

NOT REPORTABLE

**REPUBLIC OF NAMIBIA**



**LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case No: LC 18/2010

In the matter between:

**AFRICA PERSONNEL SERVICES (PTY) LTD**

**APPLICANT**

and

**THOSE PERSONS WHOSE NAMES**

**APPEAR ON ANNEXURE "A" HERETO**

**1<sup>ST</sup> TO 624<sup>TH</sup> RESPONDENTS**

**Neutral citation:** *Africa Personnel Services (Pty) Ltd v Those Persons whose Names appear on Annexure "A" hereto* (LC 18-2010) [2014] NALCMD 14 (7 April 2014)

**Coram:** VAN NIEKERK J

**Heard:** 11 May 2010

**Delivered:** 7 April 2014

**Flynote:** Urgent application brought on oral evidence – Rule *nisi* issued interdicting respondents from certain conduct – Return date anticipated – Point *in limine* raised that application based on hearsay – Witness not indicating that his evidence based on hearsay – Evidence not containing statements of information or belief – Witness not disclosing sources for information – Confirmatory affidavits made in reply by first hand witnesses – Applicant cannot make case in reply - Point *in limine* upheld – Hearsay evidence struck – Remaining evidence not sufficient to sustain confirmation of rule *nisi* – Rule discharged.

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## ORDER

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1. The fifth point *in limine* raised by the 4<sup>th</sup>, 41<sup>st</sup>, 71<sup>st</sup>, 119<sup>th</sup>, 145<sup>th</sup>, 277<sup>th</sup>, 377<sup>th</sup>, 391<sup>st</sup>, 439<sup>th</sup> and 570<sup>th</sup> respondents is upheld.

2. The rule *nisi* is discharged and the application is dismissed.
  3. There shall be no order as to costs.
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#### ANNEXURE "A"

M NAMOLO	1ST RESPONDENT
ABROSIUS HAIMBODI	2nd RESPONDENT
DAVID KATALE	3rd RESPONDENT
SIMEON SHIPUNDA	4th RESPONDENT
ESTER KAMHULU	5th RESPONDENT
LEENA SHILONGO	6th RESPONDENT
FELISIAN MUTERO	7th RESPONDENT
SOINI KALWENYA	8th RESPONDENT
ANNA NENDONGO	9th RESPONDENT
RUDOLF AUTANGA	10th RESPONDENT
JUNIAS PETRUS	11th RESPONDENT
LUKAS T HITENANYE	12th RESPONDENT
ERASTUS UUTONI	13th RESPONDENT
ISMAEL SHILONGO	14th RESPONDENT
FRANS GABRIEL	15th RESPONDENT
SEM ANDJENDJA	16th RESPONDENT
DAVID SHIFUGULA	17th RESPONDENT
ERASMUS MUYAMBA	18th RESPONDENT
JOHANNES SIMON	19th RESPONDENT
KLEMENS SHIKOKOLA	20th RESPONDENT
WILHELM SHIWEDA	21st RESPONDENT
ELISE NGHIALWA	22nd RESPONDENT
ANNA INDONGO	23rd RESPONDENT
ESTER ASINO	24th RESPONDENT

RACHEL P FRANS	25th RESPONDENT
JOHANNES SHAIMANYA	26th RESPONDENT
INGO EELU	27th RESPONDENT
ALBERTIN HAUFIKU	28th RESPONDENT
FESTUS NANDJENDJA	29th RESPONDENT
JOHANNES HAIKELA	30th RESPONDENT
LOIDE KAPENDA	31st RESPONDENT
ALVIN IYAMBO	32nd RESPONDENT
SAFARIUS NGHINYENENE	33rd RESPONDENT
BEATA SHIPINGE	34th RESPONDENT
TEOFELUS STEFANUS	35th RESPONDENT
T MWEILIHANGA	36th RESPONDENT
EINO UUGWANGA	37th RESPONDENT
MATHEUS ANDJELO	38th RESPONDENT
JOSEF DAVID	39th RESPONDENT
WIRBARD HAMUTENYA	40th RESPONDENT
JOHANNES NIINGUNGO	41st RESPONDENT
JUNIAS HAIMBODI	42nd RESPONDENT
SIMSON MICHAEL	43rd RESPONDENT
ELIFAS N AWINO	44th RESPONDENT
ESTHER LUNGAMENI	45th RESPONDENT
UUSIKU NALIMANGULUKE	46th RESPONDENT
FABIAN NEPILO	47th RESPONDENT
MICHAEL NIKANOR	48th RESPONDENT
FRIEDA NGHITONGO	49th RESPONDENT
MARIA IIPUMBU	50th RESPONDENT
HILMA NANGOMBE	51st RESPONDENT
SARA ND SHAFODINO	52nd RESPONDENT
NDEUHALA NGHITWAPO	53rd RESPONDENT

LUSIA ELIA	54th RESPONDENT
APOLONIA HIDINEA	55th RESPONDENT
FRIEDA AMOOMO	56th RESPONDENT
LOIDE N HALUDILU	57th RESPONDENT
REMIGIE PHILLIPUS	58th RESPONDENT
FRINDA AMUNYELA	59th RESPONDENT
PETRUS SHITENI	60th RESPONDENT
LEONARD KAVALE	61st RESPONDENT
SAIMI N SHILYOMUNHU	62nd RESPONDENT
SELMA SHIKONGO	63rd RESPONDENT
OLIVIA R NGHIIYELEKW	64th RESPONDENT
THEOPHEL SHITUMBU	65th RESPONDENT
ROSALIA SHIGWEDHA	66th RESPONDENT
HENRIETT NGUNDA	67th RESPONDENT
ABISAI IMBILI	68th RESPONDENT
LAHJA SHEYADIVA	69th RESPONDENT
SEIVELIA SHIPALE	70th RESPONDENT
FILLEMON SHIKONGO	71st RESPONDENT
HELENA KIIMBA	72nd RESPONDENT
KAROLINA SAMUEL	73rd RESPONDENT
HENRIETE FILLIPUS	74th RESPONDENT
FESTUS E KALUWA	75th RESPONDENT
MONIKA NAKATSE	76th RESPONDENT
KATRINA SHIKONGO	77th RESPONDENT
SELMA HAMADILA	78th RESPONDENT
MR ALBANUS SHOOPALA	79th RESPONDENT
LINUS HANUKWAYA	80th RESPONDENT
HILENI NDAENDAPO	81st RESPONDENT
LOIDE IYAMBO	82nd RESPONDENT

