**IN THE LABOUR COURT OF SOUTH AFRICA**

**(HELD AT JOHANNESBURG)**

**Case Number: JS 242/06**

In the matter between

**NATIONAL UNION OF MINEWORKERS** Applicant

And

**DE BEERS CONSOLIDATED MINES (PTY) LTD** Respondent

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**JUDGMENT**

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Freund A.J.:

**INTRODUCTION:**

1. On 26 January 2006 the Respondent gave notice to the Applicant, in a letter sent in terms of Section 189(3) of the Labour Relations Act No. 28 of 1956 ("the Act"), of its intention to commence consultations regarding the possible retrenchment of 329 employees. Consultation meetings were held with the Applicant and progress was made but no agreement was reached regarding the contemplated retrenchments.

2. On 28 March 2006 the Respondent informed the Applicant that it

intended to issue notices of termination of employment to the affected employees on 31 March 2006.

3. On 30 March 2006 the Applicant referred a dispute to the CCMA regarding the proposed retrenchments.

4. On 31 March 2006 the Respondent delivered letters to the affected employees giving them notice that their contracts of employment would terminate on 30 April 2006.

5. It is the Applicant's contention that these notices of termination were given prematurely and in contravention of Section 189A(8), read with Section 64(1), of the Act. The Applicant also contends that the Respondent has not consulted adequately with it in respect of the proposed retrenchments and that this renders the dismissals unfair. The Respondent denies these contentions.

6. The Applicant has applied to this Court for an order in the following terms:

> *"1. Declaring that the notices of termination of the Applicant's members' contracts of employment dated 31 March 2006 are of no force and effect;*

2. *Interdicting the Respondent from giving notice to terminate the contracts of employment of the Applicant's members until the periods mentioned in Section 64(1)(a) of the Labour Relations Act 66 of 1995 ("the LRA") have elapsed in respect of the dispute referred to the Commission for Conciliation, Mediation and Arbitration in terms of Section 64(1) read with Section 189A(8)(a) of the LRA on 30 March 2006;*

3. *Alternatively, directing the Respondent to reinstate the Applicant's members purportedly dismissed on 30 April 2006 until it has complied with a fair procedure;*

4. *Awarding the Applicant's members compensation;*

5. *Directing the Respondent to pay the costs of this application;*

6. *Granting further and/or alternative relief."*

7. The principal issues to be determined are the following:

7.1 Whether the notices of dismissal were given prematurely and in contravention of the requirements of Section 189A(8)(a) read with Section 64(1) of the Act;

7.2 If so, what effect this has on the validity of the notices;

7.3 Whether the Applicant is entitled to an interdict in the terms sought in prayer 2 of the Notice of Motion;

7.4 Whether the Respondent failed to consult with the Applicant adequately and, if so, what relief, if any, should be granted in this regard.

**THE FACTUAL BACKGROUND:**

8. The affected employees were employed by the Respondent at its Koffiefontein Mine ("the Mine"). This is a diamond mine that has been operative, on and off, since the late 19th century. Since 2002 it has been running at a loss. For the 2005 budget year, it ran at a loss at about R75m.

9. Discussions between the Respondent and the Applicant on the Mine's financial position have been ongoing for at least the last 4 years. In January 2005 a proposal to close the Mine was seriously considered by the Respondent but instead cost-saving measures were implemented. A consultation process with the Applicant resulted in 36 employees being retrenched in October 2005.

10. The Respondent held an "old order" licence to conduct mining

operations at the Mine which was due to expire on 4 February 2006. It endeavoured to sell the Mine, in the hope that the purchaser would convert the "old order" mining licence to a "new order" licence. To achieve this it was necessary to secure a purchaser for the Mine and its assets by no later than 20 January 2006.

11. Negotiations took place with a possible purchaser and the Applicant was kept fully informed thereof. However, on 20 January 2006 the Respondent informed the Applicant that the possible sale had fallen through. It also informed the Applicant that it had given the Department of Minerals and Energy fourteen days notice of its intention to close the Mine and stated that it would issue a notice in terms Section 189 of the Act. It proposed that a facilitator be appointed to assist the parties in the conciliation process. The Applicant did not regard this as necessary at that stage and the Respondent stated that, in that event, consultation should proceed without a facilitator.

