IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN

CASE NO. C 291/99

In the matter between:

Applicant

and

Respondent

JUDGMENT

BASSON, J

[1] The applicant, Mr R J Mandla, maintained that he was employed by the respondent, LAD Brokers (Pty) Ltd, (as from 1 December 1998) and alleged that he was unfairly dismissed for operational reasons when his contract with the respondent was terminated with effect 30 April 1999.

[2] The respondent denied that it had employed the applicant and alleged that the contract which it had concluded with the applicant created an independent contractor relationship. The respondent admitted that it had terminated the contract with the applicant based upon the operational requirements of its client (for whom the applicant worked) but denied that this had constituted an unfair dismissal in terms of the Labour Relations Act, 66 of 1995 ("the LRA").

[3] "Employee" is defined in terms of section 213 of the LRA to mean:

"(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

(b) any other person who in any manner assists in carrying on or conducting the business of an employer ...".

[4] On the evidence presented it was clear that the respondent had contracted with the applicant in its capacity as a "labour broker". In fact, although the respondent's witnesses tried to indicate that the contract was

concluded merely to facilitate payment of the applicant in overseas currency, it was conceded in argument that the contractual relationship entered into between the parties was that between a "temporary employment service" (the respondent) who, for reward, had "provided" to a client (Weatherford) another person (the applicant) who rendered services or performed work for such client and who was remunerated by the temporary employment service.

[5] The contract that the respondent had concluded with the applicant (exhibit A1 to A4) as well as the contract that the respondent had concluded with the client (exhibit A9 to A10) also make this absolutely clear. In fact, the evidence was that these were the standard contracts used when securing persons to work for clients. There is thus absolutely nothing in the contracts to indicate that the usual rights and obligations were not created thereby. I will return to a discussion of the nature of the relationships created by these contracts below.

[6] These contracts brought into operation the provisions of section 198 of the LRA which regulate such temporary employment services. In this regard, I quote from section 198(1) and (2) and (3) of the LRA:

"(1) In this section, 'temporary employment service' means any person who, for reward, procures for or provides to a client other persons -

(a) who render services to, or perform work for, the client; and

(b) who are remunerated by the temporary employment service.

(2) For the purposes of this Act, a person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.

(3) Despite subsections (1) and (2), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person".

[7] The crisp question to be decided *in casu* was whether the contractual relationship between the applicant and the respondent (the temporary employment service) constituted an employment contract or whether it was that of an independent contractor relationship in terms of the exclusionary provisions of section 198(3) of the LRA.

[8] The courts have formulated various tests to identify an employment contract. The right to supervision and control was held to be one of the most important *indicia* that a particular contract is in all probability a

contract of service (employment contract). The greater the degree of supervision and control to be exercised by the employer over the employee the stronger the probability will be that it is a contract of service. On the other hand, the greater the degree of independence from such supervision and control the stronger the probability will be that it is a contract of work (independent contractor relationship). See, *inter alia*, *Smit v Workmen's Compensation Commissioner* 1979 (1) SA 51 (A) at 62D-G.

[9] A further test is the so-called dominant impression test. See in this regard, *inter alia*, *Ongevallekommissaris v Onderlinge Versekeringsgenootskap AVBOB* 1976 (4) SA 446 (A) at 457A; and *Medical Association of South Africa & others v Minister of Health & others* (1997) 18 *ILJ* 528 (LC) at 536C-E. The value of this test is that no single factor is considered to be decisive in determining the nature of the relationship.

[10] A particularly apposite judgment is that of the Labour Appeal Court in *South African Broadcasting Corporation v McKenzie* (1999) 20 *ILJ* 585 (LAC) *per* Myburgh JP (at 590F to 591D) where some of the important characteristics of the contract of employment and the contract of work were identified and distinguished as follows:

"*1. The object of the contract of service is the rendering of personal services by the employee to the employer. The services are the object of the contract. The object of the contract of work is the performance of a certain specific work or the production of a certain specified result.*

2. According to a contract of service the employee will typically be at the beck and call of the employer to render his personal services at the behest of the employer.

The independent contractor, by way of contrast, is not obliged to perform the work himself or to produce the result himself, unless otherwise agreed upon. He may avail himself of the labour of others as assistants or employees to perform the work or to assist him in the performance of the work.

