166336

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

CASE NO: **C356/2000**

In the matter between:

MAARTEN, NICOLAAS FRANCOIS	First Applicant
KOTZE, WILLEM HENDRIK	Second Applicant
LOTTER, HELEN LOUISA HENDRINA	Third Applicant
WOOD, PATRICIA YVONNE	Fourth Applicant
SCHARNECK, MAUREEN LORRAINE	Fifth Applicant
HANSEN, FREDDIE ADAM	Sixth Applicant

And

RUBIN, NEVILLE N.O.	First Respondent
SOUTH AFRICAN NATIONAL PARKS	Second Respondent
COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION (THE CCMA)	Third Respondent

---

JUDGMENT

STELZNER AJ

1. This is an application in terms of section 145 of the Labour Relations Act, 66 of 1995 ("the Act") for the review and setting aside of an award handed down by the first respondent on 11 April 2000. In terms of this award the first respondent upheld the point *in limine* raised by the second respondent and held that the third respondent did not have jurisdiction to adjudicate the dispute between the applicants and the second respondent on the basis that "*on a balance of probability the circumstances which gave rise to the dispute*

involved matters concerning the operational requirements of the respondent as employer."

2. In the papers before me the point was taken by the second respondent in opposing this application that the application was not brought within the six week period contemplated in section 145(1)(a) of the Act. This point appears to have been raised in the papers by virtue of the fact that the first respondent's award was dated 20 March 2000. The application was filed on 18 May 2000. Applicants, however, contended that the award was only served on their attorney on 11 April 2000, a fact which was not disputed by the second respondent. Accordingly, in its heads of argument the second respondent properly abandoned this leg of its opposition and the matter was argued before me on the merits.

3. The applicant's case was based on the averment that the first respondent committed a gross irregularity in the conduct of the proceedings or exceeded his powers. The averment of gross irregularity did not relate to alleged defects in the procedure as such, in this case, but was based on the submission that the first respondent misconceived the nature of his functions or failed to apply his mind to the issues in the manner required by the Act, with the result that the applicants were denied a fair hearing (a so-called "latent irregularity" such as contemplated by the Labour Appeal Court in the decision of *Toyota South Africa Motors (Pty) Ltd v Radebe & others* (2000) 21 ILJ 340 (LAC) at 351F – 352A, per Nicholson JA:

"*Mr Van Niekerk, who appeared for the appellant, submitted that a reasoning process can be so flawed and conclusions be drawn which are so unsound that such constitutes a gross irregularity. Schreiner J, as he then was, stated the following in* Goldfields Investment Ltd & another v City Council of Johannesburg & another *1938 TPD 551 at p560*

"It seems to me that gross irregularities fall broadly into two classes, those that take place openly, as part of the conduct of the trial – they might be called patent irregularities – and those that take place inside the mind of the judicial officer, which are only ascertainable from the reasons given by him and which might be called latent … Neither in the case of latent nor in the case of patent irregularities need there be any

intentional arbitrariness of conduct or any conscious denial of justice … The crucial question is whether it prevented a fair trial of the issues. If it did prevent a fair trial of the issues then it will amount to a gross irregularity. In matters relating to the merits the Magistrate may err by taking a wrong one of several possible views or he may err by mistaking or misunderstanding the point in issue. In the latter case it may be said that he is in a sense failing to address his mind to the true point to be decided and therefore failing to afford the parties a fair trial. But that is not necessarily the case. Where the point relates only to the merits of the case, it would be straining the language to describe it as a gross irregularity or a denial of a fair trial. One would say the Magistrate has decided the case fairly but has gone wrong on the law. But if the mistake leads to the court's not merely missing or misunderstanding a point of law on the merits, but to its misconceiving the whole nature of the enquiry, or of its duties in connection therewith, then it is in accordance with the ordinary use of language to say that the losing party has not had a fair trial.")

4. Counsel who appeared for the applicants submitted, correctly, that the question to be asked was quite simply not whether or not the arbitrator had committed an error of fact or law but whether in committing such an error the result was that the right of the applicants to a fair trial had been violated. Applicants relied in this regard on the well known and much followed decision in *Carephone (Pty) Ltd v Marcus NO & others* (1998) 11 BLLR 1093 (LAC) and the decision of Greenberg JP in *Goldfields Investment Ltd & another v City Council of Johannesburg & another* 1938 TPD 551 (as referred to in the *Toyota* judgment and as quoted *(supra)*).

