THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case No: 278/2019

In the matter between:

S A SIGHT ENHANCEMENT INITIATIVE[1] Applicant
(Non-Profit Organisation: 2016/308593/08)

and

GIDEON FRANCOIS BENADE[2] First Respondent
VM OPTICS Second Respondent
LIBRA OPTICAL Third Respondent

Coram: Opperman, J

Heard: 25 APRIL 2019

Delivered: 5 JULY 2019

Judgment: Opperman J

Summary: Restraint of trade – non-profit organisation – protectable interest of non-profit organisation in business

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JUDGMENT

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[1] SASEI.
[2] First respondent.

INTRODUCTION

1. The applicant seeks a final interdict to enforce the covenant of restraint of trade and vindicatory relief pertaining to some moveable assets. The case revolves, mainly, around the restraint-of-trade provision. The dispute is distinctive in that the applicant is a registered non-profit organisation.

2. The Non-profit Organisations Act 71 of 1997 defines a “non-profit organisation” (NPO) to mean a trust, company or other association of persons—
   (a) established for a public purpose; and
   (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered.

3. On 26 May 2017 the Companies and Intellectual Property Commission of South Africa issued the applicant with a Certificate of Confirmation[3] in which the “enterprise type” was depicted as a “Non-profit Company” and the “enterprise status” to be “in Business”. It is important to realise at this stage that NPOs are more often than not businesses and the accreditation of the enterprise status by the Commission confirms such. The NGO is distinguishable in that any income and profit must be applied for public purpose except for fair remuneration for services rendered to members or office bearers.

[3] Court Bundle on page 34.

4. Fodor and Radebe[4] summarise the system in which charity organisations operates under the law with reference to "The Law of South Africa" (LAWSA), second edition (2011), volume 31, page 4 to 5 and 86 to 97. (Also see the White Paper on Social Welfare Government Gazette 18166 GN 1108, 8 August 1997), pertinently.

   "South Africa's legal system is affected by the Roman Dutch and English legislative regimes' historic impact on its development. However, the spirit of *Ubuntu* (a Zulu word that denotes the essential human virtues including compassion and humanity) with which the South African Constitution is infused is pervasive in post-Apartheid legislation.

   Charity law in South Africa is broadly classed under the heading of "welfare". As such, the Constitution places welfare within the ambit of co-operative government (*part 2, Volume 31, LAWSA*), with national and provincial government enjoying concurrent jurisdiction. Each province can promulgate its own welfare statutes in addition to the nationally applicable statutes like the Non-Profit Organisations Act 1997 and the Companies Act 2008. The Non-Profit Organisations Act 1997 represents the culmination of the efforts of the Directorate for Non-Governmental Organisations, under the auspices of the Department of Welfare. It takes a holistic approach to the welfare sector, creating an enabling environment to address the needs of the greater South African society."

5. On 12 July 2017 the applicant was issued with a "Certificate of Registration of a Non-Profit Organisation"[5] by the Department of Social Development that declared the applicant to meet the requirements for registration.

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[4] Principia Charitable Organisations in South Africa: Overview, **https://uk.practicallaw.thomsonreuters.com/9-632-4485?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1** sourced on 15 June 2019.

[5] Court Bundle on page 33.

6. The applicant was established to provide low cost access to basic eye care in underserviced areas in South Africa by doing electronic eye screening. After screening the person will choose a frame. The glasses are ordered from a specific supplier. The glasses are sold at a fixed price which included the free eye screening, the frame, case and cloth and normally the person will pay on lay-buy for the glasses in one to four instalments.

7. Applicant's Memorandum of Incorporation[6] states as follows:

"2.1 INTRODUCTION

Visual impairment is not just a health problem – it has economic, educational and public safety implications. According to the World Health Organisation approximately 90% of the world's visually impaired live in low- income settings, and 80% of all visual impairment can be prevented or cured. A pair of eyeglasses can transform the life of a poor person – from enabling a child to read and learn, to enabling an adult to perform daily tasks such as cooking food, sewing, shopping or driving a motor vehicle. Employment opportunities are severely limited by visual impairment.

The company is a non-profit company without members, and with the following object:

To provide corrective healthcare treatment to poor and needy visually-impaired persons, thereby improving their socio-economic situations and transforming their quality of life.

