

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO.91 OF 2009

ALLY ISSA MUSSA.....APPLICANT

VERSUS

1. MWIDADI ALLY MAWILA.....1ST RESPONDENT
2. ISSA ALLY SHUNDA2ND RESPONDENT
3. SHAI COMPANY.....3RD RESPONDENT

Date of last order: 20/12/2010

Date of oral submissions: 20/12/2010

Date of ruling: 19/04/2011

RULING

MAKARAMBA, J.:

This is a ruling on application to investigate the attachment of property of the Applicant with a prayer to raise such attachment release the attached property, a motor vehicle. In the application, the Applicant has invoked the scheme available in the Civil Procedure Code under Order XXI Rules 57, 58, and 59. The Applicant is asking this Court as an executing court to make an investigation and an appropriate order regarding the propriety of the attachment of Motor Vehicle with Registration No.T478 BGN, which is under dispute.

The application, by consent of the Counsel for the parties was disposed of orally, Mr. Mosha learned Counsel from Law Consult Advocates

representing the Applicants and Mr. Mkongwa, learned Counsel, from F.E. Mkongwa & Co. Advocates for the Respondent.

In fronting his arguments in support of the application, the Applicant's Counsel has relied on two decisions, one a ruling of Hon. Nsekela, J. (as he then was) **Commercial Case No.50/2000 between CRDB BANK LTD VS MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI**; and another, the decision of the Court of Appeal of Tanzania in **Civil Appeal No.30/2001 between THOMAS MBANDO VS LART & LIQUIDATOR OF MWATEX**. In **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra), the applicant/objector had brought the application under Order XXI rules 57, 58, 59, 88(1) and section 95 of the Civil Procedure Code, seeking to set aside the sale of a mortgaged property, a house, on Plot No.114 Block "C" Mikocheni, Dar es Salaam, which had been sold by public auction. In that case, Mr. Maira, the learned Counsel for the applicant/objector submitted that the 2nd Defendant therein, Mr. Mulokozi had perpetrated a massive fraud upon the 1st Respondent bank in obtaining the overdraft facility which was secured by a mortgage over the house in question which did not belong to him (Mulokozi) as it had already been sold to the applicant/objector, way back in November, 1991. In that case, Mr. Mwandambo, learned Counsel for the 1st Respondent bank submitted that under rules 57 and 58 of Order XXI of the Civil Procedure Code the applicant/objector has to adduce evidence that he has an interest in the property before the Court can investigate the objection in question. However, Mr. Mwandambo was of the view that the proviso to rule 57(1) of

Order XXI of the Civil Procedure Code stood in the way of the objector because of the delay in instituting the objection proceedings.

In **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra), Mr. Mwandambo, learned Counsel, argued forcefully that the objection was not maintainable since the objector had not established ownership of the mortgaged property and that the objector had to prove that he was the lawful owner of the mortgaged property but not to make bare assertions that he bought the property in question in November 1991. In that case the Court Broker who sold the mortgaged property on the 25.5.2001, argued that when the proceedings were instituted on the 08.06.2001, the property had already been sold, which means that no investigation can be made under Order XXI rules 57, 58 and 59 as such investigation must be made before the sale. In **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra), His Lordship Nsekela, J. cited the relevant provisions of the law on objection proceedings, namely Order XXI Rules 57(1); 58; 59 and 60, of the Civil Procedure Code [Cap.33 R.E. 2002], which were central to his ruling. The said Rules are *pari materia* with Order XXI Rules 58, 59, 60 and 61 of the Indian Code of Civil Procedure Act, 1908. In that case, His Lordship Mr. Justice Nsekela citing at page 7 of the typed ruling, the decision of Mr. Justice Mukhi in the Indian case of **G.R. BHANDE V. B.R. JHDAV AIR [1974] Bom. 155** on proper construction of the Rules, observed that the question to be decided as put by Mukhi, J. in that case is ***whether on the date of the attachment it was the judgment debtor who was in possession or it was the objector who was in***

