

IN THE HIGH COURT OF SOUTH AFRICA**(EASTERN CAPE, PORT ELIZABETH)****CASE NO: 3122/09**

In the matter between:

JAPHET PROFESS KHWELA**FIRST PLAINTIFF****OCTAVIA NTOBINAZO KHWELA****SECOND PLAINTIFF****SIHLE KHWELA****THIRD PLAINTIFF****And****THE MINISTER OF SAFETY AND SECURITY****DEFENDANT**

JUDGMENT

ANDREWS, AJ

- [1] In this matter the first plaintiff (“the plaintiff”) claimed damages for unlawful, alternatively malicious arrest and detention, and malicious prosecution arising on or about 4 September 2007. The defendant admitted the arrest and detention but denied that they were unlawful. The claims of the second and third plaintiffs were withdrawn on the date of hearing.
- [2] The defendant pleaded that the institution of these proceedings was not in compliance with section 3(4) of Act 40 of 2002. On 31 September 2010 this Court granted the following order:
1. that the non-compliance by the applicants with section 3 of Act 40 of 2002

be condoned in terms of section 3(4) of such Act; and

2. the applicants be granted leave in terms of section 3(4) of Act 40 of 2002 to proceed with the civil action for damages against respondent;

No order as to costs was made.

The arrest was without a warrant. The defendant pleaded that the plaintiff was lawfully arrested by South African Police Services ("SAPS") members in terms of the provisions of Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 ("the CPA"), upon reasonable suspicion that he had committed an offence of theft referred to in Schedule 1 of the Act.

- [3] The plaintiff pleaded that he was unlawfully arrested and thereafter unlawfully detained until he appeared in the Magistrates Court at Port Elizabeth on 6 September 2007, when he was released on bail. Further that the SAPS members knew or should have known that there were no reasonable grounds for the detention, and that the arrest and detention were affected by them *animo iniuriandi*. As result of this unlawful conduct he was unlawfully, deprived of his liberty and suffered contumelia in the form of anxiety, damage to his good name, embarrassment and insult to his dignity.
- [4] The plaintiff pleaded that if the jurisdictional facts for a warrantless arrest were found to be present, the members of the SAPS who effected the arrest nevertheless failed to exercise their discretion to arrest properly and lawfully. The defendant denied this claim and pleaded that the plaintiff was suspected of committing a serious offence which warranted his arrest, after the allegations against him were explained, and that he declined to give his explanation for the events upon being invited by the arresting officer to do so.
- [5] The plaintiff also claimed that as a consequence of the arrest the SAPS members set in motion a malicious prosecution. The defendant denied these allegations, pleading that the law was set in motion by Thebalethu Landu who laid a charge of theft against the plaintiff. It was also pleaded that in the event of a finding that the SAPS had set the law in motion, then they had reasonable and probable cause to do so, based on being in possession of evidence under oath by an eye witness that plaintiff had committed the

offence of theft of a truck.

Arrest without warrant

[6] As was held in *Duncan v the Minister of Law and Order*¹ the jurisdictional facts for a lawful arrest under section 40(1)(b) are:

- i) the arrestor must be a peace officer;
- ii) the arrestor must entertain a suspicion;
- iii) the suspicion must be that the suspect committed an offence referred to in schedule 1;
- iv) the suspicion must rest on reasonable grounds.

The defendant bears the onus of justifying the arrest (*Minister of Law and Order v Hurley*²).

[7] It is common cause that the plaintiff was employed at the time of his arrest by Rand Civils as the driver of a truck which was stolen on the night of 3 September 2007. He was arrested on suspicion of having committed theft of property valued at approximately R500 000, ie a schedule 1 offence, by Warrant Officer Vermaak, a member of the SAPS, on 4th September at his workplace, after being pointed out by a security guard working for the employer, Thembaletu Landu. Landu had deposed to an affidavit an hour before the arrest where he stated that he could identify the suspect. The plaintiff was held in detention at Zwartkops Police Station until his release on warning on the morning of 6th September, 48 hours after his arrest. The defendant admitted that the arrest and detention were effected by members of SAPS acting in the course and scope of their employment. On the 6th September a note in the investigation diary at Zwartkops, Mount Road, by the public prosecutor inquired how Landu knew the plaintiff on the 4th but did not recognise him at the crime scene. The investigating officer, Gerhard Weyers asked Landu the same question, as was reflected in his affidavit dated 13 September 2007. Charges were eventually withdrawn against the plaintiff

1 1986 [2] SA 805 [A] at 818G-H

2 1986 (3) SA 568 (a) at 589 E-F

Reasonable suspicion.

