REPORTABLE

IN THE TAX COURT

CASE NO: 11283

In the matter between:

Appellant

and

THE COMMISSIONER FOR THE SOUTH

AFRICAN REVENUE SERVICE **Respondent**

JUDGEMENT

JAJBHAY J:

INTRODUCTION

This is an interlocutory application in terms of rule 13 of the rules promulgated under section 107A of the Income Tax Act, 58 of 1962 **("the Income Tax Act")** for leave to amend the Appellant's Statement of Grounds of Appeal.

The Appellant seeks to add a new paragraph 3.2.4 to its Grounds of Appeal as follows:

"3.2.4 Put differently:

3.2.4.1 in the 1999 year of assessment, the Appellant was entitled to deduct the cost price of its 15.6% shareholding in A, being R300,724,524, in terms of section 22(2) of the Income Tax Act, as:

3.2.4.1.1 it was trading stock held and not disposed of by it at the beginning of the 1999 year of assessment;

3.2.4.1.2 such trading stock formed part of the trading stock of the appellant at the end of the immediately preceding year of assessment;

3.2.4.1.3 the said amount was, in the determination of the taxable income of the appellant for such preceding year of assessment, taken into account in respect of the value of such trading stock at the end of such preceding year of assessment;

3.2.4.2 the sale price of R141,021,605 was to be included in the appellant's "gross income", as defined in section 1 of the Income Tax Act, in the 1999 year of assessment, as being a receipt not of a capital nature;

3.2.4.3 in the premises, the Appellant had a net income tax deduction or loss of R159,702,919.00 in the 1999 year of assessment pursuant to the holding and disposal of the said shares."

On 20 May 2005 the Respondent was given notice of the substance of the proposed amendment. On 24 May 2005 SARS requested a full explanation for the lateness of the amendment and the circumstances giving rise to it. On 31 May 2005 a full explanation was furnished.

Thereafter, on 13 June 2005 and on 27 June 2005, SARS indicated that it would "in all likelihood" agree to the amendment, but had not yet been able to obtain counsel's opinion on the matter. SARS undertook to revert on 8 July 2005. SARS did not honour this undertaking.

On 14 July 2005 SARS changed its stance to being one of not agreeing to the amendment "at this stage" but said that the issue could be discussed at the pre-trial conference. The conference was convened on 19 July 2005. At this meeting, the Respondent's representatives insisted that a formal application be delivered to effect the proposed amendment.

The application for leave to amend was delivered eight court days thereafter. Six court days later the Respondent delivered an answering affidavit. This was the first time the Appellant knew that the application would definitely be opposed. This was

also one court day before the hearing commenced. A replying affidavit was immediately prepared.

The Respondent's main ground of opposition to the amendment is that instead of seeking merely to clarify the existing Grounds of Appeal, the amendment introduces new grounds of appeal which, are bad in law, contradict the existing Grounds of Appeal, and finally, are contradicted by the common cause facts. It may well be that the effect of the refusal of the amendment will put an end to a lengthy trial of the issues such as whether certain expenditure incurred by the Appellant was of capital or revenue nature, which is the Appellant's principal contention on the merits.

THE LAW PERTAINING TO AMENDMENTS

In *Commercial Union Assurance Co Ltd v Waymark NO 1995 (2) SA 73 (TK) at 76D to 77I* the case law pertaining to amendments was summarised as follows:

"I turn now to the merits of the application, namely whether the amendment should be granted. The principles applicable to this issue have been set out in numerous cases. In Caxton Ltd and Others v Reeva Forman (Pty) Ltd and Another 1990 (3) SA 547 (A) Corbett CJ stated at 565G:

'Although the decision whether to grant or refuse an application to amend a pleading rests in the discretion of the Court, this discretion must be exercised with due regard to certain basic principles.'

The following statement by Watermeyer J, in *Moolman v Estate Moolman and Another 1927 CPD 27 at 29* has been accepted and followed as reflecting the situation in our law:

'The question of amendment of pleadings has been considered in a number of English cases. See for example: Tildesley v Harper (10 ChD 393); Steward v North Met Tramways Co (16 QBD 556) and the practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading it is sought to amend was filed.'

