

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

CASE NO **C288/2000**

DATE 2002/06/19

In the matter between:

Applicant

and

Respondent

**BEFORE THE HONOURABLE MR ACTING JUSTICE
NGCAMU**

ON BEHALF OF APPLICANT:

[Adv. De Wit]

ON BEHALF OF RESPONDENTS:

[Mr. D. Short]

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN
CASE NO: C288/2000

DATE: 19 June 2002

In the matter between:

NDUNA BANTUBONKE

and

SOUTH AFRICAN NATIONAL PARKS

J U D G M E N T

NGCAMU AJ

- [1] The applicant was employed by the respondent as a manager finance reporting at the Cape Town regional office. On 27 October 1999 the applicant and other employees in the finance section in Cape Town resigned. The applicant's case is that he was dismissed on 8 September 1999 on operational requirement. He further claims that he was discriminated against. He claims that the respondent did not consult with him at any stage prior to 8 September 1999 as to his

redundancy or possible transfer. The applicant seeks compensation equivalent to 24 months' salary and a severance package.

- [2] The respondent denies that the applicant was discriminated or that he was dismissed based on operational requirements. The respondent's case is that the applicant resigned. For the purposes of this judgment the applicant will be referred to as Nduna.
- [3] The respondent called three witnesses in support of his case, namely Mavuso Msimang (the chief executive officer), Jan Smal (the former head of the Human Resources and Industrial Relations) as well as Mr Brian Carstens (Human Resources Coordinator for Southern Parks).
- [4] Mr Mavuso Msimang testified that the respondent operates and manages national parks throughout the Republic of South Africa. The head office is in Pretoria. It was responsible for the Northern Parks. The Cape Town Regional Office was responsible for the Southern Parks. In 1998 the respondent realised that there was a need for it to restructure itself to

become more cost effective and efficient. He saw the parks as business units which should operate with their costs at an optimum level and restrict their overheads. A corporate plan was compiled in 1998 which envisaged the decentralisation of certain functions, empowering the various national parks and reducing overhead costs through consolidation. The respondent was experiencing cash flow problems. Several workshops were held regarding the proposed restructuring. He visited all the national parks. There was active participation by most of the people present. Guidelines were derived from the workshops. There was consensus that decentralisation to the parks and consolidation had to occur. There was nothing specific about the closing down of certain offices. The workshops were facilitated by external consultants, the METRE Plan, who were experts in conservation industry. The staff was not opposed to the restructuring.

- [5] On 25 May 1999 the respondent addressed a letter to the staff. This letter appears at page 46 of Bundle A. Paragraph 4 of the letter reads as follows:

"One opportunity for cutting back on the 284 staff falling outside the parks is by consolidating the Cape Town and

Pretoria offices into a sole rationalised support structure. This is possible because Pretoria duplicates most of the services provided by Cape Town. In addition, it will remove the unnecessary layers of communication between a park manager and the respective directors, who are equipped with the technical expertise. For example, the Director of Finance would now be responsible for all finance personnel that fall outside the parks' business units."

[6] On 30 May 1999 Mr Nic Geldenhuys, Provincial Parks Manager Southern parks, addressed a letter justifying the fact that the Cape Town Regional Office should be left intact. This proposal was not accepted by the directorate. One Mr Lubbe of the Cape Town office advised Msimang that the staff wanted the respondent to take a final decision. He was accused of consulting too much.

[7] On 3 August 1999 Mr Msimang attended at the Cape Town Regional Office to discuss the process of decentralisation and consolidation with the employees. He denied that he assured the staff that the Cape Town office would not be closed. On 7 September 1999 the Directorate took a decision, *inter alia*,

that the finance department of the Cape Town Regional Office would relocate to Pretoria. On 8 September 1999 a video conference was held between the Director of Finance, Mr Soglanich, Dirk Fourie and the staff of the Finance Department of the Cape Town Regional Office advising them of the decision taken by the directorate to relocate the finance department to Pretoria.

[8] The staff was invited to make representations and ask questions. Mr Msimang was not personally involved in the video conference. Mr Msimang met with the staff on 9 September 1999 to discuss the relocation of the finance department to Pretoria. None of the staff members challenged the relocation to Pretoria. Some employees mentioned that they would not relocate and requested information regarding the severance package.