12. As referred to above, on 26 January 2006 such a Section 189 notice was issued in respect of the contemplated retrenchment of all of the Mine's 329 employees.

13. A number of consultation meetings with the Applicant followed. At a meeting on 31 January 2006 the concept of a draft agreement to regulate the terms of the retrenchment was discussed. The Respondent undertook to provide a draft agreement and the Applicant agreed to respond with counter-proposals.

14. The draft agreement was submitted to the Applicant for comment on 3 February 2006. The Union responded in writing on 7 February 2006. It raised certain issues which it contended should be dealt with in the proposed agreement.

15. The parties met again on 16 February 2006 and continued their discussions. By this time, the Respondent's licence had expired and mining operations had ceased. The Respondent alleges that the Applicant's principal representative at this meeting was ill-prepared for the meeting and that, for

this reason, little progress was made at this meeting. The Applicant undertook, however, to provide the Respondent with written proposals in response to the Respondent's draft agreement.

16. On 24 February 2006 the Union provided a formal response to the draft agreement. Annexed thereto was a revised draft agreement.

17. An informal meeting between the Respondent and the Applicant's branch committee took place on 3 March 2006.

18. On 16 March 2006 a further meeting between the parties took place. The Respondent made a presentation addressing the Mine's financial situation and a social plan framework dealing with the Applicant's proposed post-retrenchment involvement in the Koffiefontein community. The Respondent also disclosed at this meeting that it had resumed discussions with the party which had previously been interested in purchasing the Mine. However, no concrete proposals had emerged. None subsequently emerged.

19. On 22 March 2006 the Applicant proposed in a letter to the Respondent that a facilitator should be appointed. In a letter dated 27 March 2006, the Respondent declined to agree to this. In the same letter it recorded its understanding that the only unresolved issues related to the severance package to be paid and some of the detail concerning its involvement in the Koffiefontein community post-retrenchment.

20. On the following day, 28 March 2006, the Respondent informed the Applicant that it intended to issue notices of termination to the 329 affected employees on 31 March 2006.

21. On 30 March 2006 the Applicant referred a dispute to the CCMA. In the portion of the referral form in which the Applicant was required to summarise the facts of the dispute which it was referring, the Applicant stated:

> *"The employer wants to retrench approximately 278 NUM members from its Koffiefontein Mine on 31 March 2006. We are in dispute with the employer regarding the retrenchments. The dispute is referred to the CCMA in terms of Section 64(1) read with Section 189A(8)(a) of the LRA."*

22. On the same day the Applicant's attorneys addressed a letter to the Respondent's attorneys pointing out that the Applicant had referred the dispute to the CCMA and alleging that the threatened notices of retrenchment would be premature and unlawful in terms of Section 189A(8)(b) read with Section 189A(2)(a) of the Act.

23. The Respondent nonetheless issued the notices of termination on 31 March 2006. On the same day its attorneys denied in a letter to the Applicant that the notices of retrenchment were premature or unlawful.

24. On 7 April 2006 the Applicant delivered the Notice of Motion and Founding Affidavit in respect of the present application. The

application was brought on an expedited basis and was argued on 4 May 2006.

**THE VALIDITY OF THE DISMISSAL NOTICES**

25. It is common cause that, having regard to the number of employees affected, Section 189A has application to this dispute.

26. Section 189A(2) provides (in the relevant part):

> *"(2) In respect of any dismissal covered by this section-*
>
> *(a) an employer must give notice of termination of employment in accordance with the provisions of this section;*
>
> *(b) …"* (my emphasis)

27. Section 189A(3) provides that the CCMA must appoint a facilitator to assist the parties engaged in consultation if the employer has, in its notice in terms of Section 189(3), requested facilitation, or if consulting parties representing the majority of employees have requested facilitation and have notified the CCMA within fifteen days of the Section 189(3) notice. It is common cause that these conditions did not apply and that a facilitator was accordingly not appointed.