KOSTANTI ASHIPALA	83rd RESPONDENT
HELENA ASHEENDO	84th RESPONDENT
TANGENI SHIFIFOUNYE	85th RESPONDENT
ELIKAN KASHINDA	86th RESPONDENT
TRIANUS HANGULA	87th RESPONDENT
SELMA HAIHAMBO	88th RESPONDENT
ESTHER IYAMBO	89th RESPONDENT
YOOLOKEN WEYULU	90th RESPONDENT
MARTHA BONIFATIUS	91st RESPONDENT
FOIBE VATILIFA	92nd RESPONDENT
MAGIINA NEGONGO	93rd RESPONDENT
THERESIA RASALUS	94th RESPONDENT
GOTLIEB JOHANNES	95th RESPONDENT
GIVEN SHAUNGU	96th RESPONDENT
LYDIA ELIKANA	97th RESPONDENT
NESTOR SHADUKA	98th RESPONDENT
LUCOS SHEELONGO	99th RESPONDENT
DANIEL KALOLA	100th RESPONDENT
JOSEFINA ERASTUS	101st RESPONDENT
ESTER FESTUS	102nd RESPONDENT
JOHANNA KALUME	103rd RESPONDENT
JULIA WASHIME	104th RESPONDENT
NDILIPOM PIUS	105th RESPONDENT
UUTONI KUUME	106th RESPONDENT
EINO HAUFIKU	107th RESPONDENT
LAVINIA FESTUS	108th RESPONDENT
ITILIE SHIYAKELA	109th RESPONDENT
SECILIA NEFUNGO	110th RESPONDENT
SELMA IYAMBO	111th RESPONDENT

ALBERTIN DUMENI	112th RESPONDENT
NDILIMEK KADILA	113th RESPONDENT
LAVINIA LAZARUS	114th RESPONDENT
JACOBINA KASITA	115th RESPONDENT
LOVISA MIKKA	116th RESPONDENT
H NIKANOR	117th RESPONDENT
JOHANNES MICHAEL	118th RESPONDENT
LAHYA N SHEEFENI	119th RESPONDENT
LIKIUS SHIKONGO	120th RESPONDENT
ANANIAS MWAPOPILE	121st RESPONDENT
SILVANUS HAMUKWAYA	122nd RESPONDENT
SYLVIA ANTONIUS	123rd RESPONDENT
JOAS TANENI	124th RESPONDENT
KARLUS HAUFIKU	125th RESPONDENT
LOIDE S ABNER	126th RESPONDENT
JOSEPHIN IILEKA	127th RESPONDENT
STEFANUS THOMAS	128th RESPONDENT
A VAENDWAHAWA	129th RESPONDENT
ERASTUS PHILIPUS	130th RESPONDENT
HAUFIKU KALEB	131st RESPONDENT
HATUTALE NAKALE	132nd RESPONDENT
EMMANUEL ASHIPALA	133rd RESPONDENT
ERICKSON HALEINGE	134th RESPONDENT
A SHILONGO	135th RESPONDENT
AINA JOSEF	136th RESPONDENT
KLEOPHAS KASHIVULIKA	137th RESPONDENT
IMMANUEL MWAIKANGE	138th RESPONDENT
BEATHA KAVALE	139th RESPONDENT
H NAKALE	140th RESPONDENT

ILKA SHILONGO	141st RESPONDENT
MOSES K SHILOMBOLEN	142nd RESPONDENT
PADELIA VAENDWANANA	143rd RESPONDENT
JOHANNES AMUKWAYA	144th RESPONDENT
HAFENI JONATAN	145th RESPONDENT
ERASTUS NOONGA	146th RESPONDENT
AILI A MUTUMBULWA	147th RESPONDENT
IRJA KANKONO	148th RESPONDENT
MUYAMBA NDAMONONGHE	149th RESPONDENT
REBEKKA NDILIMONDJO	150th RESPONDENT
LUTRICH AUKUS	151st RESPONDENT
ESTHER IILEKA	152nd RESPONDENT
JOHANNA SHANIKA	153rd RESPONDENT
VICTORIA MVULA	154th RESPONDENT
NDAINDIL SHANGULA	155th RESPONDENT
NAEMI KANYELE	156th RESPONDENT
KAARINA TOLATA	157th RESPONDENT
BEATRIZ SHAUNGU	158th RESPONDENT
EMMA N IYAMBO N NANDE	159th RESPONDENT
MAGRITH NEKUNDI	160th RESPONDENT
KLAUDIA NDJAULA	161st RESPONDENT
JOHANNES HAMUTENYA	162nd RESPONDENT
LOVISA NTINDA	163rd RESPONDENT
SECILIA SHIPENA	164th RESPONDENT
ESTHER SHIKONGO	165th RESPONDENT
JOHANNES FILLIPUS	166th RESPONDENT
HENDRINA MATHEUS	167th RESPONDENT
VEINSER NGHIPULILE	168th RESPONDENT
ANDREAS SHIMWE OSHI	169th RESPONDENT



IMMANUEL KASHINGHOLA	170th RESPONDENT
JOHANNES HANGULA	171st RESPONDENT
MIKAEL KWAMBI	172nd RESPONDENT
FOSNES HEIMO	173rd RESPONDENT
ELISE MUKONGO	174th RESPONDENT
LAUHA N HANGULA	175th RESPONDENT
TRESIA SHADUKA	176th RESPONDENT
LUSIA NEKONGO	177th RESPONDENT
FOIBE ERASTUS	178th RESPONDENT
ELI N SHIMWANDI	179th RESPONDENT
ALBERTIN SHOWA	180th RESPONDENT
PAULINA IIKONDJA	181st RESPONDENT
MMETCHIL KAUTOTWA	182nd RESPONDENT
MANFRED HEVITA	183rd RESPONDENT
THEOPOLI NOA	184th RESPONDENT
ASNATH MUNDANDALA	185th RESPONDENT
ESTHER KAUHONUA	186th RESPONDENT
HELVI SHITALENI	187th RESPONDENT
JOSEPHIN HAUNINGA	188th RESPONDENT
GIDEON SHIMWINO	189th RESPONDENT
LIINA SHIKONGO	190th RESPONDENT
LUKRETIA JOHANNES	191st RESPONDENT
EVELINA UHEPO	192nd RESPONDENT
FELISIA SHIYUKIFENI	193rd RESPONDENT
CECILIA KAMHULU	194th RESPONDENT
MARTHA KAMBINDA	195th RESPONDENT
JOSEPHIN KUUTONDOKWA	196th RESPONDENT
HELENA SHIPULWA	197th RESPONDENT
EMILIA SHEETEKELA	198th RESPONDENT

