REPUBLIC OF SOUTH AFRICA

TAX COURT

Held at Johannesburg

CASE NO: 13950

Reportable: No
Of Interest to Other Judges: No

Signature 24 February 2020

In the matter between:

ABC (PTY) LTD **APPELLANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

J U D G M E N T

Vally J (with Ms Freda Venter and Mr Deon Adams concurring)

[1] This matter was set down for two weeks, commencing on Monday 18 November 2019. On that morning we were informed by counsel, Mr X, claiming to act on behalf of the appellant, that he held a brief from M and M Inc (M) to apply for a postponement only. Neither the appellant nor M nor Mr X deemed it necessary to communicate to the appellant's attorneys,

K Attorneys (K), or the respondent's counsel that M represented the appellant and that the appellant intended to apply for a postponement at the hearing. In fact the respondent was taken by surprise to find Mr X attending Court and claiming to represent the appellant. The only time the respondent was informed that the appellant intended to apply for a postponement was when Mr X communicated such to its counsel at the door of Court.

[2] Notwithstanding the above, Mr Z SC, acting for the respondent, responded to Mr X's averment that the appellant would be seeking a postponement by stating that the respondent had over the weekend anticipated that such an application would be brought. This was so because it had been unable to get the appellant to attend a meeting to finalise all pre-hearing preparations. It, therefore, prepared an affidavit in anticipation of an application for postponement. The affidavit was intended place facts in opposition to a possible application for postponement by the appellant, but as it had no knowledge of the grounds upon which the application would be brought it could only place historical facts before the Court. The respondent made it clear it was not, and could never be, a response to any affidavit in support of a postponement application that the appellant might bring.

[3] Mr Z further pointed out that Mr X's attorneys, M, had failed to place themselves on record. Mr X acknowledged that M was not on record, and, as his brief was from them, he had no right to represent the appellant in these proceedings until M had placed itself on record. He was asked if his briefing attorney from M was present in Court. His response was that his briefing attorney was Mr M. Mr M was not present at the hearing but had sent a candidate attorney to represent him at the proceedings. He confirmed that the candidate attorney was not fully apprised of the facts and the issues in the matter. The candidate attorney therefore was not in a position to advise him or enlighten the Court about the history, details or substance of the appellant's case. Mr X was informed that such conduct was not amenable to a proper ventilation of the issues. He asked for the matter to stand down for him to clear up the issue. His request was granted. Upon resumption of the matter, Mr X handed up what purported to be a notice of appointment of M as attorneys of record by the appellant. It reads:

> "**KINDLY TAKE NOTICE THAT** we, the undersigned M AND M INC, do hereby appoint ourselves as attorneys for the APPELLANT herein."

[4] The notice of appointment handed up by Mr X is clearly problematic. It states that M appointed itself as attorneys of record. Mr X was asked to explain the contents of this notice of appointment as well as why there was no accompanying notice of motion, and why the application was brought so tardily at the hearing. His response was the notice was drafted during the adjournment, printed, signed and handed up on resumption of the hearing, but he had failed to notice that its contents were incorrect. He submitted further that M was only instructed "during the weekend" before the hearing and that the attorney, which I presume is Mr M, had a "skydiving" event to attend to that weekend and was therefore unable to prepare

and present a proper application to the Court. He was not able to enlighten the Court as to when exactly "during the weekend" the instruction was received by his attorney. In any event, if it is true that his attorney accepted the brief but decided not to prioritise it over his "skydiving" event, then he certainly failed in his duty to see that his client got the best service he was entitled to. He also failed in his duty to this Court, which was to ensure that its proceedings were conducted in a manner befitting its dignity. It is all very unfortunate.

[5] Despite the problems associated with the manner in which the application for the postponement was brought, Mr Z asked that it be entertained, and that Mr X be allowed to represent the appellant as the respondent was anxious to have the matter finalised. He requested that the appellant's affidavit in support of the application be admitted, and informed the Court that the respondent had no intention to respond specifically to it. He handed up the respondent's own affidavit which was crafted in anticipation of the application. Mr X agreed that it would be the prudent way to proceed. Mr X was specifically alerted to the fact that the factual averments in the respondent's affidavit would go unchallenged. He agreed that the matter should be adjudicated on that basis. After considering the issue the Court agreed to entertain the application.

