IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH

P 44/08
Reportable

In the matter between:

VUYANI KENNETH ZONO **APPLICANT**

and

THE MINISTER OF CORRECTIONAL SERVICES **FIRST RESPONDENT**

THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES **SECOND RESPONDENT**

THE REGIONAL COMMISSIONER OF CORRECTIONAL SERVICES **THIRD RESPONDENT**

REASONS FOR THE ORDER

Cele J

Introduction

1. Since the year 1999, a dispute about a salary payment of the applicant by the Department of Correctional Services has not come to rest. Calculated up to 21 November 2008, being the date of the last order issued by this court in this matter, it is a period very close to 10 years. A party wishing to be furnished with reasons for the order of 21 November 2008 was advised to request same. The State Attorney which represented the respondent has since filed such a request.

2. On 21 November 2008 the applicant approached this court with a three pronged relief, seeking to be granted an order-

    1. striking out the respondents' defence for non-compliance with an obligation to discover certain documents in compliance with an order of this court,
    2. declaring that he was entitled to the relief as sought in the main application where he sought payment of R1 342 115.87 plus interest from the respondents, arising from the enforcement of an order of this court dated 12 August 2005 and
    3. of costs on the attorney-client scale against the respondents.

3. While the indebtedness to the applicant was conceded by the respondents, the amount owing was limited to R27 003.43, including interest. In contemplation of the filing of a replying affidavit to answer issues raised by the respondents in their answering affidavit, the applicant served them with two notices regarding documents he required to be discovered and thereafter an application to compel discovery. On 11 June 2008 this court issued a compliance order against the respondents, some documents were subsequently discovered by the respondents but they objected to the discovery of others on the basis of relevance.

4. The matter subsequently came before me on 21 November 2008 and, having read the papers filed of record and having heard counsel, I issued an order in the following terms:

> "RE: NOTICE OF MOTION DATED 27TH AUGUST 2008 PER REGISTRAR'S STAMP:

1. The Respondent's defence is struck out.

2. The Respondents pay the costs of this application on the scale as between Attorney and own client.

RE: NOTICE OF MOTION DATED 6TH NOVEMBER 2008 PER REGISTRAR'S STAMP:

1. The Applicant is entitled to the payment of R 1 342 115.87, together with interest at the legal rate from the 1st July 2006 to date of the final payment.

2. The Third Respondent takes the steps necessary to comply with the Order and inform the Applicant within 21 days of the date of this order that this has been done by sending confirmation per facsimile transmission to the Applicant's Attorneys, failing which the Applicant is granted leave to apply on supplemented papers, for the purpose of this application, for an Order declaring that the Third Respondent be in contempt of court and committing her to prison for a period of six months or such other period as Court deems appropriate.

3. The First, Second and Third Respondents pay the costs of these proceedings, jointly and severally, the one paying, the other to be absolved."

5. There are facts of this case that I need first to outline as they were germane in the resolution of the dispute between the parties.

Background Facts

6. The applicant commenced his employment with the Department of Correctional Services ("the Department") on 12 March 1986 in the position of a Warder. He acquired further promotions and in 1997 he held the position of an Assistant Director. In 1999 the Department in the Eastern Cape advertised internally, for various vacant posts, including that of Vice Chairperson Parole Board. The applicant applied for the Vice Chairperson post as did, among others, a Mr Mabandla. The second respondent appointed Mr Mabandla instead of the applicant. He was aggrieved by his non-appointment and he referred an unfair labour practice dispute in relation thereto, for conciliation and arbitration by the General Public Service Sectarial Bargaining Council. The Arbitrator, a Mr Simphiwe Taku, acting under the auspices of the said Bargaining Council issued an arbitration award dated 12 June 2003 in the following terms:

> **Award**
>
> I find that, the applicant has discharged the onus on him to prove that the respondent acted unfairly in not promoting him in terms of schedule 7, item 2 (1) (b) of the LRA. The respondent's conduct or omission is unfair and negates the applicant's constitutional right to fair labour practices in terms of S23(1) of the constitution. I therefore order that:
>
> 1. The respondent must promote the applicant to a vacant post or an alternative suitable post at a level of a vice-chairman of the parole with effect from 1 April 1999,
>
> 2. The applicant must be paid at salary rate and benefits of R130 878 per annum with effect from 1 April 1999 and this amount

shall bear interest at a prescribed rate from the date he would have been appointed, that is, 1 April 1999