IRIA NAMBINGA	199th RESPONDENT
M NGWEDA	200th RESPONDENT
PAULINA SILAS	201st RESPONDENT
RUBEN IPINGE	202nd RESPONDENT
DAVID NDUNGULA	203rd RESPONDENT
MARIA MBANGULA	204th RESPONDENT
AMBROSIUS MWAHAFA	205th RESPONDENT
VISTOLIN AMBILI	206th RESPONDENT
TOMAS VILHO	207th RESPONDENT
EURICO FERSINU	208th RESPONDENT
MARTHA IYAMBO	209th RESPONDENT
MARTHA JEREMIA	210th RESPONDENT
EVA K MUULONGO	211th RESPONDENT
LAIMI SHETUNYENGA	212th RESPONDENT
KAREL AMENYA	213th RESPONDENT
LETITIA SHIVOLO	214th RESPONDENT
HILDE MWEYAKO	215th RESPONDENT
EVA LISA SHOONYEKA	216th RESPONDENT
SECILIE NGHISHONGWA	217th RESPONDENT
SIMON H KAMATI	218th RESPONDENT
IITA MALAKIA	219th RESPONDENT
PINEAS NASHILUWA	220th RESPONDENT
PAULUS JULIUS	221st RESPONDENT
SIMEON HAMBUNDA	222nd RESPONDENT
ANANIAS SHINOMIDI	223rd RESPONDENT
FILLEMON KALOLA	224th RESPONDENT
TUYEIMO HANGO	225th RESPONDENT
MARIA KAMBUNDU	226th RESPONDENT
NELAO TOMAS	227th RESPONDENT

PAULINA MWAKOYELE	228th RESPONDENT
S THOMAS	229th RESPONDENT
FRIEDA NANDAGO	230th RESPONDENT
SIMEON SHIPANDENI	231st RESPONDENT
MONIKA HENDJALA	232nd RESPONDENT
ALBERTIN ALEX	233rd RESPONDENT
VERONIKA UUSIKU	234th RESPONDENT
VERONICA HAMUKWAYA	235th RESPONDENT
MARTHA NAMUPALA	236th RESPONDENT
B ISMAEL	237th RESPONDENT
THEOPOLI KAMATI	238th RESPONDENT
TEOPOLIN MENGELA	239th RESPONDENT
MARIA KASHIMBA	240th RESPONDENT
LUKAS SHINOLO	241st RESPONDENT
ALIMA N SHINIME	242nd RESPONDENT
SAIMA N PETRUS	243rd RESPONDENT
PETRUS UUSIKU	244th RESPONDENT
SEVERIA HAUFIKU	245th RESPONDENT
ALMA IPINGE	246th RESPONDENT
DAVID AKUUNDA	247th RESPONDENT
JOHANNES SHIVUTE	248th RESPONDENT
N TILAINGE	249th RESPONDENT
HILIA HAUANGA	250th RESPONDENT
JAKOBIN SHIIMI	251st RESPONDENT
ABED AMUPOLO	252nd RESPONDENT
THOMAS STEFANUS	253rd RESPONDENT
TANGENI NDUBU	254th RESPONDENT
GISBERT SHIKONGO	255th RESPONDENT
HOPOTELW ANDREAS	256th RESPONDENT

LETISIA SALOMO	257th RESPONDENT
KAUFIWET NDAPANDONGW	258th RESPONDENT
H NENDONGO	259th RESPONDENT
RAUNA SHIMANENI	260th RESPONDENT
AINA SHAPAKA	261st RESPONDENT
FRANSINA SHADUKA	262nd RESPONDENT
JONAS HIPUNDUKA	263rd RESPONDENT
MARIA ISMAEL	264th RESPONDENT
JOHANNES KAMATI	265th RESPONDENT
ANDREAS HAMUKOTO	266th RESPONDENT
PAULINA PHILLEMOM	267th RESPONDENT
INDILENI MWAFINGANGE	268th RESPONDENT
MARTHA SHITONGENI	269th RESPONDENT
LIKIUS N HANGULA	270th RESPONDENT
SAARA HAIMBODI	271st RESPONDENT
SOPHIA IMMANUEL	272nd RESPONDENT
WILHELMI KAIMBI	273rd RESPONDENT
MARTHINUS HAIMBONDI	274th RESPONDENT
ESTER HAUWANGA	275th RESPONDENT
ANGELIKA MUUMBA	276th RESPONDENT
MARTHA KALUWA	277th RESPONDENT
MARIA T KANGATE	278th RESPONDENT
ANDREAS HAUFIKU	279th RESPONDENT
NAMBAHU ABRAHAM	280th RESPONDENT
ALETTA KANDJABANGA	281st RESPONDENT
SEVEKUA DANIEL	282nd RESPONDENT
JOHANNES TANGENI	283rd RESPONDENT
SHIHEPO FILLEMOM	284th RESPONDENT
NEKOTO GEBHARD	285th RESPONDENT

LAZARUS ELIAS	286th RESPONDENT
ISASKAR SHIKONGO	287th RESPONDENT
VEIKKO HEITA	288th RESPONDENT
HANDJENGO	289th RESPONDENT
DAVID SHILONGO	290th RESPONDENT
ELIZABET SACKEUS	291st RESPONDENT
SELMA SHIGWEDHA	292nd RESPONDENT
REBEKKA NGHIGEWA	293rd RESPONDENT
HELENA HAULOFO	294th RESPONDENT
ESTER SHINYOLO	295th RESPONDENT
SELMA GABRIEL	296th RESPONDENT
DELILA IYAMBO	297th RESPONDENT
KORNELIA NAHOLO	298th RESPONDENT
SELMA KASHIPULWA	299th RESPONDENT
ALBERTIN HAMADILA	300th RESPONDENT
MARIA NDAKUKAMO	301st RESPONDENT
HILENI SHIPAHU	302nd RESPONDENT
S.N ANGULA	303rd RESPONDENT
HELENA ANDREAS	304th RESPONDENT
HILYA T MAHARERO	305th RESPONDENT
AUNE S AMUKONGO	306th RESPONDENT
KRISTOF MWALUNGILAN	307th RESPONDENT
D ARKUS	308th RESPONDENT
T.P NDINONDJENE	309th RESPONDENT
MARTHA NGHINANYE	310th RESPONDENT
BENEDICT AMUPOLO	311th RESPONDENT
LOIDE NAKALE	312th RESPONDENT
ELIZABET NALUWE	313th RESPONDENT
PALAGIA AMUNGENGA	314th RESPONDENT