[6] Mr X handed up the affidavit in support of the application and gave a copy thereof to Mr Z, who did the same with regard to the respondent's affidavit. Both affidavits were admitted. Argument was entertained and an *ex-tempore* order was issued, with a commitment from the Court that written reasons for the order would follow in due course. The order was that the application for postponement was dismissed with costs of two counsel.

[7] As soon as the order was issued, Mr X stood up and asked to be released as his brief had terminated upon the finalisation of the application for postponement. He also requested that the candidate attorney from M also be released as the mandate of M too had terminated upon the conclusion of the application for postponement. There was, however, no notice of withdrawal as attorneys of record from M. Nevertheless, both Mr X and the candidate attorney were informed that they were free to leave should they choose to do so.

<u>The reasons for dismissing the application for postponement</u>

[8] Mr X indicated that the affidavit contained all the factual averments necessary to support the application. The affidavit was deposed to by a Ms F. She is an attorney employed as an assistant to the company secretary of the appellant. The affidavit consists of fifteen (15) single sentence paragraphs. The only relevant ones are:

> "5. Mr G is an adult male attorney admitted in the High Court of South Africa.
>
> 6. Mr G is a Director of both, J Attorneys and the [appellant].
>
> 7. Mr G has represented the Appellant from the inception of this matter.

8. A conflict of interest arose because Mr G is a Director of J Attorneys and the [appellant].

9. The board of directors of J Attorneys instructed Mr G to withdraw from the matter and Mr G subsequently withdrew.

10. The Appellant was only informed of Mr G's withdrawal 10 days prior to the hearing date.

11. The Appellant then attempted to obtain counsel without success due to limited time constraints.

12. The Appellant in the interim attempted to settle this matter, however settlement negotiations failed on or about 14th November 2019.

13. Due to the settlement negotiations failing at the last minute, the Appellant was put under pressure to obtain a further counsel.

14. Due to the distance and time constraints, this original Affidavit will be filed in the court file in due course.

15. We humbly request for the courts [sic] indulgence and request a postponement of this matter."

[9] The affidavit filed by the respondent in anticipation of the application, and which is titled "Respondent's Answering Affidavit in anticipated postponement application", contains the following relevant factual averments:

"5. This appeal commenced with a notice of appeal filed on 16 May 2014. The appeal, itself, originates in an additional assessment raised by the respondent on 30 April 2013.

…

7. At all times, until 17 October 2019, the appellant has been represented by Mr. G, an attorney at J Attorneys.

…

9. This tax appeal arises out of an additional assessment raised by the respondent on the appellant for its income tax in relation to the 2008 year of assessment. The appellant objected to the additional assessment and, in the main, the objection was disallowed, whereupon the appellant noted an appeal.

10. The respondent's Rule 31 statement was delivered on 14 August 2015. The appellant's Rule 32 statement was delivered on 18 June 2018 and the respondent's Rule 33 statement was delivered on 31 July 2018. Accordingly, the pleadings have closed.

11. The respondent filed its discovery affidavit on 13 October 2018 and the appellant filed its discovery affidavit on 27 November 2018.

12. On 5 December 2018, the appellant's attorney confirmed its agreement to having the matter heard in Gauteng (instead of Durban which is where the appellant is situated). In response, on the same date, I informed the appellant's attorneys that any settlement proposal should be made at least two months before the hearing date so that the

proposal could be properly considered and if settlement was reached, would obviate unnecessary wasted costs. This is particularly important given that any moneys spent by the respondent belong to the fiscus and not to the respondent. Obviously, the same considerations apply to any desire or intention on the part of the appellant to postpone the hearing.

13. Given that the main issue in dispute is the valuation of shares, a matter for expert evidence, it was expected that experts would be called by the parties in relation to this issue. It was also envisaged that experts might be called in relation to the remaining issue which related to the disallowance of certain deductions claimed by the appellant.

14. The parties were agreed that the duration of the hearing would be 10 days. Accordingly, I, made enquiries with the Tax Court to ascertain when the matter could be set down for a 10-day hearing. I was informed that the period 18 to 29 November 2019 was available and, after being informed, telephonically, by the appellant's attorneys that this was a suitable date, on 22 January 2019, the respondent applied for the set down of the tax appeal on these dates.