5. The facts which led to the first respondent's decision and which were before him are summarised hereunder. The applicants first referred their dispute to the CCMA by way of the completion of Form 7.11 on or about 5 October 1999. The dispute referred was described as "*Unfair Dismissal – see detailed statement*" and was stated to relate to section 189 of the Act. A detailed typewritten statement was attached thereto. From the statement it was apparent that the dispute arose from the second respondent's decision to close its finance division in Cape Town and to re-deploy that department to Pretoria. All the finance staff previously employed in Cape Town were offered alternative employment in Pretoria. Certain employees, at certain

levels or grades, were given the option of accepting the transfer or opting to apply for a severance package should they not be willing to move to Pretoria. The applicants, however, all being employees of a more senior level, were not afforded the option of a severance package but were told that they either had to accept the transfer or to resign. None of the applicants were prepared to move to Pretoria and alleged that they had been treated unfairly. Their complaints were fairly detailed and, it is apparent from the statement, did include averments to the effect that the provisions of section 189 of the Labour Relations Act had not been complied with by the second respondent. However, they also alleged that they had been treated in an inconsistent manner in that (as I have mentioned already) certain other staff members were afforded the option of accepting a severance package as an alternative to transferring to Pretoria. There was a suggestion that the second respondent's actions in this regard were discriminatory and amounted to an automatically unfair dismissal. There were also suggestions that the second respondent had unfairly changed its retrenchment policy. The statement then went on to detail certain specific individual complaints of the different applicants. The common thread in respect of all the applicants was apparently an indication that they did not wish to remain in the second respondent's employ but were of the view that they should be paid compensation and/or severance packages.

6. The next relevant document is a letter dated 6 October 1999 from the second respondent to the applicants' attorneys. In that letter the second respondent denied the applicability of section 189 of the Act on the basis that the aforesaid section deals with dismissals based on operational requirements and the second respondent stated that it had no intention of dismissing employees based on operational requirements. It simply reiterated that it was relocating the finance function from the regional office in Cape Town to the head office in Pretoria. The second respondent also, in the same letter, states as follows: "*We deny that any of the affected staff members are constructively dismissed as we require their services at our head office in Pretoria or in a suitable alternative position*."

7. On 14 October 1999 applicants' attorneys wrote to the CCMA pursuant, apparently, to the referral to which I have already alluded above. It would appear that the CCMA queried the validity of the referral on the

basis that the employees concerned (the applicants) were still working. The applicants' attorneys advised the CCMA in the letter of 14 October that their clients, although still at work, believed that they had been dismissed in that they had been informed that should they not accept the re-deployment proposed they should of their own accord tender their resignation. They have remained at work in order to serve out their notice period.

8. Then on 27 October 1999 applicants' attorneys wrote to the second respondent in which letter it was stated specifically that the applicants regarded the actions of the second respondent as rendering their continued employment intolerable and amounting to a constructive dismissal and an unfair labour practice. On that same day a second LRA 7.11 Form was submitted to the CCMA. Once again the nature of the dispute is described as "*Unfair Dismissal – see detailed statement*". However, this time it is stated that the dispute relates to section 189 and section 191 of the Act. The statement annexed is substantially similar to that which was annexed to the original referral. In the second referral it is alleged that the dispute arose on 27 October 1999. In the annexed statement certain averments consistent with an allegation of constructive dismissal are made, for instance, as follows:

"*The employees view the employer's actions against them as being highhanded, unilateral and with no regard to them as employees and as individuals, and has resulted in a complete breakdown in the employment relationship.*

As a direct result of the employer's actions and the failure to properly consult with us or communicate with us whatsoever, has left us no alternative but to leave in the circumstances that we are doing."

At a later stage in the statement it is also averred that "*many of the employees have shown extreme signs of the pain and suffering and trauma caused by this action of the employer, many employees having had to consult doctors with stress related symptoms including ulcers and depression.*"

9. A conciliation meeting was duly convened by the CCMA. It was common cause that the second respondent

failed to attend the conciliation meeting. At the conclusion thereof and on 22 November 1999 the conciliating Commissioner issued a Certificate of Outcome indicating that the dispute remained unresolved. In the section on the LRA Form 7.12 where space is provided for a description of what the dispute concerns the Commissioner writes "*an alleged unfair dismissal (reasons unknown) (respondent in default)*".