LILIA NINKOTI	315th RESPONDENT
NATALIA NAKALE	316th RESPONDENT
OLIVIA NEGANDJO	317th RESPONDENT
MARTHA ABINIEL	318th RESPONDENT
LORNA HAMUKWAYA	319th RESPONDENT
EMELITA UUKONGO	320th RESPONDENT
JUSTINA NDAKALAKO	321st RESPONDENT
WILLYSON NDINOSHINGE	322nd RESPONDENT
JOHANNES UUTONI	323rd RESPONDENT
JUSTINA FRANS	324th RESPONDENT
JOSEPHIN NAKULWA	325th RESPONDENT
L MUNYALA	326th RESPONDENT
GERDA SHIKONGO	327th RESPONDENT
OLIVIA HAUFIKU	328th RESPONDENT
HELENA ALFEUS	329th RESPONDENT
MIRJAM KAMBONGELA	330th RESPONDENT
ELINA IMBILI	331st RESPONDENT
ELISE A ABNER	332nd RESPONDENT
LAINA NDEIWEDA	333rd RESPONDENT
GUDRUN AMAGOLA	334th RESPONDENT
FALAO NDAFEDIVA	335th RESPONDENT
FESTUS M JOHANNES	336th RESPONDENT
VICTORIA ASHIMBANGA	337th RESPONDENT
NDILIMEK ISHINDA	338th RESPONDENT
MATILDE TAARU	339th RESPONDENT
ELIZABET ENDJALA	340th RESPONDENT
ANNA OSKAR	341st RESPONDENT
PENEXUP SHAHAMANGE	342nd RESPONDENT
PATRICIA JOHANNES	343rd RESPONDENT

T HANGULA	344th RESPONDENT
SARAFINA NEKONGO	345th RESPONDENT
RAKKEL KALOMHO	346th RESPONDENT
LAIMI XWEKA	347th RESPONDENT
ISASKAR MUNDUDU	348th RESPONDENT
HILENI SHEKUZA	349th RESPONDENT
HELVI KATALI	350th RESPONDENT
MATIAS ABRAHAM	351st RESPONDENT
ABED AMWEENYE	352nd RESPONDENT
PETER SH AidILA	353rd RESPONDENT
MIRJAMA HAILEKA	354th RESPONDENT
MARIA NEKWAYA	355th RESPONDENT
ABSALOM IMMANUEL	356th RESPONDENT
FRANS KAMBANGULA	357th RESPONDENT
AMON MWADULU	358th RESPONDENT
FILLEMON UUGWANGA	359th RESPONDENT
J KAMANPA	360th RESPONDENT
KORNELIA IITA	361st RESPONDENT
PAULINA KATAMBA	362nd RESPONDENT
ANNA TEODOR	363rd RESPONDENT
ASTERIA TOBIAS	364th RESPONDENT
WALTER KANGUMU	365th RESPONDENT
MOSES E SIMON	366th RESPONDENT
PRISKA M SEBULON	367th RESPONDENT
RUBEN HAMUKWAYA	368th RESPONDENT
GUSTAV N THOMAS	369th RESPONDENT
KORNELIA HAFENI	370th RESPONDENT
ILONA IYAMBO	371st RESPONDENT
JULIA SHININGE	372nd RESPONDENT

BENEDICT AMWEELO	373rd RESPONDENT
FRANSINA SHIKOMBA	374th RESPONDENT
FANNIE IYAMBO	375th RESPONDENT
JOHANNA AMUPADHI	376th RESPONDENT
TAINA ANGOLO	377th RESPONDENT
ONESMUS KAPENDA	378th RESPONDENT
MICHAEL MUVANGUA	379th RESPONDENT
MONIKA IIPINGE	380th RESPONDENT
MARTHA HAILEKA	381st RESPONDENT
CELINE KALIPI	382nd RESPONDENT
FENNI KANHALELO	383rd RESPONDENT
JERRY NKANDI	384th RESPONDENT
SAKEUS NANGOLO	385th RESPONDENT
HILIA KALOMPO	386th RESPONDENT
A AMUTENYA	387th RESPONDENT
LIINA MULEKA	388th RESPONDENT
M SILAS	389th RESPONDENT
HANGO	390th RESPONDENT
LINEA NDISHISHI	391st RESPONDENT
HILMA NASHIWAYA	392nd RESPONDENT
THOMAS ALWEENDO	393rd RESPONDENT
SYLVIA HENGHONO	394th RESPONDENT
ANASTASI MUKWAUKONGO	395th RESPONDENT
E NEHALE	396th RESPONDENT
I LENI T MUMWOYE	397th RESPONDENT
SELMA N UUTONI	398th RESPONDENT
FESTUS UUGWANGA	399th RESPONDENT
JESSICA KARIPO	400th RESPONDENT
REBEKKA KAAJOSA	401st RESPONDENT



GEDEON KAMATI	402nd RESPONDENT
MARIA MWANDINGI	403rd RESPONDENT
VERNA SIKONDOMBORO	404th RESPONDENT
FIMANEKE NDUBU	405th RESPONDENT
N SHATYOHAMBA	406th RESPONDENT
ELINGAUS HAMAAMBO	407th RESPONDENT
FRANCINA HAIMBODI	408th RESPONDENT
SIMON JOHANNES	409th RESPONDENT
REBEKKA KAFITA	410th RESPONDENT
ABEDNEGO HALWENDO	411th RESPONDENT
MARIA NAMUPALA	412th RESPONDENT
AINA HANGHOME	413th RESPONDENT
WILKA NAMBALA	414th RESPONDENT
MARIA INGASHIPOLA	415th RESPONDENT
TUHAFENI HAIDULA	416th RESPONDENT
SIMON NUUYOMA	417th RESPONDENT
SECILIA KAVALE	418th RESPONDENT
SELMA NANDEHASHO	419th RESPONDENT
ROSWITTA EELU	420th RESPONDENT
KATAURIR TJIMBONDE	421st RESPONDENT
LINDA NEDONGO	422nd RESPONDENT
MARTIN MUSHONA	423rd RESPONDENT
LAVINIA HAINONGO	424th RESPONDENT
MARJAMI HAIKALI	425th RESPONDENT
JULIA LUKAS	426th RESPONDENT
MARTHA MUNDJIINDI	427th RESPONDENT
JASON SHIKONGO	428th RESPONDENT
NAEMI TIMOTEUS	429th RESPONDENT
ILENI J NESHUKU	430th RESPONDENT

