IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No.: **818/04**

In the matter between:

V & A WATERFRONT PROPERTIES (PTY) LTD First Applicant
VICTORIA AND ALFRED WATERFRONT (PTY) LIMITED Second Applicant

and

HELICOPTER AND MARINE SERVICES (PTY) LIMITED First Respondent
THE HUEY EXTREME CLUB Second Respondent
THE SOUTH AFRICAN CIVIL AVIATION AUTHORITY Third Respondent

JUDGMENT : 24 FEBRUARY 2004

COMRIE J. :

[1.] The first and second applicants are respectively the owner and managing agent of the V & A Waterfront, Cape Town. They seek an urgent order against the first and second respondents interdicting and restraining them from operating the Bell helicopter, registered as ZU-CVC-B205 UH 1 H, from the helipad situated at Building 200, Breakwater East Pier, V & A Waterfront, pending the upliftment of a grounding order issued by the South African Civil Aviation Authority (the "CAA") on 7 January 2004. The CAA is cited, at its own request, as the third respondent. Technically it abides the judgment of the Court. In reality it supports the application: it filed papers, and I was addressed by senior counsel, Mr **Puckrin**, on its behalf.

[2.] The relationship between the first applicant and the first respondent is

contractual. In terms of a lease the first appellant lets site one of the helipad to the first respondent. The latter is the owner of the helicopter in question, known as a Huey, which was manufactured by Bell Aviation as a military aircraft during the Vietnam War. At some time after a lengthy military career, it was converted or reconstituted into a civilian aircraft. As such it was "non-type" certificated by the CAA in 2002 for non-commercial use. It was certificated for commercial use during 2003. It has been using the helipad since December 2002.

[3.] The first respondent lets or hires out the helicopter to the second respondent, which operates (i.e. flies) it. The second respondent claims to function as a club and it claims in consequence that when club members go on flights, the helicopter is not operating commercially. The CAA regards this as a stratagem to avoid some of the more stringent aviation regulations (Part 96). It is not in dispute that the first respondent, through its Mr van der Merwe, controls the second respondent.

[4.] The grounding order of 7 January 2004 is referred to in the papers as the second grounding order. It was preceded by the first grounding order issued by the CAA on 8 December 2003. In proceedings before this Court under case no. 10549/03 between the second respondent and the CAA, **NC Erasmus J** handed down an order on 18 December 2003 in the following terms:

> "1. A rule *nisi* is hereby issued calling upon the Respondent to show cause (if any) on a date to be arranged between the parties, why an order should not be granted against it in the following terms:
>
> 1.1 Setting aside the Respondent's decision, alternatively purported decision, as contained

in its letter dated 8 December 2003, in terms of whereof a helicopter with registration letters ZU-CVC was grounded;

1.2 Declaring that the Applicant is entitled to operate and fly the said helicopter, unless and until the same has been validly grounded by the Respondent;

1.3 Ordering the Respondent to pay the Applicant's costs of this application, including the costs of two counsel.

2. The orders in 1.1 and 1.2 above shall operate as an interim interdict pending the final determination of this application."

[5.] I am told that no reasons were furnished for the granting of that order. I note too that no return day was fixed. Be that as it may, it will be seen that in para. 1.2 of the order the learned Judge stipulated: "unless and until the same has been validly grounded" by the CAA. The second, and current, grounding order followed soon after, on 7 January 2004. The respondents contend among other things that this second order is *mala fide* and forms part of a campaign of harassment. A further inspection of the helicopter was conducted by officials of the CAA on 28 January 2004. The second grounding order has not presently been uplifted by the CAA, which is still pursuing its enquiries. The CAA's stance is that it is not presently satisfied that the helicopter is airworthy or safe to operate.

[6.] The respondent's stance, on the other hand, is that the second grounding is invalid and that they have no intention of obeying it. They maintain that the

helicopter is entirely safe and airworthy. No civil proceedings have been instituted by the CAA to enforce the order; nor have the respondents instituted civil proceedings to have the order reviewed and set aside. There is mention in the papers before me of a criminal charge having been laid with the police, to which Mr van der Merwe has filed an anticipatory defence, but nothing seems to have come of this as yet.