possession. His Lordship Mukhi, J. in the Indian case cited by Hon. Justice Nsekela in his ruling, proceeded to state that when the court comes to a finding that the property was in the possession of the objector, then the court must proceed further to find ***whether that possession of the objector was on his own account for himself or as trustee or on account of the judgment debtor.*** In the Indian case of **G.R. BHANDE V. B.R. JHDAV AIR 1974 Bom. 155**, (supra) His Lordship Mukhi, J. as quoted by Justice Nsekela in **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra), rendered the following statement, which in my opinion may inform in no small measure the matter currently under consideration, thus:

*"....It requires to be emphasized that the direction of the investigation, which the court has to carry out, points to **possession being the criteria.** It is, of course, possible that in the course of such investigation as to **who is in possession of the property subjected to attachment,** the question of some legal right or interest or title may also arise and if such legal right affects the determination of the question as to **who is the real person in possession in fact or in law,** then such a legal right or interest will naturally have to be taken into account. **But it is also settled law that complicated questions as to title are not to be gone into under summary procedure of investigation under Order XXI rule 58.**" (the emphasis is of this Court).*

His Lordship Nsekela in his ruling in **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra) also quoted the Supreme Court of India in the case of **SAWAI SINGHAI V UNION OF INDIA AIR 1966 SC 1068** where the Court when

considering Order XXI rule 58 (in *pari materia* with our Rule 59) stated that the scope of enquiry under Order XXI rule 58 of the Civil Procedure Code is limited and is confined to the question of possession.

In **Civil Appeal No.30/2001 between THOMAS MBANDO VS LART & LIQUIDATOR OF MWATEX**, [Ramadhani, J.A., Lubuva, J.A. and Nsekela, JA] His Lordship Nsekela JA now sitting in the Court of Appeal had opportunity at pages 12/13 of the typed judgment to restate the scheme of Rules 57, 58 and 59, of Order XXI of the Civil Procedure Code that as Rule 57 provides, first of all the investigation is of the claim or objection and Rule 58 enjoins the claimant or objector to adduce evidence to show that he had either some interest in, or was possessed of, the property attached on the date of the attachment. Rule 59 of Order XXI on the other hand provides for the release of the property from attachment, if the court by reason of having made the investigation is satisfied of two things: (a) that the property when attached was not in possession of the judgment debtor or some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, that is to say, the judgment-debtor; or (b) if it is found that the judgment-debtor was **at the time of the attachment in possession of the property**, then such possession was not of his own account or as his own property but on account of someone else, and if these conditions are satisfied, then it would be the duty of the court to make an order releasing the property.

As correctly submitted by Mr. Mosha, learned Counsel for the Applicant, and as could be gathered from the authorities he cited in his submissions which I have endeavored to summarize herein above, when

the court is dealing with an objection under Order XXI rules 57, 58, 59, and 60 of the Civil Procedure Code, it should concentrate on the property, the subject of attachment and then decide whether the judgment debtor is in possession of such property on his own behalf or on account of some other person other than the judgment debtor. Then the court has to decide whether that possession is in trust for or on behalf of the judgment debtor. I should however point out here and as correctly stated by Hon. Nsekela J. in **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** and the decisions cited therein, that in conducting the investigation the court should not be concerned with the question of title or ownership unless it is necessary for its decision on the question of possession. The foregoing is the settled position of the law with regard to investigation of claims or objections by the court under the scheme set out under Order XXI Rules 57, 58, 59 and 60 of the Civil Procedure Code.

Let me now turn to consider the arguments of Counsel in support and against the application. It was the submission of the Applicant's Counsel that in the present matter as per the affidavit of Mr. Khamis in paragraph 5, 6 & 8, which the Applicant's Counsel maintains that it is not seriously controverted, that at the time of the attachment the disputed motor vehicle by the 2nd Respondent on 18/11/2010, it was in the hands and possession of the Applicant on his own account. It was the further submission of the Applicant's Counsel that it is not disputed by the 2nd Respondent (MEM Auctioneers) which in paragraph 1 to 5 of its counter affidavit, noted the contents of the affidavit, and prayed that this Court

accept the admission of the 2nd Respondent and proceed to grant the prayer sought.