- [8] The first issue to be decided is whether Vermaak formed a reasonable suspicion that the plaintiff had committed a Schedule 1 offence. The defendant bore the onus of proving reasonableness. As stated on *Mabona v Minister of Law and Order and others*³ the test is an objective one:

“Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of the conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating this information a reasonable man would bear in mind that the section authorizes drastic police action. It authorizes an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyze and assess the quality of information at his disposal critically, and will not accept it lightly without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain the suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However the suspicion must be based on solid grounds. Otherwise it will be flighty or arbitrary and not a reasonable suspicion.”

- [9] Vermaak stated that he formed the suspicion necessary for a lawful arrest on the basis of a sworn statement of an eye witness, Landu and that he had no reason to doubt Landu, a security guard stationed at the Rand Civils premises at the time. Landu deposed that he had witnessed the theft and could identify the suspects. His statement did not contain any information which identified the plaintiff and therefore I conclude that the suspicion could only have been formed after the plaintiff had been pointed out by Landu.

- [10] The plaintiff's counsel argued that according to Standing Order G 341, section 2(1) an arrestor must really believe or suspect something based on facts which are certain, and that a reasonable person would have held the same belief or suspicion. Reference was made to the case of *Gellman v Minister of Safety and Security*⁴ which states that there is a need for corroboration of the evidence of a single witness. It was submitted that Vermaak did not take

3 1988(2) SA 654 (SE) 658 E-H

4 2008(1) SACR 446 (W)

extra steps to check the testimony of Landu in order to satisfy himself that the suspicion was well grounded and that he was entitled to arrest the plaintiff. According to Landu's affidavit, on the evening of the 3rd September he was present at the crime scene at the time of the theft, and he called his employer and the police who both arrived at the scene. The affidavit was drawn up the next day at the police station. In this regard it merely stated "I will recognise the driver who drove the truck." Landu did not state that he could identify any specific person, or the fact that he recognised a suspect as being someone who worked at Rand Civils. Sergeant Weyers, a few days after the arrest, concluded that it was strange that Landu could identify the suspect on the 4th but was not so sure on the night of the theft. It was submitted on behalf of the plaintiff that Vermaak was in a rush on the morning of the 4th September, and the arrest was based on his own personal convenience rather than a reasonable suspicion that the plaintiff had committed an offence. Less invasive options than arrest should have been considered by the members of the police. Counsel for the defendant argued that there was no evidence of any reason for Vermaak to doubt that Landu could identify the suspect on 4th September.

- [11] It is not clear from Landu's affidavit when precisely he became able to identify the suspect. Vermaak's evidence was that since Landu was prepared to state under oath that he could identify the suspect and to physically point him out, he felt that there was no reason to doubt him or probe the veracity of this assertion. In my opinion it would be unreasonable to expect a police officer to interrogate an informant who is prepared to state under oath that he can identify a suspect in a Schedule 1 offence, and who is willing to point him out, unless there is a significant improbability or uncertainty in his statement. The plaintiffs counsel submitted that this was the position in the present matter.
- [12] With hindsight, Vermaak could have enquired from Landu when and how he had come to be able to identify the suspect, on the morning of the 4th September. But since Landu had stated under oath that he could do so, I do not think it was improper of Vermaak to accept this assurance. Under cross examination he stated that it was possible that Landu could have seen the

suspect earlier that morning. The probabilities of such a meeting taking place were explored in the cross examination of Vermaak but not completely excluded in the process.

- [13] The information at the disposal of Vermaak at this point was not yet the full basis of the suspicion. The suspect still had to be pointed out. Vermaak testified that he checked with Landu whether the plaintiff was the correct suspect after he had been pointed out. At this initial stage Vermaak had therefore laid the basis for a reasonable suspicion on which to base the arrest.

The exercise of discretion to arrest.

