IN THE HIGH COURT OF SOUTH AFRICA
KIMBERLY LOCAL DIVISION

CASE NO 1181/04

In the matter between

WILLEM HENDRIK CLOETE AND NINETEEN OTHERS (As set out in schedule "A" attached hereto)	**1ST – 19TH Applicants** (In forma Pauperis)
REV. EDWARD APPIES	**20th Applicant**
JACOBUS ENGELBRECHT	**21st Applicant**
REV. DR. IZAK HERMANUS LABUSCHAGNE	**Applicant in the public interest** (Amicus Curiae in person)
And	
GOODHOUSE AGRICULTURAL CORPORATION (PTY) LTD.	**Respondent**

SUPPLEMENTARY AFFIDAVIT

---

1. I, the undersigned IZAK HERMANUS LABUSCHAGNE, ID No 5908185132007, of Mtunzini in Kwa Zulu Natal do hereby solemnly and sincerely declare the following and truly affirm that the content of this declaration is true.

   1.1. The facts contained herein are within my own personal knowledge and belief.

2. I appeared in this matter yesterday, Monday the 20th day of December 2004 before the presiding officer on duty during the recess period.

3. In order to clarify matters that seemed unclear to the officer presiding I hereby place the following on record: -

The respondent

4. The respondent in this matter is a propriety limited company described in the first paragraph of the founding affidavit as follows: -

4.1. "The respondent is a propriety limited company which subsequent to its incorporation as EDUGAIN (PTY) LTD changed it's name to GOODHOUSE AGRICULTURAL CORPORATION (PTY) LTD. "

4.1.1. Both the respondent and the applicants are exhaustively described in agreements and reports to the Minister of justice attached to and referred to the founding affidavit. For the sake of overcoming any formalisms regarding some requirement to engage in the superfluous act of the actual repetitive description of the parties I have done so with regard to the applicants further on in this affidavit, although I expect that anyone with a modicum of intelligence will have no difficulty in identifying the parties should they have actually applied their mind in reading the papers currently before court.

4.2. The respondent has only one director and that is Mr. Gil Arbel of Sandton in Johannesburg. Mr. Arbel also is the only shareholder, as he owns 100% of the company shares. This much has been represented by Mr. Arbel to this honourable court in a letter that appears on the court file.

4.3. The abovementioned *status quo* can be verified with the registrar of companies as well.

4.4. Mr. Arbel entered into agreements with the state and the Land Bank of South Africa regarding a project known as the Paprika Project, at Goodhouse in the Northern Cape.

4.5. The agreements relating to these arrangements have been included in previous affidavits placed before this court.

4.6. Mr. Arbel's letter also deals with one Thumi Johanne who instructed an attorney to make appearance on his behalf in this court claiming that he has *locus standi* to oppose the application.

4.7. It should be clear from the letter and the facts that there are no other directors or shareholders in the company other than Mr. Arbel that Mr. Johane could quite obviously impossibly have any *locus standi.*

4.8. THE CURRENT POSITION IS THAT MR. JOHANNE IS NO LONGER INVOLVED WITH THE PROJECT AT GOODHOUSE IN ANY MANNER WHATSOEVER having been told by his employers, the government to get involved in a project called the Kalahari Kid project and having left the project at Goodhouse and relocated to Johannesburg. As can be quite clearly seen from the agreements, letters and other annexures the government have absolutely no right to get involved in that wholly private sector run project other than the temporary indulgence Mr. Arbel described in his letter.

4.9. Notwithstanding the above and the fact that this was disclosed to the officer presiding, he insisted that the court record showed that the attorneys for Mr. Johanne were on record as representing the respondent.

4.10. The fact that the attorneys of Mr. Arbel were correctly sighted as the attorneys for the respondent in the papers and Mr. Arbel's letter seemed was on record seems to have no effect on the presiding justice in that he insisted that the matter could only proceed if the attorneys of Mr. Johanne where to appear in court to oppose the matter or if they were to do a notice of withdrawal.

