance of South Africa.

24. Third, there is no consideration of comity which gives rise to the risk that the South African courts would be usurping the sovereignty of the United States and its competence to regulate commodity trading within the United States. The Commission has exercised its powers under the law of the United States and found ABSA and FirstRand to be in violation of that law. If a South African court were to find that the conduct of ABSA and FirstRand and its effects constitute an infringement of the Bill of Rights that would be an exercise of jurisdiction by the South African courts entailing no usurpation of the Commission's powers, and no order made by the South African court conflicts with the orders of the Commission. Put simply, ABSA and FirstRand would be liable to sanction under the law of the United States and such remedies as the South African courts might impose for an infringement of the Constitution. There is neither conflict nor double jeopardy resulting from this court assuming jurisdiction.

25. FirstRand has correctly submitted that South African courts should not assume jurisdiction to pronounce upon regulatory violations under United States law. The violation is one against the municipal laws of the United States. But it does not follow that conduct in the United States that has effects in South Africa may not fall within the jurisdiction of the South African courts. The issue for the South African courts is not whether the conduct is unlawful under the law of the United States, but rather, whether the conduct and its consequences infringe rights conferred by the South African constitution. Such a finding by a South African court does not rest upon the Commission's findings of a violation under the law of the United States, much less any consideration by a South African court as to whether there was such a violation. The

South African court is simply concerned with the question as to whether the conduct and its effects infringe, in this case, the Bill of Rights.

26. Mr Achuko does rely upon the findings of the Commission to make out his cause of action. But it is not that the conduct of ABSA and FirstRand was found to have violated the laws of the United States that signifies. Rather it is the factual averments made as to the attributes of the infringing conduct in making prearranged trades on the CBOT and its effects that are said to infringe section 27(1)(b). That in my view falls within the jurisdiction of this court.

THE CAUSAL ISSUE

27. It is one thing to allege that the conduct of ABSA and FirstRand in trading as they did gave rise to the risk of compromising access to the staple food of poor people in South Africa. It is another to prove it, and seek to do so in motion proceedings. And it is to this issue that I now turn.

28. The founding affidavit of Mr Achuko sets out the conduct that he alleges is unlawful and in breach of ABSA's and FirstRand's constitutional and statutory duties. The founding affidavit, relying upon the factual findings of the Commission, characterizes the prearranged trades as non-competitive. In particular, the trades are said to be non-competitive by reason of the agreements concluded between ABSA and FirstRand as to the quantity, price, direction and timing of the trades. These averments are made,

quite apart from any contention as to the fact that the trades were found to be unlawful under the law of the United States.[11]

29. As I have already observed, this conduct of ABSA and FirstRand is said to have resulted in a failure on the part of these banks to take account of the risk that their trades would or could give rise to increases in the price of maize in South Africa and compromise the food security of poor people. The founding affidavit goes on to make bolder claims concerning the impact and effects of the prearranged trades. It is alleged that the unlawful conduct of ABSA and FirstRand directly or indirectly had a material impact on the price of maize, making it more difficult for poor people to have access to sufficient food, and in particular maizemeal at an affordable price.[12]

30. ABSA and FirstRand deal extensively with these contentions in their answering affidavits. Their affidavits are detailed. The affidavit filed on behalf of FirstRand by Mr Ribbens, who is qualified as an expert, explains that the trades investigated by the Commission were exchange for risk trades in respect of futures contracts traded on CBOT. The trades were intended to hedge against the risks that FirstRand and ABSA assumed as a result of facilitating futures trading on the JSE. Both ABSA and FirstRand deny that their prearranged trades constitute price fixing.

31. Central to the evidence adduced by Mr Ribbens is the contention that the infringing conduct had no impact whatever upon the South African market for maize. This is so, he says, for a number of reasons. First, there is no trading on CBOT of South African

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[11] FA paragraph 25.1
[12] FA paragraph 36

maize or maize futures. Second, there is no link between the price of CBOT futures and the South African maize price. Third, the trades on CBOT amounted to less than 1% of the total value of the trades on that market and hence the impact of the infringing conduct was negligible. Fourth, during the period the 29 trades took place there were no bulk imports from the United States into South Africa. Fifth, the infringing conduct involves instruments that do not reference South African commodities. The 29 trades did not move the prices of the commodity trades on the CBOT, as the trades were at mid-market price. Sixth, there are numbers of factors that influence the price of maize in South Africa, but none of them are related to the infringing conduct. Seventh, the JSE market and the CBOT for maize are not closely correlated.[13]

32. The deponent to ABSA's answering affidavit, Mr Pieterse, a senior derivatives trader principal, sets out evidence to like effect. In particular, Mr Pieterse says that the trades in question had no effect on the South African market.[14]
33. In his replying affidavit, Mr Achuko asserts that this is not so, that the infringing conduct constitutes cross-border crime and did adversely affect the price of maize in South Africa. But there is no evidence tendered by him to counter what has been said by Mr Ribbens and Mr Pieterse.[15]
34. The basis upon which ABSA and FirstRand contend that the prearranged trades were not instances of price fixing or anti-competitive behavior is not persuasive. Two firms that are competitors and agree to fix prices, quantities and other trading conditions in respect of their trades on a market are standardly engaged upon anti-competitive

