IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NUMBER: J 499/98

In the matter between:

ERICA HOCH **Applicant**

and

MUSTEK ELECTRONICS (PTY) LTD **Respondent**

JUDGMENT

BASSON, J

[1] The applicant, Ms Erica Hoch, was charged with dishonest conduct in that she allegedly misrepresented her qualifications to her employer, Mustek Electronics (Pty) Ltd (the respondent). After being found guilty of the said misconduct, the applicant was dismissed with effect from 26 August 1997 (after her appeal failed). The applicant contended that her dismissal was both substantively and procedurally unfair.

[2] The matter came before me after the director of the Commission for

Conciliation, Mediation and Arbitration ("the CCMA") exercised her discretion in terms of section 191(6) of the Labour Relations Act, 66 of 1995 ("the Act") and decided to refer the dispute about the alleged unfair dismissal for misconduct to the Labour Court for adjudication.

[3] The qualifications that the applicant was alleged to have misrepresented appear from her curriculum vitae that she presented at her initial interview for employment with the respondent in September 1990 (exhibit B23 to B30). More in particular, under "University/College" it was stated "Hamidrash 'Lminhal (Israel) 1970 - 1973" and under "degree/diploma" it was stated: "Diploma in Accounting; Teaching Diploma".

[4] From her employment letter it appears that the applicant was appointed as a data processing manager with effect 12 September 1990 (exhibit B1 to B2). It was common cause that a teaching diploma would not have been relevant to her employment with the respondent. However, it was clear that the applicant worked in what was to become the accounting department of the respondent and that her employment history also included the functions of an accountant (see the curriculum vitae referred to above).

[5] In fact, the applicant was at pains to point out that she had been working in accounting all her life (even in her present position at another company) and that she had occupied the position of acting financial manager at the respondent before being demoted (more about the demotion later). In the event, I am satisfied that a qualification in accounting was relevant to the type of work that she was expected to perform in the respondent's employ, especially during the first four years of her employment.

[6] The chief executive officer of the respondent, Mr D Kan ("Kan"), admitted that he was satisfied with the applicant's work at the beginning. It was common

cause that the respondent's business was small at the time compared to the time of the applicant's dismissal when it was a very big operation and a company listed on the stock exchange.

[7] Kan also stated that he was not overly concerned with qualifications on paper but was more concerned with the question whether an employee could do the job. In fact, he admitted that, had the applicant left blank the spaces "degree/diploma", he would have appointed her anyway on the basis of the other information in the curriculum vitae. However, Kan testified that, had he known that she had falsified information to boost her curriculum vitae, he would not have employed her as he placed a very high value on honesty.

[8] In order to show that the applicant did possess a diploma in accounting, the applicant submitted a certificate (the translation of which appeared as exhibit B40). The certificate was headed "Management College; Under authority of Clerks Union" and stated that it served to confirm that [the applicant] had participated in "the Management **Secretaries school** of 350 hours duration, which has taken place in Tel Aviv in years 1969 - 1970" (my emphasis). Under "School/ Course" is indicated "Management **Secretaries**" (my emphasis).

[9] The applicant also submitted a "confirmation" certificate (exhibit B159) headed "The College of Administration, founded by the Organization of Clerks" and stating that she had partaken in studies at the "Administrative **Secretaries** School" (my emphasis). Also of importance was the fact that this document referred only to the year 1970 and the applicant claimed to have spent three years at the said university (*supra* at paragraph [3]).

[10] The applicant stated that she had lost all other certificates when she moved house and could not obtain documentation from the said education

institution when she visited Israel.

[11] The applicant further submitted a statement and certificates of a co-student instead. In terms of the statement and certificates the studies that was undertaken by the co-student was "Administrative **Secretaries**" (my emphasis). Interestingly, only one year of study was indicated on the certificate: 1970. Further, the word "diploma" appeared nowhere on the document but merely the word "certificate"and the word "university" or the name of the university in question appeared nowhere on the document.

[12] More important in assessing the nature of this "certificate" are the subjects mentioned, no less than fifteen. These included subjects such as office management, expression in writing, relations at work, expression of material for print, improvement of secretary image, demographic structure of Israel, statistics, commercial law, finance and accounting (exhibit B154 to B155). Objectively speaking, these subjects would belong in a course for secretaries (as the "certificate" also indicated - *supra*).