ROSALINA SHAANIKA	431st RESPONDENT
LUSIA ELIFAS	432nd RESPONDENT
LINEEKEL ELIFAS	433rd RESPONDENT
HELENA N KAYAMBU	434th RESPONDENT
LOIDE ASHIMBAMBA	435th RESPONDENT
SELMA KALIMBO	436th RESPONDENT
LOIDE T MUMBALA	437th RESPONDENT
NAEMI KALILI	438th RESPONDENT
ANNA JOHANNES	439th RESPONDENT
BEATRIZ NDEITWA	440th RESPONDENT
NAKAMWI MUTWAMPO	441st RESPONDENT
ESTER KAMULE	442nd RESPONDENT
WILMA N SHANYENENGE	443rd RESPONDENT
THERESIA NAMBONDI	444th RESPONDENT
BEATRIX HINYENGWA	445th RESPONDENT
LOIDE N AMPADHI	446th RESPONDENT
ALINA AMUTENYA	447th RESPONDENT
DAVID NYAMBALI	448th RESPONDENT
AGNES MWANYEKANGE	449th RESPONDENT
HELENA NAMBAHU	450th RESPONDENT
ERIKA IITHETE	451st RESPONDENT
NALWEEND AMAKALI	452nd RESPONDENT
TEOPOLIN SHITYENI	453rd RESPONDENT
ISABEL MURORUA	454th RESPONDENT
REBEKKA GABRIEL	455th RESPONDENT
FELECIAN DJOLONIMU	456th RESPONDENT
FRANSINA HASHIPALA	457th RESPONDENT
KATRINA NAMBAHU	458th RESPONDENT
N HAIPINGE	459th RESPONDENT

JOSEFINA ABRAHAM	460th RESPONDENT
OTILIE KAPIYE	461st RESPONDENT
HILINGAN SEBASTIAANU	462nd RESPONDENT
O NDJENE	463rd RESPONDENT
MATEUS UUSIKU	464th RESPONDENT
FRANS NASHIDENGO	465th RESPONDENT
LIHONGEN HAMUKOTO	466th RESPONDENT
FRANSINA HASHALI	467th RESPONDENT
MARTHA ANGOMBE	468th RESPONDENT
SECILIA NAMBONGA	469th RESPONDENT
MARIA NAMWANDI	470th RESPONDENT
PAULUS HAIHONYA	471st RESPONDENT
LAIMI N NGHIPETEKWA	472nd RESPONDENT
SOFIA T MATHIAS	473rd RESPONDENT
BEATHA SHAPWA	474th RESPONDENT
LINDA KANIME	475th RESPONDENT
E HAIPINGE	476th RESPONDENT
NICODEMU SHIWAYU	477th RESPONDENT
ISASKAR DULA	478th RESPONDENT
SELMA NAKAPIPI	479th RESPONDENT
SAKARIA NAKALE	480th RESPONDENT
HILDE NUUYOMA	481st RESPONDENT
ELIZABET KANAWANGA	482nd RESPONDENT
MARTHA KAUYIWA	483rd RESPONDENT
HILMA SHIVOLO	484th RESPONDENT
MONIKA N SHITENYA	485th RESPONDENT
PELAGIA VICTOR	486th RESPONDENT
TUSNELDE IMBILI	487th RESPONDENT
GLORIA KAIHONGUA	488th RESPONDENT

ELIZABET HANGO	489th RESPONDENT
RAKEL PINEHAS	490th RESPONDENT
RAINA N NEGONYA	491st RESPONDENT
EILIA KAUSHITWA	492nd RESPONDENT
MAGDELEN NANGOLO	493rd RESPONDENT
AINA SHEYA	494th RESPONDENT
H JOHANNES	495th RESPONDENT
LOVISA T HEITA	496th RESPONDENT
FRISON HAMALWA	497th RESPONDENT
SELMA NAMBANDI	498th RESPONDENT
LOVISA NAMBOGA	499th RESPONDENT
MIYAZE I MOOWA	500th RESPONDENT
MARTHA WINKILD	501st RESPONDENT
ROSALIA SHEEHAMA	502nd RESPONDENT
ALICE MAHANZU	503rd RESPONDENT
JOHANNA KAANDUKA	504th RESPONDENT
DONIET SHIFION	505th RESPONDENT
THOMAS H JOHANNES	506th RESPONDENT
FESTUS NDAKOLUTE	507th RESPONDENT
FERDINAN NEMBWAYA	508th RESPONDENT
MARTHA HANGADA	509th RESPONDENT
HENRIETE IITULA	510th RESPONDENT
HELVI KASHAKA	511th RESPONDENT
BENYAMIN PAAVO	512th RESPONDENT
FANUEL SHIKONGO	513th RESPONDENT
KOSMOS HIDINWA	514th RESPONDENT
EMILIA EDUARD	515th RESPONDENT
SELMA ANDREAS	516th RESPONDENT
WILHELMI ALWEENDO	517th RESPONDENT

JK BONIFATIUS	518th RESPONDENT
GABRIEL HANGULA	519th RESPONDENT
ELIFAS NDASHAALA	520th RESPONDENT
SARAFINA NAMBINGA	521st RESPONDENT
LOIDE SHIKOYENI	522nd RESPONDENT
MAGDALEN NDILENGA	523rd RESPONDENT
SELMA KASHO	524th RESPONDENT
HERTHA UUPINDI	525th RESPONDENT
EMILIA ALBERTUS	526th RESPONDENT
ELIZABET FRANS	527th RESPONDENT
MARIA IYAMBO	528th RESPONDENT
RICHARD SINYEPE	529th RESPONDENT
LEENA AMAPAYA	530th RESPONDENT
FRANSINA MUTIRAKUTI	531st RESPONDENT
E MULOKOSHI	532nd RESPONDENT
NELAGO S AKWENYE	533rd RESPONDENT
TS NAMBOGA	534th RESPONDENT
JOSIA L HAIPOPYA	535th RESPONDENT
MARIA HAIKONDJA	536th RESPONDENT
CHARLOT MWETULUNDIL	537th RESPONDENT
SARAFINA SHINDONGO	538th RESPONDENT
N DUMENI	539th RESPONDENT
POPERA NHULEIPO	540th RESPONDENT
SECILIA PAULUS	541st RESPONDENT
NDAPUNIK SHUUDIFONYA	542nd RESPONDENT
JOSEPHIN LUNGAMENI	543rd RESPONDENT
RAINHARD IYAMBO	544th RESPONDENT
HELENA AMALOVU	545th RESPONDENT
VIVI ALUGONGO	546th RESPONDENT

