

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT PORT ELIZABETH

CASE NO. P117/98

In the matter between

FOOD AND GENERAL WORKERS UNION

First Applicant

TOZAMILE EDMUND NCAPAYI

Second Applicant

and

FIDELITY GUARDS HOLDINGS (PTY) LTD t/a

PRITCHARD CLEANING

Respondent

JUDGEMENT

GON AJ

1. The issue to determine is whether the second applicant's dismissal for operational requirements reasons was procedurally and substantively fair.
2. Evidence was given by the second applicant and Ms. Christina Yawa ("Yawa") for the applicants and by Mr. Victor Ahlin ("Ahlin"), regional manager for the respondent
3. The second applicant was employed as a cleaner by the respondent in East London on 3 July 1989, he was promoted to group cleaner in approximately December 1990 and promoted to junior supervisor on 28 March 1991 on the Mercedes Benz of South Africa ("MBSA) contract". The second applicant had applied for the latter promotion. The second applicant remained on the MBSA contract for about 2 years and was then transferred to the Rainbow Chickens ("Rainbow") contract in about December 1993. The Rainbow contract ended on 16 January 1998 after its abattoir was closed down. The cleaners were on employment contracts the duration of which was directly tied to the length of the contract with Rainbow. The second applicant was employed on an indefinite term contract.
4. It was disputed as to exactly when the second applicant was told about the end of the Rainbow contract: the second applicant submitted that it was only at the first formal meeting held with him about his retrenchment on 2 February 1998. He conceded in cross-examination, however, that the cleaners were

notified on 19 December 1997 that their contracts would end with the closure of the Rainbow contract on 16 January 1998 and as their supervisor he was aware of this and acted as translator on the issue.

5. The second applicant stated that he approached Ahlin on 2 February 1998 to discuss his position in light of the Rainbow contract ending. Ahlin did not dispute that the second applicant initiated the meeting, but stated that there had been several informal discussions with the second applicant prior to this date.
6. The respondent's evidence follows. Ahlin confirmed the 2 February 1998 discussion in a letter dated 3 February 1998 in which he stated that the position of supervisor no longer existed and that the second applicant "was a candidate for retrenchment". However, Ahlin went on to state that both parties must look for alternatives and proposed a further meeting on 6 February 1998. The letter referred to previously suggested job offers in Port Elizabeth ("PE") or other branches of the respondent. Ahlin stated that the second applicant would be retrenched only if no other positions were forthcoming or second applicant did not wish to avail himself of them. He was advised to consider retrenchment as a last resort.
7. On 4 February 1998 a memorandum was also sent to all the respondent's branches by the respondent's communications officer asking for a position as junior supervisor specifically for the second applicant to prevent his retrenchment.
8. On 6 February 1998 Ahlin and second applicant met again. According to Ahlin's contemporaneous handwritten minute, the idea was to endeavour to find an alternative to retrenchment. He stated that there may be a temporary junior supervisory position, until something permanent "cropped up", in the East London area.
9. Ahlin's evidence was that the second applicant's demanded as the only alternative he would consider was returning to a junior supervisory position at MBSA, and nothing else.
10. Ahlin recorded that the second applicant was not happy with the respondent's failure to consider returning him to MBSA, and that he (the second applicant) would not consider other alternative employment. Ahlin told the second applicant that the respondent was tendering for three contracts, two in East London and one in PE.
11. According to Ahlin's minute and evidence, the second applicant was not prepared to go anywhere other than MBSA. According to the minute the second applicant would not consider going anywhere else without discussing his salary with which he was unhappy. Ahlin's minute records that the second applicant said that he would like the respondent to prepare for his retrenchment and notify him of his package.
12. Ahlin said that MBSA had been considered but MBSA was under financial constraints. The second respondent stated then that "we are wasting time and that we need to proceed with the retrenchment". In answer to the question as to whether he would not accept any alternative position, the second applicant

replied that he would not. Ahlin stated that the second respondent's attitude was hostile and he was only interested in returning to MBSA. If it had been possible to transfer the second applicant to MBSA, his salary would have been unaffected, unless he could only return to a lower position.