15. On the same day, a letter was directed to the Judge-President of the Gauteng Division of the High Court to confirm that the matter could be set down to be heard from 18 to 29 November 2019.

16. On 23 January 2019, the Registrar of the Tax Court issued a notice of set down,

17. On 11 February 2019, the Judge-President confirmed the set down date.

18. The Judge-President's response was sent to the appellant's attorneys on 11 February 2019.

19. On 15 August 2019, the agenda for the pre-trial conference was served on the appellant. The pre-trial conference was held on 22 August 2019 and the minutes were delivered on the same date.

20. On 23 September 2019, the respondent sent to the appellant, the indices of the parties' discovered documents to indicate which documents it intended to include in the witness bundle.

21. The appellant did not indicate a desire to supplement the witness bundle.

22. The respondent delivered the dossier on 23 September 2019.

23. The respondent gave notice of the expert witnesses it intended to call, in terms of Tax Court Rule 37(*a*), which were sent by e-mail to the Appellant on 7 October 2019 and served at court on 14 October 2019.

24. The respondent delivered the expert summary of the expert witness, Mr Greg Beech, as contemplated by Tax Court Rule 37(*b*), on 18 October 2019.

25. On 17 October 2019, the appellant's attorneys withdrew from the matter. The notice indicated that the appellant's address is xxx, Durban, and Kwazulu Natal. … To date,

the appellant has not informed the respondent of its new legal representatives nor have any attorneys entered appearance on behalf of the appellant.

26. The appellant has not given notice that it intends to call an expert witness nor has it filed a summary of any expert evidence which it intends to lead.

27. On 5 November 2019, the respondent served the notice of set down, again, on the appellant directly.

28. On 13 November 2019, the respondent served the indices to the witness bundles on the appellant directly."

[10] Mr X, as mentioned earlier, accepted that these factual averments are true and correct. His only contention was that the contents of the appellant's affidavit were sufficient to secure a postponement as it showed that the appellant had found itself in a situation that was not of its own making, and that was unfortunate. Mr Z disagreed. He contended that the contents were simply false when placed against the facts emanating from his client's affidavit. He submitted further that the appellant's case failed to even meet the basic legal requirements for a postponement.

[11] The legal principles concerning an application for postponement are by now well worn. Without burdening this judgment with citations, these principles are:

a. A court has a discretion to grant or refuse a postponement, which discretion has to be judicially exercised.

b. A judicial exercising of the discretion must commence with a careful consideration of the facts presented in support thereof by the applicant, who by seeking the postponement is asking for an indulgence.

c. The facts must establish that the applicant has true and genuine reasons (show good cause) for seeking the indulgence.

d. To establish this the applicant should at the very least be open and candid with the court: the application must be made in good faith.

e. The applicant should place the full facts of its non-preparedness for the hearing before the court.

f. The facts must constitute a satisfactory reason for the non-preparedness.

g. The postponement must not result in the respondent having to endure a prejudice which cannot cured by an order of costs.

h. The application must be brought timeously so that any prejudice that the respondent may suffer can be mitigated.

[12] The sum total of the averments relied upon by the appellant for the indulgence it sought are quoted above in [8]. The averments do not address even the most basic and fundamental of requirements for a postponement as set out in [11] above. We know as a matter of objective fact (as recorded in paragraph 25 of the respondent's affidavit quoted above) the attorneys for the appellant filed a notice of withdrawal on 17 October 2019. The withdrawal was, therefore, one month before the hearing date. Yet Mr X asks us to accept the averment that the appellant only came to learn of the withdrawal ten days prior to the hearing date. On the probabilities this simply cannot be true. We have to decline his invitation to accept it as being true. But, even if we were to accept the averment at face value, it would still require the appellant to furnish some explanation as to why this knowledge only came to it so late in the day. However, it does not make an effort to provide one. Furthermore, it would have had to show that the withdrawal was unforeseen, was not a consequence of its own actions and that it was not engineered to justify the postponement of the hearing. This is necessary for it to show that it had true and genuine reasons for the postponement and that it was *bona fide* in seeking the indulgence. The appellant made no effort to even respond to the respondent's concern which is that the matter had dragged on for so long that any further delay would cause it prejudice that could not be cured by a costs order.