The Applicant's Counsel further submitted that paragraph 5 & 6 of the counter affidavit of the 2nd Respondent are contradictory to the admission made in paragraph 3 of the same counter affidavit. The Applicant's Counsel submitted further that it is not true that at the time of the attachment the motor vehicle was having registration card in the name of ALLY SHUNDA, and that the Applicant changed the registration after the 2nd Respondent had taken control of it. It was the further submission of the Applicant's Counsel that this is hearsay and bare assertions not fit for court of law otherwise the sky will be the limit since there is no official search from TRA to support the assertions, and there is no copy of the Registration card attached to indicate so.

It was the further submission of the Applicant's Counsel that it is trite law that the provisions of Order XXI Rule 57, 58, & 59 clearly talk of possession and not ownership or title as it was stated by Hon. Nsekela J. (as he then was) in **CRDB BANK LTD VS MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra). It was the further submission of the Applicant's Counsel that the 2nd Respondent talk of **change of ownership** of the motor vehicle, which is title whereas the cited provisions talk of **possession**. The Applicant's Counsel further buttressed his argument on this point by citing the decision of the full bench of the Court of Appeal of Tanzania in **Civil Appeal No.30/2001 between THOMAS MBANDO VS LART & LIQUIDATOR OF MWATEX.**

It was the Applicant's Counsel's prayer that in light of the two decisions cited in his submissions this Court be pleased to grant all the orders sought in the chamber summons.

In his reply submissions the Respondents' Counsel complained that the Applicant's Counsel has not served him with the authorities he has relied on in support of the application and therefore he has thereby been denied the opportunity to go through them and prepare for the reply. Mr. Moshia, learned Counsel for the Applicant in his rejoinder submissions responded that it is stated in the affidavit that the Applicant was going to rely on other grounds to be adduced at the hearing of the application and therefore the practice of this Court is for each party to come armed with its weapons. It was the further submission of the Applicant's Counsel that since the present proceedings are not pleadings where it is prohibited to take the other side by surprise it is designed so that the Advocate gets ample time to prepare his client's case, and no injustice has been occasioned to the Respondent.

In my view, much as the Respondent's Counsel did not have the opportunity to go through the case authorities the Applicant's Counsel relied on in his submissions, I do not see any injustice which the Respondent has suffered by that omission. In the circumstances this Court will evaluate the submissions of Counsel and the affidavits on record in reaching its decision bearing in mind the statement of the law as appearing in decided cases cited in the submissions of the Applicant's Counsel.

The Respondents' Counsel in reply submitted further that from the counter affidavit, at the time of seizure, the disputed motor vehicle was in

the name of the judgment debtor and in whose name the registration card for the motor vehicle was. It was the further submission of the Respondents' Counsel that the Applicant who was in possession of the bus, took one of the registration cards and went to change the name previously appearing on it. The annexed copy of the registration card clearly show that the change occurred on 18/11/2010 after the bus had been seized by the Court Broker, and that it was expected that the Applicant would produce the original registration card in court but did not, the Respondents' Counsel further submitted. The bus is still in possession of the Court Broker and pictures were taken showing the name of the owner on the side and that it has been in the name of the Judgment Debtor as it was on the date it was seized, the Respondents' Counsel further submitted. Since this is an investigation, the Respondents' Counsel requested this Court to have a look at the pictures of the bus taken on the day it was seized which pictures were taken in the premises of the Court Broker on 20/11/2010 in the presence of the Court Broker.

The Respondents' Counsel submitted further that the Applicant has not brought any evidence to court to support the contention that the bus was not the property of the judgment debtor before the 18/11/2010. The reply to the counter affidavit does not show whether at the time it was seized, the bus was not the property of the judgment debtor, the Respondents' Counsel further submitted. The Applicant has failed to bring the original of the Registration Card so that the court can satisfy itself of the contents, the Respondents' Counsel further countered. The Applicant

does not have proof that at the time the bus was seized it was not the property of the judgment debtor, the Respondents' Counsel surmised.