[13] Moreover, no reasonable person would conclude on the basis of this documentary evidence that this "certificate" and the passing of these subjects would comprise a "diploma in accounting". After all, a person who possessed such "certificate" could hardly claim that he or she now also had a diploma in, for instance, commercial law or in the demographic structure of Israel.

[14] There is also no indication in the least that accounting was awarded any higher status than any of the other fourteen subjects. In the event, even if I accept the applicant's evidence that an inordinate amount of time was spent on the subject of accounting, this still would not entitle her to a claim to have a "certificate" in accounting, let alone a "diploma" which carries a very specific meaning in tertiary education terms.

[15] Further, the statement of the co-student (exhibit C2) did not state that these studies of "Administrative Secretaries" constituted a diploma of any kind, let alone a diploma in accounting. In fact, the statement made it clear that "statistics, accounts and finance" were studied as subjects "among other things".

[16] In my view, this documentary evidence showed *ex facie* the documents that the applicant (and her co-student) merely concluded a secretaries' course and did not possess a diploma either in accounting or in teaching.

[17] According to the minutes of the disciplinary enquiry on 19 August 1997 that preceded her dismissal, the applicant admitted that she did not have the said qualifications.

[18] However, during the disciplinary proceedings (after the disciplinary hearing was postponed and on the date of the resumption of proceedings), the applicant's attorney wrote a letter to the respondent stating that the correctness of the said minutes was being disputed (exhibit B70 to B71). In the notice of appeal (exhibit B87 to B88) the applicant's attorney stated that the finding that the applicant did not have an accounting diploma was being attacked but as far as the teaching diploma was concerned this was being attacked merely on the basis "that a teaching diploma is irrelevant to the [applicant's] duties at work".

[19] In her evidence before Court the applicant insisted that the minutes of the disciplinary hearing were incorrect and that she had only admitted to not having enough "points" for the teaching diploma (the minutes are recorded as exhibit B73 to B75 - see especially exhibit B74 lines 1 to 2 and *in fine*). The applicant did, however, conceed that the minute taker would have had no reason not to have correctly recorded the proceedings.

[20] There was, of course, always the possibility that the applicant had tried to

reverse the effect of her admission of not having an accounting diploma by attacking the correctness of the minutes. It did appear that she only had problems with the minutes where the minutes were detrimental to her case whilst she admitted the correctness of the minutes where they supported her case. It is, however, not necessary for me to make such finding as I am satisfied on the evidence presented to Court that the applicant did not have an accounting or teaching diploma.

[21] In this regard it was also significant that the applicant had offered a version at the disciplinary enquiries stating that, at her job interview in September 1990, she had indeed told Kan about her lack of qualifications. It was clear that this defence of the applicant rested on the contention that she had "come clean" about her lack of qualifications (albeit only in regard to the lack of points in regard to the teaching diploma) already at her interview with Kan in September 1990.

[22] This defence was raised in terms of the minutes of the postponed enquiry on 22 August 1997 where it was minuted that "[the applicant's] reply was that she could not swear that she did tell [Kan] she did not complete her diploma" (exhibit B77 *in fine*). Further, it was minuted at the hearing in mitigation (on 26 August 1997) that "[the applicant] replied that she remembers telling [Kan] that her qualifications were incomplete, but there are no witnesses to support her"(exhibit B82 *in fine*). In the same vein, Kan was asked in cross-examination whether the applicant did tell him at the time of the interview in 1990 that her qualifications were incomplete (albeit then only in regard to the teaching diploma).

[23] Kan repeated his answer given at the disciplinary enquiry: if the applicant had told him about the lack of qualifications, he would have remembered (the applicant denied that this was said during the disciplinary hearing). In giving evidence, Kan added that he would have remembered as it was highly unusual for a candidate to admit at her job interview that her curriculum vitae contained untruthful information. Indeed, on the probabilities, I believe that this would be

the case.

[24] I therefore accept Kan's evidence that the lack of qualifications of the applicant was never mentioned at the job interview in September 1990. In this regard it must also be pointed out that Kan was a good witness who easily admitted to facts even if they could have been construed to be detrimental to the respondent's case. If it came down to a decision based upon credibility I accordingly also would have no problem to accept his version in preference to that of the applicant.