28. It is nonetheless of relevance to note that Section 189A(7) provides as follows:

> "*7. If a facilitator is appointed in terms of subsection (3) or (4), and 60 days have elapsed from the date on which notice was given in terms of Section 189(3)-*
>
> *(a) the employer may give notice to terminate the contracts of employment in accordance with section 37(1) of the Basic Conditions of Employment Act; and*
>
> *(b) a registered trade union or the employees who have received notice of termination may either-*
>
> *(i) give notice of a strike in terms of section 64(1)(b) or (d); or*
>
> *ii) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191(11)."* (my emphasis)

29. The provision most directly relevant to the present dispute is Section 189A(8). That subsection provides as follows:

> *"8. If a facilitator is not appointed-*
>
> *(a) a party may not refer a dispute to a council or the*

*Commission unless a period of 30 days has lapsed from the date on which notice was given in terms of section 189(3); and*

*(b) once the periods mentioned in section 64(1)(a) have elapsed-*

*i) the employer may give notice to terminate the contracts of employment in accordance with section 37(1) of the Basic Conditions of Employment Act; and*

*ii) a registered trade union or the employees who have received notice of termination may-*

*(aa) give notice of a strike in terms of section 64(1)(b) or (d); or*

*(bb) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191(11).”* (my emphasis)

30. It will be noted that section 189A(8)(b)(i) permits an employer to give notice to terminate the contracts of employment once “the periods mentioned in section 64(1)(a)” have elapsed. Section 64(1)(a)

provides as follows:

> *"(1) Every employee has the right to strike and every employer has recourse to lock-out if-*
>
> *(a) the issue in dispute has been referred to a council or to the Commission as required by this Act, and-*
>
> *i) a certificate stating that the dispute remains unresolved has been issued; or*
>
> *ii) a period of 30 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the council or the Commission; and after that-*
>
> *(b) ….."*

31. Mr. Van der Riet S.C, who appeared on behalf of the Applicant, contended that the notices of dismissal issued by the Applicant on 31 March 2006 were issued prematurely and in breach of Section 189A(8)(b)(i). He submitted that that provision must be construed to prohibit the employer from giving notice to terminate the contracts of employment unless and until a dispute in respect of the proposed retrenchments has been referred by one of the parties to the CCMA and the periods mentioned in Section 64(1)(a) have elapsed. He pointed out that, in any event, a dispute regarding the intended

retrenchments had in fact been referred by the Applicant to the CCMA on 30 March 2006 and submitted that, since it was clear that neither of the periods referred to in Section 64(1)(a) had elapsed when the notices of termination were issued, such notices were premature and unlawful.

32. Mr. Redding S.C, who appeared on behalf of the Respondent, disputed the Applicant's contention that notices of termination may only be issued after a referral of a dispute to the CCMA and the expiry of the periods referred to in Section 64(1)(a). In my view the crux of his argument appears in the following submission made in his Heads of Argument:

> *"There is nothing in the section which compels the employer to dismiss only when a dispute is referred to the CCMA and the matter is unresolved. It is difficult to understand what dispute the employer must refer. It cannot compel employees to agree to the proposed dismissal for operational requirements or the terms therein. It cannot say to the CCMA that it is in dispute with the Union because it will not agree to the termination of employment. Of course, since there is as yet no termination, there is no dispute but the fairness or otherwise of the dismissal."*

33. Mr. Redding was constrained to concede during argument that where, as a matter of fact, a dispute in relation to proposed retrenchments has been referred to the CCMA, Section 189A(8)(b)(i) has application, so that the employer is obliged to wait for the expiry of the periods mentioned in Section 64(1)(a). He submitted, however, that this only applies if the employer has not already waited 60 days from the date on which it had issued the Section 189(3) notice. He pointed out that, if this was not the case, a trade union would be at liberty to drag out the consultation process for an indefinite but perhaps lengthy period, then refer the matter to the CCMA and then require the employer to refrain from issuing notices of termination for a further 30 day period. He contended that this was an anomaly that could never have been intended by the lawgiver. He could not, however, refer me to any provision which supported his submission that Section 189A(8)(b)(i) only applies if 60 days have not already elapsed since the issuing of a Section 189(3) notice.

34. In my view the Applicant's contention that the notices to terminate the employees' contracts was given prematurely and in breach of Section 189A(8)(b)(i) is correct. In the present case, it is clear that the Applicant referred a dispute in respect of the contemplated retrenchments to the CCMA on 30 March 2006. This was a referral

which was permissible in terms of Section 189A(8)(a). In my view the plain meaning of Section 189A(8)(b)(i) is that, in such circumstances, the employer may not give notice to terminate the contracts of employment unless the periods mentioned in Section 64(1)(a) have elapsed. I do not see how that provision can be construed to have any different effect.