- [14] As stated in *The Minister of Safety and Security v T J Sekhoto*⁵ once the jurisdictional facts for an arrest are present, the discretion whether to arrest arises. The officer is not obliged to arrest. The exercise of discretion to arrest must be lawfully exercised. Any discretion that must be exercised must be in good faith, rationally and not arbitrarily.⁶ The exercise of discretion must also be objectively rational and rationally related to the purpose for which the power was given.⁷ Once the jurisdictional facts for the arrest are established it is for the plaintiff to prove that the discretion was exercised in an improper manner.⁸ The police official has the duty to investigate exculpatory explanations by the suspect, if the plaintiff has pleaded that other less invasive means should be used in order to bring the suspect to court.⁹
- [15] The plaintiff pleaded that the members of the defendant failed to properly or lawfully exercise their discretion to arrest the plaintiff, on *inter alia* the following grounds: They failed to apply their minds in considering whether or not to effect the arrest in that they failed to consider all information before them. They failed to establish and provide sufficient reasons for the exercise of the discretion to arrest. They acted arbitrarily and capriciously in exercising the discretion whether or not to arrest. The defendant denied these claims

5 (131/10){2010}ZASCA 141 at parag 28

6 Id parag 38

7 Id parag 36

8 Id parag 48

9 Id parag 52

and put the plaintiff to the proof thereof. It justified the arrest on the grounds of the reasonable suspicion coupled with the plaintiff's failure to answer questions after he had been pointed out by the eye witness, and the allegations had been explained to him. Vermaak's evidence was that the need to do further investigation at the SAPS cells arose as a result of the fact that the plaintiff would not answer his questions. According to Vermaak's evidence, had the plaintiff given an alibi this would have been investigated. Vermaak clearly did not consider arrest to be an automatic next step which would have taken place after identification of the plaintiff, even though he might not have distrusted Landu's version.

- [16] In his evidence in chief, Vermaak testified that the plaintiff was pointed out to him at Rand Civils by Landu, and was then brought over to him by an employee of the company. He asked the plaintiff his name and was told it was Mr Khwela. He then informed the plaintiff that Landu had laid a charge of theft and that he had been identified as one of the suspects. He then asked the plaintiff if he could tell him something about the incident to which the plaintiff replied that he had nothing to tell him. He asked him whether he was on the premises of Rand Civils the previous night, but the plaintiff did not say anything. If he had said something he would have followed it up. Then he stated that if plaintiff had nothing to tell him that he would have to arrest him. Before arresting him he asked Landu if the plaintiff had been correctly identified. Under cross examination he repeated the interchange:

"Nadat ek myself voorgestel het, het ek aan hom verduidelik wat ek daar kom doen het oor die diefstal. Ek het toe vir hom gevra of hy enigiets vir my kan se ten opsigte van die diefstal, die bewering wat teen hom gemaak is. Hy het toe vir my gese dat hy niks vir my te se nie. "

"So your exact question was did he know anything about the theft?- - - Answer: That's correct.

And he said "I have nothing to say?- - - Answer: Yes, he's got nothing to say to me.

What else then?- - -Answer: Then I said to Mr Khwela if he is not going to speak to me or tell me anything I will have to arrest him."

Vermaak stated that the plaintiff would not talk to him, he did not know why. This necessitated taking the plaintiff to the cells for further investigation.

- [17] Plaintiff's version of the events was that after he was pointed out, and called over to where the police were standing, Vermaak asked him where he had put the truck after stealing it. He became shocked by being asked such a question and told him that he did not know where it was. Vermaak then told him that someone saw him stealing the truck and therefore he must say where he hid it. He gave the same reply, that he did not know where the truck was when he arrived at work. Vermaak then told him that since he had been seen taking the truck he was arresting him. He asked where he had been the previous evening at 20H30 to which the plaintiff replied, at home. Vermaak's response was to show disbelief, whereafter he arrested him. His view was that the information on which the police based the arrest was insufficient. They simply believed Landu and never investigated where he was at the time of the theft.
- [18] Counsel for the plaintiff argued that Vermaak's conclusion that the plaintiff failed to co-operate with the police was unfounded. He had supplied his name, address and whereabouts the previous evening to the police. He was asked broad questions about the disappearance of the truck and his statement that he had nothing to tell Vermaak did not signal a refusal to co-operate with the Police. No other questions were asked of plaintiff.
- [19] The defendant's counsel argued that there was a glaring improbability in the plaintiff's version in that he testified that he never met or saw his accuser, yet Landu who accompanied the police pointed him out. Also, that the plaintiff's evidence did not concur with his counsel's submission that no further questions were asked. It was argued that the test is whether the police officer duly and honestly applied his mind even though he might have made a mistake ie the actions must be objectively rational, in good faith and not arbitrary.
- [20] It appears that the plaintiff's counsel's submission that no further questions were asked of the plaintiff after the initial interchange is correct. There is disagreement between the parties as to whether the interchange culminated