4.11. I have approached the attorneys of Mr. Johanne in Kimberley who undertook to contact their instructing attorneys in Johannesburg and refer them to me.

4.11.1. It appears that the instructing attorneys have no intention in making contact or either confirming their persistence with what is obviously a vexatious and unfounded intervention or by withdrawing.

4.12. This tactic of course will cause the matter to be delayed to such an extent that the applicants will suffer irreparable harm in that they will miss the planting season for this year and go another year without any source of income.

Urgency

5. Despite all that has been set out in the previous affidavits and the fact that PREVIOUS JUDGES PRESIDING COULD CLEARLY IDENTIFY THE CASE AS URGENT the presiding justice made out that he could not identify any urgency in the matter.

5.1. The urgency in this matter is in fact wholly obvious and will be dealt with further in the following paragraphs. The members of Group One, the other

observers in court and I are in the circumstance left little other intelligent alternative but to regard the presiding officers attitude as a pretence which is justified by wholly inadequate and illogical reasoning.

The respondents

6. The respondents are occupiers of land held in trust by the minister for the community on the land and which land should have, as has been illustrated in the draft application for the land supplied with the previous supplementary affidavit, been transferred to the applicants on may previous occasions, not to mention in terms of the land bank loan agreement also attached to that affidavit. Moreover the real and obviously only respondent in the matter supplied a letter stating that he would fund the costs for such an application. That letter was attached to the previous supplementary affidavit.

6.1. The relationship between the applicants and the respondents was destroyed by illegal government intervention of the type boldly and unashamedly illustrated by Mr. Johanne before this honourable court.

6.2. The applicants cancelled their agreement with the respondent and asked me to prepare a business plan for them so that they could raise finance for a project independent of the respondent.

6.3. All the commercial banks and other financing institutions as well as potential operators on the land are all aware of the illegal government intervention that the respondent persistently allows at Goodhouse and wanted a court order interdicting the respondent from such actions before they would provide any money for a project, which moneys are available save for such an order being in place.

Opposition

7. THE RESPONDENT DOES NOT OPPOSE THIS APPLICATION.

7.1. SO FAR THE ONLY OPPOSITION THE APPLICANTS HAVE RECEIVED IS FROM THE SYSTEM OF JUSTICE that has thrown up every delay in the process of them getting what is after all judicial resolve by consent of the parties before court.

Urgency continued

7.2. If the respondent do not get their relief THEY WILL MISS ANOTHER PLANTING SEASON AND BECOME UTTERLEY DESTITUE AD SUFFER IRREPERABLE HARM AS THEY WILL IN ALL PROBABILITY HAVE TO ABANDON THE LAND THEY HAVE DEVELOPED RIGHTS TO OVER SOME THREE DECADES AND IN TERMS OF NUMEROUS STATUTES AND LAND REFORM POLICIES ETC.

7.3. The presiding justice seemed to be ignorant of the idea of planting seasons: -

7.4. As incredible as it might seem to be called upon to do such a thing I now have no choice but to place the following (which most people should remember from their primary school natural science lessons) on record: -

7.4.1. Planting of crops occurs during the summer months.

7.4.2. One must ensure that one does not commence planting too late because the crops will not mature properly when it becomes winter.

7.4.3. The maturity rates of crops vary from several weeks to several months and one needs to time your planting accordingly.

7.4.4. When applications for production finance is made to banking institutions they are sensitive to these basic facts as well as the prospects of achieving optimum market prices against production costs giving sufficient margins to show a profit even after meeting the cost of interest charged on the finance provided.

7.4.5. IT SHOULD BE MANIFESTLY CLEAR TO ANY ONE WITH BUT A MODICUM OF INTELLEGENCE THAT DELAYS IN THIS CASE WILL EFFECTIVELY DESTROY THE APPLICANTS CHANCES OF GETTING FINANCE FOR CROPS DURING THIS YEAR'S SUMMER PERIOD.