3. Services to be rendered in terms of a contract of service are at the disposal of the employer who may in his own discretion subject, of course, to questions of repudiation decide whether or not he wants to have them rendered.

The independent contractor is bound to perform a certain specified work or produce a certain specified result within a time fixed by the contract of work or within a reasonable time where no time has been specified.

4. The employee is subordinate to the will of the employer. He is obliged to obey the lawful commands, orders or instructions of the employer who has the legal right of supervising and controlling him by prescribing to him what work he has to do as well as the

manner in which it has to be done. The independent contractor, however, is notionally on a footing of equality with the employer. He is bound to produce in terms of his contract of work, not by the orders of the employer. He is not under the supervision or control of the employer. Nor is he under any obligation to obey any orders of the employer in regard to the manner in which the work is to be performed. The independent contractor is his own master.

5. *A contract of service is terminated by the death of the employee whereas the death of the parties to a contract of work does not necessarily terminate it.*

6. *A contract of service terminates on expiration of the period of service entered into whilst a contract of work terminates on the completion of the specified work or on production of the specified results. See Smit v Workmen's Compensation Commissioner at 61A-H".*

[11] The judgment continued at 591E-H:

"The legal relationship between the parties must be gathered primarily from a construction of the contract which they concluded (Smit v Workmen's Compensation Commissioner at 64B; Liberty Life Association of Africa Ltd v Niselow at 683D-E), 'although the parties' own perception of their relationship and the manner in which the contract is carried out may, in areas not covered by the strict terms of the contract, assist in determining the relationship' (Borcherds v CW Pierce & J Steward t/a Lubrite Distributors at 1277H-I). In seeking to discover the true relationship between the parties, the court must have regard to the realities of the relationship and not regard itself as bound by what they have chosen to call it (Goldberg v Durban City Council 1970 (3) SA 325 (N) at 331B-C). As Brassey 'The Nature of Employment' at 921 points out, the label is of no assistance if it was chosen to disguise the real relationship between the parties, 'but when they are bona fide it surely sheds light on what was intended'".

[12] The issue *in casu* is, of course, further complicated by the fact that a person who is provided by the temporary employment service to a client renders service, not to the temporary employment service, but to the client (although he or she is remunerated by the temporary employment service - see the provisions of section 198(1) of the LRA quoted above at paragraph [6]). This is clearly a unique and *sui generis* tri-partite relationship. It is accordingly a fiction that the person concerned renders services to the temporary employment service even when it is the employer of the person whose services are provided to the client through the temporary employment service.

[13] In the facts of the present matter the relationship between the client (Weatherford) and the applicant (who

was thus provided and remunerated by the respondent) was that of employer/employee in terms of the definition of employee contained in section 213 of the LRA (quoted above at paragraph [3]). In terms of paragraph (a) of the definition the applicant worked for the client (Weatherford) and was entitled to receive remuneration (albeit from the temporary employment service). Further, in terms of paragraph (b) of the definition the applicant assisted in carrying on or conducting the business of the client.

[14] In fact, it is clear that such scenario may readily (and perhaps even usually) arise in cases where a person is provided to a client to render services, that is, he or she may qualify to be the employee of both the client and the temporary employment service in terms of the definition of "employee" in section 213 of the LRA (quoted above at paragraph [3]). It therefore appears to be one of the main objects of the provisions of section 198(1) and (2) of the LRA (quoted above at paragraph [6]) to provide that such person is designated (for the purposes of the LRA) as the employee of the temporary employment agency, and not of the client (even though he or she would qualify to be the employee of both in terms of definition of "employee" in section 213 of the LRA).

[15] Nevertheless, I believe that the exact nature of the relationship between the client and such person as well as the nature of the services rendered to such client through the temporary employment service could be an important factor to be taken into account when determining whether such person is an independent contractor *vis-à-vis* the temporary employment service (in terms of the exclusionary provisions of section 198(3) of the LRA) or, on the other hand, if an employer/employee relationship exists.

[16] I reiterate that, on the evidence presented, the applicant provided his services to Weatherford (the client of the respondent), not on the basis of the performance of a certain specified work (selling the fruits of his labours) or on the basis of producing a certain specified result (as it would have been in the case of an independent contractor) but placed his personal services at the disposal of Weatherford as one could have expected from an employee. See in this regard the characteristics of an employment contract identified as point 1 in the judgment of *SA Broadcasting Corporation v McKenzie* (quoted above at paragraph [10]).