[7.] The applicants decline to be drawn into the merits of the dispute between the respondents and the CAA regarding the validity or otherwise of the second grounding order or regarding the airworthiness or otherwise of the helicopter. The applicants' narrow position is:

a) that the second grounding order is valid, and must be obeyed, unless and until it is set aside or otherwise uplifted; and

(b) that by reason *inter alia* of the provisions of the lease, they are entitled to insist on compliance by the respondents with the second grounding order, unless and until it is set aside or otherwise uplifted.

It is clear, and was accepted by counsel in argument, that I am not required in these proceedings to decide the issue of validity. As I see the position, and for reasons which will appear later, I must unavoidably consider the question of airworthiness.

[8.] The application is strenuously opposed. The opposition is replete with applications to strike out, allegations of misjoinder, challenges to urgency and *locus standi*, and a reliance on the Stamp Duties Act. This last contention was dropped after the lease was stamped.

Interim or Final Interdict

[9.] A useful starting point is to determine whether the interdict sought by the applicants is interim or final. It will be noted that there is no *lis* between the applicants and the respondents in respect of the validity of

the second grounding order. No such proceedings between them are contemplated. If the CAA and the respondents should engage in litigation on that score, it is highly unlikely that the applicants would be parties thereto. The proposed interdict, as framed, is: "pending the upliftment of [the second] grounding order". Such an upliftment could occur unilaterally (on the part of the CAA), or consensually (as between the CAA and the respondents), or by order of court (again in proceedings between the CAA and the respondents). The upliftment is not an event over which the applicants are able to exercise any control by way of litigation. The duration of the interdict, if granted, would be indefinite. In particular the duration would not depend on the outcome of further proceedings between the applicants and the respondents (the classic example of an interim interdict). In theory at least the interdict might endure for ever. Moreover, the fact that the order sought may well only operate temporarily, does not convert it into an interim interdict. *Cape Tex Engineering Works (Pty) Ltd v SAB Lines (Pty) Ltd* 1968(2) SA 528 (C) at 530. The right which I am called upon to determine is the claimed right of the applicants to insist that the second grounding order be obeyed by the respondents for so long as it stands. My decision on that question will finally determine such right; it will not preserve or restore the *status quo* pending the final determination of some other rights between the applicants and the

respondents.

[10.] It appears to me accordingly that the interdict sought by the applicants, though interim in form, is final in substance. See *Law of South Africa* (ed. Joubert), vol 11 (first re-issue) from para. 307; Harms: *Civil Procedure in the Supreme Court* from p. 500; *Masuku v Minister van Justisie en Andere* 1990(1) SA 832 (A) at 841 C.

The merits

[11.] The requisites for the granting of a final interdict are well settled. They are: (i) a clear or definite right, (ii) "injury" actually committed or reasonably apprehended; (iii) no adequate alternative remedy. The Court's limited discretion relates to the last-mentioned requisite. The authors cited above observe that a final interdict is invariably claimed by way of action. By proceeding on motion in this case the applicants have exposed themselves to the usual rules governing disputes of fact in motion proceedings. Subject to exceptions, not here applicable, those rules require me to accept the respondents' version of facts which are disputed. *Plascon- Evans Paints Ltd v. Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (A).

[12.] The applicants' contention that they enjoy a clear right contains three steps. The first step is the principle that, subject to rare exceptions, an administrative decree such as the grounding order is taken to be valid until

set aside. That principle was accepted in this division by **Farlam AJ** (as he then was) in *Coalcor (Cape) (Pty) Ltd v. Boiler Efficiency Services CC* 1990(4) SA 349 (C). That case was the obverse on the facts to the case before me. There the property in question had been rezoned by the City Council. The validity of the rezoning was challenged by the applicant, which sought a temporary interdict restraining the first respondent from trading on the property pending the outcome of the challenge. Applying the above principle the learned Judge held that the first respondent must be taken, for the time being, to be trading lawfully. The principle was endorsed by **Conradie J** (as he then was) in *Metal and Electrical Workers Union of South Africa v. National Panasonic Co (Parow Factory)* 1991(2) SA 527 (C) at 532 – 3. The learned Judge was well aware of criticisms which have directed at the distinction between "void" and "voidable" acts. See too *Clark v. Faraday and Another*, a recent unreported judgment of **van der Westhuizen AJ** in this division (at p. 28).

[13.] Mr **Hodes**, who led for the respondents, expressly indicated that he did not ask me, sitting as a single Judge, to depart from the *Coalcor* principle on the ground that it was plainly wrong. He accepted that I was bound by it. He did not argue that this was one of those "comparatively rare cases of flagrant invalidity" to which **Cooke J** (as he then was) referred in *AJ Burr Ltd v. Blenheim Borough* [1980]2 N2LR 1 at 4. It follows that I must accept for the purpose of this application that the second grounding order is valid.