[13] Ribbens paras 16.34 and 20.6 -20.7
[14] Pieterse paras 36 - 40
[15] Replying affidavit to First Rand para 15; and to ABSA para 24

conduct. That they do so to hedge the risks that ABSA and FirstRand assumed to facilitate futures trading on the JSE would not ordinarily permit of a benign characterization of the conduct. I do not however need to make any finding on this issue. Even if the prearranged trades constitute anti-competitive conduct that may be cognizable as an element relevant to the proof of unlawfulness in terms of section 27(1)(b), if the trades had no effect upon the price of maize in South Africa, then the conduct of ABSA and FirstRand cannot have adversely affected the Applicant's right (and those for whom he brings this application) to have access to sufficient food.

35. These are motion proceedings. The causal claim that Mr Achuko makes that the prearranged trades on CBOT adversely affected the price of maize in South Africa is much disputed on the evidence adduced by ABSA and FirstRand. The account offered by ABSA and FirstRand is not clearly untenable or otherwise incapable of belief. Accordingly, I am bound to proceed on the facts put up by these respondents.

36. This requires that I determine this application on the basis that there is no causal connection between the infringing conduct and the price of maize in South Africa.

37. Once this is so, the infringing conduct cannot have infringed the right of Mr Achuko, his family, and the many poor South Africans who depend upon maize meal as a staple to enjoy access to sufficient food. The case of Mr Achuko is that the infringing conduct put at risk the price of maize in South Africa, and at worst, caused it to increase, thereby making it harder for the poor to buy this staple product. But if the infringing conduct had no effect whatever on the price of maize in South Africa , then there is no factual basis for the claim that ABSA and FirstRand compromised the right

of access to sufficient food. Nor is there any showing that the infringing conduct had any effect on some other condition relevant to securing access to the availability of maize in South Africa.

38. This renders the primary cause of action relied upon by Mr Achuko unsustainable. Mr Achuko has failed to demonstrate a causal relationship between the prearranged trades and access to maize in South Africa. Once that is so, as I find on the papers before me, there is no warrant to declare the conduct of ABSA and FirstRand to be unlawful and unconstitutional because there is no proven infringement or threatened infringement of the right to have access to sufficient food. The primary relief sought in prayer 1 of the notice of motion, and the consequential remedies proposed in prayers 2,3 and 4 are dismissed.

THE FMA CHALLENGE

39. Mr Achuko also seeks what is in effect declaratory relief that the prearranged trades are prohibited trading practices in terms of section 80 (1) (a) and (b), (2), (3) (a) (b) and (c) of the FMA.

40. The parties are at odds as to whether the prearranged trades constitute practices prohibited by section 80 of the FMA. Mr Achuko submits that they are. ABSA, FirstRand,and the Coduct Authority contend that the trades are not prohibited by the FMA.

41. In my view, this issue does not require determination. The prearranged trades took place in the period June 2009 to August 2011, involving CBOT corn and soy futures contracts.

42. The FMA came into force on 3 June 2013. At the time that the prearranged trades took place, the legislation that regulated prohibited trading practices was section 75 of the SS Act. The SS Act was repealed by the FMA. There is no reading of the FMA that permits of the FMA having retroactive or retrospective application. The strong presumption against such an interpretation holds good.[16] Mr Achuko submits in his heads of argument that there is no substantive difference between the prohibitions in section 75 of the SS and section 80 of the FMA. And there would have been no point to require the court to consider the contravention of the SS Act, which is no longer of application. This last submission is correct, but it does not provide a reason to consider the FMA which was not of application to the prearranged trades at all.

43. That being so, there is no live dispute that warrants this court entertaining the declaratory relief sought by Mr Achuko. The prearranged trades, the legality of which Mr Achuko challenges in his application, were never regulated under the FMA. The FMA had not yet been passed into legislation, much less come into force. Furthermore, an object of the FMA is to ensure the fairness, transparency and competitiveness of South African financial markets. The question as to whether trades undertaken on the CBOT in Chicago and regulated under the law of the United States would be considered unlawful under South African legislation not yet on the statute

[16] S v Mhlungu and others 1995 (3) SA 867 (CC) at [65]

book at the time appears to me to entail no live controversy for this court to consider. For this reason I decline to entertain this declaratory relief.

44. For like reasons, I can see no basis to entertain the alternative relief proposed by the notice of motion, should the court find that section 80 of the FMA does not prohibit the prearranged trades. Under this relief, Mr Achuko seeks to have section 80 of the FMA declared unconstitutional by reason of its failure to prohibit the prearranged trades. This failure is contended to be at odds with section 27(1)(b) of the Constitution.