[13] As for costs, two counsel were correctly employed by the respondent for the hearing. It would not be reasonable for the respondent to only employ one counsel given that it only learnt of the postponement application at the door of Court. The fact that it anticipated the postponement application is of no moment. That was an expectation and no more. It was therefore required to be fully prepared for the hearing as a whole. Thus, the only prudent avenue open to it in these circumstances was to employ two counsel. Mr X could not disagree with this logic when he was confronted with it. He therefore had no submission to make on costs.

[14] It is on the basis of this reasoning that the application for postponement was dismissed with costs of two counsel.

[15] Before closing on this issue it is necessary to deal with a development that occurred after the order was issued and the Court had adjourned to consider the matter as a whole. On 12 December 2019 a letter was received by my office from Mr G. It is on the letterhead of the appellant's erstwhile J Attorneys. It reads:

> "Dear Honourable Judge
>
> **RE: ABC (PTY) LTD/SOUTH AFRICAN REVENUE SERVICES [SIC] CASE NO: IT13950**
>
> I am constrained to write to you pursuant to an Application for a postponement by ABC (Pty) Ltd in the matter against South African Revenue Services [sic].

> I was not in Court and only became aware of the contents of an Affidavit filed in support of the Application for postponement.
>
> I, respectfully, feel duty bound to place on record the facts in this regard.
>
> My firm officially withdrew on the 16th October 2019. A copy of that Notice is attached. This was after ABC Pty) [sic] Ltd was informed a week before the intended withdrawal.
>
> The firm has represented ABC (Pty) Ltd from the inception, as I am a Non-Executive Director of the Company and also specialise in tax matters. I acted without charging any fees. However, disbursements were incurred from time to time – especially Counsels' fees. The firm experienced delays in recovering these disbursements.
>
> The trial necessitated briefing Counsel (Senior and Junior) for 2 weeks and the two expert witnesses for the same period of time as well – this clearly involved substantial disbursements, which was not forthcoming.
>
> My firm did not want me to continue in these circumstances, hence the Notice of Withdrawal.
>
> I respectfully and humbly request My Lord to take the aforesaid facts into consideration when the Judgment in this matter is finalised.
>
> I am copying this letter to SARS."

[16] The contents of Mr G's letter when juxtaposed with the contents of the Ms F's affidavit raises a number of issues: (i) if the averment of Mr G that J Attorneys withdrew on 16 October 2019 is true, then the averment of Ms F that J Attorneys withdrew "10 days before the hearing date" is not true; (ii) if the averment of Mr G that the appellant was informed a week before 16 October that J Attorneys would be withdrawing as attorneys of record, then Ms F's averment that "the Appellant then attempted to obtain counsel without success due to limited time constraints" cannot, without more, be true and correct; (iii) if Mr G's averment that the reason for the withdrawal was because of the appellant's failure to provide cover for impending disbursements is true then Ms F's averment that the reason for the withdrawal was because of Mr G being conflicted is not true. In essence, if Mr G's averments are correct then Ms F has not been candid with the Court. On the other hand, if her averments are correct then Mr G has not been candid with the Court. Either way the situation is not a pleasant one. Both of them are officers of the court. A court should be able to accept affidavits and letters from attorneys in the confidence that the averments contained therein are beyond reproach. It is a recognised principle that attorneys should never place themselves in a situation where they are forced to be less than candid with the court. In this case, one of the attorneys, Ms F, is an employee of a party, but she is an attorney nevertheless, and her duty of candour to the court is no less applicable than it would have been if the party before the court was her client. In the same vein, the other attorney, Mr G, voluntarily decided to act for a client in whose affairs he was intimately involved. By so doing he exposed himself to a conflict of interest, and soon enough the conflict became real when his partners in the law firm asked him to terminate his

relationship as a legal representative of the appellant. His fiduciary duties as a director of the appellant remained intact while he was faced with having to implement the decision of his partners in the law firm. This required him to withdraw. But it also required him to be candid to this Court, which, unfortunately, he only complied with more than three weeks after the hearing was over. And then he was, in his words, "constrained to do so". Whether he became aware of the affidavit filed on behalf of the appellant before he penned a letter to this Court is not clear. He certainly makes no reference to it. What, however, is clear is that his version of why he was no longer able to represent the appellant is very different from the one put to this Court by the appellant. More worrying though is that the appellant's version is put in an affidavit deposed to by someone, who like Mr G, is an officer of the court. The two versions are, however, not reconcilable – one or the other attorney is, quite frankly, not candid with the Court. It is a pity Mr G only alerted this Court of his version after the hearing was finalised. Had he done so before the hearing was finalised the Court could have ordered that the issue be ventilated more fully.