[14.] The second step in the clear right contention is the lease between the first appellant and the first respondent. The "purpose" of the lease of site 1 is:

"The premises shall be used solely as a light helicopter base for the purposes of embarking and off-loading passengers and for no other purpose whatsoever. No cargo handling services will be permitted."

See too clauses 6.1, 6.2 and 6.3.1. Clause 6.3.5 provides:

"6.3.5 Approval and compliance with authorities:

6.3.5.1 The Lessee shall be obliged to obtain and maintain for the duration of this lease including any renewal thereof, the requisite licences and all the necessary approvals from inter alia the Department of Transport, The South African Civil Aviation Authority, The Port Captain and any other authority who may require approval for the operation of a helicopter landing site. The Lessee undertakes to strictly comply with the regulations and rules of such authorities.

6.3.5.2 The Lessee shall have no claim against the Lessor should any of aforesaid licences or approvals not be obtained or should it be revoked at any stage during

the currency of this lease."

Clause 6.8 provides:

"6.8 The Lessee shall not contravene or permit the contravention of any law, bye-law, statutory regulations or the conditions of any licence relating to or affecting the occupation of the Premises or the carrying on of the Lessee's business in the Premises, nor any title deed conditions, legal rule, enactment or directive of any authority which legally applies to the Premises or which the Lessor is required to observe as a result of the ownership of the site on which the Premises is situated. The Lessee shall be obliged to acquaint itself fully with all of the aforegoing, which is accessible to and ascertainable by the general public. In regard to any matter, which is not so accessible or ascertainable, by the general public, the Lessee shall be excused from his obligations in this clause unless the Lessor has given the Lessee prior written notice of the obligation concerned."

[15.] There is some debate in the correspondence and the affidavits about the proper interpretation of clauses 6.3.5 and 6.8. However, Mr **Hodes** did not in argument address these questions. I can see that there is room for a difference of opinion as to the precise ambit of clause 6.3.5, referring as it does to the "operation of the helicopter landing site." But clause 6.8 seems to me to be clear enough. It is not disputed that in order to operate (fly) the helicopter, even for non-commercial purposes, the respondents require in

terms of the aviation statutes and regulations, a form of licence or permit known as a certificate. They have such a certificate for the Huey (a copy is to be found at p. 407 of the record). It is not disputed that the CAA has the power to "ground any aircraft". The second grounding order has admittedly been issued and, as I have shown, must be taken to be valid. The first respondent, as lessee, continues to permit the second respondent to fly the helicopter, indeed it appears to encourage such operation, thereby flouting the grounding order. That conduct in my view is in clear breach of clause 6.8, which requires the first respondent to obey the law and to not be party to flouting it.

[16.] The third step in the clear right contention is an invocation of the principles laid down in the leading case of *Patz v. Greene & Co.* 1907 TS 427. Armed as it is with a contractual right, I consider that as against first respondent, the first applicant has no need to rely on *Patz v. Greene* and the numerous decisions which have followed upon it. I conclude therefore that the first applicant has a clear right to insist that the first respondent, and through it the second respondent, comply with the second grounding order for as long as it stands. It is true that there is no direct contractual connection between the first applicant and the second respondent. The relationship between the two respondents is so close, however, and the power of control conceded, that I do not think that the absence of a contractual link matters. Nor did Mr **Hodes** so argue.

[17.] I conclude accordingly that the first applicant's clear right has been established.

[18.] The second requisite for a final interdict is stated by *Harms*, supra, at para S9 as follows:

> "The second requisite for the granting of a final interdict is an injury actually committed or reasonably apprehended.
>
> The term "injury" should be understood to mean infringement of the right which has been established and resultant prejudice. Prejudice is not synonymous with damages and it is sufficient to establish potential prejudice.
>
> A reasonable apprehension of injury is one which a reasonable man might entertain on being faced with the facts and therefore the applicant need not establish on a balance of probabilities that injury will follow."

