IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

CASE NO JA20/02

In the matter between:

UNIVERSITY OF THE NORTH	**FIRST APPELLANT**
COUNCIL OF THE UNIVERSITY OF THE NORTH	**SECOND APPELLANT**
GM NEGOTA NO	**THIRD APPELLANT**
EXECUTIVE COMMITTEE OF COUNCIL	**FOURTH APPELLANT**

and

MATABOLE DOROTHY ROCKY RALEBIPI	**FIRST RESPONDENT**
SELAELO THIAS KGATLA	**SECOND RESPONDENT**
DINEO TALITHA SELOANA	**THIRD RESPONDENT**
JOHN KGWALE TSEBE	**FOURTH RESPONDENT**
DORNAN DANJUMA DECENT SHENI	**FIFTH RESPONDENT**

JUDGMENT

JAFTA AJA:

Introduction

[1] The first appellant is a university and employer of five respondents who were appointed to various posts prior to the appointments which form the

subject- matter of this appeal. The second appellant is the governing body and council of the first appellant. The third appellant was the chairperson of the council and the fourth appellant was its executive committee. During 1999 the respondents were already employees of the university but when certain vacancies within the first appellant were advertised, some of them applied for different posts. After following certain procedures the council of the first appellant (as it was then constituted) appointed them to those posts. However, the establishment of the posts to which they were appointed together with the actual appointments generated a deep-rooted controversy within the university which initially led to the suspension of the principal of the said university and the respondents, themselves.

[2] The entire university was plunged into crisis due to lack of proper leadership, management and general governance. Academic programmes, teaching and learning were disrupted as the situation degenerated to total chaos. The Minister of Education was compelled to appoint an assessor to investigate the matter and make recommendations as to how normality could be restored to the institution. In his investigation the assessor found that within the high ranking officials including the academic staff, there was dissatisfaction with the management style of the suspended principal. It was felt, especially among the academic staff, that the university's senate was not consulted in various matters in which it had direct interest. The assessor's report which forms part of the record before us contains scathing criticism against the university's council and its chairperson, the third appellant. The two are blamed for having largely contributed to the chaotic situation that prevailed at the university. The fourth appellant too received its fair share of criticism in the report. The assessor then recommended, inter alia, that an administrator be appointed to replace and assume the functions of the council as well as management. Indeed on 8 December 2000 Patrick Thomas Fitzgerald was appointed as the administrator of the first appellant. He is the person who deposed to the main affidavit filed on behalf of the first appellant in its attempt to challenge the validity of the respondents'

appointments.

The facts

[3] Shortly after his appointment, the principal of the first appellant embarked upon a transformation process which included restructuring of management structures and establishment of new structures to underpin such transformation. New posts within the established structures were created and the university sought to fill them. Applications were invited from prospective candidates and the respondents duly applied. They were interviewed and eventually appointed to such posts. The first respondent who was then a professor and head of department of information studies was appointed to the position of Chief Executive, Administration with effect from 1 November 1999 up to 31 October 2004. The second respondent who was also a professor and head of department was appointed to the post of Dean of Student Affairs. The third respondent who was a lecturer in the department of social work was appointed as a Manager, Total Quality Management. The fifth respondent who was a dean of the faculty of health sciences was appointed as Dean of Research. The other three respondents were also appointed for a fixed period, commencing on 1 November 1999 and lapsing on 31 October 2004. All respondents with the exclusion of the fourth respondent, entered into written agreements setting out the terms and conditions of their respective appointments.

[4] The position of the fourth respondent is totally different from that of the other respondents. He was already a librarian prior to the appointments in question. His post was merely brought into the new management structure without any substantive changes. In other words, he became part of the new management team without any changes to his terms and conditions of service.

[5] On 19 January 2000 the first respondent received a letter of suspension from the third appellant in his capacity as acting chairperson of the council. The reasons given for such suspension were gross insubordination of council and bringing the university into disrepute. On 21 January 2000 the third appellant addressed another letter to the first respondent informing her that the post she had been appointed to had been “temporarily suspended”

pending investigations. She was also directed in the same letter, to resume her former post. Letters in similar terms were also issued on the same date to other respondents. But surprisingly, a similar letter was also issued to the fourth respondent who was not appointed to any new post. He too was directed by Mr. Negota to " vacate forthwith the office you occupy and revert to your former position". This is completely astonishing when considered in the light of the fact that the fourth respondent was not appointed to any post. To require him to vacate the office of the librarian he had been occupying prior to the other appointments and revert to his former position is incomprehensible, to say the least.