"In *Rosenberg v Bitcom 1935 WLD 115 at 117* Greenberg J, stated:

'Although it has been stated that the granting of the amendment is an indulgence to the party asking for it, it seems to me that at any rate the modern tendency of the Courts lies in favour of an amendment whenever such an amendment facilitates the proper ventilation of the dispute between the parties.' (My emphasis.)

"In *Zarug v Parvathie NO* 1962 (3) SA 872 (D) at 876C Henochsberg J held:

'An amendment cannot however be had for the mere asking. Some explanation must be offered as to why the amendment is required and if the application for amendment is not timeously made, some reasonably satisfactory account must be given for the delay.'

Caney J stated in *Trans-Drakensberg Bank Ltd (under Judicial Management) v Combined Engineering (Pty) Ltd and Another 1967 (3) SA 632 (D) at 641A*:

'Having already made his case in his pleading, if he wishes to change or add to this, he must explain the reason and show prima facie that he has something deserving of consideration, a triable issue; he cannot be allowed to harass his opponent by an amendment which has no foundation. He cannot place on the record an issue for which he has no supporting evidence, where evidence is required, or, save perhaps in exceptional circumstances, introduce an amendment which would make the pleading excipiable.' (My emphasis.)

And at 639B:

'The mere loss of the opportunity of gaining time is not in law prejudice or injustice. Where there is a real doubt whether or not prejudice or injustice will be caused to the defendant if the amendment is allowed, it should be refused, but it should not be refused merely in order to punish the plaintiff for his neglect.'

And at 642H:

'In my judgment, if a litigant has delayed in bringing forward his amendment, this in itself, there being no prejudice to his opponent not remediable in the manner I have indicated, is no ground for refusing the amendment.'

...

The principles enunciated in the abovementioned cases can be summarised as follows:

1. The Court has discretion whether to grant or refuse an amendment.

2. An amendment cannot be granted for the mere asking; some explanation must be

offered therefor.

3. The applicant must show that prima facie the amendment 'has something deserving of consideration, a triable issue'.

4. The modern tendency lies in favour of an amendment if such 'facilitates the proper ventilation of the dispute between the parties'.

5. The party seeking the amendment must not be mala fide.

6. It must not 'cause an injustice to the other side which cannot be compensated by

costs'.

7. The amendment should not be refused simply to punish the applicant for neglect.

8. A mere loss of time is no reason, in itself, to refuse the application.

9. If the amendment is not sought timeously, some reason must be given for the delay."

In *J R Janisch (Pty) Ltd v W M Spilhaus & Co (WP) (Pty) Ltd 1992 (1) SA 167 (C)* the court referred to the aforesaid authorities, stating that:

"The tendency of our Courts is not to be over-formalistic and to grant an amendment whenever it will facilitate the proper ventilation of a dispute between the parties. In

Whittaker v Roos and Another; Morant v Roos and Another 1911 TPD 1092 at 1102-3 this tendency was described as follows:

'This Court has the greatest latitude in granting amendments, and it is very necessary that it should have. The object of the Court is to do justice between the parties. It is not a game we are playing, in which, if some mistake is made, the forfeit is claimed. We are here for the purpose of seeing that we have a true account of what actually took place, and we are not going to give a decision upon what we know to be wrong facts. It is presumed that when a defendant pleads to a declaration he knows what he is doing, and that, when there is a certain allegation in the declaration, he knows that he ought to deny it, and that, if he does not do so, he is taken to admit it. But we all know, at the same time, that mistakes are made in pleadings, and it would be a very grave injustice, if for a slip of the pen, or error of judgment, or the misreading of the paragraph in pleadings by counsel, litigants were to be mulcted in heavy costs. That would be a gross scandal. Therefore, the Court will not look to technicalities, but will see what the real position is between the parties.'"

Where the real issue in a case is imperfectly or ambiguously expressed in the pleadings, an amendment designed to place on record the true issue will be allowed. See *Trans-African Insurance Co Ltd v Maluleka 1956 (2) SA 273 (A) at 279C* where Schreiner JA stated the following:

"There is no introduction of a fresh cause of action but only a clarification of a step in the proceedings which, it is assumed, has insufficiently or imperfectly set out the one cause of action that throughout has been relied upon... In the present case the appellant was fully informed in the petition served on it before the expiration of the period of prescription of every material feature of the case that was being brought against it, and in actual fact could not have been in doubt from the time the summons was served as to the nature of the action. Obviously there was every reason why the amendment, assuming it to be necessary, should have been granted and PRICE, J, was quite right in granting it."