13. Other than the three tenders Ahlin mentioned there were a number of "downgraded" jobs the nature of which, including some as group leader, were never discussed with the second applicant because he showed no interest. Ahlin stated that he had told the second applicant that the down graded jobs were to those of group leader or team leader and that it was only intended to be temporary.
14. Even looking at MBSA supervisors on a LIFO basis, Ahlin advised that this would have excluded the second applicant as he was the most recently appointed supervisor.
15. Ahlin confirmed the outcome of the 6 February 1998 meeting in a letter dated 9 February 1998, namely, that the second applicant:-
 - would not consider an alternative position;
 - would not accept a transfer even if it was a temporary measure;
 - would only consider a return to MBSA otherwise the respondent must proceed with the retrenchment. (my underlining)
16. The letter also set out that there were possible alternative supervisory positions if the tenders were successful and reiterated the fact that MBSA had no supervisory positions available. The respondent referred to LIFO militating against the second applicant, but stated that this was not a basis for selection employed by the respondent. Further alternatives were still being investigated. A response was still being awaited from the memo sent to other branches.
17. A further meeting was held on 10 February 1998 and confirmed in a letter dated 11 February 1998. The proposals confirmed were either that the second applicant take 12 days leave owed to him until the tenders were resolved or that he consider a temporary downgraded position. The letter noted that the second applicant had declined the proposals other than a transfer back to MBSA. The letter urged the second applicant to reconsider his position and to take the leave to give him a chance to think about his position.
18. The second applicant's retrenchment was confirmed in writing on 17 February 1998 with effect from 16 February 1998, in light of his refusal to accept the proposed alternatives. His notice pay, leave pay and severance package were set out. Ahlin expressed his disappointment in this last letter that the second applicant had accepted retrenchment rather than an alternative position.
19. Ahlin stated in evidence that if a junior supervisor post was available he would have given it to the second applicant. There were team and group leader posts available.

20. The second applicant's evidence was that at their first formal meeting Ahlin stated that he would have to retrench the second applicant as there were no other solutions. Then he stated that Ahlin said that he was going to transfer the second respondent to Port Elizabeth. He acknowledged that he was asked to put forward suggestions. The second applicant said that at the 6 February 1998 meeting Ahlin said he had to take the position in PE and the second applicant said he had no objection provided he received an increase in salary and accommodation, which Ahlin did not agree to. Ahlin said that all the second applicant had said about PE was that he would discuss it with his wife. Ahlin said with regard to the salary increase, that it had never been raised in the context of an alternative to retrenchment. The second respondent conceded in cross-examination that his salary had been a long standing grievance and had not been raised in the context of a transfer to PE.
21. Under cross-examination when the second applicant was asked whether he was prepared to move to PE at the same salary with the provision of accommodation, he said that it would be impossible.
22. With regard to a "downgrading", the second applicant said it had never been explained to him and insisted that it meant being reduced to a cleaner position. He would not say that moving to the level of group leader or down to team leader was a "downgrade" but he conceded that they were subordinate in position to junior supervisor. He conceded that he was never told that the downgrade at MBSA was to the position of cleaner. The second applicant also denied Ahlin's evidence that the respondent could accommodate him as group leader at MBSA, but conceded that he could only be accommodated at MBSA on a downgraded basis. He further conceded that the downgraded positions or transfers were only intended to be temporary measures.
23. According to the second applicant the respondent had a duty to return him to MBSA as a junior supervisor. Ahlin denied that any undertaking of this nature could have been given to the second applicant.
24. The second applicant said he only asked for the MBSA position and had not demanded it. He confirmed, however, that he instructed the first applicant's official Yawa to write to the respondent on 26 February 1998 when he declared a dispute against the respondent. He confirmed her evidence that he instructed her to write, as she did:

"As far as the company is concerned Ncapayi was employed for MBSA contract and was transferred to the Bony Bird, the company must take him back to MBSA."

This evidence supports Ahlin's evidence and correspondence (See paragraph 15).

25. Significantly, the second applicant said that he would not accept a downgraded position at MBSA because no supervisor before him had been downgraded. This is probably the crux of why the second applicant was retrenched rather than retained in employment. His pride would not allow him to accept a demotion to a

place where he had formerly been employed as a junior supervisor. The point was repeatedly made. It appears that he could not believe that he, like the cleaners, might actually face retrenchment. The second applicant said that he understood that if the Rainbow contract was lost only the cleaners would be retrenched. However, he conceded in cross-examination that if the Rainbow contract terminated even the employment of supervisors could be terminated.