7.4.6. The presiding officer has feigned an inability to grasp the urgency of the matter saying that he is not convinced that the matter should be heard in the recess period of the courts. To expect any normal person to believe such drivel is of course to heinously insult their intelligence.

7.5. What needs to be taken into consideration here of course is that these developments, spurned and driven by the presiding officer of course suite all those who would want the rightful beneficiaries starved off the land through such blatantly crude and hopelessly transparent delay tactics and then occupy and obtain it themselves or for their political allies.

7.5.1. I suppose we are expected to believe that this too has escaped the (what appears to be severely handicapped) powers of deduction on the part of the judge.

7.6. In short, the judicial system is now fast making itself PARTISAN to these efforts by adopting such an unduly and formalistic and I might add ridiculously narrow approach in this matter.

7.7. It is respectfully submitted that to expect the ordinary members of the public to believe that a judge cannot see the urgency in a matter in which gross human suffering is immanent if judicial resolve is not reached immediately is to insult their intelligence as well as that of the ordinary public's normal regard to the intelligence of some of the judges of the High Court of South Africa.

7.8. It is respectfully submitted that to expect the public to believe that a judge cannot identify a sole director and shareholder as the only person able to decide whether a company can defend a matter or not is to similarly demean the public and himself as an ignoramus.

7.9. In fact it creates the impression that the judge is partisan, grossly bias and on the side of those of the likes of the governments agents already identifiable in this matter.

8. I place on record that I pointed out to the court that the banks, investment community and potential operatives are all aware that the government is delaying the transfer of the land in order to perpetuate its political control over the occupiers, to eliminate any persons not voting for them and to

deliberately intervene and cause the failure of projects to those ends. This is common knowledge and contained in many publications like "The Great land reform Scandal" by Dr. Phillip Du Toit, a prominent labour lawyer, the court cases won by attorney Van De Venter regarding the land at Rust de Winter, not to mention many communities around the country in a similar position as those of the applicants such as at Giyani, Makatienie flats in KZN and the Eastern Cape, Africa Project Access, Natgrowth, members of NEPAD and the articles and lectures set out on the web site of the deponent hereto under www.izak.co.za under the land reform tab.

8.1. This seemed to be completely ignored, re-enforcing the appearance of bias created by the above referred to impressions that were created.

8.2. The presiding officer seemed nonplussed by the suggestion of review proceedings developing from such behaviour thus further enforcing the impression of partisanship **as the delay in such proceedings would perfectly satisfy the aims of those who would want the applicants starved off the land.**

8.3. For some insight into this type of review I quote the following: -

> With the ambit of the new constitution, it is submitted that there is added to that, now also **a Constitutional right to Review**. This is not only so in taking into account the dicta of Froneman J in Matiso v Commanding Officer, Port Elizabeth Prison, and Another 1994 (4) SA 592 (SECLD) 594 at F where he states that

> ***"A judge*** *is also accountable in a number of different ways for the decision he makes. He is obliged to give reasons for his decision and may be taken on appeal to a higher Court. But he should also accept that his decision-making and reasons for it should be subject to vigorous and critical public scrutiny at all levels of society.* ***It is the obligation of society to ensure that this kind of accountability is real.*** *In addition the Constitution in s 104(1) and (4) makes provision for formal accountability in the selection process of judges and for their removal on the grounds of misbehaviour, incapacity or incompetence. The* ***Constitution gives explicit recognition to the role of the judiciary in participating in the decision-making process and accountability of the person making the decision by making provision for judicial review, based on the supremacy of the Constitution (ss 98 and 101 of the Constitution), and by its fundamental concern to establishing a constitutional system based on openness, democratic principals, human rights****, reconciliation, reconstruction and peaceful co-existence between the people."*

9. The applicants are indigent, i.e. they have no assets or income worth mentioning. I include myself with the applicants having spent some R 110,000.00 in trying to help these victimized and terrorized people and now being bereft of funds altogether.