It aims to achieve this objective by offering mobile care services to the poor and needy in impoverished and rural areas, through the provision of, *inter alia*:

- Free eye testing in rural and impoverished areas;
- Free or low-cost eyeglasses, according to assessed need;
- Patient education regarding follow-up treatment and
- Access to specialised surgical intervention, where necessary.

2. OBJECTS AND POWERS OF THE COMPANY

[6] The Memorandum of Incorporation at page 265 of the Court Bundle.

2.5 All activities of the company shall be carried out in a non-profit manner and with an altruistic or philanthropic intent and no such activity shall be intended to directly or indirectly promote the economic self-interest of any director, officer or employee of the company, otherwise than by way of reasonable remuneration payable to that director, officer or employee."

DISPUTE

8. The first respondent unequivocally admits in his opposing affidavit that he continued business against the covenant of the restraint of trade.[7] He questions that the applicant possesses a proprietary interest and/or clear right that warrants the enforcement of a covenant of restraint of trade. It is the first respondent case that the applicant does indeed apply all its assets and income, however derived, to advance the objectives of the organisation. Nevertheless, SASEI may not restrain charity services by way of contract; it will be against public policy.[8]

9. He, in addition, attacks the fairness of the covenant because of the following:[9]

9.1 I have been in this occupation for a mere three years now. First as an employee of the applicant and later as a business owner with my own clientele.

9.2 Although I am still finding my feet, I learned the needs of the community I serve and find their appreciation of the service I render very rewarding.

9.3 I have no other foreseeable means of making a living.

First respondent further averred that the applicant is merely acting maliciously with the claim.

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[7] See clause 7 EXCLUSIVITY, clause 8, clause 9, clause 11, clause 14 and clause 28 RESTRAINT of the agreement marked "NJL4" from pages 38 to 61.

[8] Opposing affidavit in Court Bundle at pages 109 to 111 and page 116 paragraphs 81 to 83.

[9] Opposing affidavit in Court Bundle at page 111.

10. The argument of the first respondent is that enforcement of the restraint of trade is in direct contrast with the fair rendering of services to the community. It is only logical that the more service providers to the community, the more beneficial it would be to the impoverished in need of eye care.

11. Moreover, first respondent specifically denies that "the applicant has clients and suggests that it might rather have beneficiaries." He sourced the individuals in issue as clients himself. They were not part of the data base of clients supplied by the applicant.

12. He further admits that he ordered supplies from suppliers in breach of the contract. He was forced to do this because the applicant repudiated the contract.[10] In regard to the claim for delivery of goods the defence is that it was not part of the lease agreement although he is in possession of some items and tender delivery to the applicant thereof.

THE CLAIM AND THE FACTS

13. The claim is against the first respondent only. There lies no claim against second and third respondents and no relief or costs order is sought against them. They are cited due to the alleged fact that they provided first respondent with supplies to act in alleged contradiction with the restraint of trade clause in the contract and might have an interest in the litigation.

[10] The applicant denies the repudiation.

14. The agreement between applicant and first respondent was entered into with the resolve to improve access to basic eye care services in underserviced areas in the Republic of South Africa by mobile units and/or on fixed premises.

15. The agreement can be typified as a hybrid supplier/lease/profit share/sub-contractor service agreement.[11] The applicant's claim is based on this agreement only.[12] The terms of the contract are common cause. It is common cause that the contract was terminated; the reasons and cause thereof are in dispute but not relevant to the existing litigation.[13] The date of termination will be deemed to be 1 November 2018.

16. The applicant did not enter into the contract with the first respondent with the intention that he, first respondent, be a beneficiary of the NPO but purely for the purposes of promoting the business and welfare objectives of the SASEI.[14] The first respondent is just what the agreement depicts; an independent contractor.[15] The individuals serviced by the applicant and the first respondent are indeed beneficiaries. The moment when the first respondent engaged in his private capacity and not in terms of the agreement in business with the public, he turned them, per definition, into clients for his own gain.