[9] Mr Msimang testified that the position of the D to E band of employees of the finance department in Cape Town were required at the head office in Pretoria. Any staff in Bands B to C could, in addition to the transfer to Pretoria, either apply for a transfer to any other suitable vacancy or apply for a

severance package. These other options open to Bands B to C were not available to Bands D to E. These said positions are available in the head office. The staff in bands B to C were regarded as secondary income earners. This was the reason for offering them other options. The staff members were advised by letter that their services were required at the head office.

[10] On 16 September 1999 the Director of Finance addressed a letter to the staff to exercise their options by 30 September 1999. The letter reads:

"As I have stated, management requires the services of all the finance staff at our head office in Pretoria. However, would any staff members in the Bands B to C wish to rather apply for a transfer to any other suitable vacancy in the National Park or, alternatively, apply for a severance package, such application will be favourably considered by the management. In order to properly plan the work flow office accommodation on relocation of staff to head office, you are kindly requested to exercise your options in writing by no later than Thursday, 30 September 1999, 16h00. Should you require any information on possible alternative positions or severance package benefits, you are requested to individually consult the

coordinator Human Resources, Mr B Carstens, who will assist in any manner possible."

[11] None of the staff of the finance department exercised their options by 30 September 1999. There was no communication between the respondent and Mr Nduna and other employees after 9 September 1999. According to Mr Msimang the staff could be transferred as there was a contractual obligation. If people indicated that they did not want to transfer, he would have taken a decision to persuade them.

[12] Mr Msimang further testified that there were certain consultations around consolidation and it was implied that the Cape Town office would cease to exist and that the staff would have to move somewhere else. He testified that they were temporary employees in the finance department in Pretoria. The staff would have to be housed in Pretoria head office if they had agreed to come.

[13] Mr Msimang stated that he did not know Mr Nduna very well and would not have had any reason to discriminate against him. He stated that Mr Nduna was not happy with the move to

new Medical Aid, the Discovery. Mr Nduna wrote a long e-mail and e-mailed it to everyone who had e-mail. Mr Msimang saw this as an abuse of the e-mail and directed that Mr Nduna's e-mail be disconnected. Another person who had also abused e-mail was removed from the e-mail system. It was reinstated after he had apologised. Mr Msimang denied victimising Mr Nduna in any way.

[14] Mr Smal testified that he was General Manager, Labour Relations, up to the end of October 2001. He was the adviser to the Director Human Resources and later the Director of Finance. He attended two workshops regarding the process of restructuring and decentralisation of functions. The aim of the workshops was to get input from the staff on how they saw certain functions being devolved down to parks level. It came out that certain functions could be done at park level. The Human Resources Department worked together with the directorate, looking at human resources' structure. A corporate plan was compiled in 1998. Mr Daan de Waal was mandated to visit the National Parks to establish which functions could be performed in the National Park. Mr de Waal co-opted Mr Maartens. These two gave the report, the Nature

of which was that some functions could be done inside the National Park.

[15] Mr Smal also testified that he did not attend the video conference but was informed about it. The letter of 16 September 1999, addressed to the staff, was written with his input. He further testified that the transfer did not amount to a retrenchment and therefore no severance package was payable to the staff.

[16] With regard to the 1997 retrenchment policy he stated that he did look at the policy and made changes. These were approved by the Chief Executive Officer. They were, however, not negotiated with the trade union. The old retrenchment policy was still in force. It was part and parcel of the recognition agreement with SACCAWU. The policy applied to all the employees of the respondent. With regard to the policy on retrenchment the Court is of the view that this policy does not apply as it was not negotiated with the union and therefore cannot be applied in this case.

[17] Mr Smal was surprised in getting a letter from the attorneys

Mallinicks Attorneys acting for Mr Nduna and other employees. This letter by the attorneys is dated 30 September 1999. In the said letter the attorneys advised that Mr Nduna and other employees had been constructively dismissed. The applicant and other employees had not indicated their options.

[18] Mr Nduna and other staff members referred the dispute to the CCMA regarding their dismissal alleged to have taken place on 8 September 1999. The CCMA did not accept the referral as the employees were still employed. The respondent addressed correspondence to the attorneys denying that there was any constructive dismissal. It was also mentioned that the respondent was not retrenching staff as they were required in Pretoria.