[25] Moreover, the evidence of the applicant in Court in regard to the teaching diploma revealed her to be an unsatisfactory witness in regard to her qualifications. The applicant went so far as trying to persuade the Court that she indeed also possessed a teaching diploma. It was only with great difficulty that she eventually conceded that she did not complete the course for the "teaching diploma" and that she admitted to not having such qualification. It is also important to note that, when it was put to the applicant that she had lied in misrepresenting her "teaching" qualifications (which clearly had been the case, even on her own version), she simply refused to answer the question.

[26] In view of the documentary evidence in regard to the qualifications of the applicant as well as in the light of her unsatisfactory evidence in this regard I am satisfied that the applicant did not possess either a diploma in accounting or a diploma in teaching. All indications were that the applicant merely completed a secretaries' course where one of the subjects that she took had been accounting. By no stretch of the imagination would such course qualify the applicant for a "diploma in accounting" and the reasonable employer would also have viewed the position as such.

[27] In the result, the applicant dishonestly misrepresented her qualifications

when she applied for a job at the respondent that entailed accounting work and where she even rose to the position of acting financial manager. In this sense, her dishonest misrepresentation was relevant in regard to the work that she was employed to perform.

[28] This dishonest act was repeated when the applicant (in terms of the requirements of the standards set by ISO 9000) completed another education record for the respondent in 1995 (exhibit B21 to B22), stating under qualifications: "University - Israel" and "Diploma Teaching and Accounting (1970 to 1973)".

[29] The negative inference that the applicant had lied about her qualifications can also be drawn from the fact that the she had to be cajoled into supplying the respondent with her certificates which eventually had to be translated (see exhibits B15 to B40).

[30] During the disciplinary hearing and the appeal hearing the applicant repeated this lie about the accounting diploma and also insisted that she had such qualification in her evidence before Court. She was also dishonest when she stated that she had come clean in her initial interview with Kan (*supra* at paragraph [24]).

[31] In the event, I cannot accept the argument that the applicant had merely made an error of judgment. In fact, when the applicant eventually admitted that the information about the teaching diploma was false she also conceded that her reason for misrepresenting the information was because she had feared the reaction of her superiors at work.

[32] In my view, this showed not only that the applicant knew that the respondent placed a high value on honesty but also that she expected to be

disciplined for her dishonesty.

[33] There is also no merit in the argument that the applicant found herself in a "catch 22" situation as it was common cause that she had a very good relationship with Kan and that she had discussed all her problems at work with him. This was, of course, also a further indication that the applicant did not tell Kan at the time of her initial interview about her lack of qualifications. It was namely highly unlikely that, had she done so, she would not have approached Kan already at this stage in 1995 to remind him of the fact that she had disclosed the lack of qualifications earlier, rather than resorting to the falsehood (which she admitted) on the new form that she was required to fill in.

[34] Further, the mere fact that the respondent may have had dishonest dealings with the Receiver of Revenue does not mean that the employer does not have the prerogative or competence to require high standards of honesty from its employees.

[35] This was especially true in the case of the applicant who occupied a unique position at the company.

[36] The applicant started working for the company since it was a small undertaking and it was clear that she enjoyed a very good relationship with the chief executive officer (Kan).

[37] It was common cause that the applicant could approach Kan at any time to air her grievances (more about the grievances later). It was also common cause that Kan went out of his way to accommodate the applicant. Even when there were complaints about her work he asked her superiors to accommodate her. This did result in her demotion (as will also become clear later). However, the applicant who eventually worked as a debtors' clerk, was paid a salary equal to that of the

financial manager of the company. The applicant also received exactly the same company car as the financial manager and had her own office whilst the other debtors' clerks worked in a communal office.

[38] Kan also trusted the applicant with his own loan account, only he and she kept a key to the safe and she wrote up the cash book, working with hundreds of thousands of rands every day. In other words, the applicant stood in a unique relationship of trust and confidence towards Kan.

[39] I have no doubt that Kan expected loyalty from the applicant and that theirs was a trust relationship as Kan had testified to in Court. Kan stated that he was upset and hurt to learn that the applicant had been dishonest on at least two occasions and when she was persisting in her dishonest conduct.

[40] In the event, even though the applicant was an employee of seven years' standing and was honest and trustworthy in her work and even though the applicant's qualifications were irrelevant to her position as debtors' clerk at the time of her dismissal, the respondent was, in my view, justified to consider her dishonesty as serious enough to have irreparably damaged the unique trust relationship enjoyed by her.