17. The core of the agreement lies with the first respondent to do a free, practical eye screening, after which he assists the member of public to choose a frame and make an arrangement for the lay-buy payment

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[11] Court bundle at pages 33 to 61.
[12] Court bundle, founding affidavit, page 13 paragraph 4.1.
[13] See clause 6.2 on page 44 of the court bundle.
[14] See clause 7.2 on page 44 of the court bundle.
[15] Clause 14.1 of the agreement on page 53 of the court bundle.

of the glasses with such a member of public, upon which the pre-fixed tariff for the glasses will be collected by the first respondent. On payment of 75% of the price for the glasses, the laboratory automatically receives the script, manufactures the glasses and delivers same directly to the first respondent.

18. The agreement *inter alia* provided:

18.1 That the first respondent will not at any time during the course of the agreement or during any renewal or extension thereof or during the duration of the restraint period directly or indirectly enter into negotiations or conclude any agreement with any third party which would in any other way conflict with or detract from the objective set out in the agreement, or offer products or services similar or related to the products or services rendered by the applicant (clause 7.1.1), and

18.2 first respondent will for the duration of the agreement with consideration of the restraint period comply with all the terms and obligations of the agreement (clause 8.1), and

18.3 first respondent will for the duration of the agreement place exclusively with applicant all orders for products relating to the services rendered in execution thereof, such orders to be placed and processed as specified in the operation/administrative system (clause 8.1.1), and

18.4 the products (glasses) are sold at a fixed rate, as referred to in clause 9 of the agreement, for example initially a single vision eye glass was sold at the amount of R550.00, of which an amount of R210.00 was retained by the first respondent and an amount of R340.00 should have been paid over to the applicant, and

18.5 that the first respondent, its executives including but not limited to a proprietor, principal, member, agent, partner, representative, shareholder, director, manager, consultant, advisor, financier, administrator and/or in any other like capacity (restrainees) irrevocably undertake in favour of the applicant, and its successor entitled, that they shall not from the date of termination of the agreement for the period of 2 years within the allotted area or any other area already in service of the applicant, be directly or indirectly associated and/or concerned with, interested and/or engaged in and/or interest itself in any firm, business, company, close corporation or any other form of business that carries on business similar to the business of the applicant (clause 28.1).

19. It all worked very well, until the first respondent fell in arrears with his payments of the agreed amount(s) to the applicant, while, on the other side, the applicant remained liable towards the laboratory for payment of all those applicable frames and glasses having been manufactured by the laboratory.

20. First respondent is currently in arrears to the amount of R201,619.94 in terms of payments due and payable to applicant, while applicant was obliged to pay all laboratory invoices, which it indeed did. First respondent's failure to pay the applicant the agreed amount in terms of each eye screening and glasses basically caused the business relationship between the applicant and the first respondent to have deteriorated to such an extent that it was finally terminated during November 2018. Applicant issued summons in relation hereto in the

Regional Court, Bloemfontein and the summons was served simultaneously with service of this application.

THE LAW

21. The major issue is, and specific to the facts *in casu;* whether the applicant wants protection of charity or merely business that generates an income and which is ploughed back into the non-profit organisation to render welfare services to the indigent. If the protectable right[16] claimed is charity, the question that follows is whether any entity may have contractual monopoly and a protectable interest in charity to the community. If the protectable interest; on the facts is business to generate income or profit for charity, will the covenant be automatically illegal and unenforceable because the applicant is a non-profit organisation?

22. Sutherland[17] summarized the situation in law as it stands currently in South Africa correctly:

    22.1 The mere fact that an entity is typified as an association not for profit or a section 21 company will not in itself mean that its activities will not be subject to competition law rules.

    22.2 These entities often perform economic activities that even earn profits, although the profits made from those activities may not be distributed to their members.

    22.3 The organisational structure of an entity should nevertheless be considered as one of the evidentiary factors that point

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[16] It is also referred to as "proprietary interest" in the contract at paragraph 28.1 on page 57 of the Court Bundle. Note that the "proprietary interest" was not defined in the contract.

[17] Competition Law of South Africa, https://www.mylexisnexis.co.za/Index.aspx: 21 June 2019, Last Updated: November 2017 at 4.4.

towards it being involved in business or non-business activities.