[19.] With regard to the last sentence of that quotation, **Berker JP** said in *Nestor and Others v. Minister of Police and Others* 1984(4) SA 230 (SWA) at 244:

> "A reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts (*Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 515). The applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, injury will follow: he has only to show that it is reasonable to apprehend that injury will result *(Free State Gold Areas* case *supra* at 518*).* However, the test for apprehension is an objective one *(Ex parte Lipshitz* 1913 CPD 737; *Seligman Bros v Gordon* 1931 OPD 164; *Pickles v Pickles* 1947(3) SA 175 (W). This means that, on the basis of

> the facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."

[20.] The aforegoing passage was approved by **Hefer JA** in *Minister of Law and Order and Others v. Nordien and Another* 1987(2) SA 894 (A) at 896 G. See too *Janit and Another v. Motor Industry Fund Administrators (Pty) Ltd and Another* 1995(4) SA 293 (A) at 304 G. Clearly, then, in deciding whether the applicants' apprehension of injury is reasonable, I must have regard to all the facts, which means all the evidence before me. A reasonable man would do no less.

[21.] The applicants' apprehension is this: that the Huey helicopter in question may have an accident, it may crash, causing damage to property at the Waterfront (or further afield), injury to those aboard the helicopter or on the ground, and even death. In such a regrettable event the applicants fear that they will be exposed to extensive claims for damages by third parties which the applicants' insurance, and the respondents' indemnities (actual or proposed), will in practice be inadequate to cover. That is the potential harm of which the applicants' complain. It seems to me that such hypothetical actions for damages would not succeed unless it could be shown that the applicants, in breach of a legal duty of care, failed to prevent the helicopter from flying, in other words that they failed to enforce the contractual right of obedience to the second grounding order. To establish the legal duty and its breach, there would in my view have to be an adequate causal connection between the hypothetical crash and the existence of the second grounding order. That connection on the papers is clear: unairworthiness. An accident caused by say pilot error, and having no connection with the helicopter's

airworthiness, would not suffice.

[22.] What are the prospects of the Huey helicopter crashing in the foreseeable future by reason of unairworthiness? As I have pointed out, the applicants themselves are unable to make an independent assessment of airworthiness. In their founding papers they could go no further than to adduce evidence of the CAA's "reasonable belief" to that effect (see the second grounding order) and that the order was issued "in the interests of aviation safety" (see the CAA's letter of 9 January 2004). It appears that the CAA's inspectors had sought access to the helicopter's maintenance and airworthiness records, particularly the life limited component log cards. When this was allegedly refused by the respondents in early January, on the ground that the demand was unreasonable, the second grounding order was issued. The order states that the helicopter shall remain grounded until its airworthiness status can be verified by the CAA's officers, who shall be given full access to all the relevant documentation especially the aforementioned log cards. We know from documentation filed by the CAA that this concern probably sprung, wholly or in party from the Bell Helicopter Company's letter dated 13 November 2003. A further inspection on 28 January 2004, when the CAA's officers were given access to contentious documents, did not result in the upliftment of the grounding order.

[23.] At para.s 26 and 27 of the answering affidavit Mr van der Merwe states:

> ". . . The Applicants have placed no evidence before the Court that the grounding order was validly imposed, or that the Huey helicopter is not airworthy or safe to operate, or

that the Third Respondent or the Commissioner could reasonably have held this view. I state unequivocally that the Huey helicopter is both airworthy and safe to operate. In this regard I should mention that since the commencement of the Second Respondent's activities in about December 2002, I have flown the helicopter approximately half a dozen times a week, if not more. This is over and above all the other – extremely experienced – pilots who fly the helicopter on behalf of the Second Respondent and, occasionally, for the First Respondent. I am a very experienced helicopter (and fixed wing) pilot with more than 3000 hours of flying time in helicopters alone. To the best of my knowledge, nobody in South Africa has more flying hours and experience than I on a Huey helicopter. I have been in the helicopter industry for more than twenty years, controlling – directly or indirectly – various helicopter-owning companies. For a goodly part of this time I have been accountable for all the aircraft maintenance operations of, *inter alia*, these companies. I mention in passing that I have represented South Africa at a World Championship helicopter flying competition. Accordingly, I am more than qualified, I respectfully contend, to express the views set forth in this affidavit.

27. **Ad Paragraphs 22 and 23:**

These allegations are admitted. I repeat the contention that the Huey has been consistently operated in a sound and airworthy condition."

[24.] At para. 43.4 Mr van der Merwe states:

" . . . the Huey has an impeccable safety record . . .".

He explains the "compressor stall" which occurred on 17 January 2004, which was reported to the CAA (though not reportable), and adds: "The Huey is currently in impeccable condition."