In *Cross v Ferreira 1950 (3) SA 443 (C) at 447* Van Winsen AJ, as he then was, stated as follows:

"The South African Courts have up to the present adopted a liberal attitude towards applications for amendment of the pleadings where the proposed amendments have had as their object the raising of the real issues between the parties."

THE ISSUE IN THE TAX APPEAL

The issue in the tax appeal is whether the Appellant was entitled to treat the loss made on the disposal of its 15.6% shareholding in A as not being of a capital nature i.e. as being on revenue account, with the consequence that in the 1999 year of assessment the Appellant had a net income tax deduction or loss of R159, 702,919.00 pursuant to the holding and disposal of the said shares.

The determination of the aforesaid issue depends *inter alia* on the intention of the Appellant when it first acquired the shares and when it sold them. I am informed that the evidence will traverse whether the shares were acquired for better or for worse, or, relatively speaking, for "keeps" or whether they were acquired and sold with a speculative intention of making a profit i.e. as part of a profit-making scheme. In an elucidating and oft quoted exposition of this issue Corbett JA in his minority judgment in *Elandsheuwel Farming (Edms) Bpk v Sekretaris van Binnelandse Inkomste 1978 (1) SA 101 (A)* at 118A - D, said the following:

"Where the taxpayer sells property, the question as to whether the profits derived from the sale are taxable in his hands by reason of the proceeds constituting gross income or are not subject to tax because the proceeds constitute receipts or accruals of a capital nature, turns on the further enquiry as to whether the sale amounted to the realisation of a capital asset or whether it was the sale of an asset in the course of carrying on a business or in pursuance of a profit-making scheme. Where a single transaction is involved it is usually more appropriate to limit the enquiry to the simple alternatives of a capital realisation or a profit-making scheme. In its normal and most straightforward form, the latter connotes the acquisition of an asset for the purposes of reselling it at a profit. This profit is then the result of the productive turn-over of the capital represented by the asset and consequently falls into the category of income. The asset constitutes in effect the taxpayer's stock-in-trade or floating capital. In contrast to this the sale of an asset acquired with a view to holding it either in a non-productive state or in order to derive income from the productive use thereof, and in

fact so held, constitutes a realisation of fixed capital and the proceeds an accrual of a capital nature." (My emphasis)

In *Commissioner for the South African Revenue Service v Knuth; Commissioner for the South African Revenue Service v Industrial Holdings (Pty) Ltd 2000 (1) SA 1088 (E)* the full bench summarised the law as follows:

"Of course it is well established that no single feature should be elevated to a position of decisive pre-eminence (see Commissioner for Inland Revenue v Guardian Assurance Co South Africa Ltd 1991 (3) SA 1 (A) E at 19B - C) but the intention with which the taxpayer acquired the property or asset in question is a particularly important consideration. Indeed, a taxpayer's intention has been described as being the most important 'test' employed to decide whether the profits arising from the disposal of an asset are in the nature of capital or income (see Silke on South African Income Tax vol 1 para 3.2). Accordingly, if the object of the original acquisition was to resell the asset at a profit and that object is achieved, the profit obtained is the result of the productive use of capital employed for the purpose of making such profit and is, then, income - see Lace Proprietary Mines Ltd v Commissioner for Inland Revenue 1938 AD 267 at 277. On the other hand, if an asset is acquired with the intention to hold it 'for keeps', ie only to be disposed of if some unusual or unexpected circumstance should intervene, that 'is the usual badge of a fixed, capital investment' - per Trollip JA in Barnato Holdings Ltd v Secretary for Inland Revenue 1978 (2) SA 440 (A) at 454A.

The distinction between capital, on the one hand, and revenue, on the other, may also be considered in terms of 'fixed' and 'floating' capital (as adverted to by Corbett JA in the passage from his judgment in the Elandsheuwel Farming case quoted above), fixed capital being that which a person wishes to keep in his possession as a means of earning continuous profits, with floating capital being the property a person means to turn into profit by resale. In Commissioner for Inland Revenue v George Forest Timber Co Ltd 1924 AD 516 at 524 Innes CJ, in dealing with these concepts, said the following:

'Capital, it should be remembered, may be either fixed or floating. I take the substantial difference to be that floating capital is consumed or disappears in the very process of production, while fixed capital does not; though it produces fresh wealth, it remains intact. The distinction is relative, for even fixed capital, such as machinery, gradually wears away and needs to be renewed. But as pointed out by Mason J in Stephan v Commissioner for Inland Revenue (1919 WLD at 5) the two phrases have an ascertained meaning in accountancy as well as in economics. Ordinary merchandise in the hands of a trader would be floating capital. Its use involves its disappearance; and the money obtained for it is received as part of the ordinary revenue of the business. It could never have been intended that money received by a merchant in the course, and as a result of his trading, should not form part of his gross income.