26. In cross-examination the second applicant stated that he was prepared to take a drop in salary and/or work as a cleaner "if the right procedure was followed". Such procedure, he stated, was an explanation as to why he had to be a cleaner as he believed some other supervisors had been employed after his dismissal. This latter allegation was never put to Ahlin. The evidence on the subsequent appointment of supervisors all related to the appointment of senior supervisors, not junior supervisors.
27. I find this explanation for the refusal of a downgrade incredible. It is clearly a version created after the fact to try to explain why he had not considered these alternatives at the time.
28. The second applicant in evidence in chief repeatedly denied the veracity of the three letters sent to him to confirm nature of the consultations between him and Ahlin. However, he never challenged the contents of these letters himself nor through the first applicant until after his retrenchment. The second applicant then contradicted himself in cross-examination and confirmed the veracity of what was said to him at the second consultation meeting on 6 February 1998 with regard to retrenchment being the last resort, that three tenders had been made, that his availability had been advertised to the group, that no supervisory position was available at MBSA and even on the LIFO measure at MBSA his service was the shortest.
29. The impression gained through Ahlin's evidence, the correspondence and the second applicant's confirmation of most of the contents of that correspondence was that the respondent was trying not to rush retrenching the second applicant, as there were alternatives available if he would consider them. Ahlin was clear, however, that the one alternative not available at that time was a junior supervisory position in East London. The second respondent confirmed that he was urged, as reflected in the last letter of 11 February 1998, to accept a downgraded position until a suitable position became available. He said in fact that he approached Ahlin on 12 February 1998 to say that he was not accepting a downgrading even temporarily.
30. The second applicant insisted that, although the contents of the correspondence were correct with respect to the search for alternative positions, it was a sham as Ahlin was going to retrench him irrespectively. This does not conform with Ahlin's evidence, the correspondence or second applicant's insistence that they were wasting time and Ahlin should get on with the retrenchment. The second applicant said that he had never seen supervisors performing "relieving functions" as was suggested he consider in the final letter to him on 11 February 1998.
31. The second applicant also said that during the consultation process he had suggested to Ahlin that the

process be referred to the first applicant and to the respondent's consultants to deal with, but Ahlin refused to comply with the suggestion. This fact was never put to Ahlin in cross-examination.

32. The second applicant then submitted that as he was a member of the first applicant, which he alleged Ahlin knew, the negotiated retrenchment procedure should have been applied to him.
33. The second applicant state that having mentioned his union membership to Ahlin, Ahlin should have taken the matter from there and involved the first applicant. I find it extremely difficult to understand why if he mentioned his membership to Ahlin as alleged, he did not then act on Ahlin's alleged failure to involve the first applicant by bringing the first applicant into the process himself. The second applicant in fact stated that he did not contact the first applicant until after his retrenchment.
34. The applicants also argued that in terms of the recognition agreement with the first applicant, the respondent was obliged to consult with the first applicant over all retrenchments of workers, including the second applicant.
35. I will first consider the issue of the second applicant's membership of the first applicant.
36. The second applicant stated that he became a member of the first applicant in September 1997 and informed Ahlin of it. Yawa also gave evidence that the 0second applicant became a member in September 1997. However, none of this was put to Ahlin.
37. The second applicant said that Ahlin's response (not put to him) was that the second applicant could not wear two hats as supervisor and union member and that as a supervisor and member of management he was not allowed to be a union member.
38. Yawa's evidence, however, was that she was a shop steward and group leader at the time that the recognition agreement was negotiated. Further, that when she was promoted to supervisor she remained a shop steward and did so until she resigned in 1996. I find it difficult, to believe, therefore that the respondent would have tolerated Yawa's membership of the first applicant and what's more, her position as shop steward while holding the position of supervisor, but would have denied the second applicant's right to claim union membership.
39. The second applicant said that he had signed union membership and stop order forms. The respondent he alleged, however, never deducted subscription fees which he could deduce from his pay slips. He said that he did not give the respondent his membership form, it was done by his union representative. He also said that he completed a further stop order form. None of this was put to Ahlin and none of these forms were put in evidence. There was no evidence that the second applicant complained about the respondent's alleged failure to deduct union dues.