in the plaintiff advising the police that he was at home the previous night during the time of the theft or not. The probabilities as to the respective versions will be discussed below.

Analysis

- [21] Vermaak's evidence does not differ much from the plaintiff's evidence as to how he initially responded to being confronted with the allegations that he was implicated in the theft. In evaluating Vermaak's version, that plaintiff refused to speak to him, the following facts are relevant. Vermaak stated that the plaintiff had given him his name and address. The plaintiff responded to being asked if he had anything to say about the theft, by saying he had nothing to tell him.

Other conduct by the plaintiff indicates that he was willing to speak to Vermaak. The following information reveals Vermaak's uncertainty regarding his version, that the plaintiff refused to speak to him.

"You did not ask Mr Khwela where he lived.....Answer: No

May I please ask you to read Answer: I'm sorry before I turn this page, he said he stayed I think it was Motherwell, Buthelezi Street or something like that.

So he did tell you where he lived.... Answer: He did.

Did you ask him or did he just tell you? ... Answer: No I think I asked him, I'm not sure if I asked him or Capt Neethling asked him at that stage, but he did give his address.

He did give his address. But after that you said he was unco operative.... Answer: Ja well, he did not want to speak to me. He did not want to say anything to me.

- [22] It is unlikely that the plaintiff would have refused to speak to Vermaak but given information Neethling when both were present together at the time of the arrest. There is no indication in Vermaak's evidence that Neethling questioned the plaintiff at the scene. Thus the evidence suggests that the plaintiff was forthcoming to Vermaak with information. It also suggests a certain awkwardness on the part of Vermaak in admitting that the plaintiff had given him this information, possibly unsolicited, when his version was that the plaintiff adamantly refused to speak to him.

Plaintiff's evidence in my view does not indicate a refusal to speak to

Vermaak or a refusal to answer questions, and it appears that Vermaak wrongly, and over hastily concluded so. The plaintiff's response is in fact consistent with having an alibi, which was his position at all material times.

It is improbable that the Plaintiff would have supplied his address readily, possibly without even being asked by Vermaak, and would then have refused to answer a question where he could have exculpated himself, by indicating that he had an alibi, that he was at home at that address the previous evening. I found the plaintiff to be a credible and confident witness and discrepancies in his testimony were minor in nature and not relevant to the facts surrounding his arrest. It is more probable that Vermaak refused to believe the alibi, which was the plaintiff's version. As it happens, later on the day of the arrest the police interviewed the plaintiff's minor son at home and he testified that they were told that the plaintiff was at home the previous evening.

- [23] Numerous persons were present when Vermaak questioned the Plaintiff. He testified that he was accompanied to the scene by Captain Neethling and Constable Plaatjies who remained in the police vehicle. When the plaintiff was called he came to them, and they were standing near the vehicle. It is not clear from the evidence who precisely Vermaak was referring to in this instance but it seems safe to assume that Landu who did the pointing out and Plaatjies who remained in the vehicle were present during the interchange between Vermaak and the plaintiff. Neethling, a worker from Rand Civics who pointed the plaintiff out and a head of Rand Civics were also mentioned by him as having been on the scene at the time. However no witnesses were called to testify to corroborate Vermaak's version. He also appeared to give somewhat contradictory evidence when describing the plaintiff's conduct. He stated that the plaintiff refused to talk to him and refused to get into the police van when asked to, but one more than one occasion in his evidence pointed out that the plaintiff was not uncooperative. Vermaak was on patrol that morning attending to complaints, and at the time of the arrest already had an outstanding complaint waiting for him to attend to. He was not the investigating officer in the truck theft case. He had been told about it by his shift commander on arrival at work that morning about it and was asked to "go