45. I have found that there is no basis to entertain or determine the question as to whether section 80 of the FMA prohibits the prearranged trades. The predicate for the constitutional challenge to section 80 of the FMA, as postulated in the founding affidavit, is that section 80 does not prohibit the prearranged trades or is silent on the issue.[17]

46. But since the predicate will not be determined, neither can the constitutional challenge which is conditional upon it. There is neither cause nor utility to determine a question of constitutional validity that is abstract in nature because the prearranged trades were not regulated under the FMA. Whether the FMA would have been of application to the prearranged trades, and if so, whether it would have prohibited such trades, and if, further, the FMA did not, would the FMA be found constitutionally wanting, conjures a world of sufficient conjecture that I can see no warrant for this court to venture upon it.

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[17] FA paragraph 45

47. I observe that the constitutional challenge to section 80 of the FMA raises considerable difficulties, as the Minister of Finance has submitted, concerning the separation of powers, and in particular, the powers of Parliament to determine whether and by what legislative intervention to regulate particular conduct. Parliament may have already done so by reason of the fact that the infringing conduct may well be subject to regulation under the provisions of the Competition Act 89 of 1998 which prohibits restricted horizontal practices and is of application to economic activity having an effect within South Africa. I make no findings on these matters, but reference them only to indicate that the issues have complexity, and should not be determined in a case where the challenge is abstract.

48. It follows that neither the declaratory order in respect of section 80, nor the alternative relief that is sought by way of constitutional challenge to Section 80 will be entertained and for this reason this relief is dismissed.

COSTS AND FAIRNESS

49. When this matter was called before me, Mr Achuko, who represents himself, sought a postponement of the matter. I refused the postponement and I have given full reasons for doing so. I then invited Mr Achuko to address me on the merits of his application. He sought to venture back to the basis upon which he had sought a postponement. I was not persuaded that the matter must be heard by three judges, nor that more time should be afforded Mr Achuko to find legal representation, when he had not, prior to appearing in court ,expressed any such wish, nor did he provide

any clarity as to how he might do so. Having brought the application and attracted considerable opposition, Mr Achuko failed to set the matter down over a lengthy period, and when FirstRand did set the matter down, on fair notice, Mr Achuko simply sought to contrive a basis to avoid the hearing.

50. This court makes every allowance for those who come before it unrepresented. But that latitude does not permit a litigant to avoid a hearing. This is prejudicial both to respondents, as also to the court.

51. Mr Achuko complained that it would be unfair to ask him to address the court on the merits, when he would wish to do so at a later date. But I cannot see why this is so. Having dismissed Mr Achuko's application for a postponement, the matter had to proceed. Mr Achuko was invited repeatedly to address the court by way of oral submission. This he declined to do, both at the commencement of the hearing on the merits, as well as after counsel for the respondents had addressed the court. Mr Achuko was entitled to make this election. But if a litigant declines the opportunity to be heard, he cannot complain that he is being treated unfairly.

52. I have considered Mr Achuko's written submissions so as to come to my judgment of this matter.

53. The respondents sought costs against Mr Achuko should his application be dismissed. They submitted that the qualified immunity accorded to litigants who fall under the *Biowatch* principle was not of application in this matter. This is so, they contend, because the application is entirely without merit; Mr Achuko pressed on with the matter

when he was invited to withdraw it; and Mr Achuko has abused the process of this court.

54. I do not find that the application, as framed by a lay litigant, was frivolous and raised no issues of import. The question as to whether extra-territorial conduct might give rise to effects in South Africa that infringe constitutional rights is not of small moment.

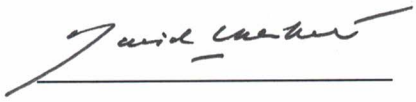
55. But once the answering affidavits had been served, raising very clear obstacles to which Mr Achuko had no answer, he continued with the litigation. The position must have been even more apparent to him once the heads of argument had been exchanged. Mr Achuko then failed to set the matter down for hearing, nor would he withdraw it. At that point, in my judgment, he lost the qualified immunity that I consider he enjoyed under the *Biowatch* principle. His conduct thereafter in seeking a postponement to avoid a hearing, when he knew that the respondents wished to proceed and were preparing to do so, does him no credit.

56. Accordingly, I consider that Mr Achuko should pay the costs of the respondents who appeared before me in respect of their preparation for the hearing and the costs consequent upon the hearing itself. This strikes a balance between not discouraging litigation that concerns constitutional rights and not permitting such litigation to be prolonged when its prospects become vanishingly small.

In the result, the following order is made:

1. The application is dismissed.

2. The Applicant shall pay the costs of the First, Second, Third and Seventh Respondents in respect of their preparation for the hearing and the hearing itself, from the time that these respondents served their heads of argument upon the Applicant.



Unterhalter J

Judge of the High Court

Gauteng Local Division : Johannesburg

Date of Hearing: 07 August 2019

Date of Judgement: 15 August 2019

Appearances

Plaintiff: Mr Achuko

First Respondent: LM Grenfell SC with X Hilita instructed by Lowndes Dlamini Attorneys

Second Respondent : B Leech SC with H Mutenga instructed by Werksmans Attorneys

Third Respondent: K Hardy instructed by RW Attorneys

Seventh Respondent: M Sello instructed by State Attorney Johannesburg