The proceeds of fixed capital stand in a different position. The sale of such capital would, generally speaking, represent a mere realisation, which ought from its nature

to be excluded, and which I think the section intended to exclude from the calculation of income.'

Although the difference between fixed and floating capital is not a distinction expressly mentioned in the Act, it is often referred to in tax cases and can now be regarded as entrenched in our law - see Bourke's Estate v Commissioner for Inland Revenue 1991 (1) SA 661 (A) at 672F. It is therefore clearly established that an asset held by a taxpayer, either in a non-productive state or in order to derive income from the productive use thereof, constitutes fixed capital and the proceeds derived from a realisation thereof are of a capital nature. <u>But where an asset is acquired for reselling at a profit, it effectively constitutes the taxpayer's stock-in-trade or 'floating capital' and the proceeds derived therefrom are of a revenue nature</u> - see the Elandsheuwel Farming case supra and the Bourke's Estate case supra at 673A - B."(My emphasis)

It is trite that the acquisition of an asset for the purpose of reselling it at a profit will usually be regarded as a profit-making scheme. See *Commissioner, SA Revenue Service v Wyner 2004 (4) SA 311 (SCA)* at paras [8] to [10]. The issue between the parties is precisely whether the shares were acquired and held with such an intention.

THE EXPLANATION FOR THE AMENDMENT

Both parties pleaded the issue as being whether the intention of the shareholding was of a capital or of a speculative nature and whether the Appellant was entitled to deduct the loss of R159,702,919 in terms of section 11(a) of the Income Tax Act read together with section 23(g). The aforesaid formulation of the issue as reflected in the communications between the parties outlined in the Appellant's affidavit is the traditional and usual way that a dispute regarding the capital or revenue nature of a profit or loss from a sale is formulated. See *Natal Estates Ltd v Secretary for Inland Revenue 1975 (4) SA 177 (A) at 194.*

The Appellant contends that in terms of the Income Tax Act, the sale price of R141, 021,605 is to be included in the Appellant's "gross income", as defined in section 1 of the Income Tax Act, in the 1999 year of assessment, as being a receipt not of a capital nature. The net deduction of R159, 702,919 is arrived at by subtracting from R141, 021,605 the cost price of the shares of R300, 724,524.

The parties have both approached "the subtraction leg of the equation" with reference to the general deduction formula in the Income Tax Act, ie. section 11(a) as read with section 23(g). This was the basis upon which the case was pleaded. When senior counsel was consulted in the matter, he pointed out that strictly speaking, the correct approach is that if the shares were trading stock, the cost price was deductible in the year of acquisition in terms of section 11(a) of the Income Tax Act, subject to section 22 of the Income Tax Act.

SECTION 22 OF THE INCOME TAX ACT AND WHETHER THE AMENDMENT IS BAD IN LAW.

Section 22 of the Income Tax Act is a curious provision, dealing extensively with the subject of trading stock but without specifying exactly how it is to figure as the basis of a deduction at the end of –and of an inclusion at the beginning of – each year of assessment.

During the 1994 year of assessment, A acquired a savoury snack business known as B. The purchase price was some R411-million.In order to enable A to make the acquisition, A issued fresh capital in the form of shares totalling some 15, 6% of its issued shares. The Appellant acquired these shares at a cost of R300 724 524, 00. This occurred too in the 1994 year of assessment. The financial methodology by which this occurred is complex, and will no doubt form part of the investigation of the merits when matters come to that.