10. The judge knowing this glibly asked why they or I did not get ourselves legal representation. Well, one needs money for that and without money one would

need to approach state funded organizations such as the legal Aid board, some of its members which in this case has been exposed as being either so stupid or corrupt that the attempt amounted to a senseless waste of time for the applicants and a rather wonderful opportunity to the state to frustrate the efforts of the applicants at survival for yet another year in the hope that they will crumble and leave the land.

1.1 It is perhaps no wonder that Judge Kriegler (at the time of the Transvaal Provincial Division and whilst serving as acting judge of Appeal) made the following remarks at a "Seminar of the Johannesburg Attorneys' Association on the 'Future of the Legal Profession'" held on 5 June 1991 (as reported in the Star 6 and 8 June 1991):-

> ***"We are enclaves of privilege in a wasteland of misery....There are 4500 members of the population per lawyer... very much worse in the platteland where it is unthinkable for twenty million of our fellow citizens to have any legal advice whatsoever....100,000 people went to prison without any legal representation.....The future which faces us frightens anyone with sense. And we are debating the fusion of the profession. I have heard no attorney offer to do any pro deo work in the Supreme Court. Turning to advocates, Mr. Justice Kriegler said that they want to hold on to their lucrative motion court practice, 'which enables young Wasps to get richer and richer'.. There is no future for any of us, there is no future for our children, unless the legal profession takes the lead.... All South Africans come from traditions which respect doing***

things the right way. Let us not throw up our hands in horror <u>at peoples courts</u> as a sore in the urban black community which is erupting....<u>It is a manifestation of a society which has been deserted by law because the law has not fulfilled its function</u>."

11. I must state here for the record that I am deeply offended and disturbed by the fact that I have been maneuvered into a position where I am left little other alternative but to present an affidavit in such a reactionary manner and in such strong terms in order to hammer home such simple issues.

11.1. This affidavit shall also be advertised on the world wide web as an indictment against the system of justice in South Africa and in particular the officer presiding in this matter.

12. As expected, the charlatan respondent did not supply his notice of withdrawal and so the matter has effectively been sent into an eternal stalemate so grossly engineered by our justice system with the effect that THE AIMS OF THE GOVERNMENT ARE NOW PERFECTLY FOSTERED AND INDEED SECURED BY ITS JUDGES.

13. The applicants have lost complete faith in the system of justice as its judges ended up the main opponents in an unopposed application and proffered such a ridiculous set of excuses for the crime, that they have belittled themselves to the point that judges in the main are now despised rather than respected as was previously the case.

14. The humanitarian pain and suffering caused, will of course be called into account by the Judge of final instance, one that has the power to damn to hell.

But then again, in what is now a secular state that is incredibly actually comprised of a population comprising mainly of Christians, it may be a crime even to mention hell and the final judgment. The need for denial and escapism from the inevitable reality of giving an account for ones life is so great that the secular will be up in arms no doubt. I am at pains to make this point because the religious persecution of the applicants because of their faith and because they chose not to embrace the beliefs of the communist secular systems forced on them are well established in the partisan manner in which they have been handled by the state.

15. Finally there was the issue of the notice of set down.

15.1. It appears the presiding justice is unsatisfied with the responses of the real respondent in respect of the notice of set down and instead wants a notice to be served on the attorneys of the government's (clearly illegal) intervener. This will of course result in more delays, no doubt suiting the partisan, biased and hostile system perfectly.

16. I shall call for a transcript of the proceedings although I will not be too surprised if that has disappeared as has so often handled in other controversial cases I have handled. See www.izak.co.za under the tab Judge president appearing under the tab marked publications on the home page.

17. I MUST ALSO PLACE ON RECORD THAT THE JUDGE INTIMATED THAT HE IS ABLE TO RAISE MANY MORE OBJECTIONS AS THE CASE GOES ON.