40. Yawa said that she did not know if deductions were being made from the second applicant's salary as they went straight to the head office. She denied, however, that the second applicant complained that his stop orders were not being deducted but said that this only happened in September 1997, when he joined the first applicant and he paid his subs by hand.
41. Even if I accept that the second applicant became a union member in September 1997 I am not convinced that the respondent, and Ahlin in particular, knew about his membership. The failure to produce documentation in evidence and the fact that it was never put to Ahlin supports Mr. Snyman's argument that his membership was created *ex post facto*. The recognition agreement provides that monthly subs will be paid and submitted with a "list of workers" which will be sent to the branch office, no list was produced. Yawa said that she did not have a copy.
42. In addition, I find it further unlikely in the circumstances that the second applicant either suggested to Ahlin that the first applicant be called in to conduct retrenchment consultations. In the circumstances it could not have been expected of Ahlin to have applied the agreed retrenchment procedure to the second applicant on the basis that he was a member of the first applicant.
43. I turn to consider the second applicant's allegation that the respondent was obliged to consult with the first applicant over the retrenchment of all workers including the second applicant in terms of the recognition agreement, irrespective of union membership.
44. A recognition agreement was entered into between the first applicant and the respondent in June 1994. Its objectives are stated as:
- “.....regulates the relationship between the Company, as an employer of workers, and the Union, as the body the majority of workers employed by the Company have chosen to represent them”.
45. The agreement defines “union member” as meaning and including “.....all workers who are paid up members of the union”. “Workers” are defined as “.....all persons employed by the Company engaged in production work or engaged in work incidental to production, and shall exclude management”.
46. Further under “**4. Recognition**” it states:
- The Company agrees to recognise the Union as the **representative of its members** and,it agrees to recognise the Union as the sole representative of all the workers, **who are Union members**, in the negotiation of wages and conditions of work, or **any other collective agreement**”.(My emphasis)
- Such other agreement includes annexure “C : Retrenchment Procedure”.
47. In my view it is clear that the first applicant was recognised to represent its members who were workers

and not all workers, irrespective of whether they were union members or not.

48. In her evidence under cross-examination, Yawa, agreed that in terms of the recognition agreement the first applicant was recognised as the representative of union members, not all workers at respondent. Even in re-examination she maintained her evidence that she had given in cross-examination, namely, that it applied to members only.
49. Clause 11 in the Retrenchment Procedure defines retrenchment as the termination of the employment of “worker(s)” on economic grounds and obtains agreement from the respondent that it will not retrench any workers without complying with the retrenchment procedure in annexure C. In terms of the scope of the agreement the term “worker” must be taken to be as defined in the recognition agreement. In light of its recognised scope the agreement applies only to union members who are workers. I agree with Ahlin’s contention to this effect.
50. In any event, this discourse is academic because the respondent largely applied the terms of the retrenchment procedure to the second applicant. In light of the nature of the industry and the respondent’s business, as testified by Ahlin, the sudden withdrawal of a contract affects the entire complement of staff on the contract, and there is little scope for redeploying other than a handful of staff to other contracts.
51. In light of my finding that Ahlin did not know that the second applicant was a member of the first applicant, Ahlin was under not obligation, therefore, to have to consult with the first applicant over the second applicant’s retrenchment.
52. The retrenchment procedure provides:

“ANNEXURE C : RETRENCHMENT PROCEDURE

- C1. The Company operates a service industry in terms whereof a client of the Company is entitled, should it not be happy with the service of the Company, to summarily cancel any contract.
- C2. In normal situations the notice period in contracts vary from 7 (SEVEN) days to 3 (THREE) months albeit that the majority of contracts run by the Company have a one month termination period subject to the proviso as stipulated in paragraph C1 above.
 - C3.1 Whenever a contract is cancelled, the Company undertakes to give the employee, wherever possible, bearing in mind the contents in paragraph C1 and C2 above, a minimum of 2 (TWO) weeks notice.
 - C3.2 The Company will as soon as possible after being aware of the final notice of cancellation of a contract notify the Union and invite the Union to consult on the pending retrenchment arising from loss of contract.

C4. In selecting workers to be retrenched, the Company shall use the following criteria:-

C4.1 Workers:-

C4.1.1 of retirement age;

C4.1.2 able to take early retirement;

C4.1.3 willing to be retrenched voluntarily.

C4.2 Last-in-first-out. Workers should be retrenched in accordance with their length of service, subject only to the requirement that the Company cannot retrench workers with skills which are necessary and would otherwise have to be replaced.