[6] The aforesaid suspensions precipitated a joint application in the court a quo by the respondents in an attempt to have the suspensions set aside and their employment contracts reinstated. The court a quo found in respondents' favour and ordered that the respondents be permitted to carry out their duties in terms of their respective contracts. The court also issued a declarator to the effect that contracts entered into between them and the first appellant were valid. The application was opposed by the appellants who also lodged a counter-application. The latter application was dismissed and the first appellant was ordered to pay costs of the entire application. The first appellant then applied for and was granted leave to appeal to this court.

The issues

[7] Although leave was sought on the basis of various grounds, leave was expressly granted after the Judge in the court a quo had dealt with a single point relating to the construction of the term 'academic employee'. Initially Mr. Moshoana, who appeared for the respondents before us, contended that leave was restricted to the single ground dealt with in the judgment granting leave. However during the debate of the issue he relented and conceded that the judgment granted unrestricted leave. However, in the notice of appeal the appellants pursued only the following major grounds :

7.1 The court a quo erred in attaching a narrow meaning to the phrase 'academic employee' and consequently finding that the respondents were not academic employees as envisaged in the Higher Education Act 101 of 1997. Therefore, the court a quo should have found that the appointments of

the respondents, which did not comply with the requirements of s 34 (2) of the said Act regarding consultation with the senate thereon, were invalid ab initio.

7.2 The court a quo further erred in granting a declaratory order which enforces the employment agreements despite the fact that such agreements had been terminated on notices issued in terms thereof. I should mention that I have paraphrased the aforesaid grounds.

[8] Before dealing with the above issues I should comment on the formulation of the order granted by the court a quo. It reads thus: " It is declared that the contracts of employment concluded between the first respondent and the applicants, in the absence of any lawful termination of those contracts subsequent to the order made by this court on 8 March 2000, remain of full legal force and effect and that the applicants be permitted to carry out their duties in accordance with their respective contracts of employment". The order was formulated in this manner even though there was evidence placed before the court to the effect that termination notices were served upon the respondents but such notices had not come into operation at the time of the hearing of the matter. However, the said hearing was on 22 June 2001 but judgment was reserved and handed down on 26 March 2002. It is clear from its judgment that the court a quo did not deal with the issue pertaining to the notices of termination. Before us Mr. Brassey, who appeared together with Mr. Hulley for the appellants, challenged the validity of the order, in this regard, on the ground that it was not based upon any findings as the court a quo did not consider the issue. The question of whether or not that part of the order was competently issued is something I shall later return to. At this stage it suffices to mention that during the hearing of this appeal the respondents were afforded a chance to consider their position towards the proposition that this court should adjudicate that issue even though the court a quo had not dealt with it. Indeed the respondents have, later and through their legal representative, consented to us dealing with the issue.

[9] I shall now turn to issues raised in this appeal which I shall consider separately. I shall first deal with the question of interpretation and then consider the issue and the effect of notices of termination. This approach appeals to me for the simple reason that if the definition of academic

employee includes the respondents the need to consider the other issue will fall away. Since the case against the fourth respondent stands on a different footing, it will also be dealt with separately.

The proper meaning of academic employee

[10] In challenging the validity of the employment contracts the appellants contended in the court a quo, that the respondents' appointments were effected without compliance with the peremptory terms of s34 (2) of the Higher Education Act in that there was no consultation with the senate before such appointments were made. The power to appoint employees of a public higher education institution such as the first appellant, vests in the council but if the appointment to be made relates to an academic employee the council should first consult the senate before making such appointments. Section 34 of the Act reads as follows:

"(1) The council of a public higher education institution must appoint the employees of the public higher education institution.

(2) Notwithstanding subsection (1) the academic employees of the public higher education institution must be appointed by the council after consultation with the senate.
(3) The council must determine the conditions of service, disciplinary provisions, privileges and functions of the employees of the public higher education institution, subject to the applicable labour law."

