IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO. J1828/05

In the matter between:

HLOPE, VICTOR Z First Applicant

MVINJELWA, RICHARD NIXON Second Applicant

THWALA, MUSA JEREMIAH Third Applicant

NTHOROANE, GEORGE JEFFREY Fourth Applicant

and

MINISTER OF SAFETY AND SECURITY First Respondent

NATIONAL COMMISSIONER OF POLICE **Second Respondent**

PROVINCIAL COMMISSIONER OF POLICE (GAUTENG) Third Respondent

AREA COMMISSIONER OF POLICE (JOHANNESBURG) Fourth Respondent

PITOUT, S H Fifth Respondent

JUDGMENT

A VAN NIEKERK AJ

Introduction

[1] On 21 September 2005, this Court ruled that this application was urgent and issued a rule nisi. The rule operates as an interim interdict to prevent the Respondents from transferring the Applicants from their existing posts or demoting them. The application itself is brought in two parts. Part A is the application for urgent interim relief pending certain final relief sought in terms of Part B. In these proceedings, the Applicants seek to confirm the rule issued on 21 September 2005. The Respondents oppose that confirmation and seek to have the rule discharged.

[2] The facts giving rise to this application are largely common cause. The Applicants are all members of the South African Police Services (SAPS) and are engaged as plain-clothes detectives. The dispute between the parties has its genesis in a drug-related search and seizure operation conducted by a number of police officers, including the Applicants, on 30 January 2005. Consequent on this operation, complaints of robbery and corruption were laid against the detectives involved, including the Applicants. I do not intend in these proceedings to dwell further on developments consequent on the operation and the Applicants' involvement in it, save to say that the Director of Public Prosecutions ultimately declined not to prosecute the detectives concerned after criminal charges had been laid against them, and that no disciplinary proceedings have been instituted against them.

[3] On 12 September 2005, the Fourth Respondent, the Area Commissioner of Police (Johannesburg) issued a directive, *inter alia*, to the Commander of the Anti-Hijacking Task Team in terms of which the Applicants were to be transferred from the Task Team to various other posts. The effect of the directive, which gave rise to this application, is to transfer the First Applicant to the Detective Branch at the Jeppe

Police Station, the Second Applicant to the Booysens Police Station, the Third Applicant to the Client Services Centre at the Norwood Police Station and the Fourth Applicant to the Client Services Centre at the Hillbrow Police Station. The Applicants claim that the position of a plain-clothes detective is a prestigious one and that better promotional prospects exist in this Division when compared with uniformed police. They claim further that the Anti-hijacking Task Team, a specialised unit within the Detective Branch, is even more prestigious, and that membership of the team is an acknowledgement of inclusion in what they termed the "top order".

[4] Although none of the transfers that are the subject of the Directive would have the effect of adversely affecting any of the Applicants' rank or remuneration, they contend that the effect of the transfer is to demote them in so far as their status and responsibilities are concerned, to demoralise them and to ridicule and humiliate them in the eyes of their colleagues and the public. The Applicants aver that they have been given no explanation for their transfers but they speculate that these are connected with the criminal charges previously levelled against them.

[5] The Fourth Respondent admits that on 12 September 2005, he decided to transfer the Applicants away from their current stations to those reflected in his letter of the same date. The Fourth Respondent avers that the decision was taken consequent on written representations made by the Applicants' attorney on 25 February 2005, in response to a notice of possible suspension and/or transfer issued to the Applicants individually earlier that month. The Fourth Respondent denies that any unit or branch of the SAPS is more prestigious than another, and that members of the different divisions of the SAPS each believe that the division to which they belong is more prestigious and the work more illustrious than that of any other division. In so far as there is a perception amongst plain-clothes detectives that there is prestige attached to their work, the Fourth Respondent states that this belief is not shared by all members of the SAPS.

Interim relief

[6] The test to be applied for interim relief is well known. In *SA Investments v Van der Schyff and others* 1999 (3) SA 340 (N) at 345G – H the High Court recorded the various elements of the test in the following terms:

> "*As the applicant seeks interim relief it has to show the following: (a) a prima facie right; (b) a well-grounded apprehension of irreparable harm; (c) the balance of convenience favours the applicants; and (d) the absence of any other satisfactory remedy. See* ***Olympic Passenger Services (Pty) Ltd v Ramlagan*** *1957 (2) SA 382 (D) at 383A-F*."