[19] On 26 October 1999 the applicant and other staff members left the premises early and on 27 October 1999 the respondent received a letter from the attorneys alleging that they had been constructively dismissed and advising that their resignation was effective as from 31 October 1999. Mr Nduna and other staff members simultaneously referred another

dispute to the CCMA. Mr Nduna and other staff members never raised any grievance about their transfer. Again the respondent denied the constructive dismissal and extended the invitation to resolve the matter amicably. The respondent requested proposals from Mr Nduna and other staff members for an amicable resolution of the matter. No proposals came from Mr Nduna or other staff members. Nothing also came from their attorneys. The respondent reiterated that it did not intend retrenching the applicant and other staff members. Mr Smal made it clear that the three managers were required in Pretoria. Mr Nduna did not express that he could not transfer to Pretoria. None of the positions were declared redundant.

[20] Mr Smal further testified that if the three managers had submitted their decisions not to transfer, respondent would have entertained the severance package. He stated that the respondent did not constructively dismiss Mr Nduna and other staff members. He further testified that because the respondent did not retrench Mr Nduna and other staff members, it was not obliged to pay any severance package.

[21] The respondent in this matter suffered prejudice due to the

fact that certain tasks were left incomplete as a result of the resignation of the applicant and other employees. The task had to be completed by the staff at the head office in Pretoria. Mr Smal was advised by Mr Maartens, the General Manager Finance, that he and his staff were going to leave and would see the respondent in court. He appealed to Mr Maartens to follow the internal procedures. The grievance procedures were not followed by the staff and also by the applicant, Mr Nduna.

[22] Mr Brian Carstens testified that his input in the matter was to advise Mr Nduna and other employees with regard to the process as well as to assist them with looking for alternatives. He was not present at the video conference. He testified that his impression of the letter of 16 September 1999 was that all the staff had to consult with him if they wanted any information. Mr Nduna and other employees did not approach Mr Carstens for any assistance.

[23] With regard to the consolidation it was submitted that various workshops were held. This also was not disputed by Mr Nduna in his evidence. The employees concerned had to look for

alternative positions or relocate to Pretoria. The B and C Band were given the opportunity of accepting a severance package.

[24] Mr Carstens also attended a meeting in Mr Maartens' office where the employees were present, including Mr Nduna. He testified that he was trying to identify alternatives for all bands, including the D and E Bands. He telephoned head office and asked what alternatives could be offered to D and E Bands. Mr Nduna and other employees resigned before he could get a reply. He was able to identify alternatives for almost all the B to C Bands. He confirmed that during the meeting it appeared that Mr Nduna and other employees were considering leaving the organisation *en masse*. Mr Maartens further confirmed that a position in Cape Peninsula National Park was offered to Mrs Sharneck who declined to accept it on the basis that it was far. He confirmed further that the 1997 retrenchment and redundant policy had not been implemented. This completed the respondent's case.

[25] Mr Nduna, on the other hand, testified that he was aware of the philosophy of restructuring until 1998. In mid 1998 he did not attend any meetings. He did not attend any workshops in

1999. No proposals were made to him. He was not invited to any meetings. He is aware of the contents of the memorandum circulated in May 1999 dealing with the consolidation of Cape Town and Pretoria offices. He was concerned about this memorandum because it talked about the cutting down of staff and consolidation. He is aware of the letter written by Mr Geldenhuys about the ways of cutting costs.

[26] He testified that he was told during the video conference that the finance department in Cape Town will close down and that the staff will be transferred to Pretoria. He confirmed that the staff was told they were required in Pretoria and that B to C Bands would be given retrenchment. His option was to resign. He was not given an option of retrenchment. They were told they were offered alternative positions in Pretoria which meant that his position was abolished. This to him meant that he was discriminated against. He did not have any option. The fact that the respondent had unilaterally changed the conditions of employment and discriminated against him, this made him to resign. He regarded the closure of the finance department as operational.

[27] Mr Nduna further testified that he was not consulted in any process. The alternative employment was never given in writing. He did not get a reply to the e-mail sent to Mr Soglanich. Mr Nduna alleged that the letter dated 16 September 1999 requesting the staff to respond by 30 September 1999, was an ultimatum. He felt that this was coercion. He confirmed that he did not respond as he regarded the decision as unilateral. He testified that he wanted to relocate to Cape Town and that is why he applied for employment with the respondent. He mentioned this when he was interviewed. He expected that he would work in Cape Town until he retires. He was unaware of transfers within the organisation. In this regard I must mention that the employee cannot expect that he is going to remain in the same place and do the same job all the time whilst he is still employed by the employer.