[17] For the sake of completeness, it can be pointed out in this regard that the applicant went back to Cape Town after performing his duties as service technician at Mossel Bay (or off-shore) and was called back by Weatherford at any time during the month to resume his duties. However, the applicant was not on a "retainer" in the sense that he was only paid for the hours that he actually worked. The applicant was namely paid the same monthly remuneration, regardless of the time that he worked and the time that he spent back in Cape Town during the month. In other words, there was no question of the applicant being paid for the actual time that he worked as one could perhaps have expected from payment to an independent

contractor (I will return to this issue below). In fact, it was conceded on behalf of the respondent that the applicant's relationship to the client was that of employer/employee and that he was not an independent contractor *vis-à-vis* the respondent's client.

[18] In this regard, the applicant also clearly worked under the supervision and control of Weatherford's senior personnel (see point 4 of the characteristics of an employment relationship as identified in the judgment of *SA Broadcasting Corporation v McKenzie* quoted above at paragraph [10]). It was common cause that the applicant thus worked under the control of the client's personnel.

[19] In the event, the fact remains that the applicant, in rendering his services to the client of the temporary employment service (in terms of the provisions of section 198(1)(a) of the LRA - quoted above at paragraph [6]), was not required to produce a certain specified result in terms of a work contract but indeed placed his personal services at the disposal of the client. In terms of points 1 to 3 identified in the judgment of *SA Broadcasting Corporation v McKenzie* (quoted above at paragraph [10]) these are characteristics of an employment contract. In other words, the nature of the services rendered through the temporary employment service to the client was not such that would be rendered in terms of a work contract.

[20] Even if this fact is not, by itself, determinative of establishing an employment relationship also between the temporary employment service (the respondent) and the applicant, I believe that, in the light of the unique tri-partite nature of the relationship between the temporary employment service, its client and the person whose services are provided, the fact that the applicant was not provided to the client as an independent contractor *(vis-à-vis* the client) must be a relevant factor to be taken into consideration. In other words, had the applicant rendered services to the client as an independent contractor, such fact would certainly have strengthened the inference that he also stood in the same relationship to the temporary employment service that thus provided him to perform work for the client. However, exactly the opposite is true in the circumstances of this matter.

[21] Applying the control test (identified above at paragraph [8]), it was the evidence of Mr LN Montago ("Montago"), the managing director of the respondent, that the respondent exercised supervision and control over so-called independent contractors who are provided by the respondent to clients in terms of the standard contract (exhibit A1 to A4).

[22] In this regard, Montago was referred to clause 10.5 of the said contract which deals with the compliance of such "independent contractor" with "service standards". Montago explained that such standards included standards that such person should not be late for work or under the influence of alcohol at work and required orderly conduct.

[23] Montago added that, if such standards of the respondent were contravened, the "independent contractor" would be called to a disciplinary hearing by the respondent. Moreover, in doing so, the respondent would adhere to the procedures prescribed in terms of the provisions of the LRA.

[24] Further, in regard to clause 10.6 of the contract, Montago stated that the clause required conduct that would be reasonable in the opinion of the respondent. He added that, if such "independent contractors" were guilty of contraventions of the requirement of reasonable conduct, the respondent would terminate their contracts, after holding a disciplinary hearing.

[25] Montago stated that clause 13.2.4 referred to the same kind of service standards and added that the respondent ensured that their standards were in tune with the standards of the client (such as coming in to work on time). The respondent thus ensured that the "independent contractor" abided by these standards because "these became our standards as well". In regard to clause 13.2.1 which states that the "independent contractor" was obliged to "observe and comply with the instructions" of the respondent, Montago stressed that a client will phone in a complaint and the respondent will then contact the "independent contractor" to instruct him or her to comply with the client's request.

[26] In the light of this evidence, I am satisfied that "independent contractors" were required in terms of clauses 10.5; 10.6; 13.1; 13,2.1; and 13.2.4 of the standard contract to obey instructions given by the respondent and also to adhere to the standards set by the respondent (in conjunction with the client).