35. I am also mindful of Section 189A(2)(a) which provides in imperative language that an employer "must" give notice of termination of employment "in accordance with the provisions of this section". In the situation where a facilitator is not appointed, Section 189A(8)(b)(i) provides that the employer "may" give notice to terminate the contracts of employment "once the periods mentioned in section 64(1)(a) have elapsed". Reading Section 189A(2)(a) together with Section 189A(8)(b)(i), I think it is clear that the lawgiver intended that the employer may only give notice to terminate the contracts of employment if the periods mentioned in Section 64(1)(a) have elapsed.

36. I do not agree with Mr. Redding that the construction which I give to the provisions discloses an anomaly so startling as to warrant the conclusion that it could not have been the intention of the lawgiver. Where a facilitator is appointed, Section 189A(7) clearly precludes a notice to terminate the contracts of employment from being given until 60 days have elapsed from the date on which the notice was given in terms of Section 189(3). On the construction which I believe must be given to Section 189A(8), which applies where a facilitator is not appointed, a well advised employer intent upon giving notice to terminate the contracts of employment as soon as is lawfully permissible is not prevented by Section 189A(8) from giving such notices for any longer than the same 60 day period. To procure this result the employer

must ensure that the relevant dispute is referred to a bargaining council or to the CCMA as soon as is permissible in terms of Section 189A(8)(a), i.e. as soon as 30 days have elapsed from the date on which the notice was given in terms of Section 189(3). Of course, the employer is not obliged to refer the dispute at the earliest permissible moment, but if it fails to do so the consequence may be that, if agreement is not reached in respect of the retrenchments and the dispute is referred for conciliation, it will have to hold off from issuing notices of termination for the periods mentioned in Section 64(1)(a).

37. I do not agree with Mr. Redding's submission that the employer cannot say to the CCMA that it is in dispute with the union because of its failure to agree to the termination of employment. If the employer gives notice that it is contemplating retrenchments and if the union is unwilling to agree thereto within 30 days, I see no reason why the employer cannot treat this as a dispute and refer it for conciliation in terms of Section 189A(8)(a).

38. I also do not agree with Mr. Redding's submission that Section 189A(8)(b)(i) only applies if 60 days have not yet elapsed from the date on which the notice was given in terms of Section 189(3). The absence of any support in the text for such a construction is, in my view, fatal to this submission.

39. It is important to note that a central feature of the present dispute is the fact that the Applicant did refer a dispute to the CCMA. It is therefore unnecessary for me to make any finding as to whether the notices of termination would have been invalid in the absence of a referral of a dispute to the CCMA.

40. The next issue which requires to be determined is whether the

Applicant is correct that the consequence of the fact that the notices of termination were issued prematurely is that they are invalid and are of no force and effect. In my view, the Applicant is correct in this regard. Section 189A(2) provides explicitly and in imperative language that the employer "must" give notice of termination in accordance with the provisions of Section 189A. It would, in my view, flout the intention of the lawgiver and the policy underlying Section 189A to recognise the validity of notices given in contravention of Section 189A(8). See Schierhout v Minister of Justice 1926 AD 99 at 109; Standard Bank v Estate van Rhyn 1925 AD 266 at 274 to 275; Sutter v Scheepers 1932 AD 165 at 173 to 174.

41. It follows, in my view, that the Applicant is entitled to the declaratory order sought in terms of prayer 1 of the Notice of Motion, i.e. an order declaring that the notices of termination of the Applicant's members' contracts of employment dated 31 March 2006 are of no force and effect.

**IS THE APPLICANT ENTITLED TO THE INTERDICT SOUGHT?**

42. This application was argued more than 30 days after the referral to the CCMA. The Applicant persisted in seeking an interdict in the terms set out in prayer 2 of the Notice of Motion. Mr. Van der Riet submitted that

the Applicant was entitled to such an interdict because, so he contended, the period from the referral of the dispute until a certificate of outcome had been issued had still not elapsed. It was, he submitted, immaterial that a period of 30 days had elapsed since the referral had been received by the CCMA.

43. Mr. Van der Riet pointed out that Section 189A(8)(b) permits notice to terminate the contract of employment to be given only once "the periods" (plural) mentioned in Section 64(1)(a) have elapsed. He submitted that this meant that both the period referred to in Section 64(1)(a)(i) and the period referred to in Section 64(1)(a)(ii) had to elapse before the notices could be issued.