and look as to whether we can find this man at the premises and arrest him.” He may well have believed that his instruction was to arrest the suspect, and for that reason ignored the alibi, although I do not need to find a motive. I conclude that the plaintiff’s version is more probable and is inherently probable, namely that Vermaak unreasonably disbelieved him and went ahead and arrested him without checking his alibi. In exercising the discretion to arrest, Vermaak as arresting officer and member of Defendant therefore failed to duly and honestly apply his mind to the fact that the plaintiff may have had an alibi ie failed to consider all information before him, and thus failed to establish and provide sufficient reasons for the exercise of the discretion to arrest. Vermaak thus acted arbitrarily and capriciously in exercising the discretion whether or not to arrest.

[24] The plaintiff argued that if reasonable grounds existed for the arrest, Vermaak should have applied his mind as to whether a less invasive option should have been exercised. This argument falls away in light of the conclusion in the previous paragraph.

[25] As to the possible improbability regarding plaintiff’s evidence, that he never saw his accuser at the pointing out, the plaintiff’s evidence was as follows: He testified that he observed security guards speaking to the police and pointing at him. He thought they were doing so because they were going to ask him something, because his truck was lost or missing. His evidence did not go as far as to indicate that he was made aware at that time that one of these persons, Landu, was the person who had identified him as a suspect. He disputed that Vermaak asked Landu questions about him in his presence. He did not know Landu nor could he point him out. The improbability is therefore not established.

Unlawful detention

[26] The plaintiff pleaded that after his arrest he was unlawfully, wrongfully, alternatively maliciously and without probable cause, detained until his release on bail on 6 September 2007. This was denied by the defendant. Plaintiff submitted that if a person is unlawfully arrested their detention after the arrest will also be unlawful, and the right will be retained to institute an

action for damages as a result of the unlawful arrest and detention. Once the detention by a police officer is proved the onus shifts to the defendant to raise a ground of justification. In this matter since the arrest was found to be unlawful and arbitrary, I conclude that the subsequent detention was also unlawful.

Malicious Prosecution

[27] The requirements of this delict are fourfold:

- a) the defendant must institute the proceedings;
- b) the defendant acted without reasonable and probable cause;
- c) the defendant was actuated by an improper motive or malice;
- d) the proceedings were terminated in the plaintiff's favour.

[28] The defendant pleaded that in instituting the prosecution against the plaintiff the law was set in motion by Landu who laid a charge of theft under oath with the South African Police Services. Whereafter the members in the execution of their duties and in accordance with the provisions of the Criminal Procedure Act brought the plaintiff before court for a decision by the National Prosecuting Authority as to whether or not to further the prosecution against him on a charge of theft. The issue of whether the defendant's servants set the law in motion remained in dispute at the trial.

[29] The prosecution would not have been initiated, were it not for the sworn statement and pointing out of the plaintiff by Landu. Landu called the police, and his employer to the scene on the 3rd September. On the morning of 4th September he came to the police station, and made the sworn statement as a result of which a docket was opened. Members of the SAPS then accompanied him to the scene to point out the plaintiff. But for the conduct of Landu no proceedings would have been instituted. I conclude that the claim of malicious prosecution against the defendant must fail.

Quantum of Damages

[30] The factors that must be taken into account in determining quantum in cases

of unlawful arrest and detention are cited in Visser and Potgieter *The Law of Damages* (2 ed 472-5) and include the circumstances in which the deprivation of liberty took place, the presence or absence of an apology or satisfactory explanation from the defendants, the infringement of personality rights other than physical freedom, the high value of the right to physical liberty, that the *action iniuriarum* has a punitive function, and awards in previous comparable cases. As stated by Jones, J in *Olgar v Minister of safety and Security*¹⁰ (approved in *Masixole Nelson Fubesi v Minister of Safety and Security*¹¹)

“In modern South Africa a just award for damages for wrongful arrest and detention should express the importance of the constitutional right to individual freedom, and it should properly take into account the facts of the case, the personal circumstances of the victim, and the nature, extent and degree of the affront to his dignity and his sense of personal worth. These considerations should be tempered with restraint and a proper regard to the value of money, to avoid the notion of an extravagant distribution of wealth from that Holmes J called the “horn of plenty”, at the expense of the defendant.”