[17] I conclude on this issue by recording my displeasure at the conduct of the appellant, its present attorney and the two officers of the court. The manner in which the application was brought by the appellant and its attorney is not consistent with their duty of respect to this Court. The two attorneys allowed themselves to become enmeshed in an unenviable position, causing themselves and this Court great embarrassment.

The appeal

[18] After Mr X and the candidate attorney from M left, the respondent asked that it be allowed to lead its evidence on the appeal. It said that this was necessary as it had mentioned to the appellant that once the appeal was lodged it would be seeking an order setting aside the assessment and having it replaced with one setting out the amount of tax the appellant had to pay. The amount it would seek in the order was higher than the assessment. To this end, it had informed the appellant during all the pre-trial processes that it would adopting this stance. It also furnished the appellant with an expert notice indicating the specialised evidence it would be leading in support of its claim that the assessment should be replaced with an order, which it maintains reflects the correct amount of the appellant's tax liability. During these processes the appellant was invited to file its own expert notice in response thereto, but failed to do so.

[19] It will be remembered that before withdrawing from the further proceedings, Mr X informed the Court that his and his attorney's briefs were restricted to an application for postponement, and that he had no knowledge of the appellant having any other representatives. Once they left, the Court queried if there was an appearance by any other

person for the appellant, or even if there was anyone connected to the appellant in Court. The Court was informed that there was none.

[20] The appellant's case as manifested in its objection was that the assessment was too high. During the pleading stage of the matter the respondent indicated to the appellant that it too was dissatisfied with the assessment. In its view it was too low. It accordingly informed the appellant that it would be asking for the assessment to be altered upwards. As the appellant had now failed to make an appearance at the hearing, the respondent asked that it be allowed to present its evidence. This raised the question: is the Court not obliged to dismiss the appeal together with a cost order and leave it at that, as the appellant, by failing to attend, is not pursuing its appeal? The question was posed after the Court adjourned to consider its decision and written submissions to this effect were received from the respondent. The respondent submitted that there was still a live issue before Court and the Court, in terms of the powers conferred upon in by the Tax Administration Act, No 28 of 2011 (the Act) and the Rules of this Court (the rules), is empowered, if not obliged, to determine its claim regarding the alteration of the assessment.

[21] The respondent pointed out that the appellant brought its claim in terms section 107 of the Act, which appeal had to be dealt with in terms of section 117(1), and the decision must be made in accordance with section 129 of the Act. This much is uncontroversial.

[22] Section 107(1) provides that:

> "**Appeal against assessment or decision.**—(1) After delivery of the notice of the decision referred to in section 106(4) [this is the notice informing the taxpayer of the outcome of its objection to an assessment by the respondent], a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the 'rules'."

[23] Section 107 only allows for an appeal from the taxpayer. This is beyond doubt or debate. Understandably, there is no allowance for an appeal by the respondent (SARS) against its own assessment.

[24] Section 129 of the Act provides:

> "**Decision by tax court.**—(1) The tax court, after hearing the 'appellant's' appeal lodged under section 107 against an assessment or 'decision', must decide the matter on the basis that the burden of proof as described in section 102 is upon the taxpayer.
>
> (2) In case of an assessment or 'decision' under appeal, the tax court may—
>
> (*a*) confirm the assessment or 'decision';
>
> (*b*) order the assessment or 'decision' to be altered; or
>
> (*c*) refer the assessment back to SARS for further examination and assessment.

(3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty so imposed.

(4) If SARS alters an assessment as a result of a referral under subsection (2)(*c*), the assessment is subject to objection and appeal."

(Underlining added.)