[7] The threshold test of a *prima facie* right is sometimes differently reflected, and is qualified to the extent that the *prima facie* right that an applicant is required to establish might be open to some doubt. (See *Spur Steak Ranches Ltd v Saddles Steak Ranch* 1996 (3) SA 706 (C), *Webster v Mitchell* 1948 (1) SA 1186 (W)). The *prima facie* rights on which the Applicants rely are drawn from the Constitution and from the common law. The Applicants contend that in terms of the Constitution, they are entitled to fair labour practices, fair administrative practices, and the rights of dignity and equality. At common law, the Applicants claim that their transfers constitute a demotion in status.

[8] In their defence, the Respondents have chosen broadly to confine themselves to the facts. In so far as the Applicants base their claim

on a right to fair administrative action and contend that this right has been infringed by a failure to consult them prior to a decision to transfer them, the Respondents aver that the Applicants were afforded a hearing. In this regard, the Respondents rely on the written invitation extended to the Applicants to make representations on a proposal to transfer and/or suspend them, and the response to that invitation. The Respondents contend further that the Fourth Respondent was entitled to transfer the Applicants in the best interests of the SAPS and that he had taken the decision to transfer them on that basis. In so far as the claim of demotion is concerned, the Respondents deny that the Applicants have been demoted, either actually or effectively. I intend to deal with these and other factual allegations in due course. However, to the extent that the Applicants have raised complex and controversial constitutional arguments in support of their claim, these merit consideration.

[9] Under the rubric of the constitutional right to fair administrative action, the Applicants have made no mention of the Promotion of Administrative Justice Act (PAJA) and rely solely on section 33 of the Constitution. The Applicants' submission squarely raises the question whether the Fourth Respondent, the Area Commissioner of Police, is under a constitutional duty when exercising any discretion to effect the transfer of a member of the SAPS. It also raises the question whether once a constitutional right is regulated in detail by statute, persons seeking to enforce the right are confined to the statutory remedies and may no longer rely directly on the constitutional provision. The latter question is relevant not only to the right to fair administrative action that the Applicants have asserted, but also to their claim to a constitutional right to fair labour practices. In both instances, the Applicants' claims what has been described, in the context of a constitutional right to fair labour practices, as the doctrine of avoidance. (See Du Toit et al *Labour Relations Law* (Butterworths

Lexis Nexis) at 462, citing Garbers '*The Battle of the Courts: Forum Shopping in the aftermath of* Wolfaardt *and* Fredericks' (2002) Law Democracy & Development 97. Garbers states *"Before direct infringement of a Constitutional right is relied on, the applicable norm should be sought in the common law or ordinary legislation, and before constitutional remedies are used to rectify a wrong, the possibly more specific remedies available at common law or in statute should be applied."* (at footnote 26)). Du Toit *et al* suggest that in the case of the Labour Relations Act, this means that employees seeking to enforce a right to fair labour practices may only do so within the parameters established by the LRA. Alternatively, it is open to them to challenge the constitutionality of the statute. (See *NAPTOSA & Others v Minister of Education, Western Cape and others* (2001) 22 ILJ 889 (C) , especially at 898A where Conradie J said "*Yet I cannot conceive that it is permissible for an applicant, save by attacking the constitutionality of the LRA, to go beyond the regulatory framework which it establishes.* ")

[10] I deal first with the claim to a right to fair administrative action, which, as I have noted, the Applicants found on section 33 of the Constitution. Whether the enactment of PAJA has confined the Applicants' rights to a claim under that statute is not a matter that was either raised on the papers or argued at the hearing, and I do not intend to make any ruling

in this regard. I am persuaded though, after a review of a number of recent judgments dealing with the nature and extent of administrative action, that the decision to transfer the Applicants does not amount to administrative action either for the purposes of PAJA or section 33 of the Constitution. In *South African Police Union and Another v The National Commissioner of the South African Police Service and Another* (unreported, case number J1584/05) Murphy AJ (as he then was) sitting in this Court, considered whether the Commissioner of Police, when acting as an employer, is under a constitutional duty to consult with members of the South African Police Services, or their representatives, about the amendment or alternation of their terms of employment or labour practices. After a comprehensive review of the authorities, the Court concluded that there was nothing inherently public about the issue in dispute in that matter, which concerned the working hours of police officers. The Court stated the following:

> "*The nature of the power exercised and the function performed in the setting or agreeing of shift times does not relate to the government's conduct in its relationship with its citizenry to which it is accountable in accordance with the precepts of representative democracy and governance. The powers and functions concerned derive from employment law and are circumscribed by the constitutional rights to fair labour practices and to engage in collective bargaining. One is instinctively drawn to the conclusion that the concept of administrative action is not intended to embrace acts properly regulated by private law. To render every contractual act of an organ of state a species of administrative action carries the risk of imposing burdens upon the State not normally encountered by other actors in the private sphere." (*At paragraph 51 of the

typewritten judgment.)