18. **One of the underlying reasons for this type of behaviour is the insidious and childish habit of officers of court, including judges, registrars and lawyers in claiming the courts as their exclusive arena and resenting anyone who approaches the court directly without paying them their, shall we call it a "cover charge" for entry to their arena. They resent and are jealous of anyone other than their "brethren" entering their little, shall we call it "lodge". Accordingly they go out of their way to create as many obstacles and make it as difficult as possible for any member of the public who dares seek justice without their involvement.**

19. It was noted by all those who attended the proceedings that the presiding officer refused to address me by the titles set out in the application.

19.1. This hostile demeaning tactic is typical of those who are lackeys of the government. They always arrogantly insist by being addressed by their bestowed titles but take great care in addressing everyone to whom they are opposed in the most demeaning and diminutive terms.

19.2. To highlight that these statements are by no means unfounded and that the problem is in fact receiving widespread worldwide attention, I include a copy of the following precedents quoted in my last affidavit. I do this also because this affidavit will be published and the public need to have a proper perspective of the lengths to which this officer of court (who was raised from the ranks of the advocates) was prepared to go to fulfill what is written here: -

Constitutional provisions

[a108y1996s38]38 ***Enforcement of rights***

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

(a) anyone acting in their own interest;

(b) anyone acting on behalf of another person who cannot act in their own name;

(c) anyone acting as a member of, or in the interest of, a group or class of persons;

(d) anyone acting in the public interest; and

(e) an association acting in the interest of its members.

In this case the matter is firstly URGENT

And secondly it is in the **National Interest.**

This is a constitutional state[1] wherein a fundamental rights constitution based on the principals that under-girding a free democracy is the supreme law even binding the government of the day[2]. Hence the interest of justice is paramount.

---

[1] **[a108y1996s2]2 Supremacy of Constitution**
This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

[2] **[a108y1996s41]41 Principles of co-operative government and intergovernmental relations**
(1) All spheres of government and all organs of state within each sphere must-
(a) preserve the peace, national unity and the indivisibility of the Republic;
(b) **secure the well-being of the people of the Republic;**
(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
(d) **be loyal to the Constitution, the Republic and its people;**
(e) **respect the constitutional status, institutions, powers and functions of government in the other spheres;**

However, because the government of the day is one of indirect as apposed to direct representation the national interest outranks the public interest and that is why international law must be considred *in limine* in situations where the national interest is effected: -

> ***[a108y1996s39]39 Interpretation of Bill of Rights***
>
> *(1) When interpreting the Bill of Rights, a court, tribunal or forum-*
>
> *(a)* ***must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;***
>
> *(b)* ***must*** *consider international law*[3]*; and*
>
> *(c) may consider foreign law.*

See also section 41(1)(b)– i.e.

> *(1) All spheres of government and all organs of state within each sphere must-*
>
> *(b)* ***secure the well-being of the people of the Republic;***

As a result the public interest is outranked by the national interest because the state has a duty to see to the well being of all it's people collectively. It could not therefore consider the interest of a member of the public or a grouping in the public at the cost of the national well-being.

NOW THIS IS MANIFESTLY JUST SUCH A CASE.

That being so Technicalities raised in proceedings where the merits in a case threatens the national interest are therefore to be given very little weight indeed, more so because of the following case law as it relates to

[3] See section 14 of Act 108/1996

[a108y1996s231] 231 International agreements

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

[a108y1996s232]232 Customary international law

Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

[a108y1996s233]233 Application of international law

When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

Interpretation

In so far guidance for the interpretation of the sections quoted above are concerned I respectfully refer this honourable court to the following:-

Generous and purposive interpretation[4]

[4] See also 1996 (8) BCLR Azzapo v President etc...*Fundamental rights generous and purposive greatest degree of protection to subject in his or her relationship with the state* 1995 (11) BCLR 1498 (1996 (2) SA 276 (N))

Having regard to the judgment of judge Mc Laren R in Potgieter v Kilian 1995 (11) BCLR 1498 (1996) (2) SA 276 (N) at 284 C) held.... at 313 B, it is submitted that it is intended to provide the greatest degree of protection to subject in his or her relationship with the state**:-**

"As uitgangspunt aanvaar ek dat die grondwet nie die reg ten aansien van die vertolking van wette radikaal verander het nie. n' Grondwet word wel op n' besondered wyse vertolk, maar die grondslag van die begunstigended en doeleinende uitleg is om die grootste mate van beskerming aan die onderdaan te verleen in sy verhouding met die owerheid".