[11] What is clear from the reading of the entire section is that a council of each public higher education institution is empowered to appoint all employees of such institution and without any restriction determine their conditions of service, privileges, duties and functions as well as the disciplinary code applicable to them. Except in the case of academic employees, the section and indeed the entire Act does not prescribe any conditions precedent to the exercise of the power to appoint employees. The prerequisite to the appointment of academic employees is consultation with the senate. If consultation has not taken place prior to such appointment the power to appoint it seems to me, cannot be validly exercised. However, the

said prerequisite, it must be emphasized, applies and is confined to the appointment of academic employees and no other employee of the public institution. Therefore, the construction of the term "academic employee" is utterly fundamental to the enquiry of determining whether or not respondents were validly appointed.

[12] In construing the term great assistance is to be derived from the definition section of the Act, which provides useful guidance to the court regarding the meaning the Legislature intended to be attached to each defined term appearing in the body of the Act. As definitions are specifically designed to reveal to courts the meaning preferred by the Legislature on particular terms or phrases, effect must be given to its intention by means of applying the defined meaning unless strict adherence thereto contradicts a clearly established intention of the Legislature. The defined meaning should be applied even if it leads to hardship or absurdity unless such absurdity is so gross that it could never have been intended by the Legislature. The court's aversion to the results of the defined meaning cannot constitute justification for departing from the definition. Thus in **Orlando Fine Foods (Pty) Ltd v Sun International Ltd 1994 (2) SA 249 (BGD) Waddington J** had occasion to consider circumstances under which a statutory definition could be departed from and the learned Judge following a decision of the Appellate Division said at 255E:

" [I]n order to decide whether words in an actment are inconsistent with a definition,one must consider whether the application of the definition to the clause in question would lead to an injustice, incongruity and absurdity of such dimension that the Legislature could

clearly never have intended that result."

See also **Brown v Cape Divisional Council and Another 1979 (1) SA 589 (A) at 601F-602A.**

[13] The term "academic employee" means , in terms of section 1, 'any person appointed to teach or to research at a public higher education institution and any other employee designated as such by the council of that institution'. The proper reading of the definition reveals that academic employee , as envisaged in the Act, carries three meanings. Firstly, it means employees who were primarily appointed to teach students, secondly, those who were appointed to do research , and lastly, the employees who, although not appointed to teach or do research , were specially designated as academic employees by the council. It is quite obvious from the facts that the respondents in the present case were not designated as academic employees . It seems to me that such designation would normally take place after the employee had been appointed as there could be no basis upon which the council could so designate someone who is not yet its employee. Therefore, to insist on consultation with the senate prior to appointment of such people would not make any logical sense.

[14] In my view the requirement of consultation applies to those candidates whom the council intends to appoint for the primary functions of teaching or doing research. Consultation must precede the actual appointment as s 34(2) expressly requires that such appointments be effected after consultation with the senate. The question that arises immediately is whether the respondents were appointed to either teach students or do research. If they were not appointed to teach or do research then in terms of

the definition they are not academic employees as envisaged in s 34(2).

[15] In determining what functions the respondents were appointed to perform recourse must be had to the terms of their respective employment agreements. The first respondent was appointed to provide professional and administrative leadership particularly in an efficient implementation of the university's strategic and action plans which included transformation and development. Her key functions included the following:

(a) designing and developing operational plans, budgets and expenditure controls;

(b) generating and supplying accurate statistics and other progress reports required by the Department of Education;

(c) providing effective management of various divisions as well as effective supervision of staff under her control; and

(d) explicating the professional and community outreach, renewal goals and objectives of the university. This included the responsibility to inspire the general staff at the university.

[16] The second respondent was appointed to perform duties similar to those performed by the first respondent although such performance was to be confined to his division. In addition to those duties he was required to ensure that:

a) the recruitment and intake of students was increased;

b) the lifes of students in both the residences and classrooms were synchronised;

c) there were developmental programmes such as tutorials and mentors for supporting students; and

d) a high quality is maintained in the teaching, research, training and

development of programmes and standards.

[17] The third respondent too had duties similar to those of the other respondents. In addition thereto she was tasked to ensure that:

a) orchestrated reviews of the university's plans, systems, programmes and transformative changes were developed and implemented;

b) vision and strategic leadership was also provided;

c) the university's systems, policies, procedures, programmes and performance measures were monitored; and

d) policies and practices designed to yield quality and optimal support to students were developed and implemented.

She was also required to advise senior officials within and outside the university.