22.4 The nature of the activity may depend on the nature of the entity performing it. The entity's central purpose might not be to achieve profit. The activity at issue may not be commercial in that there is no attempt to profit from it or that the underlying activity does not affect commerce, regardless of the actor's intent.

22.5 The fundraising activities of charities are probably immune from the Competition Act 89 of 1998 although there may also be strong arguments for subjecting these activities to competition law supervision.

23. Lindsey D. Blanchard[18] in an article themed "Charitable Non-profits' Use of Noncompetition Agreements: Having the Best of Both Worlds" reflects the focus and question of this case when she stated:

"However, in a competitive marketplace—where every person is out for him or herself and the goal is to maximize profits—courts and legislatures in many jurisdictions are reluctant to invalidate otherwise reasonable noncompetition agreements. After all, companies should have the right to expect that freely negotiated contract provisions will be enforced. But what if the noncompetition agreement is entered into between an individual and a non-profit organization? Should the non-profit organization have the same right of expectation? For the most part, the courts and legislatures seem to think so. And, perhaps they are right, at least when it comes to the general class of non-profits and to non-profits that are protecting their interests against for-profit entities."

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[18] Golden Gate University Law Review, Volume 44 | Issue 3 Article 3, July 2014, Charitable Nonprofits' Use of Noncompetition Agreements: Having the Best of Both Worlds, University of St. Thomas School.

24. It goes without saying that charity in its purest form may never belong to any one entity. Neither by contract nor by law. Charity is for the people from the people. There is not a formal legal definition of charity. The English dictionary meaning does not pay homage to the word "charity"[19] in the African sphere as does the guiding principle of "Unbuntu".[20] The sentiment correlates with the principia that developed the Competition Act 89 of 1998:

> "On the contrary, it is the result of a determined policy initiative to bring South African competition law into line with international best practice, adapted for an African and developing country environment."[21]

25. Charity is not only monetary relief to the poor. In 1964 Potgieter J in Stadsraad, Edenburg v NG Gemeente, Edenburg 1965 (2) SA 112 (O) quoted Lord Herschell from the case of Commissioners for Special Purposes of Income Tax v Pemsel, 1891 A.C. 531 on pages 571 and 572:

> "It is the helplessness of those who are the objects of its care which invokes the assistance of the benevolent. I think, then, that the popular conception of a charitable purpose covers the relief of any form of necessity, destitution or helplessness which excites the compassion or sympathy of men, and so appeals to their benevolence for relief."

26. The predicament is when charity involves business. In Council for Medical Schemes and Others v Liberty Medical Scheme and Another (35254/2012) [2013] ZAGPPHC 542 (28 May 2013) in paragraph 28

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[19] "Charity: the act of giving money, food, or other kinds of help to people who are poor, sick, etc. also : something (such as money or food) that is given to people who are poor, sick, etc. : an organization that helps people who are poor, sick, etc. : the organizations that help people in need. Charity | Definition of Charity by Merriam-Webster, https://www.merriam-webster.com/dictionary/charity retrieved on 20 June 2019.

[20] ''...Ubuntu - the essence of being human. Ubuntu speaks particularly about the fact that you can't exist as a human being in isolation. https://www.capetownmagazine.com/whats-the-deal-with/ubuntu/125_22_17348 on 20 June 2019.

[21] Sutherland at 3.2.5.

the dictum of the Australian High Court, Williams Breen v Williams (1996) 186 CLR 71 (HCA) were relied upon and which is also relevant in this case:

"The law of fiduciary duty rests not so much on morality or conscience as on the acceptance of the implications of the biblical injunction that '[n]o man can serve two masters' (Matt 6:24). Duty and self- interest, like God and Mammon, make inconsistent calls on the faithful."

27. In terms of the Constitution of the Republic of South Africa, 1996 every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

28. The Magna Alloys-test[22] is trite. The adjudication of restraint-of-trade disputes was ruled by the Supreme Court of Appeals to be on the following principles:

28.1 Each agreement should be examined with regard to its own circumstances to ascertain whether the enforcement of the agreement would be contrary to public policy.

28.2 In which case it would be unenforceable.

28.3 Although public policy requires that agreements freely entered into should be honoured, it also requires, generally, that everyone should be free to seek fulfilment in the business and professional world.