- [31] The plaintiff is a mature gentleman who was arrested in full view of his fellow employees at the workplace. He testified that he felt painful, especially as his fellow employees might have thought that he was involved in the theft. He found it difficult to get into the back of a police van and alleged that he was sworn at by a member of the defendant. The defendant disputed this. He was detained for 48 hours. He claimed that his wife came to see him on the first day of his detention but he was not permitted to see her until the second day. He had to sleep with other detainees in a cell with a filthy toilet and in conditions that he did not regard as conducive to living for a human being. He was afraid as he was not sure if the other inmates were criminals. The lights were kept on the whole night. He did not sleep well, on the flimsy mattress provided, with a blanket that did not cover him and was not suitable for a human being to sleep on. His son testified that after his arrest he became withdrawn where beforehand he was talkative. Although the plaintiff did not plead the specific circumstances that he was exposed to in custody as part of his claim, the court takes judicial notice of the fact that prison conditions and police custody would result in a deprivation of comfort and privacy, and

¹⁰ ECD 18 December 2008 (Case no 608/07) unreported para 16,

¹¹ ECD 23 October 2010 (Case no 680/09) para 17

possible exposure to criminals.

- [32] Charges against the plaintiff were withdrawn, but no apology was tendered for the arrest and detention. The Plaintiff lost his job on his return from custody but a claim in this regard was not pleaded, and will therefore not be considered. In the light of the above facts I have no doubt that the plaintiff suffered anxiety, damage to his good name, embarrassment and insult to his dignity as a result of his unlawful arrest and detention. He was incarcerated with others whom he was afraid of lest they were criminals, in squalid conditions for a period of 48 hours. This caused him discomfort and distress and was obviously a humiliating and degrading experience for a 48 year old man.
- [33] Taking into account the factors listed above, as well as awards in comparable cases, I consider an award of R60 000 for unlawful arrest and detention for a period of 48 hours to be reasonable. In considering the appropriate quantum of damages I have been guided by recent judgments in this division as well as others, which involved detentions of similar duration to that of the plaintiff. These judgments include *J M Wardle v The Minister of Safety and Security*,¹² *R C Norman v The Minister of Safety and Security*,¹³ *M N Fubesi v The Minister of Safety and Security*¹⁴, as well as *Mvu v The Minister of Safety and Security*,¹⁵ as *Gellman v The Minister of Safety and Security*,¹⁶ and *Stolz v The Minister of Safety and Security*.¹⁷

Postponement

- [34] This matter had to be postponed on 22nd September 2009, because two of defendant's witnesses did not attend court. They were not subpoenaed. They were aware of the date of set down but decided not to attend because of leave commitments. In preparing for this trial defendant and its attorneys would have needed to consult with witnesses and therefore must have known that these witnesses had no intention of coming to court on the set down date.

12 ECD dated 25/6/2010 (Case no CA 27/2010) unreported.

13 ECD dated 10/09/2010 (Case no CA 71/2009) unreported.

14 ECD dated 30/09/2010 (Case no 608/07) unreported ,

15 2009(2) SACR 291

16 2008(1) SACR 446 (W)

17 [2006] JOL 16612 (SE)

Due diligence in the handling of litigation responsibilities would have included making sure that witnesses attend, ascertaining whether they are likely to attend and if not, informing the plaintiff that the matter will have to be postponed. The defendant did not do so and the matter had to be postponed on the date of hearing due to the non attendance of two of the defendant's witnesses. The plaintiff is as a result out of pocket due to no fault of his own and therefore it is appropriate to award costs of this postponement against the defendant.

[35] It is ordered

1. The defendant is to pay plaintiff the sum of R60 000, with interest at a rate of 15,5 % per annum from date of this judgment to date of payment;
2. The defendant is to pay the plaintiff's costs on the High Court scale including the costs of the postponement on a party and party scale.

ANGELA ANDREWS

ACTING JUDGE OF THE HIGH COURT

DATE HEARD :28 January 2011

DATE DELIVERED :10 May 2011

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