REPUBLIC OF SOUTH AFRICA

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case number: 360/2000
Reportable

In the matter between:

PANJALAY GOVENDER Appellant

and

WULAGANATHAN REDDY First Respondent
PERMAL REDDY REDDY Second Respondent
THE PROVINCIAL HOUSING BOARD OF KWAZULU-NATAL Third Respondent
THE MINISTER OF LOCAL GOVERNMENT AND HOUSING FOR THE PROVINCE OF KWAZULU-NATAL Fourth Respondent
THE CHIEF DIRECTOR OF THE DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING FOR THE PROVINCE OF KWAZULU-NATAL Fifth Respondent
THE MASTER OF THE HIGH COURT OF SA: NATAL PROVINCIAL DIVISION Sixth Respondent
LALLISA INVESTMENTS (PTY) LTD Seventh Respondent
THE DIRECTOR, REAL ESTATE FOR THE NORTH CENTRAL AND SOUTH CENTRAL LOCAL COUNCILS OF THE CITY OF DURBAN. Eighth Respondent

CORAM: SMALBERGER ADP, OLIVIER, FARLAM, MTHIYANE JJA et HEHER AJA
HEARD: 15 MARCH 2002

DELIVERED: 27 MARCH 2002
SUMMARY: Administrative law – allocation of properties by statutory board – purported revocation thereof, whether valid – whether executors of person to whom property allocated empowered to consent to revocation.

JUDGMENT

FARLAM JA

INTRODUCTION

[1] This is an appeal against a judgment of Galgut J, sitting in the Natal Provincial Division of the High Court of South Africa. In the judgment appealed against, a decision made by the third respondent, the Provincial Housing Board of KwaZulu-Natal, to revoke the allocation of certain properties to the late Gopal Reddy (to whom I shall refer in what follows as 'the deceased') and to allocate them instead to his daughter, the appellant, was set aside. The matter was remitted to the third respondent to enable it to reconsider the matter after taking proper account of certain representations made by the first respondent as well as such further representations as the first respondent or any other interested party might wish to submit. The appellant and the second respondent were ordered, jointly and severally, to pay the first respondent's costs on the attorney and client scale including those occasioned by the employment of two counsel.

PARTIES AS AT THE TIME OF THE INSTITUTION OF THE PROCEEDINGS

[2] The appellant, who was the first respondent in the court *a quo,* is the daughter of the deceased. She was cited in her personal capacity and in her capacity as executrix in the estate of the deceased.

The first respondent, who was the applicant in the court *a quo,* is a businessman who concluded certain agreements with the deceased during his lifetime. Details of the agreements are set out below.

The second respondent, who is the deceased's son and the brother of the appellant, was cited in his personal capacity and in his capacity as executor in the estate of the deceased.

The third respondent is the Provincial Housing Board of KwaZulu-Natal, established in accordance with the provisions of section 11 of the then Housing Arrangements Act 155 of 1993 (since repealed).

The fourth respondent is the Minister of Local Government and Housing for the Province of KwaZulu-Natal.

The fifth respondent is the Chief Director of the Department of Local Government and Housing for the Province of KwaZulu-Natal.

The sixth respondent is the Master.

The seventh respondent is a company known as Lallisa Investments (Pty) Ltd, the sole shareholder of which was the deceased.

The eighth respondent is the Director, Real Estate, for the North Central and South Central Local Councils of the City of Durban.

FACTS

[3] The deceased, who was born on 22 February 1904, traded for many years on properties in Bergville but lost his properties and business by virtue of the Group Areas Act 36 of 1966.

[4] On 7 October 1992 the Housing Development Board established in terms of the Housing Development Act (House of Delegates) 4 of 1987 resolved to allocate two sites in the Chatsworth Town Centre (to which I shall refer in what follows as 'the properties') to the deceased. The properties were to be acquired from the Durban City Council either by negotiation or expropriation. Upon determination of the purchase price they were to be sold to the deceased. The purpose of the Board's resolution was to compensate the deceased for losses he had suffered by reason of the Group Areas Act.

[5] The first respondent wished to acquire an interest in the properties for purposes of their development. There was initially an informal arrangement between the deceased and the first respondent to the effect that the first respondent would participate in the development of the properties and in the profits resulting from such development. It was envisaged that the first

respondent and the deceased would be partners, with the first respondent securing the services of developers and paying the costs of acquiring and developing the properties and the deceased contributing the properties to the development. The profits were to be shared equally between the first respondent and the deceased. Pursuant to these arrangements the seventh respondent was formed for the purpose of acquiring the properties as soon as they had been acquired by the deceased.