28.4 An unreasonable restriction of a person's freedom of trade would probably also be contrary to public policy, should it be enforced.

[22] Magna Alloys and Research (SA) Pty Ltd v Ellis 1984 (4) 874 (A).

28.5 Acceptance of public policy as the criterion means that, when a party alleges that he is not bound by a restrictive condition to which he had agreed, he bears the onus of proving that the enforcement of the condition would be contrary to public policy.

28.6 The Court would have to have regard to the circumstances prevailing at the time when it is asked to enforce the restriction.

CONCLUSION

29. The evidence leads to the conclusion that the applicant does gain financially from the agreement with the first respondent.

30. The mere fact that the applicant is an NPO does not prevent the generation of profit as long as it is for the benefit of charity and provided that it applies all its assets, income and profit to the welfare and objective of the organisation's altruistic and selfless activities. The evidence does not proof any misconduct or transgressions in this regard by the applicant. His contract with the first respondent is to promote charity.

31. The applicant had a business relationship cemented in the agreement with the first respondent and the activity performed in regard to the services rendered is an economic activity that might affect commerce. The lease of the equipment and the supply of the glasses is indicative of this.

32. It does, however, remain in the sphere of the contract between the parties and does not affect the wider economy and cannot be said to

be against the interest of the public. It does not prevent charity; it prevents business under the name and certification of the applicant in terms of the contract. As said, charity or welfare is regulated by government and nothing prevents the first respondent to apply for certification. If the authorities deem his services necessary it will issue consent. This cannot be prevented by the applicant by contract.

33. The legality of "trade in charity" in welfare services is regulated by government and not contract between entities horizontally.[23]

34. The law of contract is just as applicable to entities for profit as it is for non-profit entities provided that the contract may not be to monopolise welfare services in its primary form. The following dictum applies:

    34.1 In Basson v Chilwan and Others 1993 (3) SA 742 (A) at 762H Eksteen JA referred to:

    "The paramount importance of upholding the sanctity of contracts, without which all trade would be impossible …"

    Further,

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[23] Non-profit Organisations Act 71 of 1997:
2. Objects of Act. —The objects of this Act are to encourage and support non-profit organisations in their contribution to meeting the diverse needs of the population of the Republic by—
(*a*) creating an environment in which non-profit organisations can flourish;
(*b*) establishing an administrative and regulatory framework within which non-profit organisations can conduct their affairs;
(*c*) encouraging non-profit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards;
(*d*) creating an environment within which the public may have access to information concerning registered non-profit organisations; and
(*e*) promoting a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with non-profit organisations.
3. State's responsibility to non-profit organisations. —Within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions.
Fodor and Radebe supra states the principal legislative sources of law in this instance correctly as: The Constitution of South Africa, 1996, The Non-Profit Organisations Act, 71 of 1997, The Companies Act 71 of 2008, The Trust Property Control Act 57 of 1988 and The Income Tax Act 58 of 1962. I would add herewith The Competition Act 89 of 1998 for purposes of this judgement.

"If there is one thing that is more than public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this para-mount public policy to consider - that you are not lightly to interfere with this freedom of contract."

34.2 Justice Ackermann in Ferreira v Levin NO; Vryenhoek v Powell NO 1996 (1) SA 984 (CC) paragraph 26 described it as "a central consideration in a constitutional state". These statements aim for reasonable certainty, so that parties can go about their business knowing the rules of the game; constitutional economic integrity is vital.

34.3 Moseneke J (as he then was) pointed out in his dissent in Barkhuizen v Napier 2007 (5) SA 323 (CC) paragraph 98 that:

"Public policy cannot be determined at the behest of the idiosyncrasies of individual contracting parties. If it were so, the determination of public policy would be held ransom by the infinite variations to be found in any set of contracting parties."

35. The applicant, with the restraint of trade covenant, does not want to prevent the first respondent from doing charity work. As said above, charity is for the people and nobody may have a monopoly in any form on this. His intent is inferred to be to, in terms of a contract, prevent the first respondent from doing business under the guise of charity and to gain personally from the profits in contravention of the prescriptions regulating non-profit organisations, and to the detriment of the beneficiaries.