3. The total amount payable in terms clause 1 must be paid to the applicant with interest at a prescribed rate within 30 days from the date of this award,

3. The respondent must negotiate the promotion, transfer or absorption of the applicant into a vacant or an alternative suitable post at the level and salary rate of the Vice Chairman of the parole board within 30 days of receipt of this award, and

5. The respondent is ordered to pay the applicant's costs." (sic)

7. The Department, which was the only respondent at the time, decided to apply for the review and setting aside of the arbitration award. This court dismissed that application by refusing to condone the 'late filing' of the review application and the arbitration award was made an order of this court on 12 August 2005.The effect of the terms of the arbitration award is that it promoted the applicant from being an Assistant Director to being a Deputy Director.

8. In the course of a restructuring process, the Department abolished a post of Head of Nutritional Services in East London which at the time was held by the applicant. He was then transferred to Sade Correctional Centre as Head of Finance Section. While he was at Sade the Department commenced disciplinary proceedings against him. While he was subjected to a disciplinary process he was transferred to Lusikisiki to take up a vacant post Vice Chairman of the Parole Board. The transfer occurred simultaneously with the downgrading of the post he came to take, to that of Assistant Director. He was then transferred to St Alban's Correctional Centre in Port Elizabeth to work as a Deputy Director. He was ultimately

found guilty and dismissed, which dismissal was confirmed after an internal appeal in August 2006. His last salary month was on 15 August 2006.

9. In terms of the arbitration award, the applicant was entitled to an arrear salary and benefits. These were constituted by the difference between the salary he would have received, had he been appointed as a Deputy Director in 1999, and the salary he did receive up to the date of his dismissal. He wrote numerous letters and held a number of meetings with the relevant officials of the Department pertaining to his arrear salary and benefits. The Department initially disputed his claim but later conceded its indebtedness to him albeit on a lesser amount than was claimed.

10. On 8 December 2005 the Department paid the applicant an amount of R176 011.34 towards arrear salary and benefits. The position of the Department was that the payment was in full and final settlement of its indebtedness to the applicant, only to establish later that it was not such full payment. According to it, the difference due to the applicant was R17 938.72, excluding interest on the arrear payment.

11. On 8 January 2008 applicant's attorney issued a letter of demand to the Department. Its contents portray in better terms the claim of the applicant. It reads:

> "1. We write to advise that we act on behalf of Mr Zono and have received instructions to address this letter to yourself.
>
> 2. We are instructed that you are the relevant official at the Department of Correctional Services: Eastern Cape to implement awards of the General Public Service Sectoral Bargaining Council and also Orders of the Labour Court of South Africa.

3. As you will be aware our client received an Award from the Public Service Sectoral Bargaining Council under case number PSGA 2068 on the 12th June 2003. If you are not in possession of this Award we will furnish you with a copy thereof.

4. On the 12th August 2005 this Award was made an Order of the Labour Court by the Honourable Acting Justice Ngcamu under case number P418/03. A copy of this Order is attached hereto marked Annexure “A”.

5. On the 9th October 2006 a letter of demand was addressed by our client’s erstwhile attorneys of record to yourselves requesting that the Order be implemented and we trust that you are in possession of that letter. Should you require a copy thereof we will furnish you with one.

6. On the 8th December 2005 your Department made part payment of the arrear salaries and benefits in the sum of R176 011.34.

7. This part-payment has not extinguished the entire debt due, owing, and payable by the Department to our client.

8. We enclose herewith a schedule of arrear salaries for the relevant period to R963 797.69 marked Annexure “B”.

9. We further enclose a schedule of salary increments for the relevant period amounting to R113 622.03 marked Annexure “C”.

10. Finally, we enclose a schedule of bonuses which were meant to be paid to our client amounting to R264 696.00 marked Annexure “D”.

11. Your department accordingly owes our client the sum of R1 342 115.87.

> 12. Unless we receive payment of **R1 342 115.87** into our Trust account on or before the **25th JANUARY 2008** we are instructed to proceed with contempt of court proceedings against yourself and also to approach the Labour Court for a Declaration that the aforesaid amount is due, owing, and payable."