[11] The Court concluded that since the SAPS's introduction of a new shift system did not constitute administrative action, the applicants in that matter were not entitled to seek review of the Commissioner's decision either in terms of section 6 of the PAJA or directly under section 33 of the Constitution. Murphy AJ acknowledges that his conclusion is at odds with decisions of other Courts of equal standing. In particular, he refers to *Mbayeka and another v MEC for Welfare, Eastern Cape* [2001] 1 All SA 567 (Tk). That matter concerned an urgent application for an order declaring a suspension from duty without emoluments to be unconstitutional. The High Court held that when the MEC concerned suspended the applicants, she had exercised her public power and that the failure to afford the applicants a hearing prior to their being suspended amounted to unconstitutional administrative action that fell under the jurisdiction of the High Court. Similarly, this Court (Francis J) in *Simela and Others v MEC for Education Eastern Cape and Another* [2001] 9 BLLR 1685 (LC), has held that a decision to transfer an employee without prior consultation amounted to both unjust administrative action and an unfair labour practice.

[12] Murphy AJ noted that to the extent that these judgments confirm the proposition that transfers or suspensions in contravention of the *audi alteram partem* principle violate the constitutional right to fair labour practices, he was in agreement with them. However, he considered that it does not necessarily follow that because the power to suspend or transfer is sourced in legislation, it axiomatically follows that the power or function concerned is a public one.

He concluded that disciplinary or operational transfers and suspensions are employment or labour-related matters, not administrative acts. (See paragraphs 59 and 60 of the typewritten judgment).

[13] I agree with Murphy AJ's conclusions, and they are obviously apposite in this matter, being a challenge to an employment-related decision by the Fourth Respondent, a Commisioner of Police. To the extent that the courts previously extended the reach of administrative law to ensure fairness in the exercise of employment discipline in the public sector, the extension of the Labour Relations Act to that sector now guarantees labour rights to public sector workers. The approach adopted by Murphy AJ, as he notes at paragraph 55 of the judgment, acknowledges this development and gives effect to the important policy consideration that the resolution of employment disputes in the public sector should be accomplished by the same mechanisms that apply in the private sector. In other words, collective bargaining and the adjudication of rights disputes in terms of the LRA rather than the judicial review of administrative action are the appropriate institutions for balancing employer and employee interests in the public sector. (See also *Public Servants Association obo Haascke v MEC for Agriculture and others* (2004) 25 *ILJ* 1750 (LC), *and Western Province Workers Association v Minister of Labour* (unreported C22/2005)).

[14] I consider therefore that the Commissioner's decision to transfer the applicants, to use the wording of section 6 of PAJA, does not involve

the exercise of a public power or the performance of a public function having a direct external effect. On this basis, the decision to transfer the Applicants does not constitute administrative action that invites review either under PAJA or section 33 of the Constitution, and it cannot found a *prima facie* right for the purposes of this application.

The right to fair labour practices

[15] Section 23 of the Constitution establishes the right to fair labour practices, the right to engage in collective bargaining, the right to freedom of association and the right to strike. In this instance, the Applicnts rely on right to fair labour practices.

[16] The specific protections against unfair labour practices extended by the LRA are limited in their scope, and in accordance with the framework established by the Act, any protection not statutorily afforded must be claimed and won through collective bargaining.