Technical rigidity to be avoided

It is submitted that in reading and interpreting fundamental rights statute technical rigidity is to be avoided. In Ex Parte Chairperson of the Constitutional Assembly : In re Certification of the Constitution of South Africa 1996 (1) BCLR 1253 (1996) (4) SA 744 (CC) AT 745C and in Re Certification of the Constitution of the Constitution of the RSA, 1996, 1996 (4) SA 744 at 747 A-C:

Held, further, as to the interpretation of the Constitutional Principles, that the Cp's had to be applied purposefully and teleologically to give expression to the commitment expressed in the *Preamble to the interim Constitution " to create a new order"* based on a "*sovereign and democratic constitutional State"* in which *"all citizens"* were *"able to enjoy and exercise their fundamental rights and freedoms".* The Cp's had therefore to be interpreted in a manner which was conducive to that objective and any interpretation of any CP which

might impede the realisation of this objective had to be avoided. (Paragraphs [34]-[35] at 786 E.)

Held, further, that the **CP s should not be interpreted with technical rigidity**: they were broad constitutional strokes on the canvas on constitutional-making in the future. (Paragraph [36} at 786E/F.)

Held, further, that all 34 CP's had to be read holistically with an integrated approach and no Principle should be read in isolation from the others which gave it meaning an context:

In Morali v President of the Industrial Court and Others 1987 (1) SA 130 (C) at 133C-D we see that:-

> *"The acceptance of inherent **human dignity regardless of individual differences** lay at the heart of the equality guarantee. Discrimination resulting in treating persons differently in a way which impair their fundamental dignity as human beings would breach section 8(2)."*

And the following **case law and authorities**: -

Many cases are thrown out on procedural points leaving the merits that gave actual rise to the dispute unresolved.

On page 241 of the standard handbook for advocates, Eric Morris's **Technique in Litigation** he quotes the famous **Judge Heimstra** in a reported judgment[5] on a case between two insurance companies wherein he said: -

> ***I am not prepared to allow the rules of procedure to tyrannize the court where an important issue needs has to be thrashed out fully and all the facts have to be put before the court.***

On page 10 Morris unequivocally states: -

> ***Errors of a technical nature, however, are on a substantially different basis, and you should hesitate to gain an unconscionable advantage.***

The Journal of Legal Education 1981, page 201

> ***" Presiding officers must not only assist an underrepresented litigant with the presentation of his case, but also strive to make him feel at ease and relaxed in Court so that he can present his case to the best of his ability"***

It is not surprising therefore that **Alternative Dispute Resolution** is fast becoming **the global trend [6]** and current world wide reformation[7] in law and legal practice[8] as such, to the extent that: -

[5] Registrar of Insurance v Johannesburg Insurance Co LTD 1962 (4) 546 (W) at 547
[6] See Confidence Magazine November 1999 page 27, Consultus November 1996 page 124 AFSA; November 1997 page 112;
[7] Wolf Commission (UK) Danish Transitional Council (RSA), Irish department of Justice and legal reform. The Century Foundations International task force "Making Justice Work"; The Law Commission of England and Whales, Australian law reform Commission to name but a few.

***old practises and ancient formulae must be modified in order to keep touch with the expansion of legal ideas, and to keep pace with the requirements of changing conditions*[9].**

On page 110 of the **Consultus magazine** of 2 November 1996 Hans Fabricius SC says:

In England the exploitation of rules is endemic in the system; the complexity of civil procedure itself enables the financially stronger or more experienced party to spin out proceedings and escalate costs by litigating on technical procedural points or peripheral issues, instead of focusing on the real substance of the case. All too often such tactics are used to intimidate the weaker party and produce a resolution of a case which is either unfair or achieved at a grossly disproportional cost or after unreasonable delay.