[27] In fact, such "independent contractors" were clearly under the control and supervision of the respondent to a degree that one could expect to find in an employer/employee relationship. In other words, they were subordinate to the will of the respondent and obliged to obey the lawful commands, orders or instructions of the respondent that clearly had the right of supervising and controlling the "independent contractor" (see point 4 of the characteristics of an employment contract identified in the judgment of *SA Broadcasting Corporation v McKenzie* quoted above at paragraph [10]).

[28] There is thus no indication in the least that such "independent contractor" was notionally on an equal footing with the respondent as could be expected in terms of a contract of work.

[29] Montago did state that the respondent would terminate the contract, leaving the person who is provided to the client to work out what happened next. However, even though the client may (also) be in the employ of such client (for the reasons discussed above at paragraph [14]) the respondent must take singular

responsibility as it is designated (for the purposes of the LRA) as the employer in terms of the provisions of section 198(2) of the LRA, and not the client.

[30] Montago also tried to shirk his obligations by stating that, in the case of the applicant, the said contract did not apply in the usual manner because the whole transaction was merely to "facilitate payment" of the applicant's remuneration in foreign currency. This was also stated by the other director of the respondent who testified, Mr G Fleming ("Fleming").

[31] However, the witnesses both admitted that they did conclude this contract with the applicant and that they also concluded another contract with the client (exhibit A9 to A10). Moreover, the witnesses also admitted that these were the "standard" contracts which governed their relationships with their so-called "independent contractors" and clients. In fact, Montago stated that he and Fleming took a deliberate decision to accommodate the applicant in terms of this specific contract.

[32] The contract with the client also makes it abundantly clear that the respondent is providing it with *"the services of our independent contractor Robert Mandla"* (exhibit A9). Nothing at all is said about the fact that this contract was concluded merely on the basis of facilitating payment and that the usual consequences (rights and obligations) do not follow. In fact, the "reward" or fee or commission (of 8%) is worked in under "rates of pay" that the client is to pay to the respondent for the "services provided" of Mandla. Clearly therefore the obligations went far beyond the mere facilitating of payment.

[33] Further, the respondent's directors sent the standard contract to the applicant without informing him that the contract was merely concluded for facilitating payment. On the contrary, Fleming testified that he had told the applicant that he would become an "independent contractor" of the respondent on signing the contract. The applicant denied this, stating that he was told that he would become the respondent's employee. In any event, it was stressed throughout that the applicant was obliged to sign such contract upon working for the client. The respondent can now hardly escape the consequences of a contract that it was so intent on having concluded with the applicant.

[34] Moreover, the respondent obtained important rights to supervise and control the applicant in terms of the contract (see clauses 10.5; 10.6; 13.1; 13.2.1; and 13.2.4 discussed above at paragraphs [22] to [26]). That it chose not to exercise these rights matters not. These obligations rested upon the applicant and, if the respondent had wished for these clauses not to apply, it should have either deleted the clauses or, better yet, concluded a contract that did give effect to its alleged intention to only "facilitate payment".

[35] As matters stood, the standard contract and its provisions regulated the relationship between the respondent and the applicant. After all, it was in terms of securing this agreement that the respondent provided the applicant to the client, thereby earning its fee or commission. The commission *in casu* amounted to $ 120 (US) per month. In other words, the rights and obligations created by this agreement was a prerequisite for the standard agreement concluded with the client to have effect.

[36] The mere fact that the respondent did not "procure" the services of the applicant does not mean that it did not in fact "provide" such services to its client as it is stated in terms of section 198(1)(a) of the LRA (quoted above at paragraph [6]). The directors stated that they did not sit in on the interview as was their usual *modus operandi* and that the applicant was not entered into their data base, especially because he worked in a different industry than the industry they usually served. However, the fact that they elected not to travel from Johannesburg to Mossel Bay to do an interview and elected not to enter the applicant on the data base does not detract from the fact that they had deliberately decided (on their own evidence) to contract with the applicant on the basis of their standard contract for work procurement. They also had contracted with the client for whom the applicant was provided on the basis of their standard contract with clients.

[37] In the event, I am satisfied that the rights and obligations created in terms of the standard contract between the respondent and its "independent contractor" also applied in the case of the standard contract which was concluded with the applicant. It follows that the fact that the respondent was thereby placed in a position of control and supervision *vis-à-vis* the applicant is a very important *indicium* that this was an employer/employee relationship (see clauses 10.5; 10.6; 13.1; 13.2.1; and 13.2.4 discussed above at paragraphs [22] to [26]).