12. He attached schedules relevant to the arrear salary which he said had not been paid in terms of the arbitration award. These are incorporated into this judgment as exhibits A(1) - A(3), with columns explained as:
    - Column 1 – the relevant period
    - Column 2 – salary he received as Assistant Director
    - Column 3 - salary he should have received as Deputy Director
    - Column 4 – the difference between 2 and 3
    - Column 5 – the difference plus interest
    - Column 6 – the interest accrued
    - Column 7 – the total amount due

13. The Department has conceded that the applicant was not afforded the courteousy of an acknowledgment of receipt of the letter of 8 January 2008 and that no assurance was given to the applicant or his attorneys to the effect that this matter would be looked into. The explanation proffered is that a Ms Maria De Jager who was the responsible human resource clerk was on leave when the letters of demand arrived. Still after her return from leave this matter did not receive any attention of note. On 12 February 2008 the applicant filed an application with this court for an order directing the respondents to pay the amount he said was owing, failing which he would institute contempt of court proceedings.

14. The application was scheduled for a hearing on 21 April 2008. The respondents filed an answering affidavit accompanied by a condonation application on that day. Time for the filing of the answering affidavit had run out but Nel AJ condoned such late filing. The matter had to be postponed as the applicant was given an opportunity to file his replying affidavit but the respondents were ordered to pay costs at attorney-client scale, occasioned by the postponement. The matter was scheduled for a hearing on 11 June 2008.

15. On 1 May 2008 the applicant served the respondents with a notice to discover and served a formal discovery notice on 5 May 2008. The respondents had 10 days to produce the documentation sought. On 2 June 2008 the applicant issued out an application to compel discovery against the respondents. The order prayed for was in the following terms:

> "1. Directing the Respondents to make the documents available, or to state, on oath, if they are not in the Respondents' possession, in terms of the two Notices, dated the 1st May 2008, in terms of Rule 11(3), on or before the 20th June 2008;
>
> 2. For leave to apply on the same papers, as supplemented, for an order striking out the Respondents' defense, with costs, in the event of the Respondents failing to make the documents available, or failing to file an affidavit, within the time specified;
>
> 3. directing that the main application be postponed to a date to be determined by the Registrar;
>
> 4. directing the Respondents to pay the wasted costs of the postponement on the scale as between attorney and client
>
> 5. ….

6. Costs of this application."

16. On 9 June 2008 applicant's attorney received a proposal from the respondents' attorney consenting to prayer 1, but requesting three weeks to deliver and to prayers 3 and 6. The respondents objected to prayer 2 and 4. On 10 June 2008 the respondents filed their notice of opposition to the interlocutory application and on 10 June 2008 filed their answering affidavit. The matter came before Pillay J on 11 June 2008. She issued an order as agreed to by the respondents in the following terms:

> "1. The Respondents are to make the documents available, or to state, on oath, if they are not in the Respondents' possession, in terms of the Applicant's two notices, dated the 1st May 2008, in terms of Rule 11 (3) on or before 11 July 2008;
>
> 2. leave is granted to apply on the same papers, as supplements, for an Order striking out the Respondents defense, with costs, in the event of the Respondents failing to make the documents available, or failing to file an affidavit within the time ordered;
>
> 3. the main application is postponed to a date to be determined by the Registrar;
>
> 4. the Respondents are to pay the wasted costs of the postponement; and
>
> 5. the Respondents are to pay the costs of this application."

17. On 9 July 2008 the respondents filed two supplementary affidavits in which they challenged the relevance of some of the documents requested by the applicant. It is appropriate to refer to paragraphs 5, 14 and 15-20 of the supplementary affidavit deposed to by Mr Johannes Edwin Job. He had the following to say:

"5. The purpose of this affidavit is twofold:

5.1. to supplement my earlier answering affidavit with reference to recent developments

5.2. to respondent to the Applicant's notices in terms of the provisions of Rule 11(3) dated 1 May 2008

…..

…..

…..

14. Given the limited dispute between the parties, however, it is respectfully submitted that most of the documentation which the Applicant has called upon the Respondents to discover was, and remains, unnecessary in relation to the finalisation of the main application. The Applicant could have filed his replying affidavit without regard to the voluminous documentation the Respondents have been obliged to collate and put up in response to the Rule 11(3) notices. This has involved the Department in an expensive and time consuming effort.