10. On 24 November 1999 the applicants complete and submit a Request for Arbitration Form, LRA 7.13. On the form the CCMA is requested to resolve the matter through arbitration in terms of section 191(5)(a) of the Act. The relevant portions of section 191(5)(a) of the Act read as follows:

"*the council or the Commission must arbitrate the dispute at the request of the employee if-*

(i)…

(ii) the employee has alleged that the reason for dismissal is that the employer made continued employment intolerable; or

(iii) the employee does not know the reason for dismissal…"

11. Where provision is made for a description of the issues still in dispute the applicants state "*see annexure*". The annexure is, once again, in the form of a statement similar although not identical to the statements attached to the previous referral forms. What is clear from the last statement, as read with the prior statements, is that the complaints of the applicants in all three statements relate to the same set of circumstances and facts even though the submissions made and the legal conclusions to be drawn therefrom are expressed in differing terms in the aforesaid various statements. It is also true that in all three statements averments are made regarding non-compliance with the provisions of section 189 of the Act and, in respect of certain applicants at least, there are averments with regard to alleged automatically unfair dismissal on the basis of discrimination. Nevertheless, as I have said before, there are also averments consistent with an allegation of constructive dismissal. Moreover, the dispute is referred with reference to s 191(5)(a),

consistent with an averment of constructive dismissal and not consistent with an averment that the dismissals were automatically unfair or based on the employer's operational requirements.

12. The matter came before the first respondent on 16 March 2000, on which occasion the second respondent's representative raised as a point *in limine* the contention that the third respondent did not have jurisdiction in respect of the dispute as the dispute pertained to operational requirements terminations as well as automatically unfair dismissals. The averment was made that in the circumstances the correct forum for the adjudication of the dispute was the Labour Court. Counsel for the applicants, however, submitted that the applicant's case was that they had been constructively dismissed. The jurisdictional issue was then argued at some length before the first respondent.

13. During the course of the proceedings Counsel for the applicants indicated that he had received instructions to hand in an amended LRA Form 7.13. It is common cause that the amended LRA Form 7.13 was simply the original form on which certain amendments or deletions had been effected. The amended form stated that "*the issue still in dispute is whether the seven applicants were constructively dismissed by respondent on or about 27 October 1999 in that the respondent made continued employment intolerable for them*". The reference to the annexure was deleted. Counsel for the applicants also stated clearly to the first respondent that the applicants had "*taken out the annexure*" because they had formulated their dispute as being whether they were constructively dismissed by the respondent on or about 27 October 1999. Furthermore, on page 2 of the referral form the decision sought from the Commissioner was amended by deletion of the words "*the annexure*" and with the insertion of the following:

"*1. Confirmation that seven applicants were constructively dismissed by respondent on or about 27 October 1999 on the grounds that the respondent made continued employment intolerable for them.*

2. Appropriate compensation to be awarded to each applicant in the circumstances."

14. In response to this amendment the second respondent's representative then objected to the matter

proceeding to arbitration on the basis that the dispute which the applicants were now seeking to have arbitrated had not been conciliated or referred to conciliation, the case having been referred to conciliation being that described in the Form 7.11 (as elaborated upon in the statement annexed thereto.) The second respondent's representative submitted, in short, that applicants were trying to "*change the goal posts*" at a late stage in the proceedings and that what was therefore now being sought to be placed before the second respondent was a *"whole new cause of action*". Applicants' Counsel, on the other hand, reminded the first respondent that as early as 27 October 1999 the applicants, in the letter addressed by their attorney, had made allegations of constructive dismissal.

15. Finally, at the hearing before the first respondent, the applicants' Counsel tendered to lead oral evidence from the applicants in order to clarify the exact nature of the case which they were seeking to bring, insofar as clarification were still required. The first respondent, however, ruled that it was not necessary to hear oral evidence as the nature of such evidence had already been indicated in the statements annexed to the various forms.

16. In making his ruling the first respondent went on to disregard what he referred to as "*the purported amendment to Form 7.13*", indicating that he had taken into account the content of the statements which formed the annexures to both Forms 7.11 and the original version of Form 7.13. On that basis and on the basis that all of those forms suggested that the dispute concerned the operational requirements of the second respondent together with other suggested causes of action (possible unfair labour practices and automatically unfair dismissal), he concluded that the dispute lay outside the jurisdiction of the CCMA and the point *in limine* was upheld.