[41] It is for the employer to set standards of conduct for its employees. As long as these standards are reasonable the Court will not interfere (see the requirements of item 7 of schedule 8 of the Act).

[42] It is also the prerogative of the employer to decide on a proper sanction once these standards have been transgressed. This is especially so when there is a personal and unique relationship of trust which has been broken by the dishonest misconduct of the employee.

[43] I take this view even without considering the effect of the judgment of the Labour Appeal Court in the case of *County Fair Foods (Pty) Ltd v The Commission for Conciliation, Mediation and Arbitration & others* (1999) 20 *ILJ* 1701 (LAC) which appears to require even greater deference to the sanction imposed in terms of an employer's prerogative.

[44] In the result, I cannot find that Kan had acted unfairly in his assessment that the employment relationship of trust had been damaged irreparably by the repeated insistence of the applicant that she possessed a diploma in teaching and a diploma in accounting.

[45] The fact that Kan stated that the Court case had aggravated the position does not take the matter any further as, on the probabilities, he was also referring to the repetition of the lies during the Court proceedings.

[46] It is not possible for me to consider what the result of a possible "coming clean" by the applicant could have been or at what stage such admission of guilt would have assisted her case. I therefore do not intend to enter the realm of speculation.

[47] Taking all of the above into consideration, I am satisfied that the applicant's dishonesty constituted a material misrepresentation in that it destroyed the relationship of trust between the employer and the employee. In the result, the dismissal of the applicant was an appropriate sanction. In other words, the dismissal was for a fair reason and accordingly substantively fair.

[48] This did not mean that the respondent did not act unfairly towards the applicant in the circumstances which gave rise to the dismissal.

[49] There was bad blood between the applicant and the financial manager Ms

M Orlet ("Orlet"). Orlet initially worked for the firm of auditors who audited the respondent's books and this brought her into contact with the applicant at the early stages of her employment with the respondent.

[50] Orlet alleged that the applicant had always been absolutely useless in accounting and did not even know a debit from a credit. She allegedly also reported this to Kan.

[51] Eventually Kan appointed Orlet as financial manager in September 1994. This resulted in the demotion of the applicant.

[52] The bad feeling between the applicant and Orlet culminated in an incident on 18 October 1996 when the applicant called Orlet a "stupid cow". The applicant alleged that she was provoked into doing so and that she was physically assaulted by Orlet. The applicant was issued with a final warning for insubordination but her own grievance was not followed up.

[53] At the disciplinary hearing into this incident the applicant raised eight instances of alleged provocation (see exhibits D7 to D8, that is, the applicable minutes).

[54] The applicant thus raised various issues which were supposed to have constituted a pattern of harassment or victimisation but which appeared to be without real substance when she was questioned about it in cross examination.

[55] These issues were, for example, the taking away of a printer, tax monies paid out to co-employees and the charging of interest on employee loans. It appeared that the applicant did not so much entertain a grievance about the merits of these actions undertaken by the respondent but rather with the manner in which they were carried out (mostly by Orlet). Some of her grievances did have some

justification, for instance, she received a warning for merely discussing bonuses with a co-employee and received no less than a final warning from Ms Orlet, valid for a full twelve months.

[56] It is significant that nowhere in the list of grievances was it noted that Orlet had discriminated against the applicant and insulted her on the basis of her being Jewish.

[57] Orlet had vehemently denied any notion of anti-Semitism in her evidence before Court and Kan could not remember that such issue had ever been raised with him by the applicant (although he could not deny this). In fact, Kan appeared genuinely surprised at the allegation of discrimination. Certainly it was never put to him that he had discriminated against the applicant on this basis or that the dismissal had taken place on the basis of discrimination. After all, the applicant had never laid a grievance in regard to this very serious allegation and did not mention it during the internal hearings which led to her dismissal but it was only mentioned for the first time in the application to the CCMA in terms of section 191(6) of the Act.

[58] Moreover, Kan definitely did not strike me as a person who would allow himself to be prescribed to by Orlet or, for that matter, any other employee. In the result, the applicant has failed to show that her dismissal was in any way related to discrimination on the basis of anti-Semitism. In fact, I am satisfied on the evidence before Court that this was not the case.