15. It will further be submitted, as will become apparent from my detailed response below, that the Applicant has abused the process of court by requesting the documents which are not relevant to the main application, but which are relevant rather to other litigious matters which he has initiated against the Respondents.

16. I turn now to deal with the Applicant's first notice in terms of Rule 11(3) which he alleges is a "(n)*otice requesting inspection of documents referred to in the Respondents' Opposing Affidavits (similar to Rule 35 (12))…".*

17. I am advised that sub-rule (12) of Rule 35 of the High Court rules authorises the production of documents which are referred to in general terms in an affidavit. The terms of the Rule do not require a detailed or descriptive reference to such documents, but reference by mere deduction or inference does not however constitute a *"reference"* as contemplated in the sub-rule.

> 18. Further, even assuming that such documents exist, the parties' obligation to produce them is subject to limitations. One such limitation is privilege. The other is relevance.
> 19. I respectfully submit that, in many instances, the Applicant has imagined the existence of documents or imputed a reference to specific documents where no pertinent reference was made thereto in the first place, in order to justify his entitlement thereto. In short, he has gone on a fishing expedition!
> 20. Further, as stated above, many of the documents sought are entirely irrelevant to the issues remaining between the parties in the main application."

18. On 11 July 2008 the respondents filed a bundle of discovered documents. They omitted quite a number of documents sought in the discovery notice, having explained the underlying reasons in the two supplementary affidavits filed on 9 July 2008.

Submissions by the parties

19. On 21 November 2008, Mr MJ Lowe SC appeared for the applicant and Mr B Hartle was instructed by the State Attorney to appear on behalf of the respondents.

Mr Lowe's submissions

20. The Order issued by Madam Justice Pillay on the 11th June 2008 (annexure "A" to the Applicant's Founding Affidavit), was an order made by the above Honourable Court, no more no less.

21. Once the Court has made an order it becomes *functus officio:* its jurisdiction in the case having been fully and finally exercised its authority

over the subject-matter having ceased. (See *West Rand Estates Limited v New Zealand Insurance Company Limited* **1926 AD 173 at 176, 178, 186).**

22. The Supreme Court of Appeal has recognized that a number of exceptions to the rules such as the supplementation of a judgment in respect of accessory or consequential matters for example costs or interests on the judgment debt which were overlooked or inadvertently omitted.

23. The court may clarify its judgment or order if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter "*the substance*" of the judgment or order. (See *Thompson v South African Broadcasting Corporation* 2001 (3) SA 746 (A) at 748 to 9).

24. In submission, in this matter, the order made by Madam Justice Pillay, referred to above, is clear and unequivocal, requiring the Respondents *"… to make the documents available, or to state, on oath, if they are not in the Respondents' possession, in terms of the Applicant's two notices, dates the 1st May 2008, in terms of Rule 11 (3), on or before 11 July 2008;"*

25. It is thus not open to Respondents to simply contend, as they do in the Heads of Argument that it is *"unfortunate that the compliance order reads the way it does",* going on to submit that all that was *"intended by the parties agreement was that the provisions of Rule 35 would apply in the principal application and that the Respondents would, on the basis provided for in that rule, deal with the Applicant's request within the timeframe agree upon, namely on or before 11 July 2008."*

26. In this particular matter, the labour court has a wide discretion, in terms of Rule 11 (3) in application matters being stated as follows:

> "11(3). If a situation for which these rules do not provide arises in proceedings or contemplated proceedings, the court may adopt any procedure that it deems appropriate in the circumstances."

27. It is correct that the above Honourable Court has a discretion as to whether or not to strike out the Respondents' opposition. The power of dismissal conferred by both the order and the provisions of Rule 35(7) of the High Court Rules, which uses the word *"may"* relevant to the dismissal of the claim, is discretionary. It would seem that the power to dismiss is one where the court is *"entitled to have regard to a number of disparate and incommensurable features in coming to a conclusion".*

28. Where one is dealing with a decision which puts an end to an action or defense and giving the importance, finality and potential consequences which flow from such a decision the wider discretionary approach as probably justified. Whilst a court may be slow to adopt the extreme measure of dismissal when another remedy is available, it is submitted, in this matter, Respondents have been contumacious, and dismissing the defense is the only sensible remedy. There has been, in submission, a willful or at least reckless disregard for Respondents' obligations.