In the same issue Wallis SC says further: -

Around the world, wherever one goes the cost and delays of civil litigation have become a byword. The accusation of indifference

---

[8] **See also** UN - ***Basic Principles on the Role of Lawyers*** as adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. **http://www.unhchr.ch/html/menu3/b/h_comp44.htm**

[9] Per Innes J in Blower v Van Noorden, 1909 TS 890 at 9p905

extends not only to our view of the real world but more specifically to the question of cost and delay.

Having regard to the **Wolf Report,** the various articles in the advocates fraternity's ***Consultus*** Magazines, the vast volume of complaints made to the **press**, and **various other commissions** and entities here in South Africa, the prevailing volume of **precedent**, the fact that several foundations are involved in trying to remedy the problems arising out of the use of similar tactics, the time has now fully come to remedy the problem.

The problem is that ***the public has for too long allowed lawyers to unnecessarily complicate and protract proceedings, in so doing running up immense costs***. ***Lawyers have been allowed to engage in a frenzy of technicalities, imputing notions which never were in the contemplation of their clients and which are foreign and unintelligible to them, all at the cost of their clients, in the process producing purely academic judgments that serve no purpose whatsoever in resolving the real issues the litigants wanted judicial resolve on[10].***

This is supported by binding authority set in 1985[11] (in Afrikaans)

[10] Quoted from the submission of the Justice 2000 Project to The Danish Transitional Council, which latter council is finance by the Danish Investment Development Association in order to comply with the South Africa Ministry of Justice's mandate to the council to draft legislation to bring South African legal practice in line with the findings of the Wolf Report of the UK.
[11] Steyn v Onderlinge Assuransie Associasie 1985 (4) 10 at E - J

The unfair results of relying on technical replication that was raised on behalf of totally non-suspecting parties. *(Translated and abbreviated)*

Professor Lowrens Du Plessis in his handbook book "**An Introduction to Law"**on law that forms part of every law student's library repeatedly condemns a technical approach and he also said that ***it serves merely as an obstacle and destroys confidence in the system*** as in page 111 bottom paragraph:

> ***"A jurist should therefore not be out to evade legal procedures or find loopholes in the law or try and outwit his opponents on 'technical points '. Such an attitude implies that the legal system does not really make sense but is simply an obstacle to be overcome. But the system does make sense to the extent that it is mindful of the rights and interests of people. This is why a jurist must strive as much as they can to rectify the deficiencies and inhumane aspects of the system and insure that the impact of unjust measures(which still exist) be minimized as far as possible."***

and on page 112 second paragraph , which says:

"JURISTS IN POSITIONS OF AUTHORITY (SUCH AS JUDICIAL OFFICERS) WHO APPLY THE LAW IN A FORMALISTIC AND LEGALISTIC WAY ARE ALSO UNDERMINING RESPECT FOR THE

COURSE OF JUSTICE OF THE LAW AND BRING THE LEGAL SYSTEM INTO DISREPUTE)

The South African Law Journal of May 1994 page 343

" Presiding officers must not only assist an unrepresented litigant with the presentation of his case, but also strive to make him feel relaxed in court so that he can present his case to the best of his ability. The extract from the novel' Anatomy of a Murder', written by judge John D Voelker of the Supreme Court of Michigan, as referred to in 'the South African Legal System and its Background' by Hahlo and Kahn, at 40 seems apposite: (I am sure the word 'appropriate' was intended here)

'Judges, like people may be divided roughly into four classes: Judges with neither head nor heart - they are to be avoided at all costs; judges with head but no heart - they are almost as bad; then judges with heart but no head - risky but better than the first two; and finally, those rare judges who posses both a head and a heart.'