[6] On 30 July 1994 the deceased and the seventh respondent concluded a written agreement in terms of which the deceased sold the properties to the seventh respondent for the same amount as that which the deceased would be required to pay under the contract of sale pursuant to which he was to purchase the properties.

[7] On the same day the deceased and the first respondent concluded a written agreement in terms of which the deceased sold to the first respondent

the shares in the seventh respondent with effect from the date on which the properties were to be registered into the name of the seventh respondent.

[8] At the time these contracts were concluded it was envisaged by the deceased and the first respondent that the properties were to be acquired by the deceased within the near future. This did not happen and after some delay the deceased, during February 1995, launched an application in the Natal Provincial Division against the National Housing Board (which had assumed the obligations of the Housing Development Board) and the third and fourth respondents for an order that effect be given to the Housing Development Board's resolution to allocate the properties to the deceased. This application succeeded and on 21 June 1995 McLaren J ordered the National Housing Board and the third respondent to take steps as expeditiously as possible to implement the resolution.

[9] The deceased died on 1 October 1995 before the properties could be transferred to him. On 13 October 1995 an attorney, Mr Leslie Weinberg, whom the deceased had consulted before his death, was appointed executor testamentary to the deceased's estate.

[10] Soon after his appointment Weinberg, acting in his capacity as the executor in the deceased's estate, authorised the first respondent's attorneys to do all things necessary to facilitate negotiations in connection with the conclusion of an agreement of purchase and sale in respect of the properties between the relevant authorities and the estate.

[11] On 24 October 1996 the eighth respondent informed the first respondent's attorneys, pursuant to a request by the fifth respondent, that the sale of the properties was to be concluded with the estate and the first respondent's attorneys were requested to return two signed copies of a sale agreement to be concluded between the City of Durban and the deceased's

estate in terms of which the properties were to be sold for a total price of R3 328 000.

[12] On the previous day, 23 October 1996, attorneys acting on behalf of the appellant as the deceased's sole heiress wrote to Weinberg asking for the reasons that he as executor in the deceased's estate was insisting that the properties be sold to the estate. The appellant's attorneys stated that they were instructed that it would not be in the interests of the estate for the properties to be sold to it as it could not afford the purchases and the costs of the estate would increase unnecessarily. Weinberg replied to this letter furnishing the appellant's attorneys with the relevant documentation concerning the agreements between the first respondent and the deceased and the deceased and the seventh respondent.

[13] Thereafter, finding himself in a conflict situation, Weinberg resigned as executor. As a consequence of his resignation the appellant and the

second respondent were appointed on 11 December 1996 as executrix and executor respectively to the estate of the deceased.

[14] On 25 February 1997 the eighth respondent informed the first respondent's attorneys that the properties would be sold to the appellant.

[15] On 10 March 1997, however, the fifth respondent, acting on behalf of the fourth respondent, sent a letter to the first respondent's attorneys stating that certain aspects were still being clarified with the Master, the sixth respondent.

[16] On 1 April 1997, the eighth respondent advised the appellant and the first respondent that the properties could not be sold directly to the appellant and that they would first have to be sold to the deceased's estate.

[17] On 14 April 1997, in response to a request for advice, the sixth respondent advised the fifth respondent as follows:

> 'The appropriate Housing Board [the third respondent], acting in terms of its enabling legislation, would presumably be at liberty to revoke or amend any allocation. Such amendment or revocation would presumably be considered when it is found that such allocation cannot be given effect to.
> An allocation of a specific site that has been revoked would of course be capable of being re-allocated thereafter.
> ...
> I trust the above is of assistance.'

[18] On 6 May 1997 the fifth respondent wrote to the first respondent's attorneys and stated that his office was of the view, based on the sixth respondent's comments, that the allocation of the properties to the deceased should be revoked and that they should be sold and transferred directly to the deceased's heiress, namely the appellant.

[19] On 8 May 1997 the first respondent's attorneys wrote a letter to the fifth respondent, referred to certain letters, copies of which had been sent to their office, and continued:

> 'It clearly appears from the letters ... that our client [the first respondent] will be prejudiced by the decision to sell the properties directly to the heir, that our client would be responsible for the provision of the purchase price of the properties, that

> the Estate will benefit by receiving transfer of the properties, that both the Estate and our client will be seriously prejudiced in the absence of the materialisation of the sale concerned.
>
> It is accordingly clear that any statement to the effect that the Estate is not in a position to purchase the properties is not correct. It is our client's contention that any indication by the Executors that the estate is not in a position to purchase the properties is simply an attempt by them to avoid the obligation of the Estate to our client. ...'