Section 186(2) of the LRA reads as follows:

> "(2*) 'Unfair labour practice' means any unfair act or omission that arises between an employer and an employee involving -*
> *a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;*
> *b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;*
> *c) a failure or refusal by an employer to*

> *reinstate or re-employ a former employee in terms of any agreement; and*
>
> *d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act 26 of 2000), on account of the employee having made a protected disclosure defined in that Act."*

[17] Section 186 (2) does not refer to the transfer of an employee at the behest of an employer. In the absence of any specific protection against transfers effected in what are alleged to be unfair circumstances, relief must be sought outside of the provisions of that section, perhaps, as the Applicants have submitted, through the direct application of what has been termed a constitutional unfair labour practice. On the other hand, employer conduct in relation to a demotion is capable of being held to be an unfair labour practice. The wording of section 184(2)(a) makes it clear that it is conduct of the employer that gives rise to the consequence of demotion, and not the demotion itself, that is capable of being impugned in terms of that section. This is where, as Murphy AJ notes, the absence of any right to *audi alterem partem* prior to a demotion being effected becomes significant both in constitutional terms and for the purposes of the LRA. I do not intend to decide this matter directly on the basis of the constitutional rights to fair labour practices that the Applicants claim, nor do I intend to express any view on the two issues that the Applicants' submissions raise. To recap, these are whether in the case

of demotion, there is a right to assert a constitutional right in circumstances where the LRA gives effect to that right and affords a remedy for a breach of it, and in the case of employer-initiated transfers, whether constitutional rights can be asserted in the absence of any allegation that the LRA is constitutionally deficient. These are not issues that the parties presaged or addressed in their arguments, but they will no doubt do so at the hearing of the application for final relief.

[18] For the purposes of these proceedings, and in the context of the Applicants' submission that they have not been afforded a fair hearing, the threshold requirement of a clear right though open to some doubt is established by the terms of the bargaining council agreement annexed to the answering affidavit. The Respondents acknowledge that the document, headed "Agreement 5 of 1999 : Agreement on Transfer Policy and Procedures Agreement" is a collective agreement for the purposes of the LRA. The agreement records the agreed policy and procedures applicable to transfers within the SAPS. A number of clauses are, on the face of it, pertinent to this application. Clause 2.1 requires that there be a valid and sufficient reason to transfer a member. Clause 5 provides that transfers may not be used as a punitive measure. Clause 8 provides for a right of representation and assistance at every stage the process established by the agreement. Clause 10 requires that members be afforded a reasonable opportunity

to make representations relating to proposed transfers. These must be considered and the outcomes stated. If representations are not favourably considered, the reasons for their rejection must be set out in brief.

[19] Section 23 of the LRA confirms the binding nature of collective agreements and provides for the incorporation of their terms into individual contracts of employment. In terms of section 24, disputes concerning the application and interpretation of collective agreements, if unresolved, must be referred to arbitration. On the face of it, the bargaining council is likely therefore to have the jurisdiction to arbitrate any dispute between the Applicants and the Respondents concerning the application of collective agreement 5/1999. Similarly, the LRA confers jurisdiction on the bargaining council to arbitrate all disputes concerning unfair employer conduct in relation to demotion.

[20] In so far as the Applicants' contracts of employment and the Applicants' submissions absed on the hcommon law are concerned, this Court exercises concurrent jurisdiction with the High Court under section 77 of the Basic Conditions of Employment Act, and the nature and extent of any incorporation of collective agreement 5/1999 into their employment contracts and any breach of those contracts is justiciable. The same general principle applies to any contractual dispute concerning demotion. The contract of employment confers status, remuneration and benefits, and a unilateral variation of these is a breach of contract. A demotion without consent is a repudiation of the employment contract, and entitles the employee either to enforce the terms of the contract or repudiate by resigning. In the later instance, the employee will generally have a statutory right to claim unfair dismissal, since continued employment in these circumstances will inevitably be intolerable.

[21] It is common cause that on 18 February 2005, each of the Applicants was handed a letter giving notice of a possible suspension and transfer. The reason proffered in each case was that disciplinary proceedings had been instituted consequent on charges of misconduct. Each of the Applicants responded, through his attorney, to the letter and submitted detailed representations as to why each of them should not be suspended and/or transferred. Nothing more was heard until the letter dated 12 September 2005, ordering that the transfers be effected. In the interim, the disciplinary and criminal charges against the Applicants had been withdrawn. They did not receive any response to their representations, or any reasons as to why they had not been favourably considered.

[22] All that the Respondents rely on in these proceedings is the fact of the invitation extended on 18 February, and the fact of the responses, and an assertion to the effect that the decision to transfer the Applicants was taken in the best interests of the SAPS. This clearly falls short of what the agreement requires. The Applicants are entitled to expect the SAPS to comply with the terms of collective agreement 4/1999 when effecting any transfer by which they might be affected, and in particular, they are entitled to require that transfer is not used as a punitive measure. They are also entitled to considered reasons for the rejection of their representations. The collective agreement also impliedly establishes that transfers and representations concerning transfers will be dealt with professionally, expeditiously and efficiently. In this instance, none of those objectives was met. The Applicants were simply handed the directives transferring them, some 7 months after submission of their representations.