[28] Mr Nduna testified under cross-examination that the reason for resignation was discrimination. He was aggrieved that he was not offered the package and he was told to relocate to Pretoria. He agreed that he was a manager and different from

the Bands B to C. He testified that he was not a breadwinner. His wife earned more than him. He agreed that he did not raise this with the management. He kept quiet after the e-mail had been cut off. Mr Nduna contended that the respondent did not apply the correct retrenchment policy dated 1997.

[29] In support of his case Mr Nduna led the evidence of Mr Geldenhuys, Maureen Scharneck, Kotze and Maartens. The gist of their evidence was that they were not consulted on transfer. Scharneck testified further that they were told they would do the same work in Pretoria. She testified that she walked out in October because of pressure of work. This evidence by Scharneck contradicts the evidence of the applicant in that the applicant resigned because the employee made the employment intolerable by discriminating him and not offering him a retrenchment package, while on the other side Mrs Scharneck testified that she resigned because there was pressure of work as a result of other employees leaving.

[30] The respondent contends that the consolidation was for operational requirement. Section 213 of the Labour Relations Act defines operational requirement as requirements based on

the economic, technological, structural or similar needs of an employer. Section 189(1) obliges the employer to consult when contemplating dismissing one or more employees based on employer's operational requirements. The applicant has to prove that he was constructively dismissed.

[31] Various reasons have been put up by the applicant as proof of dismissal. The applicant argues that he was only informed on 8 September 1999 to transfer to Pretoria. He therefore argued that his position became redundant as he was not consulted.

[32] The Labour Relations Act does not deal specifically with the transfers. The evidence disclosed that the respondent wanted to relocate the finance department to which the applicant was attached. The Labour Relations Act does not specifically outlaw a transfer of employees as a result of relocation. It does not provide for consultation with the employees. The employer is entitled to relocate his business to any other place if that is in the interest of the business. In so doing he is entitled to move employees as there is no prohibition in the Labour Relations Act. If the transfer involves a major disruption for the employee, the employee's view must be

taken into account. This is so because the employee may have to relocate his family and disturb the schooling of the children. This may also involve the purchase of a new house. Although the Labour Relations Act does not prohibit the transfer, the employee cannot be transferred against his will. He must be given an opportunity to be heard. It would, therefore, be unfair to force the employee to transfer where reasonable objections have been raised. In *Howell v International Bank of Johannesburg Ltd* [1990] 11 ILJ 791 [IC], the employee was given an ultimatum to transfer or resign. This was found to be unfair.

- [33] The applicant's submission is that he had either to accept a transfer or resign, and refers to the minutes of the video conference, the relevant portion relied upon is the following:
- "So the decision was then made that B and C levels would be offered the retrenchment packages according to the SANP policy. The director of the staff would offer to be transferred up to Pretoria to operate in a central financial department up here, where we have down our own rationalisation and reduced certain numbers, or we will certainly be reducing the temporary situation in Pretoria to accommodate the move of

staff from Cape Town to Pretoria. So that was the decision as it was taken was, to summarise, to transfer or offer employment to all of you up here in Pretoria but with options for the B and C Grades to take the retrenchment packages if it was deemed that the move to Pretoria was impractical in their eyes."

[34] There is nothing in the paragraph quoted that indicates that the applicant had to transfer or resign. It is clear that the applicant and other employees were offered positions in Pretoria. It was upon the employees to identify certain alternative positions if available. The employees were free to identify positions. There is nothing in the video conference indicating that this was only limited to the B to C Grades.

[35] In the letter dated 16 September 1999 the applicant and other employees were requested to signify their intentions. The applicant is aware of this letter. The letter cannot in any way be interpreted as an ultimatum to transfer or resign as contended by the applicant. The applicant had to indicate whether he was going to Pretoria or not to enable the respondent to do the planning for the accommodation in the

Pretoria offices. The applicant took a very strange decision, keeping quiet, thereby not disclosing what his intentions were.

[36] The respondent indicated that there was work for the applicant in Pretoria. There is no evidence that his duties would have been different from those he was performing in Cape Town. The applicant's silence prevented the respondent from knowing what the applicant wanted and to consult in the event of refusal to transfer. The respondent could not have been expected to consult on retrenchment with the applicant when he had made it clear that it was not retrenching. The situation would have been different had the applicant indicated his intentions. The respondent was not aware if the transfer would disrupt the family of the applicant. No inconvenience or impracticality was indicated to the respondent. On the evidence before the Court there is no evidence of dismissal on operational requirements as alleged by the applicant.