[18] The fifth respondent as well had similar duties with key areas applying exclusively to him. He was required to ensure that :

a) high post-graduate training standards, research programmes, innovations and research performance outputs were maintained;

b) senior academics do not only teach but also research, supervise post-graduate students and mentor junior academics to teach well, research and improve their abilities and qualifications;

c) new competitive post-graduate programmes are designed, approved,

registered and implemented;

d) the university's research, training and development programmes and standards are maintained at a high quality level; and

e) academic staff produce and publish quality research publications in national and international reputable journals.

[19] As it appears from above , none of the respondents was appointed to teach or to do research by himself or herself. Those who had something to do either with teaching or research, were required to provide an environment conducive to proper teaching or research. Others were required to play a supervising role to staff members who were directly involved in teaching or research. But not a single respondent was appointed to perform the function of teaching or research. Therefore, if the statutory definition is adhered to in the strict sense, not a single respondent would qualify to be an academic employee.

[20] However, before us Mr. Brassey contended for an expanded meaning of the phrases "to teach" or "to do research". He criticised the court a quo for adopting a narrow meaning thereof. No Vice –Chancellor or his equivalent , so the argument went, would accept that he was not an academic and none of the other respondents would have accepted this either. In my view, the fallacy in this argument lies in the fact that it seeks to contradict the clear stance adopted by the respondents throughout the proceedings, namely, that they were not academic employees hence s 34(2) did not find application to their appointments. It may be so that some principals are appointed from the ranks of professors but that does not automatically make them, as principals, academic employees as envisaged in the section.

[21] Although in their heads of argument the respondents contended that a purposive interpretation of the relevant legislation should be adopted, in oral argument before us Mr. Brassey did not pursue the point when the court debated the issue with him. Instead he contended that the functional

approach should have been followed by the court a quo. He submitted that in terms of that approach the phrase "academic employee" should be given its natural ordinary meaning which, it was argued, included the employees who managed and supervised other employees who were directly involved in teaching or research. Whilst not expressing any firm opinion on whether the contended meaning constitutes the ordinary meaning of the term in question, I hold the view that the issue of what the ordinary meaning happens to be, is not the key issue in the present matter. The central issue remains : whether the application of the definition to s 34(2) leads to an absurdity of the nature that could never have been contemplated by the Legislature. In deed in **Canca v Mount Frere Municipality 1984 (2) SA 830 (Tk) Davies J,** after reviewing authorities on the point, stated at 832 B-G:

" The question whether a word in a particular section of a statute should be given its statutory definition or the ordinary meaning has come up for decision in a number of cases… The principle which emerges is that the statutory definition should prevail unless it appears that the Legislature intended otherwise and, in deciding whether the Legislature so intended, the court has generally asked itself whether the application of the statutory definition would result in such injustice or incongruity or absurdity as to lead to the conclusion that the Legislature could never have intended the statutory definition to apply".

[22] The above approach was recently approved and reaffirmed by the

Supreme Court of Appeal in **Hoban v ABSA Bank Ltd t/a United Bank and Others [1999] 2 All SA 483 (SCA).** In that case **Howie JA** (writing for the court) said at para[18]:

"[18] Finally, and most importantly, it is not enough to warrant departure from the defined meaning that the subject matter of the rule or section under examination differs from the subject matter of provisions in which the defined meaning clearly does apply. That is not the test. There is a line of cases including decisions of this Court, in which the true approach is stated. The inference is compelling that none of them, was drawn to the court's attention in either the First Consolidated case or in Rontgen matter. They are collected in Canca v Mount Frere Municipality 1984 (2) SA 830 (Tk) at 832 B-C in a passage which in my opinion sets out the position correctly." See also **ABP 4x4 Motor Dealers (Pty) Ltd v IGI Insurance Co Ltd 1999 (3) SA 924 (SCA)at paras [17]-[18].**

[23] In the present matter it was argued on the appellant's behalf that the application of the definition meaning would lead to an absurdity. It was submitted that the absurdity in question lies in the exclusion of those responsible for managing and supervising teachers and researchers from the meaning of the term academic employee. However, I do not agree that such exclusion leads to an absurd conclusion. Even if one were to assume that the result is absurd, I am quite certain that it cannot constitute the absurdity which could never have been intended by Parliament.