In the 1999 year of assessment, the Appellant disposed of this shareholding in A to C for a price of R141 021 605, 00. The Appellant avers that when it acquired the shares in 1994:

> *"(A) was earmarked for a listing on the Stock Exchange later in the year, and the shares owned by (C) in (A) would have been sold by (C) within a few months. It was always anticipated that the shares would be sold at a profit, with the resulting transaction being speculative in nature. Therefore,* ***with***

> ***effect from 1 June 1994**, (C) acquired a direct interest of 15,6% in (A). ….. The intention of taking up the shares directly was with a speculative motive …. ".*

The objection goes on to record that:

> *" ….. It is clear that the shares were disposed of as part of an operation of business in carrying out a scheme for profit making".*

Naturally, all of this is in issue, but more pertinently for present purposes the objection and the appeal brought by the Appellant is to the disallowance by the Respondent of the cost of the shares as expenditure incurred in the production of income claimed in the 1999 year of assessment.

An amendment should be refused on the grounds of excipiability, only if it is clear that the amended pleading *will (*not may) be excipiable. See*: Minister of Defence,Namibia v Mwandinghi 1992 (2) SA* 355 *(NmS)* at 364H-I.

Although in form the Respondent opposes an application for an amendment, this ground of opposition is in substance an exception. See: *Sabi v Baloo and Others 1962 (4) SA 572 (T)* at 573E; *Construction & Mining Equipment Co (Pty) Limited v Provincial Insurance Co of Southern Africa Limited 1972 (1) SA 473 (T)* at 477G-H; *Bafokeng Tribe v Impala Platinum Ltd & Others, 1999 (3) SA 517 (BHC)* at 569.

The contention that the deduction for expenditure not having been claimed in 1994,

"it can never be claimed, whatever one's view of the apparent hardship of the matter" is in itself too formalistic. Section 11 (a) may well be the dominant section in the Income Tax Act. On the other hand, section 22 may be reliant upon section 11(a). These are factors that will ultimately contribute in determining what is just and reasonable at the end of the day, having regard to all of the evidence in each particular case. See: *Commissioner for Inland Revenue v Nemojim 1983 (4) SA 935 AD* at 956E-957H.

The Appellant not having provided a full and *bona fide* explanation as to the reason for seeking the amendment

The application for leave to amend gave a reasonable background and explanation for the amendment. The interests of justice demand the proper adjudication of the real issue between the parties and the correct legal determination of the tax consequences to the Appellant in accordance with the provisions of the Income Tax Act. Here, the amendment does not seek to introduce a fresh cause of action, but certainly clarifies a previous "pleading" which insufficiently, and imperfectly set out the original Appellant's Statement of Grounds of Appeal. At this point in time, I cannot determine that the facts relied upon by the Appellant are manifestly false and so divorced from reality that they cannot possibly be proved.

See: *Natal Fresh Produce Grower's Association & Others v Agroserve (Pty) Ltd & others 1990 (4) SA 749 N* at 754I-755C.

In terms of section 22 of the Income Tax Act, the cost price of trading stock in the form of shares held by any company in another company, held and not disposed of in a particular tax year, was in effect "carried forward" to the year of disposal. In the year of disposal, the cost price was taken into account in the determination of the taxable income in terms of section 22(2) of the Income Tax Act.

See: *RC Williams Income Tax in South Africa, Law and Practice* (1994) at 281

Meyerowitz and Spiro on Income Tax para 9.86 & 12.187

The Law of South Africa, 1st Reissue, Vol 22, Part 1, para 322

De Koker *Silke on South African Income Tax,* Vol II, para 8.111

Juta's Income Tax, Vol 1 at 22.9-11

Huxham & Haupt *Notes on South African Income Tax* at 187-191

- 957C Richards Bay Iron & Titanium (Pty) Ltd and Another v Commissioner for Inland Revenue 1996 (1) SA 311 (A) at 317C-318C

Commissioner for Inland Revenue v Nemojim 1983 (4) SA 929 (A) at 956A

In my judgement, the amendment does not alter the essential factual issue between the parties, which remains whether the relevant shares were acquired in pursuance of a scheme for profit making and not as a capital investment. If so, the shares may have constituted trading stock and section 22 of the Income Tax Act may be relevant in allowing the deduction of the cost price of the shares of R300, 724,524 in the 1999 year of assessment. This will have to be determined after a careful consideration of the evidence.