TOMAS ANTONIA	547th RESPONDENT
ROVISA AMUTENYA	548th RESPONDENT
MARIA KAMBODE	549th RESPONDENT
NIIWANA NGHITANUA	550th RESPONDENT
SOINY I NGHİYOLWA	551st RESPONDENT
STELLA KASIRINGUA	552nd RESPONDENT
TERESIA GABRIEL	553rd RESPONDENT
REBEKA MWETUHANGA	554th RESPONDENT
NDINERAO GOTLIEB	555th RESPONDENT
ANDONIA HAKANDONGA	556th RESPONDENT
TRESIA SHUMBA	557th RESPONDENT
OSKAR PAULUS	558th RESPONDENT
BERTA MINGERI	559th RESPONDENT
BEATHA SHILONGO	560th RESPONDENT
NDINELAG LUKAS	561st RESPONDENT
M HAMAKALI	562nd RESPONDENT
MARTHA ASHIPALA	563rd RESPONDENT
WELLY AMADHILA	564th RESPONDENT
AILY SHIKODHI	565th RESPONDENT
JONAS NGENO	566th RESPONDENT
SIPHIA SIMON	567th RESPONDENT
JAKOBINA SHEPANI	568th RESPONDENT
THERESIA WILHELM	569th RESPONDENT
NORBERT KAPILO	570th RESPONDENT
SECIALI KAMATI	571st RESPONDENT
INDILENI HAIYAKA	572nd RESPONDENT
SELMA N SIMON	573rd RESPONDENT
JUSTINA SHEEHAMA	574th RESPONDENT
LABAN SHAUMAN	575th RESPONDENT

NICHOLAS KAMWI	576th RESPONDENT
FILIPUS ELIA	577th RESPONDENT
RUSIA TOMAS	578th RESPONDENT
ESTER LUKAS	579th RESPONDENT
NESTOR SHIPOPYENI	580th RESPONDENT
ANANIAS ONESMUS	581st RESPONDENT
JOSEPHIN HEELU	582nd RESPONDENT
ELIZABET THOMAS	583rd RESPONDENT
HELVI ABASI	584th RESPONDENT
NICKSON TITUS	585th RESPONDENT
FRANCINA SHIDJUU	586th RESPONDENT
SELMA KAWENO	587th RESPONDENT
VALIMO N NGHIPUPILE	588th RESPONDENT
PRISKILL UUTONI	589th RESPONDENT
SAARA ISAK	590th RESPONDENT
FENI SHILONGO	591st RESPONDENT
TEOPOLIN NGHIKONGELW	592nd RESPONDENT
KRISTOFI HIPANGWA	593rd RESPONDENT
SYLVIE MUTUMBULWA	594th RESPONDENT
SECILIA AMUNYELA	595th RESPONDENT
ELISABET PETRUS	596th RESPONDENT
MARTHA KESHEELI	597th RESPONDENT
ELIA NDINOSHISHO	598th RESPONDENT
ANDREAS NUUYOMA	599th RESPONDENT
LEEVI A ANGULA	600th RESPONDENT
EDWARD T NDAILE	601st RESPONDENT
SELMA HAIPINGE	602nd RESPONDENT
FEBRONIA SHIMBEDEUS	603rd RESPONDENT
MARGARET KANDJE	604th RESPONDENT

I LENI EKANDJO	605th RESPONDENT
LONIA NGHINYANGELWA	606th RESPONDENT
SE SILIA ABRAHAM	607th RESPONDENT
SELMA HAUFIKU	608th RESPONDENT
MARTHA NAKAPELA	609th RESPONDENT
NDAFTEEL NEGUNGO	610th RESPONDENT
KAARNA MWANDINGI	611th RESPONDENT
ESTER NAMUPALA	612th RESPONDENT
MICHAEL JOHANNES	613th RESPONDENT
REBEKKA NDAKOLUTE	614th RESPONDENT
HELENA NAMUKOTO	615th RESPONDENT
KAARINA SHIGWEDHA	616th RESPONDENT
EDDY P MAKEMBA	617th RESPONDENT
MARIA VINDERE	618th RESPONDENT
LAHJA ENDJALA	619th RESPONDENT
FLAVINUS MUHONGO	620th RESPONDENT
NEHEMIA HAUWANGA	621st RESPONDENT
LUKAS	622nd RESPONDENT
VINIA T SHAFODINO	623rd RESPONDENT
EVELINA SIMEON	624th RESPONDENT

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## JUDGMENT

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VAN NIEKERK J:



[1] At the time this matter was heard, the applicant employed the respondents and hired out their services out to Etale Fishing Co (Pty) Ltd (“Etale”) as labourers who mainly were used to fillet fish and pack fish.

[2] During January 2010 Etale entered into a wage agreement with the Namibian Seaman and Allied Workers Union (“NASAWU”), the exclusive bargaining agent for certain of Etale’s permanent employees. Several of the respondents then joined NASAWU and mandated the union to negotiate with both the applicant and Etale for the improvement of their service conditions. After exchange of correspondence on various issues NASAWU requested to have a meeting with the respondents at Etale’s premises. The applicant refused to give permission for such a meeting at Etale’s premises, but indicated that the meeting could be held at the applicant’s premises, but requested 48 hours written notification. This led to dissatisfaction amongst the respondents. Notice was given that they would engage in a peaceful demonstration at Etale’s premises on 10 March 2010 and that they intended to hand over a petition to the applicant and Etale during lunch time. The applicant informed the respondents and NASAWU that it regarded the demonstration as illegal and warned of strict disciplinary action. The applicant indicated that it would receive the petition at its premises.

[3] Nevertheless, some of the respondents remained at Etale’s premises and handed over the petition there, but it would appear that neither Etale nor the applicant wanted to accept it there. When these respondents wanted to resume work after lunch, Etale refused them access to the premises. The same occurred when those respondents normally working the night shift attempted to commence their shift. The applicant also gave notice that the respondents were suspended with immediate effect.

[4] On 11 March 2010 Etale informed the applicant in writing of the potential losses it might be suffering as a result of the applicant’s inability to fulfil its contractual

obligations towards Etale to provide it with continuous and uninterrupted labour. The estimated amount was about N\$4 million. Meanwhile, some of the respondents continued to gather outside the entrance to Etale's premises in varying numbers.

[5] On 12 March 2010 the applicant sent 80 other workers by bus to Etale to take over the duties of the respondents. According to the applicant, the respondents were unruly and attacked the bus driver and damaged the bus. They also obstructed access and egress at the entrance and hindered Etale's permanent employees from assuming their work duties.

[6] The applicant thereupon instructed their lawyers to initiate an urgent application against the respondents. Counsel was instructed, but could only consult at 15h30 on 12 March 2010. During the consultation it became evident that the matter was extremely urgent and that there would be no time to file affidavits. The application was set down at 16h30. Although not cited as a respondent, NASAWU was given very brief notice of the application. Nevertheless, the union was able to instruct its lawyers to hold a watching brief.