[25] Section 129(1) specifically restricts this Court's jurisdiction to hearing "the appellant's appeal" lodged in terms of section 107. It is clear from this that it is the appellant's appeal that has to be before court. Section 129(2) empowers this Court to either "confirm" the assessment, order that it be "altered" or "refer the assessment back" to the respondent for re-evaluation. This can only mean that once this Court has examined the appellant's appeal, it can exercise either one of the three powers. It does not exercise the powers in a vacuum. It only acquires them once the taxpayer has exercised his/her/its rights to appeal against the assessment in terms of section 107. Hence, section 129(1) specifically highlights that the "decision" of the court is taken "after hearing the 'appellant's' appeal". Section 129(2) cannot be divorced from these two sections. It provides the court with remedial powers, but these remedial powers exist in the context sections 107 and 129(1). It is true that section 129(2)(*b*) empowers the court to "alter" the assessment. Whether the alteration of the assessment involves a downward or upward shift is not a matter we need immediately address. The immediate issue is, when can the alteration take place? Reading sections 107, 129(1) and 129(2) conjunctively I conclude that the alteration can only take place once the appellant's appeal has been heard. This conclusion is fortified by the fact that section 129(1) provides that the appellant bears the onus of proof to show that the assessment is wrong. It alone should show that the assessment is wrong. The respondent, whose assessment is being attacked, is required to defend any attack, but not to prove that the assessment is correct. In the same vein, it cannot be seen to be contending that its own assessment is wrong. If it were to do so, then it would have to bear the onus of showing this. There is no provision in the Act for such a scenario. The reason for that is that the Act does not anticipate the respondent challenging its own assessment.

[26] I turn now to the rules. Rule 44(7) reads as follows:

"If a party or a person authorised to appear on the party's behalf fails to appear before the tax court at the time and place appointed for the hearing of the appeal, the tax court may decide the appeal under section 129(2) upon—

(*a*) the request of the party that does appear; and

(*b*) proof that the prescribed notice of the sitting of the tax court has been delivered to the absent party or absent party's representative,

unless a question of law arises, in which case the tax court may call upon the party that does appear for argument."

[27] Rule 44(7) allows the court to continue with the proceedings in the absence of an appellant and further allows the court to either "confirm" the assessment, "alter" it or "refer" it back to the respondent for re-evaluation. The rule in my view overlooks the fact that when an appellant does not appear, his/her/its appeal is not heard. More importantly, the rule does not provide a basis to overlook or disregard the provisions of sections 107 and 129(1). The rule does not override the statute. On the contrary, the statute as primary legislation remains predominant, whereas the rules as delegated legislation are subordinate. That much is trite. At the same time it is important to bear in mind that this Court does not possess inherent powers. It is purely a creature of statute. The provisions of the statute lay down the parameters of its jurisdiction. It has no powers outside of the statute. Section 116 provides that this Court has jurisdiction to hear an appeal in terms of section 107, the provisions of which confine it to an appeal by a taxpayer against an assessment or decision of the respondent. Consistent with these two sections, section 129(1) makes it clear that the decision of this Court is one that can only be arrived at "after hearing the appellant's appeal". Those are the parameters that this Court is confined to. The provisions of Rule 44(7) cannot alter these parameters.

[28] On this understanding of the law, I come to the conclusion that once Mr X had withdrawn from the proceedings and no representative from the appellant was present, the appeal was effectively withdrawn: the appellant was aware of the proceedings and sent a representative to seek a postponement. On the basis of these two facts it is appropriate to infer that it deliberately chose not to participate in the proceedings. Ideally, it should have withdrawn the appeal, but its failure to do so is no bar for this Court to come to the conclusion that its conduct indicates exactly that.

[29] I am therefore of the view that the appropriate course to follow is to dismiss the appeal. Had it explicitly rather than tacitly withdrawn the appeal such an order would not have been necessary. But since this was not done, the order is appropriate to ensure that the appeal does not remain alive and that there is no ambiguity about the status of the appeal.

Costs

[30] The respondent is entitled to its costs. Although entitled to, it did not seek punitive costs. Costs will therefore be on the ordinary scale. Given the complexity of the matter, employment of two counsel was justified.

Order

[31] The following order is made:

1. The application for postponement of the hearing by the appellant is dismissed.

2. The appeal is dismissed.

3. The appellant is to pay the costs which costs are to include those occasioned by the employment of two counsel.

Vally J

Judge: Tax Court, Johannesburg

Dates of hearing	:	18 November 2019
Date of judgment	:	24 February 2020