However, even if the contention that the amendment raises a new issue between the parties is correct, I believe that the amendment should be allowed because, if it should be held that the Appellant was not entitled to claim the relevant deduction in the 1999 year of assessment in terms of section 11(a), but was entitled to claim the relevant deduction in terms of section 22(2), the Appellant will be severely prejudiced by not having contended its entitlement to such deduction in terms of section 22(2) in its Statement of Grounds of Appeal. In terms of Rule 12 of the Rules promulgated under section 107A of the Income Tax Act, the issues in any appeal to the Court will be those defined in the Statement of Grounds of Assessment as read with the Statement of Grounds of Appeal.

PREJUDICE TO THE RESPONDENT

I do not hold the view that the amendment will cause prejudice to the Respondent for the following reasons: the Respondent was given notice of the substance of the proposed amendment as early as 20 May 2005, more than two and a half months before the trial. The amendment will not alter the factual issue between the parties in any way. Even if there is a new factual issue as a consequence of the amendment a postponement would alleviate any possible prejudice in this regard. The amendment will accord the deduction the correct technical treatment in terms of the Income Tax Act and will thus assist the determination of the Appellant's tax liability.

THE RESPONDENT'S CONDUCT AND COSTS

I see no reason as to why the Respondent should not be ordered to pay the costs of this application. I say this for the following reasons: In *Myers v. Abramson*, Van Winsen AJ, said:

"It does not appeal to me as being fair and reasonable that the opponent to applicant for an indulgence should be put in a position that he opposes the granting of the indulgence at his peril in the sense that if the amendment is granted he cannot recover his costs of opposition or may even have to pay such costs as are occasioned by his opposition. It seems to me that the applicant for the indulgence should pay all such costs as can reasonably be said to be wasted because of the application, these costs to include the costs of such opposition as is in the circumstances reasonable, and not vexatious or frivolous. This seems to me to be the purport of such judgments as Middeldorf v Zipper N.O. 1947 (1) SA 545 (SR); Frenkel, Wise & Co Ltd v Cuthbert 1947 (4) SA 715 (C); Greyling v. Nieuwoudt 1951 (1) SA 88 (O)."

The Respondent's opposition was based on: the lateness of the amendment; the amendment being bad in law; the Appellant not having provided a full and *bona fide* explanation as to the reason for seeking the amendment.

LATENESS AS A GROUND OF OPPOSITION

Lateness is no reason, in itself, to refuse the application. *Commercial Union Assurance Co Ltd v Waymark NO 1995 (2) SA 73 (TK)* at 76D to 77I,

The Respondent was first given notice of the substance of the proposed amendment as early as 20 May 2005, more than two and a half months before the trial. The lateness of the application for leave to amend the Appellant's Grounds of Appeal was probably caused by the Respondent's communications that it would *"in all likelihood"* agree to the amendment. At the pre-trial conference it was made clear for the first time that consent in terms of Rule 13(1) of the Rules promulgated under section 107A of the Income Tax Act would not be forthcoming and that a substantive application for amendment was required. The Appellant has not opposed the Respondent's request for a postponement if the amendment is granted.

I have already dealt with the explanation for the amendment and the reasons for the seeking thereof earlier herein.

CONCLUSION

The Respondent, as the organ of State established by section 2 of the South African Revenue Services Act, 34 of 1997, is responsible for implementing the provisions of the Income Tax Act. The Respondent is the person responsible for the performance by The South African Revenue Services ("SARS") of its functions.

Both SARS and the respondent have a duty to assist this Court in implementing the provisions of the Income Tax Act. They discharge a public duty in ensuring that tax is paid in accordance with the provisions of the Income Tax Act. In my opinion, the amendment is intended to plead the correct provision of the Income Tax Act, which the respondent relies upon. This amendment will assist in the proper adjudication of the real issues between the parties as well as the correct legal determination of the tax consequences to the Appellant in accordance with the provisions of the Income Tax Act. This action will further lend to the fair and justiciable determination and implementation of the Income Tax Act.

Order

The application to amend the Appellant's Statement of Grounds of Appeal is allowed with costs. The costs are to include the costs occasioned by the appointment of two counsel.

M Jajbhay
Judge of the High Court

Dates of Hearing: 11 and 12 August 2005

Date of Judgement: 19 August 2005

On behalf of the Appellant:	Adv. P Solomon SC with Adv JMA Cane Instructed by Deneys Reitz 82 Maude Street Sandown REF: Mr Kron
On behalf of the Respondent:	Adv. H.Z. SLOMOWITZ SC with Adv. A. RAFIK BHANA Instructed by Ms A Mohamed For the Commissioner SARS