[59] This is not to say that Orlet acted fairly towards the applicant. Orlet vehemently denied that she had anything to do with the fact that the applicant received smaller bonuses and no increases in salary and she stated that Kan was the person who decided this. However, Kan contradicted her and stated that he would in these matters, indeed, have acted upon recommendations by Orlet. Kan

also appeared to contradict Orlet's evidence to the effect that the applicant was a totally hopeless employee although he did state that he had received complaints from his auditor about the applicant's work in the period when the business was growing and before Orlet's appointment.

[60] There was accordingly little doubt that Orlet had made life difficult for the applicant. On the other hand, the applicant admitted that Kan had said to her (when she complained about Orlet) that she should make life difficult for Orlet as well and that she had, indeed, followed this advice.

[61] The applicant also admitted that she was not happy when Orlet was appointed as financial manager and when she subsequently promoted two other employees (the applicant's former inferiors) as the applicant's superiors. In fact, the applicant stated unconvincingly that she only found out in 1996 that Orlet was indeed the financial manager. This also placed the applicant's grievance about an organogram which showed her demoted position in perspective. The applicant was unwilling to accept Orlet's appointment and was accordingly upset by this otherwise acceptable practice. The applicant subsequently also stated that she was not against the organogram being published but only about its position next to her office door.

[62] It is significant that the applicant never laid a proper grievance in regard to these acts of demotion. This strengthens the inference that there was some truth in the averment that she was not up to the task required of an experienced accountant when the company grew and the tasks of financial manager became more complicated.

[63] In this regard it may also be noted that the applicant admitted that Orlet complained about her work regularly and that the applicant had been the responsible person for the accounting department at the beginning, although other

persons did the actual writing up of the books. After much prodding, the applicant also admitted that she had no problem, in principle, with Orlet being qualified for the position of financial manager.

[64] It may be that the applicant was not that unhappy because she (as debtors' clerk) nevertheless received the same salary and benefits as the financial manager (see the discussion above at paragraph [37]) but I need not speculate on this matter.

[65] What was clear was that her unique position had become a bone of contention. Orlet stated in her evidence that, from the beginning, the applicant was too highly paid and that she should have shared an office with the other debtors' clerks.

[66] In the event, the blame for the strained working relationship rested upon both sides. Nevertheless, in spite of the fact that the applicant never laid a proper grievance, her demotion, even if it was due to incapacity or poor work performance, was not preceded by proper or fair procedures. It was common cause that she did not know beforehand of Orlet's appointment and that she was thus demoted without prior consultation. The same happened when the other employees were promoted above her.

[67] In this regard it was significant that Orlet testified that Kan had merely told her to leave the applicant alone or to give her something to do within her competence when she complained but that Kan did not take Orlet's advice. Had he done so, Orlet testified, she would have trained the applicant. One wonders, given the bad blood between them, if Orlet would have been willing to assist the applicant in addressing the alleged lack of training or competence. Kan also admitted that he had reassured the applicant that Orlet could not dismiss her.

[68] In view of the failure on the part of the respondent to assist the applicant in training her, I am particularly concerned about Orlet's insistence in Court that the applicant was dismissed for incapacity due to poor work performance. After all, Orlet was her superior as head of the financial or accounting department and should have known that the reason for the applicant's dismissal was dishonesty.

[69] The human resources manager at the time of the applicant's dismissal, Ms B Toweel ("Toweel"), stressed the fact that the dismissal was for dishonesty only. Her testimony was, however, unsatisfactory as she tried to persuade the Court that she did not know about the difficulties between the applicant and Orlet. In fact, Toweel was the applicant's "observer" at the disciplinary hearing into the "stupid cow" incident where the applicant raised no less than eight grievances (see the discussion above at paragraph [54]).

[70] Furthermore, Toweel presented the disciplinary enquiry with warnings which she admitted in her evidence were irrelevant (the chairperson of the enquiry quite properly stated that he did not take these warnings into account when deciding to dismiss the applicant). One of these warnings was made valid for twelve months (an inexplicably long period) by Orlet (see the discussion above at paragraph [55]). This leaves one with the distinct impression that Toweel wanted to get rid of the applicant. For the reasons fully discussed above, Orlet was also clearly biased against the applicant.

[71] However, I must reiterate that Kan did not strike me as a person who would be influenced by either Orlet or Toweel when making a decision.