The Application fails on the main ground that the bus has been the property of the judgment debtor up to and until it was seized by the Court Broker, which is fortified by failure by the Applicant to bring the original of the registration card, as they do not have one, the Respondents' Counsel further reiterated. It was the further contention of the Respondents' Counsel that before the seizure the bus was doing a "dala dala" business, which means that it had original registration card showing who its owner was before the 18/11/2010, and that the Applicant ought to have produced in court the Road License for the Dala Dala business. At the time of the seizure, the motor vehicle was in possession of SOZMY COMMISSION AGENT but it was the property of the judgment debtor, the Respondents' Counsel further contended. If it is in the possession of a third party then that is when the question of ownership comes in, the Respondent's Counsel surmised.

On non-production of documents to support ownership, the Applicant's Counsel reiterated that case law show that the court should not concern itself with title unless necessary for question of possession and that the rules under which the application has been preferred confine this Court only to determination of the question of possession. It was the further contention of the Applicant's Counsel that they did not move this Court under Rule 61 of Order XX of the CPC where the issue of title is important.

It was the further submission of the Applicant's Counsel that as the affidavit speaks loudly for itself, where its contents are made, it explains that at the time of attachment, the motor vehicle was in possession of the Applicant in his own account and tendered the original registration card, which shows that the motor vehicle was first registered on 23/03/2010.

The Applicant's Counsel submitted further that initially the motor vehicle belonged to the 1st Respondent, MWIDADI ALLY MAWILA. The car was sold to the judgment debtor, ISAA ALLY SHUNDA (the original owner) on **25/03/2010** as evidenced by the Sale Agreement between ALLY SHUNDA and SOZMY – SALIM SAID SALIM.

The Sale Agreement tendered by the Applicant's Counsel indicates that ISSA ALLY SHUNDA sold the said car to SAID SALIM SAID of SOZMY IINTERNATIONAL (T) LTD on **15/03/2010**. Further, the Sale Agreement shows that SAID SALIM SAID sold the car to KHAMIS SULEIMAN KHAMIS. However, the original registration card by ISSA ALLY SHUNDA was not produced in court. This Court inquired from the Applicant's Counsel why the registration took effect on **18/11/2010** while the sale of the motor vehicle was done on **25/03/2010**. The learned Counsel for the Applicant had a brief conversation with his client in court and informed this Court that the Applicant paid the advance of TZS 30,000,000/= and a balance of TZS 5,000,000/- remained, which the Applicant completed paying on **16/11/2010**. It was the further submission of the Applicant's Counsel that since SOZMY IINTERNATIONAL (T) LTD are bonded house they did not see the reason to change the ownership.

The present application concerns investigation of claims by the Applicant that at the time the motor vehicle the subject of this objection proceedings was attached it was in possession of the applicant and therefore it is not liable to attachment and therefore the attachment should be raised and the motor vehicle released to the Applicant. Let me point out here that when the court is investigating such claims it exercises the same powers as "*regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit.*" This is clearly stated under Rule 57(1) of Order XXI of the Civil Procedure Code Rule 57(1) which provides that:

*"57.(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, **the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit:....**" (the emphasis is of this Court)*

The law enjoins the claimant under Rule 58 of Order XXI of the Civil Procedure Code to adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached. Rule 59 of Order XXI of the Civil Procedure Code on the other hand concerns the release of property from attachment the court having been satisfied of two things. First, that the property when attached was not in the possession of the judgment debtor or of some person in trust for him; or secondly, such property being in the possession of the judgment debtor at the time of attachment, it was so in his possession, not on his

own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person. Rule 59 of Order XXI of the Civil Procedure Code stipulates as follows:

*"59. Where upon the said investigation the court is satisfied that for the reason stated in the claim or objection such property was not, when attached, **in the possession of the judgment debtor or of some person in trust for him**, or in the occupancy of a tenant or other person paying rent to him, or that, **being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person**, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment."*

In the present application, the learned Counsel for the parties have differed markedly on the import and reach of the legal schema for investigation of claims or objections under the provisions of Order XXI Rules 57, 58, and 59 of the Civil Procedure Code. The Applicant's Counsel on his part contends that under the said scheme, this Court while carrying out an investigation is to confine itself only to matters of possession and not title or ownership. The Respondents' Counsel on his part maintained that the court can investigate the title if there be need. In my view, as rightly submitted by the Applicant's Counsel, it is trite law that the provisions of Order XXI Rule 57, 58, & 59 of the Civil Procedure Code, clearly talk of possession and not ownership or title as it was stated by

Hon. Nsekela J. (as he then was) in **CRDB BANK LTD VS MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra).

The argument of the Applicant's Counsel relying on the authority of **CRDB BANK LTD VS MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra) is that in carrying out the investigation in relation to the attached property, the Court is confined to matters of possession but not ownership or title. That case, whose copy was availed to this Court by the Applicant's Counsel dealt not only with Rules 56, 57, and 58 of Order XXI of the Civil Procedure Code but also Rule 61 of Order XXI of the Civil Procedure Code, which has not been cited in the present application. The contention by Mr. Mosha, the Applicant's Counsel is that since the Applicant elected not to rely on Rule 61 of Order XXI of the Civil Procedure Code in bringing the application, the arguments about investigation of ownership are therefore misplaced. Rule 61 of Order XXI of the Civil Procedure Code relates to the property attached being *subject to a mortgage or charge in favour of some person not in possession*, which is not the case presently and as the Applicant's Counsel rightly submitted the Applicant was right in not relying on it as it is irrelevant to the circumstances of the present case. For the avoidance of doubt, let me cite Rule 61 of Order XXI of the Civil Procedure Code which is to the following effect:

*"61. Where the court is satisfied that the property is **subject to a mortgage or charge in favour of some person not in possession**, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge (the emphasis is mine).*

The 2nd Respondent is talking of ***change of ownership*** of the motor vehicle. This has to do with title. The provisions Order XXI Rule 57, 58, & 59 of the Civil Procedure Code talk of ***possession*** and this was given judicial expression in the decision of the full bench of the Court of Appeal of Tanzania in **Civil Appeal No.30/2001** between **THOMAS MBANDO VS. LART & LIQUIDATOR OF MWATEX.**

In investigation proceedings, the issue for determination by the investigating court is ***whether on the date of the attachment it was the judgment debtor who was in possession of the property attached or it was the objector who was in possession of it.*** In the event the investigating court comes to a finding that the property at the time of the attachment was in the possession of the objector, then the court must proceed further to find ***whether that possession of the attached property by the objector was on his own account for himself or as trustee or on account of the judgment debtor.***

In the present application, ISSA ALLY SHUNDA, the 2nd Respondent/J/debtor, is the original owner of the attached bus, the subject of the present investigation proceedings. Initially the attached bus belonged to MWINDADI ALLY MAWILLA, the 1st Respondent herein. The bus was sold to the J/debtor on 25/03/2010 as per the Sale Agreement between ISSA ALLY SHUNDA and one SALIM SAID SALIM of SOZMY COMMISSION AGENT. The Applicant's Counsel tendered in Court the said Sale Agreement during the hearing of the application showing that ISSA ALLY SHUNDA sold the disputed bus to one SAID SALIM SAID of SOZMY COMMISSION AGENT on **15/03/2010**. However, the Applicant did not

produce in court the original Registration Card by ISSA ALLY SHUNDA. The Sale Agreement shows that SAID SALIM SAID in turn sold the disputed bus to one KHAMIS SULEIMAN KHAMIS. It is indicated that registration of the disputed bus took effect on 18/11/2010 although the sale was conducted on 25/03/2010. The Applicant's Counsel explaining this stated that the Applicant paid advance of TZS 30,000,000/= towards the purchase price and paid the remaining balance of TZS 5,000,000/= on 16/11/2010. The statement by the Applicant's Counsel presumably is based on information from his client that since SOZMY are bonded house they did not see the reason to change the ownership. The Applicant's Counsel insisted that **at the time of the attachment the disputed bus was not in possession of the Applicant in his own account.**