Mr Hartle's submissions

29. On 11 June 2008, Madame Justice Pillay issued the compliance order (Annexure "A" to the Applicant's founding affidavit), which was the product of an agreement between the parties legal representatives. The Respondents readily made concessions in the application to compel and co-operated fully in advancing the matter forward. It is unfortunate that the compliance order reads the way it does, but it is respectfully submitted that all that was intended by the parties' agreement was that the provisions of Rule 35 would apply in the principal application and that the

Respondent would, on the basis provided for in that rule, deal with the Applicant's request within the time frame agreed upon, namely on or before 11 July 2008.

30. It is submitted that it could never have been the parties' intention to agree that the Applicant was entitled to more than the discovery rules permit. On 11 July 2008, the Respondents timeously delivered a supplementary affidavit together with a substantial bundle of discovered documents. The Respondents replied under oath, as the compliance order had directed, and dealt with each document listed in the Applicant's discovery notices in detail. Where documents did not exist, or were no longer in the Department's possession, this was clarified. Where the Respondents otherwise had a valid objection, this was explained.

31. The object of discovery is to ensure that both trial parties are made aware of all the documentary evidence that is available. By this means, the issues are narrowed and the debate of points which are incontrovertible is eliminated. Discovery is not intended to be used as a sniping weapon in preliminary skirmishes. The only documents which are required to be discovered are those *"relating to any matter in question in such action". Rule 35(1)* Relevance is a matter for the court to decide, having regard to the issues between the parties. The relevance of the documents required to be discovered is of the utmost importance. Relevance is determined from the pleadings. (See Rellams (Pty) Ltd v James Brown & Hamer Ltd 1983 (1) SA 556 (N) at 559.

32. Further, the Rules relating to discovery do not apply to applications automatically. Sub-rule 13 provides that the provisions of Rule 35 relating to discovery apply *mutatis mutandis* **insofar as the court may direct,** to applications. Discovery is rare and unusual in application proceedings, and should be ordered by the court only in exceptional circumstances.

Indeed, such direction is an essential prerequisite for a notice in terms of Rule 35(1), as well as for an application to compel compliance with a notice on this basis. The Applicant never obtained such direction from the court *in casu*, even though the Respondents agreed to go along with the Applicant's request to make discovery on the basis of the notices.

33. While UR 35 (12) creates a *prima facie* obligation on a party who refers to a document in a pleading or an affidavit, to produce such a document it does not mean that such mere reference creates an unqualified obligation to produce such a document. It is subject to the limitations, one being privilege, the other being relevance. The rule can also only be of application if such a document does in fact exist and can be identified in the affidavit as a clearly identifiable document within the context of the averment. Reference by mere deduction or inference does not constitute a *"reference"* as contemplated in the subrule. (See *Penta Communication Services) Pty Ltd v King* 2007 (3) SA 471 (C) at 479). As for the Applicant's second notice, the test of relevance as provided for in UR35 (14) is whether the document in question is **essential**, not merely useful, in order to enable a party to plead.

34. It is submitted that the Respondents have complied fully with the compliance order, insofar as it is their obligation in law to do so, and that their objections to discovery, where applicable, have been validly raised. It is further submitted that this matter cannot be determined on a literal interpretation of paragraph 1 of the compliance order. This would lead to an absurdity which would be contrary to the long established principles applicable to discovery. It should furthermore be borne in mind that the "issues" between the parties in the principal application are very limited. The Applicant has what is necessary to enable him to *"plead"*. He should now get on with it, or concede that the matter is at an end.

35. The Applicant fails to say how the discovery is inadequate to enable him to plead. Incidentally he pleaded, in the application to compel, that *"the Respondents have taken a stance which was not consistent with various documents and policy directives of the Department…"* as a basis for his entitlement to the discovery. In the present applicant, except to repeat that the Respondents were *"ordered"* to make the documents available, he deals in very general terms with relevancy. One is at a loss to understand why he cannot quantify his claim. It also became apparent that he missed that the Respondents had in fact made the *"Z 198 Form"* available in the discovery bundle. This leave the unfortunate impression that the Applicant was not really interested in securing the documentation.