[7] The matter came before Ndauendapo J, who heard oral testimony presented on behalf of the applicant and thereupon made an order condoning the non-compliance with the forms and service provided for in the Labour Court rules and ruling that the matter be heard as one of urgency. He further issued a rule *nisi* returnable on 9 April 2010 in the following terms:

2.1 Ejecting the 1<sup>st</sup> to 624<sup>th</sup> respondents from the entrances to the premises of Etale Fishing Company at Ben Amathila Avenue, Walvis Bay.

2.2 Interdicting and restraining the 1<sup>st</sup> to 624<sup>th</sup> respondents from in any way interfering with or obstructing the normal operation of applicant's business or any aspect of the applicant's business or any person involved in the applicant's operations.

- 2.3 Interdicting and restraining the 1<sup>st</sup> to 624<sup>th</sup> respondents from intimidating, threatening or in any way interfering with any employee of the applicant, or with any person involved in or connected with the conduct of applicant's operation or with its customers or employees .....
- 2.4 Interdicting and restraining the 1<sup>st</sup> to 624<sup>th</sup> respondents from inciting or encouraging any other person to commit any of the aforesaid acts.'

[8] The Court further ordered, *inter alia*, that the above subparagraphs of the rule *nisi* operate with immediate effect as an interim order pending the final outcome of the application.

[9] On 26 March 2010 the 4<sup>th</sup>, 41<sup>st</sup>, 71<sup>st</sup>, 119<sup>th</sup>, 145<sup>th</sup>, 277<sup>th</sup>, 377<sup>th</sup>, 391<sup>st</sup>, 439<sup>th</sup> and 570<sup>th</sup> respondents ("the ten respondents") anticipated the return date on 26 March 2010. They also launched a counter application which was dismissed on 6 April 2010. The rule *nisi*, however, was extended on several occasions and the application itself was eventually heard on 12 May 2010.

[10] The ten respondents raised six points *in limine* and also opposed the application on the merits. They pray for the rule *nisi* to be discharged. On the view I take of the matter, it is only necessary to deal with the fifth point *in limine*. This point is, essentially, that the application is mostly based on inadmissible hearsay evidence and that, once this evidence is struck, there is no basis on which the rule *nisi* can be confirmed.

[11] The applicant presented evidence by one witness, namely Mr Robert Christiaan de Villiers, its financial director. He did not state in his evidence at which office he worked or where he was based. He gave evidence about discussions at meetings which took place between Mr Kapenda Johannes, a director of the applicant, Mr Johan van Vuuren, the branch manager of the applicant in Walvis Bay and Mr Paulus Hango and one Petrus of NASAWU. He also relayed the essential contents of telephonic conversations between one Kapembe, apparently of the applicant, and

Mr Hango. He further handed in as exhibits several letters between the applicant and other parties, of which letters he was not the author. He testified about the further events which took place at the premises of Etale and described the conduct of the respondents in relation to the bus driver and the bus.

[12] In the ten respondents' main answering affidavit the following allegations are made in paragraph 16.1 thereof:

'I turn now to deal with the allegations made by Mr. Robert de Villiers when he gave oral evidence on 12 March 2010 before this Honourable Court. At the onset I say that Mr. De Villiers is employed in Applicant's Head Office in Windhoek and not in Walvis Bay. He thus wasn't an eyewitness to the events that unfolded at Etale since 10 March 2010.'

[13] The applicant did not reply to the allegations set out in paragraph 16.1. In regard to other allegations made in paragraph 9 of the main answering affidavit in support of this point *in limine*, Mr de Villiers takes note of the allegations of hearsay without denial. He refers to confirmatory affidavits by Messrs van Vuuren, Johannes and Kahimune, the bus driver, in which the witnesses give first hand accounts of events. It is clear from Mr van Vuuren's affidavit that he is the applicant's branch manager at Walvis Bay. In paragraph 3.4 of his affidavit he states:

'I also contacted Mr. De Villiers on Friday [12 March 2010] and informed him of the unlawful conduct and what transpired at the premises of Etale including the assault carried out on Mr Kahimune whereupon Mr. De Villiers related this information to the Court at the time when he gave oral evidence.'

[14] Mr *Dicks* submitted that in urgent applications a litigant is entitled to rely on hearsay matter subject to certain rules.

[15] In this regard Mr *Denk* for the ten respondents agreed, but referred to the case of *Galp v Tansley NO 1966 (4) SA 555 (C)* in which the following was said (at 558H-559H):

'For a considerable period, now, our Courts have recognised the need to admit and act upon sworn statements of 'information' and 'belief' in interlocutory matters (as distinct from matters in which the rights of the parties concerned are finally decided) where urgency, or possibly the existence of other special circumstances, appear to justify their doing so - see van Zyl's, *Judicial Practice of South Africa* (1921 edition), vol. 1, p. 441; *Mears v African Platinum Mines, Ltd., and Others (1)*, 1922 W.L.D. 48 at p. 55; *Grant-Dalton v Win and Others*, 1923 W.L.D. 180 at p. 186; *Pountas' Trustees v Lahanas*, 1924 W.L.D. 67 at p. 70; *Levin v Saidman*, 1930 W.L.D. 256; *Harris' Executor v Weinberg*, 1938 CPD 134; *Mia's Trustee v Mia*, 1944 W.L.D. 102 at pp. 103 - 4; *Brighton Furnishers v Viljoen*, 1947 (1) SA 39 (GW); *Geanotes v Geanotes*, 1947 (2) SA 512 (C). In admitting such statements our Courts cannot, of course, be said to be recognising an exception to the hearsay rule: they are merely taking cognisance of the statements in question for limited purposes and subject to certain conditions - see *Mia's Trustee v Mia*, *supra*.

.....

But one important point emerging from the cases which I have enumerated in the preceding paragraph is this, viz., that our Courts have consistently refused to countenance the admission as evidence – for any purpose whatever - of any statement embodying hearsay material, save where such statement has properly been made the subject of an affidavit (or solemn affirmation) of information and belief, i.e., save where the deponent (or affirmer) has not only revealed the source of the information concerned but in addition has sworn (or solemnly affirmed) that he believes such information to be true and furnished the grounds for his belief. In this connection see particularly *Harris' Executor v Weinberg*, *supra*; *Mia's Trustee v Mia*, *supra*; and *Grant-Dalton v Win and Others*, *supra*.'