The annexed registration card show that the change occurred on 18/11/2010 after the bus had been seized by the Court Broker. The Respondent did not produce the original of the registration card. The picture taken of the bus on the 20/11/2010 in the premises of and in the presence of the Court Broker and which was produced in Court in the course of the hearing of the application, shows the name of the J/debtor on the side of the bus as it was on the date it was seized, showing that the disputed car was the property of the J/debtor. The argument by Mr. Mkongwa is that the Applicant has not brought any evidence to show that the bus was not the property of the j/debtor before the 18/11/2010. With due respect to Mr. Mkongwa, this Court finds that a picture taken of the disputed bus showing a name is not conclusive proof of ownership, even if this Court was minded to investigate that question. If anything, ownership

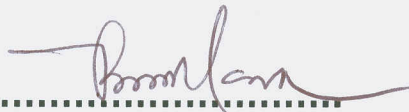
of the disputed motor vehicle like any other car is evidenced by original registration card, which is title of ownership. In investigation proceedings the law as stated under Rule 59 of Order XXI of the Civil Procedure Code enjoins the investigating court to deal with issues of possession of the attached property at the time of attachment but not ownership. John Salmond, Jurisprudence 285 (Glanville L. Williams ed. 10th ed. 1947 quoted in ***Black's Law Dictionary*** 8th Edition at page (1999) at page 1201 remarks as follows:

"In the whole range of legal theory there is no conception more difficult than that of possession. Possession for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title."

When a possessor holds title to a property and physically possess part of it, the law will deem the possessor to hold constructive possession of the rest of the property described in the title. As such there is no need to enquire into the ownership aspect of it. In the present case, Mr. Mkongwa informed this Court that before it was seized by the Court Broker, the disputed bus was doing a "Dala Dala" business, which means that it had original registration card showing who the owner was before the 18/11/2010, and which the Applicant did not produce in court. Furthermore, Mr. Mkongwa submitted that the Applicant did not produce in court the Road license for the "dala dala" business. Mr. Mkongwa also submitted further that although at the time the bus was seized it was in possession of SOZMY COMMISSION AGENT but it was the property of the J/Debtor.

In my view and with due respect to Mr. Mkongwa, in terms of the persuasive statement by Mukhi, J. in the Indian case of **G.R. BHANDE V. B.R. JHDAV AIR 1974 Bom.155**, (supra) as quoted by Justice Nsekela in **CRDB BANK LTD VS. MWAMBA ENTERPRISES LTD & CHARLES MULOKOZI** (supra), where Mukhi J., it is settled law that complicated questions as to title are not to be gone into under summary procedure of investigation under Order XXI rule 59. In the circumstances of the present case, this Court cannot therefore delve into investigating ownership of the disputed bus. This Court, on the evidence adduced and on the submissions made in the course of the investigation proceedings and the authorities cited finds that at the time the disputed bus was seized, it was in possession of the Applicant.

In the event and for the foregoing reasons, the application succeeds. The warrant of attachment is hereby raised and/or lifted. The attached motor vehicle with Registration Number T.478 BGN, a Mistubishi Fuso bus, is to be released forthwith from attachment. Order accordingly.



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R.V. MAKARAMBA
JUDGE
19/04/2011

Ruling delivered in Chambers this 19th day of April 2011 in the presence of Mr. Kyara, Advocate for the Applicant and Mr. Mhangate holding brief for Mkongwa, Advocate for the 1st, 2nd and 3rd Respondents.



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R.V. MAKARAMBA

JUDGE

19/04/2011

Words count: 5,059