C4.3 By nature of the type of service rendered by the Company the selection criteria set out in paragraph C4 shall apply only should there be a reduction of staff in any particular contract.

C5. It is recorded that employment with the Company is dependent upon the retention by the Company of the contract of the client at whose premises the employees does duty. Therefore on termination of such contract the employment of the employee will also be terminated subject to the provisions of C3.1 and C3.2.

C6. The purpose of any meeting between the Company and the Union is to consider the reasons for redundancy/ retrenchment, whether redundancy/ retrenchment is necessary or whether there are alternatives to redundancy retrenchment. In general retrenchment/redundancy will not be considered where alternatives to retrenchment/redundancy are possible.

C7. Should Company intend re-hiring workers at a later stage, retrenched workers will be given preference.”

53. Ahlin’s evidence was that in the industry, when a contract is lost, LIFO is not applied. It is applied, subject to skills retention, if a reduction of staff is necessary by reason of reduced profitability and not in situations where entire contracts are lost.

54. In the case of employees below supervisory level, their contracts state that their employment ends with the termination of the client contract. The second applicant conceded that the agreement reflects the conditions in the industry.

55. Ahlin testified that specific alternatives were not canvassed in detail with the second applicant because of his stance in the whole process, therefore only potential avenues were canvassed.

56. I accept Mr. Snyman’s argument that the second applicant knew when the Rainbow contract ended that his job went with it. I also accept that the respondent does not automatically retrench supervisors but tries to accommodate them which was supported by Yawa’s evidence.

57. In my opinion Ahlin made considerable effort to comply with the provisions of the retrenchment procedure.

58. I agree with Mr. Snyman that for some reason the second applicant could not accept anything other than transfer as supervisor at MBSA, and that he refused to accept a downgrade as being possibly a group leader or team leader, because if it was only the position of cleaner it could easily be rejected. I am convinced that the second applicant could not face returning to MBSA in a lower position, whether it was by reason of pride or some other reason.
59. Mr. Nduzulwana argued correctly, that irrespective of whether the respondent consulted with the first applicant or not, section 192 of the Labour Relations Act, 1995 places an onus on the employer to establish that the dismissal was fair.
60. He argued further that in terms of section 189(3) the respondent should have disclosed in writing what was relevant, namely,
- 1) the timing of the retrenchment;
 - 2) invited proposals about fair selection criteria, which did not happen in light of the reason for the retrenchment;
 - 3) the severance pay proposed, which was only presented in the letter confirming retrenchment.

This information is aimed at arming the employee to make an informed decision.

61. In reply, Mr. Snyman argued that in terms of ***Johnson & Johnson v CWIU* [1998] 12 BLLR 1209 (LAC)** section 189 does not require a rigid procedure. Its purpose is to afford the employee or trade union adequate opportunity to represent their side. Once a reasonable alternative has been proposed that is where the matter stops. One does not go back into the process. Mr. Snyman said that it was never suggested that the alternatives were unreasonable and that section 196(3) supports this contention. This section provides that an employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer (or any other employer) is not entitled to severance pay.
62. It was common cause that the respondent had substantive grounds for retrenchment. As a result of the loss of the Rainbow contract, the respondent had one more junior supervisor than it could employ in East London. Was the choice of the second applicant, therefore, fair and was the procedure applied to him fair?
63. In ***Johnson & Johnson*** the appeal was against a finding that the employer did not consult with the union on:-
- 1) the method for selecting employees to be dismissed; and
 - 2) severance pay.

64. The employer's arguments on appeal were that even if there was inadequate consultation the employer

could not be blamed, because of the union's failure (in that case) to take proper part in the consultation process. Alternatively non-compliance with the consultative requirements of section 189 did not render the subsequent dismissal unfair. If it did, it did not mean compensation had to be awarded.

65. One of the complaints by the union in the ***Johnson & Johnson*** case was that alternatives were not properly considered. No mention was made of the failure to consult on severance pay.

66. The Labour Appeal Court observed that section 189's only purpose is linked to the fairness of a dismissal based on operational requirements, namely,

- 1) to initiate the consultation process when it contemplates dismissals for operational reasons;
- 2) to disclose relevant information to the other party;
- 3) to allow the other party to make representations about any matter over which they are consulting;
- 4) to consider those representations and give reasons if it does not agree with them.