36. The first respond was contracted as a sub-contractor doing charity work. The evidence shows that the contract was consensual and the

terms clear. The first respondent was bound by the contract to ensure income to the charity by way of service and profit. He sourced his clients under the auspices of the applicant’s identity.

37. The plea that the business, in contravention of the covenant, is his only means of making a living, does not convince to be against public interest and unfair if measured against the evidence as a whole. The length of time for which the restraint operates is not unduly long, the geographical area to which the restraint applies is limited to the areas specified in the contract and the first respondent still has the capacity to earn a living in other areas. According to the evidence the first respondent is skilled for other work.

38. The plea for return of goods is not curtailed by the issues of non-profit or profit or charity. It goes without saying that if the contract is terminated in any manner whatsoever, the property remains that of the applicant and must be returned in terms of the contract. During the hearing of the application the applicant conceded to claim just the goods as referred to in paragraphs 3.1, 3.4, 3.5 and 3.6. of the Notice of Motion.

39. Finally, in conclusion on the main issue; the applicant wants protection of his business that generates an income by way of profit and which is ploughed back into the non-profit organisation to render welfare services to the indigent; not charity. Charity is not a protectable right to be regulated horizontally between entities and for them to claim monopoly on *via* contract. The covenant, on the facts of this case, to restrain trade is not automatically illegal and unenforceable because the applicant is a non-profit organisation.

ORDER

40. The application is granted and it is ordered as follows:

40.1 That, for a period of two (2) years, commencing on 1 November 2018 and in the South Eastern Free State within the geographical area of the towns Bloemfontein, Reddersburg, Edenburg, Rouxville, Zastron, Smithfield, Wepener, Dewetsdorp, Botshabelo, Thaba Nchu, Hobhouse, Thaba Phatswa, Tweespruit, Excelsior, Ladybrand, Marquard and Clocolan, the first respondent is interdicted and restrained to directly or indirectly; in any capacity, be associated and/or concerned with, interested and/or engaged in any firm, business, company, close corporation or any other form of business that carries on business similar to the business of the applicant, being eye screening on members of the public and the subsequent provision of eye glasses to such member of public: *Provided* that the first respondent may apply to register as a non-profit organisation with the relevant authorities and if granted, continue with the business prohibited above but, with legislatively prescribed charity objectives;

40.2 For a period of two (2) years, commencing on 1 November 2018, enter into negotiations or conclude any agreement with second- and/or third respondents, whether in his own name or for and on behalf of a third party, which offers products or services similar or related to the products or services rendered by the applicant, being in the provision of spectacle-frames and/or the manufacturing for and/or the provision of eye glasses to first respondent: *Provided* that the first respondent may apply to register as a non-profit organisation with the relevant authorities and if granted, continue with the business prohibited above but, with legislatively prescribed charity objectives;

40.3 That first respondent be ordered to immediately cease its business rendering general eye screening services to the pubic within the allocated area and/or to provide members of the public within the allocated area with eyeglasses: *Provided* that the first respondent may apply to register as a non-profit organisation with the relevant authorities and if granted, continue with the business prohibited above but, with legislatively prescribed charity objectives.

40.4 That first respondent is ordered to remove applicant's logo, or any logo obviously similar in shape and colour to that of the applicant, from any and/or all vehicles in first respondent's possession or under his control.

40.5 That first respondent is ordered to hand the items referred to in paragraphs 3.1, 3.4, 3.5 and 3.6 back to applicant within 3 (three) days after the date of this order.

40.6 That first respondent is ordered to pay the costs of this application.

40.7 The judgement must be forwarded by the Registrar of the Free State Division of the High Court to the relevant powers that be at the Department of Social Welfare, South African Revenue Services and the Registrar of Companies to investigate and ensure that the business that caused the dispute, that of the applicant: S A SIGHT ENHANCEMENT INITIATIVE, is operated in accordance with the law.

M. OPPERMAN, J

On behalf of the Applicant:	Adv. Merabe Instructed by: Horn & Van Rensburg Attorneys BLOEMFONTEIN Ref: MJVR/Maryke/SM2623
On behalf of the First Respondent:	Mr. J.H.D. Bloem Instructed by: Spangenberg, Zietsman & Bloem Attorneys BLOEMFONTEIN Ref: MAT 2489