[72] Kan was adamant that the applicant had been dishonest and deserved dismissal in his view. In fact, he insisted that it was a dismissal for dishonesty. Clearly, he also did not pander to Orlet's view that the applicant was totally incapable of doing accounting work. I am therefore not persuaded that Kan had

played any part in a possible campaign against the applicant. In fact, the applicant never made such allegation and clearly regarded Kan as her ally and protector (see also the discussion above).

[73] The sad truth remains that the applicant was the author of her own misfortune. She played into her adversaries' hands when she persisted in her dishonest conduct and insisted that her fabrication was the truth. It was because of her own actions that her loyal ally (the chief executive officer, no less) lost his trust and confidence in her - a trust and confidence that was a requirement of her unique position within the company structures.

[74] In the event, the unsatisfactory evidence of Orlet and Toweel and the fact that Orlet stayed later on the day of the applicant's dismissal as well as the fact that her letter of termination, blue card and transport were at the ready (facts which were explained by Toweel) do not persuade me that the respondent did not dismiss the applicant fairly on the basis of dishonesty. For the reasons fully discussed above, I have found that the respondent has shown that there was, indeed, a fair reason to dismiss the applicant.

[75] Nevertheless, the applicant should have been properly consulted during her demotion for alleged incapacity and even have been offered training and the like. In other words, the applicant's precarious position was well paid but badly managed - also by Kan. This unfair treatment should, in my view, be taken into account when making a proper order as to costs (*infra* at paragraph [82]).

[76] The applicant's complaints about the procedural fairness of the dismissal were without substance. The mere fact that Mr L Malan ("Malan") worked for the respondent's firm of attorneys and associated employers' organisation does not, by itself, disqualify Malan from acting as chairperson of the disciplinary enquiry.

[77] It was clear that Malan was not attending as the legal representative of the respondent and that he was in the same position than that of a (senior) employee of the respondent who may also legitimately have chaired such enquiry. Both were on the payroll of the respondent but could be required to act as chairperson. In fact, the applicant did not complain that the disciplinary enquiry into the "stupid cow" incident (*supra*) or her appeal hearing was procedurally unfair. Both these hearing were chaired by persons in Malan's position. The fact that Malan wrote to the respondent that "[i]f there are any queries please contact the writer" did not take the matter any further. In fact, it was clear from a letter written by the said other chairperson (see exhibit B90) that this was an innocuous colloquium and did not show bias.

[78] After all, these are not formal legal proceedings but an opportunity for an employee to state her version of events in accordance with the *audi alteram partem* requirement of procedural or natural justice (see item 4(1) of schedule 8 of the Act).

[79] Further, I find nothing in the procedure followed or in the reasoning that indicates bias on the part of Malan.

[80] The mere fact that the applicant was denied legal representation did not make these informal proceedings unfair. In terms of the requirements of the respondent's disciplinary code the applicant was offered the assistance of a co-employee but they refused. There was no allegation that the respondent played any role in this refusal which appeared to have been the voluntary decision of the employee(s) concerned.

[81] Further, Malan was criticised for calling Kan to testify and for asking leading questions. However, Malan (exhibit B80 at paragraph 2.4) explained that he had decided to call Kan as a witness "in respect of certain information either

disclosed or not disclosed during the accused (sic) initial interview" (see the above discussion on the applicant's allegation that she had admitted to not having certain qualifications already at this interview with Kan). Further, Malan's questions to Kan were relevant in that he was inquiring about the employer's stance or standard in regard to dishonesty and this accordingly did not show bias.

[82] In exercising my wide discretion in terms of section 162(1) of the Act, I make no order as to costs against the applicant in the light of the fact that the applicant was not treated fairly by her direct superiors and the respondent did nothing to alleviate her precarious position (*supra* at paragraph [75]). Further, the fact that the respondent was the successful party, does not mean that the respondent should not pay the costs reserved on 27 July 1999 as these costs were wasted because the respondent never managed to obtain the relevant affidavit from the former principal of the university in Israel.

[83] I make the following order:

The application is dismissed. The respondent is to pay the applicant's wasted costs for 27 July 1999. There is no order as to costs against the applicant.

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Basson, J

On behalf of the applicant:	Adv P Pauw instructed by D De Wet & Partners
On behalf of the respondent:	Mr S Snyman of Snyman Van der Heever Heyns Inc
Dates of proceedings:	22 & 23 February 1999; 26 & 27 July 1999; 21, 22, 23 & 29 September 1999
Date of judgment:	1 October 1999