[24] In my view, it is clear from the definition itself that the Legislature has deliberately intended to restrict the meaning of academic employee and that it was quite alive to the fact that the first part of the definition was indeed narrow hence the granting of the power to councils to designate as academic employees, the employees who did not fit within that part of the definition. Academic employees or academics, as they are popularly referred to, are terms that carry a certain popular meaning and in my opinion it can be assumed that when Parliament passed the Higher Education Act it was aware of such popular and ordinary meaning. It would appear that the Legislature decided that the term should not carry its ordinary meaning. This is made clear by the provisions of s 30 found in the same chapter as s 34(2).The former section provides that the principal of a public higher education institution shall be responsible for the management and administration of the institution. Obviously it cannot be said that a principal is appointed to teach or to do research. Therefore, in terms of the Act he or she cannot be regarded as an academic employee unless duly designated as such by the council because his or her primary functions are to manage and administer the institution. If the appointment of the principal does not have to be preceded by consultation with the senate there is nothing absurd in applying the same procedure in respect of appointments of the employees whose duties are mainly to assist the principal in managing and administering the institution. It is also worth noting that the same principal is the chairperson of the very senate whose consultation is not required prior to his appointment (s 26(4) (a)).

[25] Whether or not employees who were academics immediately before their appointment to administrative or managerial posts lose their privileges as academics would not affect the interpretation of section 34(2). Even if such loss were to be taken as amounting to an injustice, it certainly would not be an injustice that could not have been intended so as to justify the departure from the definition meaning.Our courts have in the past declined to expand a statutory meaning even where the narrow meaning rendered the statute inoperative. In **Barkett v SA N ational Trust & Assurance Co Ltd 1951 (2) 353 (A) Centlivres CJ** confirmed the said principle in the

following terms at 363 E-G:

“ This Court, however, in a case where the literal meaning of a statute rendered it practically inoperative, refused to give an expanded meaning to the words used by the Legislature.See Ex Parte Minister of Justice: In re Rex v Jacobson & Levy 1931 AD 466. In the instant case there is, in my opinion, no justification for giving an expanded meaning to the words used by the Legislature: those words are quite intelligible in their context and the fact that the Legislature may well have overlooked the rule of law that a master is responsible for his servant’s negligence acting within the scope of employment affords no justification for a court of law to supply the omission of the Legislature.”

This case has been applied in a number of decisions and this specific passage has recently been relied upon in Summit Industrial Corporation v Jade Transporter 1987 (2) SA 583 (A) at 597 B.

[26] In casu, to accept the interpretation contended for by the appellants would not only do violence to the language employed by the Legislature but would also fly in the face of the principle in **Barkett**. It must be remembered that here we are dealing with a narrow interpretation which does not render the statute practically inoperative and therefore there can be no justification whatsoever for the expanded meaning. The words deliberately chosen by the

Legislature cannot and should not be subverted in favour of what the Court considers to be the spirit of the law unless the preferred interpretation is consistent with the clearly established intention of the Legislature whilst at the same time the definition meaning is inconflict therewith. The principle that the language employed by the Legislature must be respected and effect thereto be given, has received the stamp of approval from the Constitutional Court in **S v Zuma and Others 1995 (2) SA 642 (CC**). In a unanimous judgment in that case **Kentridge AJ** stated at 652I-653-B;

" While we must always be conscious of the values underlying the Constitution, it is nonetheless our task to interpret a written instrument. I am well aware of the fallacy of supposing that general language must have a single "objective" meaning. Nor is it easy to avoid the influence of one's personal intellectual and moral preconceptions. But it cannot be too strongly stressed that the Constitution does not mean whatever we might wish it to mean. We must heed Lord Wilberforce's reminder that even a constitution is a legal instrument, the language of which must be respected. If the language used by the lawgiver is ignored in favour of a general resort to "values" the result is not interpretation but divination."

This dictum has been followed in many cases including a decision of the Supreme Court of Appeal in Standard Bank Investment Corp v Competition Commission 2000 (2) SA 797 (SCA) at para [18].

[27] To conclude this point, I must indicate that the section we are called upon to construe is located in the context of governance of public higher education institutions. The entire chapter 4 is devoted to issues of governance. It sets out structures through which such institutions are governed, namely , the council, the senate and the principal. The latter two structures being accountable to the council. The council is given wide powers subject only to certain specific limitations in respect of basically matters that directly affect students. For example, the council has the power to determine the language policy of the institution with the concurrence of the senate; and academic functions including the studies, instruction, research and examination of students may not be amended or repealed without the senate's concurrence (s 27(2) and 32 (2)(b)). Moreover, s 37(4) stipulates that the senate's approval is required for determining entrance requirements, the number of students to be admitted, minimum requirements for re-admission and exclusion of students who fail to meet requirements for re-admission . In respect of other matters a mere consultation is required for the exercise of power by the council. Therefore, the primary intention of the Legislature in chapter 4 was to establish structures through which public institutions are governed and also confer powers to such structures with some limitations, in varying degrees, depending on the subject –matter to be dealt with. In my view, the narrow meaning of academic employee does not clash with that intention. In the circumstances I hold that the court a quo was indeed correct in attaching the narrow interpretation to the term. However, there is nothing in the Act which precludes councils from consulting senates