17. From the reasoning of the first respondent in his award it is apparent that he considered himself bound to decide the issue of jurisdiction on the basis of the manner in which the applicants formulated their dispute when the dispute was referred, initially for conciliation and thereafter for arbitration and, further, that he was prohibited from allowing an amendment to the formulation of the dispute at the outset of the arbitration proceedings.

18. The correct legal position has been set out quite clearly by the Labour Appeal Court in *NUMSA v Driveline Technologies (Pty) Ltd & another* [2000] 1 BLLR 20 (LAC), a decision by which not only I am bound in deciding this matter but which would bind Commissioners of the CCMA. I refer in particular to the following extract from the judgment of Zondo AJP (as he then was):

"*In so far as the Labour Court may have suggested in* NUMSA & others v Cementation Africa Contracts (Pty) Ltd *(1998) 19 ILJ 1208 (LC) at 1214I-1215A that, when a party refers a dismissal dispute to conciliation, it is a requirement of the Act that he states whether the dismissal relates to operational requirements or misconduct or incapacity or an automatically unfair reason, this is not correct. I must say that, despite what the Labour Court said at 1214I-1215J, its statements at 1213H-1214H appear to support the view that there is no such requirement. While it would be better and preferable if a party which referred a dismissal dispute to conciliation stated whether the dismissal was a dismissal for operational requirements or a dismissal for misconduct or for incapacity, the fact that that is not made clear in the referral to conciliation would not make the referral defective in terms of the Act. This must be so because, even when the employee does not know whether it is a dismissal for misconduct, incapacity or operational requirements or dismissal for an automatically unfair reason, he is still able to refer his dismissal dispute to conciliation.*

Section 191(5)(a) does contemplate that an employee may refer to arbitration a dismissal dispute even if he does not know the reason for his dismissal. In that case, obviously it cannot be said that the Act requires such employee to make it clear what he alleges the reason for his dismissal to be.

If an employee does not know the reason for his dismissal at that stage of the processing of his dispute, obviously he would not have known it at the time he referred the dispute to conciliation. It can therefore not be said that such an employee would be required by the Act to make it clear in his referral of the dispute to conciliation what the reason for his dismissal was. If this cannot be said in respect of such employee, I am unable to find any provisions in the Act that would justify the conclusion that the Act requires this in respect of some employees but not in respect of others.

If, at the time of referring a dismissal dispute to arbitration after conciliation has failed, an employee is not compelled to decide on what reason he relies upon as the reason for dismissal, there can be no reason either in principle or logic why such an employee must be compelled at an earlier stage than that to state the reason for dismissal he relies upon. On the contrary the nature of the conciliation proceedings is such that, in my view, there can be no reason why the employee has to make such an election because at conciliation the parties would, through conciliation, be attempting to settle their dispute. Also the contents of their discussions are such that they should, and would, not be used in subsequent arbitration or adjudication proceedings to the prejudice of any party.

At 1214J-1215A in Cementation Africa Contracts *(supra) the Labour Court made statements to the effect that, after conciliation, a party which wants to take a dismissal dispute further is bound by the conciliating commissioner's description of the dispute in the certificate of outcome. I do not agree with this. The position is, as the Labour Court correctly pointed out in that case, that a party cannot change the nature of the dispute. I would add that the conciliating commissioner is also bound not to change the nature of the real dispute between the parties. If he did, the party that seeks to take the matter further would not be bound by a wrong description of the dispute but would have a right to take further the true dispute that was referred to conciliation and to give a correct description of the dispute. What the parties are bound by is the correct description of the real dispute that was referred to conciliation."* (At 35G-36H).

And further:

"*At any rate, it matters not for purposes of jurisdiction whether at the time of the conciliation of a dismissal dispute, the reason alleged for the dismissal was operational requirements or an automatically unfair reason. The dispute is about the fairness of the dismissal. Therefore, provided the alleged reason is one referred to in section 191(5)(b), the Labour Court will have jurisdiction to adjudicate the real dispute between the parties without any further statutory conciliation having to be undertaken as long as it is the same dismissal*." (At 37A-B).