[16] This case was quoted with approval and followed by Mtambanengwe J in *Mahamat v First National Bank of Namibia Ltd* 1995 NR 199 (HC) at 204C-F after he said the following (at 203I-204C):

'Herbstein and Van Winsen *The Civil Practice of the Superior Courts in South Africa* 3rd ed at 81N4 state:

'As a general rule hearsay evidence is not permitted in affidavits, and it may accordingly be necessary to file affidavits of persons other than the applicant who can depose to the facts. In fact, this is very often done in interlocutory matters (as distinct from matters in which the rights of parties concerned are finally decided). Where urgency or other special circumstances appear to justify it doing so the Court has allowed the deponent to state that he is informed and verily believes certain facts on which he relies for relief.'

From the above quoted statement of the learned authors, and from many decisions on the subject, it seems that it is only in interlocutory matters that the rule against admission of hearsay is relaxed provided the deponent swears an affidavit of information and belief and stating the source of his information.

See: *Geanotes v Geanotes* 1947 (2) SA 512 (C) at 514; *Grant-Dalton v Win and Others* 1923 WLD 180 at 186; *Mears v African Platinum Mines Ltd and Others* 1922 WLD 48; *Pounta's Trustee v Lahanas* 1924 WLD 67; *Harris' Executor v Weinberg* 1938 CPD 134.'

[17] Having pointed out that the matter before him was one in which the rights of the parties are to be finally decided and that the application was not brought on an urgent basis, the learned Judge struck the hearsay portions from the affidavit under consideration.

[18] In *Yorigami Maritime Construction Co Ltd v Nissho-Iwai Co Ltd* 1977 (4) SA 682 (C) the following was said (at 692B-C):

'In urgent matters the Court is entitled to admit hearsay evidence in an affidavit provided the source of the information and the grounds for belief in its truth are stated. The type of case in which such evidence is accepted, if these prerequisites are complied with, is one in which it is necessary to restrain irremediable injury and to keep matters in statu quo. (See *Mears v African Platinum Mines Ltd. and Others*,

1922 W.L.D. 48 at p. 55.) It does not follow, however, that the Court is obliged to accept such hearsay evidence, even if the source and the grounds for belief are furnished. (See *Chaimowitz v Chaimowitz (1)*, 1960 (4) SA 818 (C) at p. 819F - G.)

[19] Counsel did not refer to rule 6(29) of the Labour Court rules which provides:

‘Subject to the discretion of the court to disregard such statements if it considers it proper to do so, an affidavit may contain statements of information or belief provided that the sources and grounds thereof are identified.

[20] To some extent this rule incorporates the law as developed by precedent on the subject, but does not limit its application to interlocutory matters. I shall not consider whether the rule permissibly changes the law on the subject. No argument was addressed on the issue and it is not necessary to do so for purposes of this case.

[21] Counsel for the applicant submitted that the Court which granted the rule *nisi* was aware of the hearsay evidence and exercised its discretion to accept it and that ‘this Court should not as it were sit on appeal on that decision’ (see *Small Business Development Corporation Ltd v Amey* 1989 (4) SA 890 (W) 897B). He further submitted that this Court should bear in mind that the application was brought on oral evidence in circumstances of extreme urgency as a result of the unlawful conduct of the respondents.

[22] However, the fact of the matter is, as Mr *Denk* pointed out, that the testimony by Mr de Villiers did not contain any statements of information or belief, nor did he provide the sources of his information. He testified as if he was present at the events at Etale’s premises in Walvis Bay without indicating that he was relying on information received from other persons. I hasten to mention that I do not think he did so deliberately. Apart, perhaps, from the mention of meetings between persons which did not include himself, there was no aspect of the evidence from which one could make the inference that Mr de Villiers was giving hearsay evidence. The issue of hearsay also did not feature in argument. In the circumstances I do not think that

it can be said that the previous Court, with awareness of the hearsay evidence, exercised its discretion to admit such evidence and to issue the rule *nisi*.

[23] I therefore agree with the respondents that the hearsay evidence should be struck from the testimony of Mr de Villiers. This evidence is contained in the following passages: page 90, lines 20 - 30; page 91, lines 9 – 13; page 92, lines 1 - 31; page 94, lines 17 – 32; page 95, lines 3 – 6. When the remainder of the evidence is considered, there is no basis on which the rule *nisi* can be confirmed.

[24] Counsel for the applicant pointed to the confirmatory affidavits filed in reply and submitted that a case was made out. However, as counsel for the respondents submitted, the applicant cannot be permitted to make its case for the first time in reply. (See *Jay's Properties Ltd v Turgin* 1950 (2) SA 694 (W); *Stipp and another v Shade Centre and others* 2007 (2) NR 627 (SC) paras [29] – [30]).

[25] As the respondents have succeeded on this point *in limine* it is not necessary to deal with all the other points raised, or with the merits of the application.

#### Costs

[26] The ten respondents contend that the applicant should be ordered to pay their costs on an attorney-own client scale, as the application was frivolous and vexatious within the meaning of section 118 of the Labour Act, 2007 (Act 11 of 2007). This contention is based on an assessment of the application based on all the points raised by the ten respondents. The assessment relevant to the fifth point *in limine* entails the submission that the evidence tendered was designed to mislead the Court.

[27] As I have stated before, I do not have the impression from a reading of the record that Mr de Villiers deliberately misled the Court by testifying as if he was at the scene on 12 March 2010. One should remember that he probably never contemplated giving oral evidence until counsel advised at about 16h00 that the



applicant should proceed on the basis of oral evidence at 16h30. While the witness should have been led fully on all the aspects required to make out a case at that stage, one should bear in mind that there was very little time to prepare and that it is unusual to base an urgent application on oral testimony. Bearing in mind all the circumstances I am not persuaded that the omission to cover all the necessary aspects during the oral testimony is necessarily a sign of any design to mislead the Court. In my view a cost order is not warranted in this case.

#### Order

[28] In the result the following order is made:

1. The fifth point *in limine* raised by the 4<sup>th</sup>, 41<sup>st</sup>, 71<sup>st</sup>, 119<sup>th</sup>, 145<sup>th</sup>, 277<sup>th</sup>, 377<sup>th</sup>, 391<sup>st</sup>, 439<sup>th</sup> and 570<sup>th</sup> respondents is upheld.
2. The rule *nisi* is discharged and the application is dismissed.
3. There shall be no order as to costs.

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K van Niekerk

Judge

APPEARANCE

For the applicant:

Adv G Dicks

Instr by MB de Klerk and Associates

For the 41<sup>st</sup>, 71<sup>st</sup>, 119<sup>th</sup>, 145<sup>th</sup>, 277<sup>th</sup>,

391<sup>th</sup>, 439<sup>th</sup> and 570<sup>th</sup> respondents:

Adv A Denk

Instr by Harmse Attorneys