before making important appointments such as those we are dealing with herein. Indeed it is not only desirable to do so but such practice, could also enhance the level of cooperation between the two structures. Nevertheless that is a matter of policy for the institutions themselves to decide and not the courts of law.

The effect of termination notices

[28] The employment agreements concluded by the four respondents and the first appellant provided for termination of the said agreements by one party issuing a three months' notice to the other party. On 30 April 2001 and whilst the present application was pending in the court a quo, the first appellant issued notices terminating the agreements. The said notices were supposed to take effect at the end of July 2001. Meanwhile the matter was set down for hearing on 22 June 2001 and judgment was reserved. So, when the hearing was held the notices had not become effective. The notices were served upon the respondents' attorneys who, presumably, on their instructions demanded that the appellants comply with the interim order granted on 8 March 2000 and which declared that respondents were entitled to be remunerated in terms of the said agreements. Although the court a quo alluded to the fact that the respondents' attorneys appeared to have contested the notices, the respondents did not raise any substantive challenge to the issuance of the notices, which was done in terms of the agreements themselves. It therefore seems that the first appellant has competently issued the notices and that in terms thereof the contracts terminated on 30 July 2001. Consequently, I am persuaded that the court a quo erred in formulating its order in the manner it did which rendered the entire order confusing.

The fourth respondent's case

[29] At the time the other respondents entered into written agreements with the first appellant in October 1999 and in terms of which they were

appointed to new posts, the fourth respondent did not conclude any new employment agreement nor was he appointed to a new post. He retained his old post of a librarian on the same terms and conditions. He was merely drawn into the new management team without any substantive changes. Quite clearly, therefore , the chairperson of the council erroneously included him when he issued letters of suspension on 21 January 2000. The fourth respondent was entitled to challenge the validity of the decision to suspend his post and since the appellants have failed to furnish reasons for the suspension, it had to be set aside. It is also not clear from the record why the appellants sought to appeal against the whole judgment including the portion relating to the fourth respondent. As a result the entire appeal against this respondent must fail.

Costs

[30] There remains the issue of costs. Insofar as the fourth respondent is concerned, the ordinary rule that costs follow the cause should apply. In the case of the other respondents there has been partial success in their favour and also in the favour of the appellants. This means each side has partially succeeded before us. Having given a careful consideration to the matter, I am of the opinion that justice would be served if each party pays its appeal costs. However, I am not convinced that there is any basis for altering the costs order awarded by the court a quo. Its decision on the interpretation issue has been confirmed on appeal. Although the order pertaining to the declaration cannot be sustained in its original form, the appellants could not have escaped liability for costs in the court below simply because notices terminating the contracts became effective after the date of hearing. The respondents would still be entitled to their costs even if when judgment was handed down, the termination of the agreements was upheld.

[31] Accordingly the following order is made :

1. The appeal against the fourth respondent is dismissed with costs.

2. The appeal is allowed only to the limited extent that clarity is given on the status of the agreements between the first appellant and the first, second, third and fifth respondents, for the period beyond 30 July 2001.

3. In respect of the remaining parties , each party shall pay its own appeal costs.

4. The order of the court a quo is set aside and the following order is substituted therefor:

a) The appellants' decision dated 21 January 2000 and in terms of which the respondents' appointments were suspended is hereby declared null and void.

b) It is further declared that the employment contracts concluded by the first respondent and first, second, third and fifth applicants during October 1999 were valid until terminated on 30 July 2001.

c) The counter-application is dismissed.

d) The first respondent is ordered to pay costs of the entire proceedings.

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JAFTA AJA

I agree.

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NICHOLSON JA

I agree.

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WILLIS JA

Appellants' counsel: M.S.M. Brassey SC and GI Hulley

Appellants' Attorneys: Hlatshwayo Du Plessis
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Heard on 26 August 2003

Delivered on 30 September 2003