> ***'Magistrates must also bear in mind that their courts are the showcase of the judicial system as a whole, and that kindness and understanding on their part will go a long way to improving the understanding and appreciation which the average citizen has of the administration of justice' per White J in S v Nhantsi 1994(1) SACR 26 (Tk) at 30"***

Lewis in his book *Legal Ethics* goes so far as to condemn such technical litigation as it as ***unethical***.[12]

So serious are the findings of the **Wolf Report** and so endemic is the complaint that the **Chairman for the General Counsel of the Bar** in South Africa (Malcolm Wallis SC) found it necessary to quote David Pannick QC in the ***Consultus*** magazine of 2 November 1996 as follows:-

> ***The professional function of the advocates is essentially one of supreme, even sublime, indifference to much of what happens in real life. He must advance one point of view, irrespective of its inadequacies. He must belittle other interests, whatever their merits. Politely though the task is performed, many barristers spend much of their working day accusing respectable members of the community of being liars. It is not for counsel appearing in court to express equivocation, to recognize ambiguity or to doubt instructions. His client is right and his opponent is wrong. The***

[12] Page 136-137

wider consequences can be left to the judge or the jury to consider.

Way back in the 1800's Vergillius,s famous Protocols[13] (written by the Jesuits to discredit the Jews) stated:-

> *The practice of advocacy produces men cold, cruel, persistent, unprincipled, who in all cases take up an impersonal, purely legal standpoint. Their inveterate habit is to refer everything to the defensive value of it's properties and not to the public welfare of its results. They do not usually decline to undertake any defense whatsoever, they strive for acquittal at all costs, caviling over every petty crux of jurisprudence and thereby they demoralize justice.*

That is of course neither in the interest of justice nor in the national interest, and certainly not in the public interest.

AS ANYONE CAN CLEARLY SEE FROM THE ABOVE, TO ENGAGE THE COURTS IN THIS PARTICULAR MATTER SEEMS TOTALLY FUTILE, AS THE COURT IN THIS CASE HAS IDENTIFIED ITSELF AS THE MAIN OPPONENT IN THIS UNOPPOSED MATTER.

Well done your lordship or should I call you Mr. Judicial officer in line with the precedent you so persistently set for disrespect and affront. You certainly seemed to achieved the

aim you gave everyone the impression you have grasped on to and that is to brand yourself with applicants and I as a lackey of the state who is prepared to play the absolute fool to the ends of this state's aim and that is not to transfer land to its political opponents and to starve them off the land if they happen to be there. In the process you have excelled in acting contrary to the entire movement of judicial reform towards a more approachable system of justice and at the same time given incredibly accurate fulfillment to the sometimes highly criticized allegations in the Protocols of Zion. What a magnificent performance!

The upshot of it all is that the first reaction of everyone that has heard of this incredible performance has without hesitation asked one question; - "I wonder how much the judge was paid". Test the reaction of the people you are to serve for yourself and may the intense embarrassment you should suffer if you have any conscience at all cause you to admit the crime committed here, repent, make restitution, undertake never to do that again and reform as you should and ask the public for their forgiveness – that is after all the real basis of the law or have you forgotten that too?

What will you do now sir, will you try the usual threats of contempt, litigation or some other retribution that has manifested as an earmark of other judges that have similarly misbehaved? Or will you simply stonewall this admonishment in line with the by now legendary tactics of so many of the "comrades" and "brethren" in government circles who excel in such tyrannical deafness? Or will you take the guidance from your seniors as set out herein and face it like a man - and fix it like a man.

---

[13] As quoted in the Swiss High Court's Appellate division in January 1945

I implore you sir to face the fact that your actions and that of a few other judges of the same bent are demeaning the efforts of the many good judges in this country to instill confidence in the system and that you will embrace the reforms required of a fundamental rights driven world community and that of common righteousness as believed in, hoped for and indeed, expected, no demanded, by the majority of the Christian populous in this country.

_____

Deponent

I hereby certify that the deponent acknowledged that he knew and understood the contents of the above declaration, and that the deponent, in my presence, signed the declaration at Kimberley on this 21st[h] day of December in the year of our Lord 2004.

_____

Commissioner of Oaths