19. In the *Driveline Technologies* case Zondo AJP also concludes that it is always open to a party to apply for an amendment to its case or cause of action and that it will not be precluded from so seeking an amendment unless it is clear that the party concerned had expressly abandoned the right to rely on such cause of action (eg by express agreement in a pre-trial minute).

20. In *Mawisa v Commission for Conciliation, Mediation and Arbitration & others* (1998) 19 ILJ 1194 (LC), the Court held that an unfair dismissal dispute had to adjudicated by the Labour Court where the case of the applicant was founded upon one of the causes of action reserved to the jurisdiction of the Labour Court, even when part of the applicant's case was based upon an allegation over which, on its own, the CCMA would ordinarily have jurisdiction. The court held that

"the fact that the applicant has also alleged that the reason for the (allegedly unfair) dismissal is related to his (mis)conduct does not mean that the CCMA now also has jurisdiction in regard to this unfair dismissal dispute (in terms of section 191(5)(a)(i) of the Act). The very same unfair dismissal dispute namely stands to be adjudicated (also) by the Labour Court and, in the absence of a clear and unequivocal election on the part of the applicant, the CCMA therefore does not acquire the necessary jurisdiction to arbitrate this dispute. (At 119C-D).

he Court goes on, further, to state that -

" I am prepared to accept for the purposes of argument and in favour of the applicant that, despite having referred this dispute about the unfair dismissal consisting of the said two aspects to conciliation, the applicant could, (after the conciliation stage) still have elected to refer only the one aspect of the dispute (relating to the dismissal for misconduct) to the CCMA for arbitration, ***provided*** *that the other aspect of the dispute was completely abandoned. Such abandonment should have been expressed unequivocally because it is by way of the applicant's allegation that the CCMA [acquires] jurisdiction to arbitrate the unfair dismissal dispute*." (At 1201H-I).

21. Applying the reasoning of the aforementioned decisions to the facts of this case I am satisfied that when the

applicants initially referred their dispute to the CCMA they were, on the fact of it at least, relying on at least two (possibly three, in the case of certain applicants) causes of action, namely, unfair dismissal arising out of the operational requirements of the second respondent, alleged automatically unfair dismissal and alleged unfair constructive dismissal. These causes of action all arose out of the same set of facts and circumstances as is apparent from the various statements annexed to the various referral forms. Had the applicants been seeking to proceed at the arbitration stage with a dispute involving alleged unfair dismissal for operational requirements or alleged automatically unfair dismissal, the first respondent would have been correct in holding that the CCMA had no jurisdiction to entertain such dispute. However, at the hearing of the matter the applicants, through their authorised legal representative, indicated, in my view, unequivocally that they were no longer relying on those causes of action but had exercised an election to proceed on the basis of constructive dismissal alone. To the extent that it may have been necessary to do so (and I am not holding that this is the case) the applicants sought to amend the terms of the referral form, the amended form indicating clearly that their cause of action was alleged constructive dismissal. I am satisfied, in any event, that they were entitled to amend their cause of action at that stage of the proceedings, although I am of the view that it was not necessary to amend at that stage in order to introduce a fresh cause of action (the case for constructive dismissal having been made out in the earlier referral documentation). What was, however, necessary at that stage was for the applicants to unequivocally indicate that they no longer relied on any other cause of action such as would bring their dispute within the jurisdiction of the Labour Court.

22. I am satisfied that in introducing the amended referral document, which I have held they were entitled to do, and through the statements made on their behalf by their Counsel, they had indicated such an unequivocal intention. Insofar as the first respondent might have been unclear as to their intention such lack of clarity as might still have existed could have been cleared up by way of very simple oral evidence which the applicants' Counsel indicated he was prepared to lead but which the first respondent declined to hear. While an amendment to the referral document on the morning that the arbitration was scheduled to commence might have afforded the second respondent's representative an argument on which to base an

application for a postponement, that is an issue very different from the jurisdictional one with which the first respondent was faced.

23. In the circumstances I am of the view that the first respondent misconstrued the nature of his function and /or the legal principles which he was required to apply and/or failed to apply his mind properly to the issues. In so doing he committed an error which had the effect of denying the applicants their right to a fair trial. Indeed, on the facts of this case, it is apparent that the first respondent's decision has denied them the right to any trial whatsoever.