[37] On 9 September 1999 the Director of Human Resources indicated clearly that the respondent was not retrenching any employees. The applicant's position has not been shown to have been redundant within the respondent. It was, therefore,

not necessary for the respondent to consult on retrenchment as required in Section 189(1) of the Labour Relations Act.

[38] The applicant argued that he was constructively dismissed because he was not offered a specific post in Pretoria. This argument cannot be accepted. If the applicant had a problem with transferring to Pretoria or had doubts as to the work he was going to perform, it was open to him to make inquiries. The applicant and other employees were told that the work was there for them. The fact that there was no list of alternatives is no ground for not responding to the request that the employees indicate their intentions. The applicant did not identify any alternatives. In the circumstances I reject the argument that the applicant was not asked to negotiate alternatives as none were identified by him.

[39] The applicant considered himself as having been constructively dismissed. However, he never voiced this out with the respondent. What is strange is that the applicant considered himself as having been constructively dismissed on 8 September 1999. He argued that he stayed with the respondent in the hope that the respondent would reconsider

his decision of an alternative post, or discuss severance pay. This argument ignores the fact that the respondent had no idea that the applicant was not happy with the move to Pretoria.

[40] The Labour Relations Act defines constructive dismissal as meaning:

"An employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee."

The employer must have made the employment oppressive to such an extent that the employee could not have been expected to put up with.

[41] It is, therefore, clear that the applicant has to prove that the situation was intolerable. See in this regard the Labour Relations Act of 1995, *A Comprehensive Guide*, 2nd Ed. by Du Toit, Woolfrey *et al* page 373. The employee has to satisfy the Court that the employer's conduct rendered continued employment intolerable and there was no alternative but to resign.

[42] The fact that the respondent wanted the applicant to move to Pretoria in my view cannot amount to constructive dismissal as alleged by the applicant. In *Smith v Magnum Security* [1997] 3 BLLR 336 CCMA, it was stated that unreasonable or illegitimate demands by the employer do not amount to constructive dismissal.

[43] The applicant was informed that transfer would take place on 31 December 1999. There is no compelling reason for the applicant to simply resign without raising the issue with the respondent. If the employee chose to resign rather than seeking to resolve the dispute with the employer, he is not constructively dismissed. See in this case *W L Ochse Webb Pretorius (Pty) Ltd Vermuelen* [1997] 2 BLLR, 124 [LAC]. Also *Lubbe v ABSA Bank Bpk* [1998] 12 BLLR 1224 [LAC].

[44] When looking at the respondent's conduct as a whole I cannot find any constructive dismissal in that the applicant continued to work for the respondent even though he regarded himself as having been constructively dismissed. He referred the dispute to the CCMA and when the referral was rejected by the CCMA he returned to work. This is inconsistent with the

allegation of constructive dismissal and that the employment had been made intolerable. If the employment had been made intolerable by the respondent the Court would not have expected the applicant to go back and work with the respondent after the CCMA had rejected the referral.

[45] All this happened when the respondent was waiting for the applicant's election whether or not to go to Pretoria. The respondent never refused to discuss with the applicant. Applicant never made any attempt to discuss his problems with the respondent. In *Jooste v Transnet Ltd [t/a SA Airways]* [1995] 16 ILJ 629 [LAC], the Court looked at the conduct of the employer as a whole to determine whether judged reasonable and sensible is such that the employee cannot be expected to put up with the employer's conduct.

[46] All that is before Court in this matter is that the applicant did not like the respondent's actions in relocating the finance department to Pretoria. However, this is not constructive dismissal. Even if the employee is not happy with what the employer is doing in relocating the finance department, it cannot amount to constructive dismissal. There would be

constructive dismissal if there is a discussion with the respondent and the employee voices out his objections and the reason why he does not want to move to Pretoria which the employer ignores. In the absence of any other reasonable grounds raised by the applicant, it cannot be said that he was constructively dismissed.

[47] The applicant in this matter decided to resign as a result of being compelled to go to Pretoria according to him. His evidence is contradicted by Mrs Scharneck on this, who testified that they resigned as a result of the pressure of work. The applicant also relied on the judgment of WAGLEY J attached to the papers. In this judgment there is no ruling regarding constructive dismissal. This Court is, therefore, not bound by the said judgment.