44. Mr. Van der Riet pointed out that there was no evidence before the Court to show that a certificate of outcome had been issued and therefore submitted that it remained unlawful for the Respondent to issue notices of termination, even though a period of 30 days had expired since the referral to the CCMA.

45. I do not accept this argument. Whilst it is true that Section 189A (8)(b) refers to "periods" (plural), I do not accept that the lawgiver intended that both periods were required to have elapsed before an employer might lawfully give notice to terminate the contracts of employment. In my view it is sufficient if either of the periods has elapsed.

46. In Eskom vs NUMSA and Others (2002) 12 BLLR 1153 (LAC) the Labour Appeal Court dealt with a comparable issue which arose in construing Section 64(4) of the Act. That section permits any employee who, or any trade union that, refers a dispute about a unilateral change to terms and conditions of employment to require the

employer not to implement unilaterally the change "for the period referred to in subsection (1)(a) [of Section 64]". The Labour Appeal Court (per Du Plessis A.J.A.) held as follows [at paragraph 11]:

> *"There are two periods referred to in Section 64(1)(a). Each one commences when the dispute is referred to a council or to the CCMA. The one ends when a certificate is issued in terms of Section 64(1)(a)(i). The other one ends 30 days after the referral of the dispute (Section 64(1)(a)(i)). The question is whether it is the purpose of Section 64(4) to refer to only the one described in terms of a number of days. Section 64(4) refers to "the period of time" which literally means that Section 64(4) pre-supposes that Section 64(1)(a) in term refers to only one period. It is unclear on such a reading to which of the two periods Section 64(4) refers. <u>The two periods in Section 64(1)(a) are mutually exclusive in the sense that if the one applies, the other cannot</u>. Therefore, a reference in Section 64(4) to "the periods" would have been nonsensical. The singular "period" is used in Section 64(4) because the purpose is to refer to the period which is applicable in the circumstances of each case."* (my emphasis)

The Court concluded (at paragraph [13]) that the words "for the period referred to in subsection (1)(a)" where they appear in Section 64(4) refer to either the period mentioned in Section 64(1)(a)(i) or to the one referred to in Section 64(1)(a)(ii), as the case might be.

47. Although Section 189A(8)(b) refers to "the periods" (plural) mentioned in Section 64(1)(a), whereas Section 64(4) refers to the "period" (singular) referred to in Section 64(1)(a), I believe that the same construction was intended by the lawgiver to be applied to both provisions. In both cases, in the language of Du Plessis A.J.A. quoted above:

> *"The two periods in Section 64(1)(a) are mutually exclusive in the sense that if the one applies, the other cannot."*

In Section 189A(8)(b) I believe that the lawgiver intended to refer to whichever of the periods mentions in Section 64(1)(a) was applicable and not to require that both such periods be applicable.

48. On the construction advanced by Mr. Van der Riet, an employer is exposed to the risk of being precluded from giving notices to terminate the contracts of employment for an indefinite and indeterminable period, dependant on when, if ever, the commissioner issues a certificate of outcome. In my view, such a construction is contrary to the scheme underlying Sections 189A (7)(a) and 189 (8)(b). In my view, the scheme of these provisions is to prevent the employer from giving notice to terminate the contracts of employment until a fixed period of 60 days (or a longer period controllable by the employer) has elapsed. In a case where a facilitator is appointed, the employer is required to wait no more than 60 days, regardless of the progress made by the facilitator. If a facilitator is not appointed, the employer must, in my view, wait 30 days from the date of the Section 189(3) notice to be able to refer the dispute for conciliation and for up to a further 30 days thereafter (if no agreement is reached to extend the relevant period and no certificate of outcome has been issued) before being entitled to give notice to terminate the contracts of employment.

49. If a certificate of outcome is issued prior to the expiry of the second 30 days, no purpose would be served by requiring the employer to wait until the expiry of the second 30 day period and I do not believe the lawgiver intended to require this.