36. It is submitted that there are no facts which *"weigh so heavily"* as to justify the drastic relief sought by the Applicants. There is no further evidence of any contumacy on the Respondents' part. Yes, they have been on the back-foot insofar as payment of what they concede is owing is concerned! And their answering affidavit was filed out of time in the principal application! But they sought condonation and tendered costs. The late payment will also be addressed by way of *mora* interest.

Analysis

The order striking out respondents' defense

37. The extent to which the respondents materially complied with the order of this court dated 11 June 2008 had a decisive effect on whether or not the defense of the respondents ought to have been struck out. The notice of documents required by the applicant was served on the respondents' attorney as far back as 1 May 2008. A formal discovery notice was served on 5 May 2005. The respondents had more than a month period within which to determine the nature, relevance and availability of the documents sought by the applicant, before the order would be granted. If the formal

discovery notice did not sound alarm bells, the notice of 2 June 2008 of the intention to apply for an order to compel should have. Therefore the respondents had more than enough time, and in their position, enough means to verify the relevance, nature and availability of documents sought. When therefore their counsel approached court on 11 June 2008 and conceded to the delivery of the already identified documents sought, court was entitled to rely on them having done their homework.

38. Before court could grant the order sought on 11 June 2008, Pillay J would certainly have applied her mind on such issues as the relevance of the documents sought by he applicants. By the way, it was on 11 June 2008 that the respondents ought to have argued on whether or not the documents sought were relevant. They opted not to. It was never shown why they were entitled to the "second bite to the cherry" after 11 June 2008.

39. An order to compel discovery is normally issued in circumstances where one party resists discovery in terms of the rules. Once the order is issued, discovery is no longer in terms of the rules but is governed by the terms of the court order. At this stage, falling back on the rules on the face of clear and unequivocal terms of the court order should not really help the recalcitrant party. The opening remarks of the closing submissions by Mr Lowe said it all in this regard. While the order of this court of 11 June 2008 stood, there never was any room for the respondents to return to court and cry foul that the terms of the order permit irrelevant documents to be discovered. It was always open to the respondents to approach this court after 11 June 2008 and to seek to rescind such of the terms of the order as were visited by any ambiguity or an obvious error or omission or as were granted as a result of a mistake common to the parties to the proceedings. They chose not to.

40. The justice of this matter demanded that the respondents' defence be struck out. In doing so this court was very much alive to its discretionary powers, particularly in this matter as there was a dispute regarding the amount admittedly owed to the applicant. The substantial difference in the amount admittedly owed and the amount allegedly owed should have been the incentive to the staff of the respondents to act expeditiously and prudently, qualities that lacked throughout their dealings with this matter. There was an inordinate delay on the staff of the respondents in settling even the admitted outstanding payment to an applicant who had made it known he was unemployed and desperate. To grant a further indulgence to the respondents would have been unfair in the circumstances. Further, Mr Lowe's submissions were very persuasive in this regard.

A declaration of entitlement to the relief sought

41. Once the defense of the respondents was struck out, the respondents had no excuse for their failure to comply with the clear terms of the order of court. The consequence of such a failure was that the applicant was prejudiced as he could not have all the material he needed to use in drawing a replying affidavit. His position was made weaker. The respondents could not be allowed to benefit from their own wrongdoing to the prejudice of the other party. Accordingly, the version of the applicant had to prevail. In the resolution of disputed facts in this matter, court was then guided by the principle in Plascon-Evans Paints v Van Reebeck Paints 1984 (3) 623 where the following was said:

> "…where in proceedings on notice of motion dispute of fact have arisen on the affidavits, a final order, whether it be an interdct or some other form of relief, may be granted if those facts averred n the applicant's affidavits which have been admitted by a respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final

> relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by the respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact…" (my underline)

42. In my view, it had then been shown by the applicant that he was entitled to the order sought in this regard. The law and fairness of this matter, all things considered, justified that an order of costs against the respondents, on the attorney scale be granted as prayed for.

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Cele J

Date : 9 April 2009

Appearances:

For the Applicant: Mr M J Lowe SC instructed by Wheeldon Rushmere & Cole Attorneys

For the Respondent: Mr B Hartle instructed by State Attorney