[25.] Then the CAA filed its "answering" affidavits which are said to be of a provisional or preliminary nature. The principal deponent, Mr Chakarisa, states at para. 9:

> "Leaving aside the two grounding notices . . . information obtained by the CAA during its inspection of the helicopter conducted on 28 January 2004, clearly establishes the fact that the helicopter is not airworthy. A copy of the CAA's preliminary report dated 5 February 2004, is annexed hereto marked "A". Annexure "A" was telefaxed by the CAA to the Second Respondent on 5 February 2004. The concluding paragraph of the telefax reads:
>
> **"K CONCLUSION:**
>
> 1. On the information available the aircraft is currently
>
> <u>not regarded as airworthy.</u>
>
> 2. Helicopter and Marine Services is requested to supply
>
> the required information indicated in this report by 13 February 2004.
>
> 3. Helicopter and Marine Services is reminded of the
>
> fact that it is an offence to operate an aircraft that is not

> airworthy. This helicopter ZU-CVC may in the circumstances not be flown. [emphasis added]"

[26.] The affidavit elaborates on this with reference to the records of life limited components. Mr Chakarisa states:

> "Information was sought from Italy and Taiwan for purposes of verifying spares supplied and work carried out on the helicopter. That information is not, as yet, to hand."

The deponent continues by complaining about the alleged "commercial" use of the helicopter, which apparently has an effect on the ambit of inspections and of the aircraft's documentary history. He refers to the letter from Bell dated 13 November 2003. He refers to the "forced landing" (which van der Merwe describes as a compressor stall).

[27.] The preliminary report, dated 5 February 2004, refers *inter alia* to life-limited components, and records therefor, and to "specific airworthiness issues". Its author, Mr G¸ldenphennig, concludes:

> "1. On the information available the aircraft is currently not regarded as airworthy.
>
> 2. Helicopter and Marine Services is requested to

> supply the required information indicated in this report by 13 February 2004."

[In their replying affidavits, the applicants had already annexed affidavits from Mr Purnell (who received the Bell letter) and Mr G¸ldenphenning].

[28.] In his affidavit responding to the CAA, Mr van der Merwe demolishes "on paper" the case of unairworthiness against the respondents. These are not general statements of the kind quoted earlier. Mr van der Merwe furnishes a history of the helicopter and its conversion to civilian use; of its certification by the CAA for non-commercial, and then commercial use; and of its maintenance, including an audit thereof by the CAA in September 2003. The deponent addresses the "specific airworthiness issues" and mentions for example that the life of blade grips is not 3 300 hours (as asserted in the preliminary report) but 9 000 hours. He deals in some detail with limited life components. With regard to records, he states that all or most of the documents have already been seen by the inspectors, and he maintains that the CAA is now casting its documentary net unreasonably wide. Mr van der Merwe states at para. 18.2:

> "I further reiterate that if anything, this request demonstrates that at present there is no independent factual basis for the helicopter being grounded. The Third Respondent is merely attempting to gain sufficient time to enable it to find at least something wrong with the helicopter – whilst in the meantime shifting the complete *onus* onto the Second Respondent in an attempt to bury the Second Respondent in paper work."

[29.] Mr van der Merwe also touches on the difference between Parts 94 and 96 of the regulations. He states that Part 94 is applicable (because the helicopter is not flown commercially – another dispute between the parties, mentioned earlier) and he states:

> "The history of the components of the Huey available to the First and Second Respondents is such that they have sufficient information to satisfy, at the very least, the requirements of Part 94."

[30.] Earlier I used the expression "on paper". I did so advisedly. At the trial of an action, with its procedures for discovery, trial particulars, expert witnesses, and especially cross-examination, a different picture of airworthiness might or might not emerge. However, the applicants have chosen not to proceed by way of action – the invariable course for a final interdict – but instead have proceeded on motion under the guise of an interim interdict. They have done so at their peril, such peril being that I must accept the respondents' version of facts which are disputed. Applying that settled rule of practice the respondents' demolition of the alleged unairworthiness is virtually complete. A reasonable man looking at all the facts which he may properly take into account, would in my opinion conclude that the chances of the helicopter having an accident, of crashing, by reason of unairworthiness, are remote. He would conclude that the applicants' apprehension to the contrary is unreasonable and not well grounded. He would, I think, be likely to perceive that the CAA has over-reacted to the Bell letter and that, when crossed by the respondents, it has over-flexed its regulatory muscle. If the reasonable man be a man of the world, he would be likely to perceive that the CAA, when

reversed by **Erasmus J**, was licking it wounds, and in search of another mode of attack on its quarry. He would view the CAA's demands and conduct after 18 December 2003, culminating in the preliminary report of 5 February 2004, with a healthy dose of scepticism.