50. The period referred to in Section 189A(8)(b) applies equally to an

employer wishing to give notice to terminate the contracts of employment and to a trade union wishing to give notice of a strike. This, in my view, makes it all the more apparent that the construction proposed by Mr. Van der Riet falls to be rejected. On the construction he proposes, a trade union would not be entitled to give notice of a strike until both the expiry of the 30 day (or extended) period provided for in Section 64(1)(a)(ii) and the obtaining of a certificate of outcome, in terms of Section 64(1)(a)(i). Yet it is clear that this outcome is contrary to the plain meaning of Section 64(1)(a) which permits employees to strike if there has been a referral of the relevant dispute and a certificate of non-resolution has been issued or the relevant 30 day (or extended) period has elapsed. It is clear that, in terms of Section 64(1)(a), if a certificate of outcome has not been issued but a period of 30 days since the referral has elapsed, and there has been no agreed extension to that period, a strike is protected. I can see no reason to believe that the lawgiver intended otherwise in the context of a dispute referred for conciliation in terms of Section 189A(8). If, as I believe to be the case, this is so in respect of the giving of a notice to strike, it must equally be so in respect of the giving of notices to terminate employment contracts.

51. It follows, in my view, that the Respondent became entitled to issue the notices of termination after the lapse of the 30 day period contemplated in Section 64(1)(a)(ii). (I should mention in this regard that there is no evidence to suggest that the period has been extended by agreement between the

parties.) It follows that the Applicant is not entitled to the interdict sought.

**INADEQUATE CONSULTATION?**

52. This is a matter which can be disposed of quickly. The only submission made on behalf of the Applicant in this regard was that the fact that the Union was of the view that consultations had not been exhausted in itself demonstrated that consultations had not been exhausted and in itself established that the Respondent had not complied with a fair procedure before issuing the notices of termination. I do not accept this argument for two reasons.

53. First, this point was not taken in the Founding Affidavit and was only raised in the Replying Affidavit. The Respondent has therefore not been given a fair opportunity to traverse the point. On its own, that is a sufficient basis to dismiss the Applicant's case in this regard.

54. Second, the Applicant approaches this Court on this issue in terms of Section 189A(13) of the Act. That provision, read with subsection (14), empowers this Court to grant relief if an employer "does not comply with a fair procedure". In my view an employer which has consulted in accordance with the requirements of Section 189 has complied with a fair procedure, at least on the facts pertaining to the present case. Section 189 does not require consultation until agreement is reached, nor does it empower a consulting trade union to determine whether further consultation is required. That is a matter to be determined by

this Court.

55. Having regard to the facts as disclosed on the affidavits before the Court, I am satisfied that sufficient consultation has taken place to show that the Respondent has not failed to comply with a fair procedure. There is no room for meaningful dispute as to whether retrenchments are necessary. The Mine has closed. Discussions have taken place between the parties which have resolved many of the resulting issues. Whilst I accept the consensus has not been reached in relation to the severance package to be paid and some of the detail around the Respondent's involvement in the Koffiefontein community post-retrenchment, I do not accept that it has been shown that the Respondent has failed to comply with its obligations in terms of Section 189. The Applicant has not even alleged that the Respondent failed to consider and to respond to any representations made by it or failed to state its reasons for disagreeing, as required by Section 189(6). There is also no evidence that it has not "engaged in a meaningful joint consensus-seeking process" or that the Respondent has not "attempted to reach consensus", as required by Section 189(2). I therefore do not accept that it has been shown that the Respondent has not complied with a fair procedure.

**COSTS:**

56. The parties were in agreement that costs should follow the cause. Although the Applicant has not succeeded on every issue it has, in my view, achieved substantial success and I think it is appropriate that the Respondent should be directed to pay the costs of this application.

**CONCLUSION:**

57. For the reasons set out above, I make the following order:

57.1 It is declared that the notices of termination of the Applicant's members' contracts of employment dated 31 March 2006 are of no force and effect;

57.2 The relief sought in prayers 2, 3 and 4 of the Notice of Motion is refused;

57.3 The Respondent is directed to pay the costs of this application.

**FREUND, A.J.**

**APPEARANCES:**

FOR THE APPLICANT: Adv. J.G. van der Riet S.C, instructed by Cheadle, Thompson and Haysom

FOR THE RESPONDENT: Adv. A.I.S. Redding S.C, instructed by

Perrott, van Niekerk and Woodhouse

Inc.

DATE OF ARGUMENT: 4 May 2006
DATE OF JUDGMENT: 26 May 2006