[38] Another *indicium* in this regard (although not nearly as important) is the fact that the respondent found it necessary in clause 9.1 of the contract (exhibit A2) to "indemnify" itself for actions of the "independent contractor". One would have expected to find such indemnification in an employment contract as the employer is vicariously liable for the actions of its employee. A person who secures the services of an independent contractor is, however, not vicariously liable for any negligent actions committed by such contractor unless such liability is expressly contracted for. Further in this regard, clause 12 of the contract (exhibit A3) states that the "independent contractor" shall not have the authority to, for instance, incur liability in the name of the respondent. Only employees might have such authority, independent contractors never have, unless it is expressly contracted for.

[39] On the other hand, there are *indicia* in the contract which indicate that the applicant was an independent

contractor. The contract is headed "independent contracting agreement" and expressly provides that this would be the case (exhibit A1 to A2, especially clauses 1.2 and 1.3). Further, clause 6 provides, *inter alia*, that the "independent contractor" would not be entitled to the respondent's employment benefits or to vacation, public holidays, maternity, paternity, sick or other leave, payment of bonuses and salary increases "unless agreed by Weatherford".

[40] Again, it must be reiterated that a person in the *sui generis* position of the applicant may find that he or she is the employee of both the client and the temporary employment service (in terms of the definition of "employee" in section 213 of the LRA - quoted above at paragraph [3]). However, such person is (for the purposes of the LRA) designated to be the employee of only the temporary employment service in terms of section 198(2) of the LRA (quoted above at paragraph [6]). On the other hand, the temporary employment service and the client are jointly and severally liable if the temporary employment service (as employer) contravenes, for instance, the provisions of the Basic Conditions of Employment Act, 75 of 1997 (in terms of section 198(4) of the LRA). In the event, the provisions of clause 6 of the contract which appear to confirm that there is, indeed, an employee/employer relationship between the client and the *"independent contractor"*, do not convince me that the applicant is (for that reason) an independent contractor *vis-à-vis* of the respondent.

[41] Further, although the legal relationship must be gathered primarily from a construction of the contract between the parties, the label that is used to describe a relationship may be of no assistance if it is done to disguise the real relationship. One must also be wary to accept such labels at face value because the description of a person as an independent contractor takes him or her outside the ambit of the LRA and the protections provided thereby (in terms of the exclusionary provisions of section 198(3) of the LRA - quoted above). After all, the LRA concretises important constitutional rights such as the fundamental right to fair labour practices. Moreover, the real relationship must be gathered from the contract as a whole and the realities of the relationship created thereby.

[42] On the whole, I believe that the fact that the applicant was in terms of the contract clearly under the supervision or control of the respondent (even though he may also have been under the control or supervision of the client) weighs heavily in favour of the existence of an employer/employee relationship in spite of the above-mentioned *indicia* to the contrary.

[43] Further, the contract stipulates that the applicant is to be *"remunerated for services rendered"* and that the applicant is to *"render services"* to the respondent (see clauses 2 and 3 of the contract - exhibit A1). This is, of course, merely a fiction as such services are, in fact, rendered to the client (Weatherford). On the facts of

this matter, the applicant rendered such services personally to the client and **not** on the basis of a work contract (as an independent contractor - see the discussion above at paragraphs [16] to [19]). The fact that the applicant was (in terms of his contract with the respondent) "remunerated" by the respondent for services personally rendered (albeit to the client) and that the object of the contract was therefore not the performance of a specific work or the production of a specific result is also an indication that this was **not** a contract of work (see point 1 of the characteristics of a contract of work identified in the judgment of *SA Broadcasting Corporation v McKenzie* - quoted above at paragraph [10]).

[44] The import of the contract with the client must also be considered (exhibit A9 to A10). Although clause 2.2 states that *"[p]ayment will be made by you to ourselves only for actual time worked by the independent contractor, and not for any period of absence by the independent contractor, for whatever reason"*, the reality was that the applicant was not paid for the actual time worked but was paid during his absence (as one would have expected from an employer/employee relationship).