[48] I am satisfied on the evidence before the Court that there was no constructive dismissal proved by the applicant. Mr Nduna failed to communicate his intentions and he was locked in his subjective view that because respondent did what he did not like, he was therefore constructively dismissed. There is no logic in the applicant's argument on constructive dismissal and

I therefore reject it.

[49] His reason that he did not voice out his objections or respond to the letter of the 16 September because the respondent had already made a decision cannot be accepted. He argued that he was not the breadwinner but his wife was a breadwinner. If that was the reason for not going to Pretoria, that should have been pointed out to the respondent and if the respondent refused to accept his reasons for refusing to go to Pretoria the Court would have looked at this case in a different manner. However, in the present case the applicant decided to keep quiet and did not voice out what his problems were. His problems only came when the matter was before Court.

[50] The applicant further argued that he was discriminated against because the e-mail address was removed. This has no logic and could not have caused the applicant to resign. This happened some time before he was required to go to Pretoria. He further argued that his discrimination stems from the fact that he was not offered a severance package. In this case I must point out that the applicant was in a management level. It was pointed out that the managers were required in Pretoria.

Those not in the management level were offered an alternative of severance package. This was a case of differentiation based on the rank of the employees and does not amount to discrimination. Applicant did not indicate that he had a problem with the offer to go to Pretoria. It is legitimate for the employer to differentiate between the employees of different categories. The applicant was, accordingly, treated as a manager as opposed to the employees of the lower rank and as such he was offered an employment in Pretoria and that he could transfer to Pretoria whilst the other employees were offered an option of taking a severance package.

[51] The applicant's case is made difficult because he simply kept quiet and even if his position would have been looked at differently by the respondent, this was not put forward. As a result of that the respondent was kept in darkness as to why the applicant did not want to transfer to Pretoria but instead decided to take an option of resigning without first resolving the disputes internally with the respondent.

[52] I have indicated that the employer is entitled to treat the

different employees of different levels in a different manner. This is the position in cases where senior management employees are at times excluded from collective bargaining. These employees are treated differently because they are managers, which is the same position in this case. However, it does not mean that the applicant was only confined to transferring to Pretoria. It was still open to him to discuss his problems with the respondent, which he failed to do. See in this case *S A Society of Bank Officials v Standard Bank of South Africa Ltd* 1998(2) SA 1 [SCA] at page 6. It is for this reason that I cannot find any discrimination on the part of the respondent.

[53] Although the applicant called several witnesses to strengthen his case, I have come to the conclusion that these witnesses did not support the applicant's case as to why he did not respond to the letter dated 16 September and as to why there was no objection raised for not transferring to Pretoria. All they said was that there was no consultation with them and, as I have indicated, the consultation would have been required if objections have been made and that as a result of the objections made the respondent had to decide what to do with

those people who did not want to go to Pretoria. In this case the applicant and other employees did not indicate that they did not wish to go to Pretoria to prompt the respondent to consult with them regarding the termination of their employment, if any.

[54] In the result, and in view of what I have stated above, the applicant's case cannot succeed. I therefore reject the submission that the applicant was discriminated or that he was constructively dismissed. The applicant's case therefore fails.

[55] I also have to decide the question of costs in this matter. When the matter was proceeding during the trial at one stage, in particular on 29 November 2001, Mr Smal was ill and could not attend court. As a result of that the matter had to be postponed. It was argued at that stage that the Court should make an order for costs in favour of the applicant. As a result of the respondent's representative not being ready with the argument regarding costs, I indicated to the parties that the argument had to be renewed during the argument on the merits of the matter. I have noticed that in the written heads that were submitted, none of the parties raised the question of

costs of 29 November 2001. In the circumstances I have to make my own decision regarding the costs of that date. However, I must also indicate that the applicant's counsel did give submissions on 29 November as to the question of costs. What is lacking basically is the respondent's side on the question of costs for 29 November 2001. In this regard I have come to the conclusion that the postponement of 29 November 2001 was not as a result of the applicant and therefore it would be unfair to cause the applicant to pay the costs for that day. The costs for 29 November 2001 should, therefore, be paid by the respondent.

[56] With regard to the costs of the whole matter, I have come to the conclusion that in this case the costs should follow the result. In the result the order that I make is the following:

- (a) The application by the applicant is dismissed.
- (b) The applicant is ordered to pay the respondent's costs.
- (c) The respondent is ordered to pay the applicant's cost for the postponement on 29 November 2001.

THE HONOURABLE MR JUSTICE NGCAMU
LABOUR COURT JUDGE