[31.] My conclusion therefore, on the procedural basis to which I have alluded, is that the applicants have failed to establish an injury actually committed or reasonably apprehended. It follows that the application for a final interdict must fail. It is accordingly unnecessary for me to consider the third requisite for such an interdict, namely the absence of an adequate alternative remedy. I turn to deal briefly with the other matters which were raised.

[32.] **Urgency**

I am satisfied that the applicants have shown *prima facie* urgency sufficient for this matter not to have to wait for hearing on the semi-urgent roll. If the helicopter should not be flying, then the sooner it is stopped the better. The respondents' attack on urgency was in part directed at the applicant's supposed tardiness in approaching the Court for relief. It took some four weeks from 7 January 2004 for them to launch the present application. Except perhaps for a few days, the lapse of time is fully and adequately explained by the various events which occurred during that period. I do not need to detail them all, but the compressor stall and its consequences, and the inspection of 28 January, stand out. Had the applicants launched proceedings much earlier that they did, I expect that the respondents would have accused them of being premature (as they did in their attorney's letter of 1 February 2004).

[33.] **Locus standi and misjoinder**

The first applicant is properly before the Court: apart from other considerations, a resolution of its board of directors was

eventually handed up during the replying argument. The second applicant is the managing agent of the first applicant. One of its duties as agent is to institute and defend proceedings, where appropriate, on behalf of the first applicant. That does not afford the second applicant the right to include itself as one of the applicants. More than that is required in order to establish a direct and substantial interest in the outcome of the litigation. In my view the second applicant has not shown such an interest. Nothing turns on this, however, as the first applicant is properly before me and the second applicant, in the affidavits, speaks on the first applicant's behalf. The costs have not been increased.

[34.] The third respondent (the CAA) stands on a different footing. It asked to be joined and, in my opinion, for good reason. One of the CAA's core functions is the maintenance of South African air safety. Pursuant thereto it issued the second grounding order, which the applicants now seek to enforce against the respondents. It is that same grounding order that the respondents refuse to obey, and the validity of which they challenge. This appears not only from the affidavits, but also from the preceding correspondence. A clearer case of a direct and substantial interest it is hard to imagine. It is so that the applicants, in formulating their founding case, chose not to become involved in the issues of validity and airworthiness. That

was the applicants' decision, but it by no means ensured that the respondents would limit their opposition in the same way. The second respondent had succeeded, just over a month earlier, in having the first grounding order provisionally overturned. The respondents' attitude in the correspondence bordered on the truculent. There was reason to fear that the second respondent would use the application as an opportunity to overturn the second grounding order. In my opinion the CAA was properly joined as a party to these proceedings.

[35.] <u>Striking Out</u>

There are numerous parts of the record sought to be struck out by the respondents. It would unduly lengthen and delay this judgment if I were to work my way through them all. Some of the objections are sound, some not. I do not intend to rule upon them individually. I should mention, however, that the Bell letter is clearly admissible, not to prove the truth of its contents, but because its receipt by the CAA appears to be significantly linked to the present unpleasantness between the CAA and the respondents.

[36.] Costs

Costs should follow the result subject to one adjustment. While purporting to abide the decision of the Court, the CAA supported the applicants. It filed affidavits and it sent senior counsel from Pretoria, Mr **Puckrin** (who I was pleased to see again), to address me. It seems fair to me that the CAA should pay its own costs and that it should also pay the respondents' costs of preparing and filing affidavits (from p. 372) in response to the CAA's affidavits. The matter clearly merits the engagement of two counsel per side.

[37.] The order

The order is in the following terms:

1) The application is dismissed;

2) The first and second applicants are ordered, jointly and severally, to pay the first and second respondents' costs save those mentioned in the next paragraph;

3) The third respondent (the CAA) is ordered to pay its own costs plus the first and second respondents' costs of preparing and filing their affidavits (from p. 372 onwards) in response to the CAA's affidavits;

4) The costs of engaging two counsel are allowed.

R.G. COMRIE

JUDGE