67. The specific purpose is to attempt to reach consensus on the objects as stated in section 189(2), namely, to avoid dismissal, minimise the number of dismissals, change the timing of the dismissals, and mitigate the adverse affects of the dismissal.

68. Section 189 thus recognises the employer's right to dismiss for operational reasons, but then only if a fair process aimed at achieving consensus has failed. This is apparent from section 189(7), says the court, which requires the employer to select employees on criteria either agreed to, or if not possible, fair and objective.

69. The court then recognised that the important implication of this is that a mechanical "checklist" kind of approach to determine whether section 189 has been complied with is inappropriate. The proper approach is to ascertain whether the purpose of the section has been achieved. If not, and it was not the fault of the employer who did all it could from its side to achieve the kind of consultation referred to, the purpose of the section would have been achieved.

70. In my view, the circumstances of this case largely comply with the above formulation. The second applicant, in his quest primarily for a return to MBSA as junior supervisor, thwarted the respondent's attempts to canvass a range of alternatives which, if not ideal, would have avoided retrenchment particularly as lower positions may well have been temporary.

71. I am more than satisfied that the respondent made every attempt, in the face of the second applicant's insistence on a transfer back to MBSA, to canvass alternatives and that only the second applicant's attitude

prevented meaningful, in depth discussion about specific alternatives taking place.

72. The two issues to be decided then are the same to be decided here, namely, the lack of consultation over:-

- 1) the selection criteria;
- 2) the severance package.

73. Unlike **Johnson & Johnson**, the respondent did not put the severance package on the table until the notification confirming, in view of the rejection of the alternatives, the second applicant's retrenchment. It plainly did not consult on the severance package.

74. However, the respondent paid a package as required in terms of section 196(1) of the LRA. As envisaged by section 196(3), since the second applicant refused to properly consider, let alone accept the respondent's offers of alternative employment, in my opinion this considerably mitigates the respondent's failure to consult on the severance package.

75. With respect to the selection criteria, I agree with the applicants that consultation on the selection criteria as normally envisaged by the Act did not take place. However, the circumstances at the respondent (and in the industry) are unusual in that it is generally accepted, as reflected in the retrenchment agreement with the first applicant and conceded by the second applicant, that in the event that a client contract is lost, the jobs that go with it are lost unless alternatives can be found. To the extent that this does not comply exactly with section 189, I am of the opinion that the "rigid checklist" approach is not appropriate and that the respondent attempted, to consult fairly but the failure, to the extent that there was a failure, lay with the second applicant's approach to return to MBSA only.

76. I therefore find that the respondent's retrenchment of the second applicant was substantively and procedurally fair.

77. As to costs, the respondent argued that costs should follow the result. The applicants argued that I should not award costs in the event that I find in favour of the respondent. The applicants referred to **NUM vs ERGO 1992 (1) SA 700 A** and specifically the preservation of the ongoing relationship between the first applicant and the respondent. Further that it would discourage individual applicants from challenging an injustice.

78. I disagree with the applicants' contention that costs should not be awarded, taking into account the requirement of the law and fairness as required by section 162, because of the first applicant's ongoing relationship with the respondent. This is not a collective dispute directly between these parties and in any event, it cannot be assumed that every award of costs may be detrimental to such a relationship. In certain instances it may help to restore the balance of power in the relationship and reduce the number of frivolous actions being pursued.

79. Basson AM (as he then was) in ***Chamber of Mines of SA v Council of Mining Unions*** 1990 11 ILJ 52 (IC) at 77E-I he stated that public policy demands that the industrial court (and now the Labour Court) takes into account considerations such as the fact that justice may be denied to parties (especially individual applicant employees) who cannot afford to run the risk of having to pay the other sides costs. He stated that the industrial court should be easily accessible to litigants, and they should not be penalised unnecessarily even if the litigant is misguided in bringing his or her application for relief provided the litigant is *bona fide*.
80. In my view, I am not convinced that the second applicant was *bona fide* particularly in light of the concessions the second applicant made which contradicted his own version.
81. Accordingly, I make the following order:
- 1.1 the application is dismissed;
- 1.2 the applicants to pay the respondent's costs.

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S.GON

ACTING JUDGE OF THE LABOUR COURT

Date/s of hearing: 1 and 2 March 1999

Date of judgment: 14 April 1999

For the applicants: Mr M E Nduzulwana of the First Applicant

For the respondent: Mr S Snyman of Snyman Van Der Heever Heyns Inc.