[23] The Applicants have accordingly succeeded in establishing a *prima facie* right on the basis of the Respondents' breach of the collective agreement. I express no view on whether, for the purposes of this part of the enquiry, the effect of the transfer is to demote the Applicants, either actually or effectively. I turn now to consider whether the other requirements for interim relief have been met.

Well- grounded apprehension of irreparable harm

[24] The Applicants contend that their transfers will adversely affect them. They contend that their homes would in some instances be "a considerably greater distance from their places of work" than their present work places. There is no merit in this submission. Given the place at which the Applicants are currently in deploy and the police stations, all within the greater Johannesburg area to which the Fourth Respondent has directed that they should be transferred, there is little if any prejudice to any of the Applicants. I would hesitate in the absence of further evidence to label the Applicants' averments in this regard as false, but on their own version, there cannot be any prejudice or significant inconvenience to the Applicants in so far as any travelling requirements are concerned. In so far as the Applicants allege that their transfers would prejudice their promotional rights, I am equally unpersuaded that a proper factual foundation has been made out to sustain this submission. All of the Applicants will, after their transfer, remain in the detective branch. To the extent that the Applicants claim that the transfer will demoralise them or cause them to suffer ridicule in the eyes of their colleagues and the public, there is no factual basis for this averment which appears to be largely a conclusion of the Applicants' subjective perceptions. In any event, this Court has previously and consistently held that injury to reputation is not a ground for

urgent interim relief. See Hultzer v Standard Bank of SA (Pty) Ltd (1999) 20 ILJ 1806 (LC). See also Zwakala v Port St Johns Municipality & others (2002) 21 ILJ 1881 (LC) in which this Court declined to grant urgent interim relief in circumstances where an employee was suspended pending an allegation of misconduct. I would also note the long standing practice in this Court of refusing to grant urgent interim relief in the form of reinstatement in circumstances where an employee is dismissed, unless exceptional and cogent grounds exist. Where a dispute concerns a transfer, the threshold must rise accordingly. For these reasons, I am not persuaded that any harm to the Applicants consequent on their transfer is irreparable.

[25] Even if I am wrong in coming to that conclusion, I am satisfied that the Applicants have also failed to establish that there is no other satisfactory remedy available to them. Since this requirement was dealt with at some length during argument, I intend to set out my reasons for coming to that conclusion.

[26] The Applicants contend that they have a right to have a constitutional matter decided by this Court by virtue of a reading of section 169 of the Constitution. That section reads as follows:

> "*A High Court may decide -*
>
> *(a) any constitutional matter except a matter that -*
>
> *i) only the Constitutional Court may decide;*

or

ii) is assigned by an Act of Parliament to another court of a status similar to a High Court; and

(b) any other matter not assigned to another Court by an Act of Parliament."

This provision should be read with section 38 of the Constitution.

[27] These provisions should be read in conjunction with section 157(2) of the LRA, which reads as follows:

> "*The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental human right enshrined in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from -*
>
> *a) employment and from labour relations;*
> *b) any dispute act or conduct, or any threatened executive or administrative conduct, by the State in its capacity as employer; and*
> *c) …".*

[28] Mr Bishop, who appeared for the Applicants relied on *Fredericks & Others v MEC for Education & Training, Eastern Cape & Others* [2002] 2 BLLR 119 (CC) and submitted that the provisions of section 24 of the LRA did not (and could not) oust the jurisdiction of the High Court from determining constitutional matters, where an alternative remedy (referral to the CCMA in terms of section 24 (existed). Mr Bishop's argument, as I understood it, was that it followed from the *Frederick's* decision that no provision in the LRA that afforded the Applicants a right to refer a dispute to the CCMA or a bargaining council could oust

this Court's jurisdiction to decide the constitutional matter that the Applicants had raised. Accordingly, it was submitted that any submission by the Respondents that there are alternative remedies available to the Applicants is without merit.