24. I am therefore satisfied that the application ought to succeed. There is, further, no reason in either law or fairness as to why costs should not follow the result.

25. The only remaining issue then is whether or not this matter ought to be referred back to the CCMA for a fresh ruling on the issue of jurisdiction or whether I should simply substitute my ruling for that of the first respondent.

26. The following situations have been expressly identified by the High Court as being the circumstances in which that Court is permitted to correct a decision rather than refer it back:

26.1 where the end result is in any event a foregone conclusion and it would merely be a waste of time to order that tribunal or functionary to reconsider the matter;

26.2 where a further delay would cause unjustifiable prejudice to the applicant;

26.3 where the functionary or tribunal has exhibited bias or incompetence to such a degree that it would unfair to require the applicant to submit to the same jurisdiction again; or

26.4 where the court is in as good a position as the administration body to make the decision itself. This is so especially where the type of decision is one with which the court is familiar.

(See: Baxter *Administrative Law* (1984) at 681-685 and the extensive authority cited there; expressly

approved of in *Inkosinathi Property Developers v Minister of Local Government* 1991 (4) SA 639 (TkGD) at 645B-F).

27. The High Court's power of review is a manifestation of its inherent jurisdiction and the powers that flow from this. This Court's powers are, however, limited to those conferred upon it by statute. Section 1581G of the LRA grants the power to "review" the decisions of the applicable bodies or persons. It does not expressly mention the power to substitute the court's decision for that of the body under review. However, nor is the power to set aside a decision or to refer it back to the original decision-maker expressly mentioned either. In *Johannesburg Consolidated Investment Co v Johannesburg Town Council* 1903TS 111 it was held that "*whenever a public body has a duty imposed on it by statute, and disregards important provisions of the statute, or is guilty of gross irregularity or clear irregularity in the performance of the duty, this court may be asked to review the proceedings complained of and set aside or correct them*."

28. It would appear that the word "review" must of necessity incorporate those powers required to give effect to it, namely either the setting aside of the decision and its referral back to the decision-maker or, alternatively, the correction of the decision by the substitution therefor of a decision of the court (in special circumstances). In using the word "review" in section 158(1)(g) of the Act it is reasonable to infer that the drafters of the legislation intended the word to be understood broadly and to incorporate the various ancillary powers which make judicial review a practical remedy. I am, accordingly, satisfied that section 158(1)(g) does not restrain this Court from correcting an administrative decision where appropriate and fair to do so. In passing it may be noted that in the decision of *Cash Paymaster Services (Pty) Ltd v Mogwe & others* (1999) 20 ILJ 6110 (LC) at C-D, this Court in fact exercised such a power although without providing any express justification for doing so. This was done in circumstances where the outcome was a foregone conclusion and the Court therefore adopted a practical approach in replacing the decision reviewed and set aside with the correct decision.

29. Having decided that it is competent for this Court to substitute its decision I must determine whether in the

circumstances of this matter it is appropriate to do so. In the absence of guidance from previous decisions of this Court it would appear that the circumstances identified by the High Court would provide an appropriate and suitable guideline.

30. I am of the view that this is one of those instances where it would be appropriate for this Court to substitute its decision for that of the first respondent as, in my view, the result is a foregone conclusion and no purpose would be served by referring the matter back for determination afresh. Furthermore, this Court is in as good a position to determine the jurisdictional issue as would be another commissioner of the CCMA were this matter to be referred back.

31. In the circumstances I make the following order:

31.1 The decision of the first respondent under case number WE26866 dated 20 March 2000 and handed down on 11 April 2000 is hereby reviewed and set aside.

31.2 The decision of the first respondent is substituted with a ruling that the CCMA has jurisdiction to determine the dispute between the applicants and the second respondent based on the applicants' allegations of unfair constructive dismissal.

31.3 The third respondent is directed to convene an arbitration before a Commissioner other than the first respondent to determine the dispute on the merits at the earliest convenient and available date.

31.4 The second respondent is ordered to pay the costs of this application.

S STELZNER

Acting Judge of the Labour Court of South Africa

DATE OF HEARING:	11 SEPTEMBER 2000
DATE OF JUDGMENT:	15 SEPTEMBER 2000
APPEARANCE FOR APPLICANTS:	Mr G Elliot (instructed by Mallinicks Inc)
APPEARANCE FOR THE SECOND RESPONDENT:	