[45] Further, clause 2.4 of this contract foresees that the respondent *"is responsible for Unemployment Assurance and PAYE deductions for the independent contractor"*. Such deductions are, of course, not made in the case of a work contract but only where there is an employer/employee relationship. However, Montago stated that such payments were made as the respondent had to do so "as an employer". Fleming stated that such clause should not have been included in a contract dealing with "independent contractors" but added that such payments were indeed made in some cases. It must, however, be noted that no such deductions were made in the case of the applicant. In fact, no tax certificate was issued by the South African Revenue Services (as is foreseen in terms of clause 3.4 of the contract with the applicant - exhibit B2). Nothing much can accordingly be inferred from the tax status of the applicant *in casu* apart from concluding that these are not *indicia* pointing to a work contract.

[46] For the reasons fully explained above (at paragraphs [37] to [38] and [41] to [43]), I am satisfied that the contract concluded between the applicant and the respondent (exhibit A1 to A4) created an employment relationship and was therefore not a work contract. In the event, the applicant was not an independent contractor in terms of the exclusionary provisions of section 198(3) of the LRA (quoted above at paragraph [6]).

[47] It follows that the applicant was an employee of the respondent (as temporary employment service) in terms of the provisions of section 198(1) and (2) of the LRA (quoted above at paragraph [6]).

[48] The respondent accordingly terminated the contract of employment between the parties when it wrote the letter of 6 April 1999, stating that *"your contract has been terminated as of 30 April 1999"* (exhibit A5). As it is also clear from exhibit A6, that is, the letter of the client terminating the agreement of the respondent with them concerning the services of the applicant, this was done for operational reasons. Apparently the client wanted *"local (sic) based people"*.

[49] The termination of a contract of employment (with or without notice) constitutes dismissal in terms of the provisions of section 186(a) of the LRA. It follows that the applicant has shown that he was dismissed in terms of his onus in this regard contained in section 192(1) of the LRA.

[50] It was common cause that the respondent failed completely to adhere to the provisions of section 189 of the LRA which prescribes the procedures for dismissals for operational reasons. As the respondent has thereby also failed completely to consider any alternatives to dismissal in consultation with the applicant, I am satisfied that the dismissal was both substantively and procedurally unfair.

[51] Section 194(2) of the LRA caps compensation for substantively unfair dismissals at the equivalent of 12 months' remuneration (calculated at the employee's rate of remuneration on the date of dismissal).

[52] Section 194(1) of the LRA states that compensation for procedurally unfair dismissals must be equal to the remuneration that the employee would have been paid between the date of dismissal and the last day of the hearing of the adjudication (calculated at the employee's rate of remuneration on the date of dismissal). More than 12 months have elapsed since the date of dismissal *in casu*. In the case of a procedurally unfair dismissal I have a discretion to award the full compensation required in terms of section 194(1) as a *solatium,* or nothing. Had this been a case of a dismissal being unfair only because a fair procedure had not been followed, I would have exercised my discretion in favour of awarding the full amount as *solatium* as the provisions of section 189 were flaunted completely.

[53] I believe that I cannot under section 194(1) have awarded more than 12 months' remuneration as the cap in terms of section 194(2) of the LRA must certainly apply in such a case (where the dismissal is only procedurally unfair and not substantively unfair). It follows that I cannot award compensation of more than (or less than) 12 months' remuneration in the case of the substantively unfair dismissal. If section 194(2) of the LRA grants me a discretion to award less (which does not appear to be the case), in the light of what may be just and equitable, I would award the maximum amount possible (12 months' remuneration) in the circumstances of this matter.

[54] The applicant earned R8 625 per month at the date of dismissal (the pre-trial minute at paragraph 1.4). In the event, I award the applicant compensation in the amount of R 103 500.

[55] As far as an order as to costs is concerned, I see no reason, in fairness, why costs should not follow the result.

I make the following order:

1. The dismissal of the applicant by the respondent effective 30 April 1999 was unfair.

2. The respondent is to pay the applicant compensation in the amount of R 103 500 (one hundred and three thousand five hundred rand) within 14 days of the date of this order.

3. The respondent is to pay the applicant's costs.

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BASSON, J

On behalf of the applicant:	Mr T Brivik of Michael Bagraim Associates
On behalf of respondent:	Mr S Snyman of Snyman Van der Heever Heyns Inc
Dates of hearing:	5 & 6 June 2000
Date of judgment:	9 June 2000