[29] I do not understand the *Fredericks* judgment to hold that the CCMA is precluded from deciding a matter simply because the nature of the dispute might have constitutional overtones or implications. The issue decided by the Constitutional Court in *Fredericks* was whether section 24 of the LRA ousts the jurisdiction of the High Court to consider a dispute concerning the application and interpretation of a collective agreement. The Constitutional Court unanimously held that the High Court had erred in holding that it lacked the jurisdiction to entertain the matter merely because the LRA requires disputes concerning collective agreements to be referred to the CCMA. While at one level the *Fredericks* judgment may be read to the effect that the CCMA is precluded from deciding a constitutional issue that arises in the context of a dispute over which the CCMA has jurisdiction (see Du Toit et al *Labour Relations Law* at 462), it does not necessarily follow, as Mr Bishop appeared to suggest, that a party that has a constitutional complaint arising from the interpretation or application of a collective agreement is precluded from referring the matter to the CCMA, or in this instance, the bargaining council. On the contrary, in the *Frederick's*

judgment, the Constitutional Court noted that the effect of its conclusion was not that a person who has a constitutional complaint arising out of the interpretation or application of a collective agreement is precluded from referring that matter to the CCMA. On the contrary, the CCMA was advised by the Court in these circumstances to seek to give effect to constitutional commitments in the exercise of its powers (at page 134 A-C).

[30] If the Applicants' submissions are correct, a party to a labour dispute need only claim that the matter in dispute is a constitutional matter for the CCMA to be deprived of jurisdiction. Given the broad remit of section 23 of the Constitution, virtually all employment disputes would be capable, in one form or another, of being described as 'constitutional matters'. It would not take much imagination on the part of litigants to bypass the CCMA or a bargaining council with jurisdiction and refer their disputes, which the LRA requires be resolved by arbitration, to this Court or to the High Court for adjudication. While the directorate of the CCMA and most bargaining councils would no doubt welcome a decline in the number of referrals to arbitration, if this practice were permitted, it would fundamentally undermine the system of statutory dispute resolution established by the LRA.

[31] In deciding the narrow jurisdictional question that is was called upon to decide, the Constitutional Court in *Fredericks* effectively drew a distinction between a labour dispute and a constitutional dispute. It decided that the High Court was not deprived of the jurisdiction to entertain a constitutional dispute that arose from the application of section 24 of the LRA. In this instance, the Applicants have not placed section 24 within the scope of their constitutional attack. The terms of the agreement were only disclosed when an answering affidavit was filed, and the Applicants assert that a concession by the Respondents

to the effect that they did not comply fully with the procedure rendered the transfers unlawful. The real dispute between the parties is a dispute about the interpretation and application of a collective agreement. In my view, this is a matter properly categorised as a labour matter rather than a constitutional complaint. This distinction is premised on a recognition that collective agreements establish the broad parameters of the relationship between employers and employees, and that this relationship is properly regulated through arbitration rather than the courts, a forum to which the LRA has not assigned this task.

[32] There is accordingly no merit in the submission that the Applicants are precluded from referring their dispute for conciliation and if necessary arbitration, under the auspices of the bargaining council. Subject only to any rules made by the bargaining council regulating the referral of disputes, and to the extent that the Applicants rely on a breach of the collective agreement either in the form of a breach of a constitutional right to fair labour practices or on some other basis, it would seem to me that they have a perfectly adequate alternative remedy before an arbitrator. In so far as the Applicants may have a contractual claim, I have noted that the provisions of section 77 of the BCEA afford them a remedy. In these circumstances, it cannot be said that the Applicants have no other satisfactory remedy, and the application must fail on that basis.

[33] Mr Hulley, who appeared for the Respondents, submitted that costs should be awarded against the Applicants on a punitive scale, since they had been less than honest in making some of their averments, particularly those relating to the personal consequences of the decision to transfer them. While the Applicants have no doubt exaggerated the inconvenience and other consequences of the transfer, I cannot remove from the equation the inept handling of the transfer by the SAPS management, and the disregard for the clear requirements of the applicable policy. For that reason, I intend to make no order as to costs.

[34] I accordingly make the following order:

1. The rule nisi granted on 21 September 2005 is discharged.
2. The application for urgent interim relief (Part A of the application) is dismissed.
3. There is no order as to costs.

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ANDRE VAN NIEKERK,
Acting Judge of the Labour Court

Date of hearing : ___December 2005

Date of judgment: : 13 December 2005

Counsel for Applicant : Adv. A Bishop

Attorneys for Applicant : Moleke Matsepe Attorneys

Counsel for Respondents Adv. G Hulley

Attorneys for Respondent: State Attorney