[20] On 22 May 1997 the executive committee of the third respondent recommended that the allocation to the deceased be revoked, that the properties be sold directly to the appellant and that the State absolve itself 'from any claim/s which may arise as a result of the aforementioned'.

[21] It is clear from the documentation placed before the executive committee that the advice given by the sixth respondent was not accurately reported. It will be recalled that the sixth respondent had said that the third respondent *'acting in terms of its enabling legislation* would *presumably* be at liberty to revoke or amend any allocation' and that 'such amendment or revocation would presumably be considered *when it is found that such*

allocation cannot be given effect to.' No attempt was made in the documentation placed before the executive committee to establish whether a revocation or amendment of an allocation was provided for in the third respondent's enabling legislation and apart from the *ipse dixit* of the executors (one of whom, the appellant, was in a conflict of interest situation because the proposal was to revoke the allocation of the properties to the deceased so that they could be allocated to her) there was no basis for finding that the allocation could not be given effect to. On the contrary the letter quoted in paragraph [19] above (which was not mentioned in the document placed before the executive committee) indicated that effect could be given to the allocation.

It is also not clear on what basis it could have been thought that the State could absolve itself from any claim arising as a result of the revocation and reallocation of the properties.

[22] The motivation section of the recommendation, after inaccurately summarising the sixth respondent's advice in the respects mentioned above, continued:

> 'It must also be mentioned that the State Attorney (Natal) also mentioned that this office should only accept directives from either the Executor of the Estate or the Master of the Supreme Court. The Executor's directive is that the sites be sold directly to the heir as the Estate is in no position to acquire the sites concerned.'

[23] On 30 May 1997 the fifth respondent incorrectly informed the first respondent that the third respondent had on 22 May 1997 resolved that the allocation of the properties to the deceased be revoked and that they be sold and transferred directly to the appellant. The correct position was conveyed to the first respondent's attorneys on 20 June 1997 when they were informed that the matter was to be considered by the third respondent on 9 July 1997.

[24] By letter dated 4 July 1997 addressed to the chairperson of the third respondent (which for some reason which has remained unexplained was

headed 'Without Prejudice') the first respondent's attorneys made representations to the third respondent setting out the first respondent's case for consideration by the third respondent before it arrived at a final decision.

[25] On 10 July 1997 the third respondent notified the first respondent's attorneys that it had ratified the decision taken by its executive committee at its meeting of 22 May 1997, which has been quoted in paragraph [23] above.

[26] Thereafter the first respondent instituted these proceedings on 29 August 1997. In his founding affidavit he contended that the decision of the third respondent in deciding to revoke the allocation of the properties to the deceased and to re-allocate them to the appellant was wrongful and unlawful and fell to be set aside on one or more or all of six grounds, *viz.* :

(a) the third respondent had no power to revoke an allocation of property which had been made by the Housing Development Board;

(b) the first respondent's representations were not taken into account when a decision was taken which prejudicially affected his vested rights arising out of the agreement between the deceased and the first respondent dated 30 July 1994, in terms of which the deceased sold to the first respondent all his shares in the seventh respondent;

(c) the third respondent failed to take into account the full implications of the judgment of McLaren J to which I referred in paragraph [8] above;

(d) the decision was not justifiable in relation to the reasons given therefor in that it would have been clear, upon proper investigation, that the estate would be in a position to receive transfer of the property;

(e) the third respondent failed to consider the fact that the estate of the deceased would benefit by an amount of R70 000-00 by simply entering into the agreement of purchase and sale and complying with the provisions of the agreement in terms of which the deceased sold to the first respondent the shares in the seventh respondent; and

(f) the third respondent failed to consider the fact that a consequence of its decision would be to prevent the estate from giving effect to the transaction to which it was bound, expose the estate to damages, deprive the first respondent of his property, prejudicially affect him and allow the appellant in her personal capacity to deal with the properties to the exclusion of the estate and its obligations.

[27] The appellant and the second respondent opposed the application. The third, fourth, fifth, sixth and eighth respondents indicated that they

abided the decision of the court, while the seventh respondent did not respond to the application.

[28] Although the third, fourth and fifth respondents, as I have said, abided the decision of the court an affidavit was filed on their behalf which was deposed to by Mr Bedderson, who is the director: housing and administration of the department of local government and housing for the province of KwaZulu-Natal.

[29] In this affidavit Bedderson stated that after the third respondent had approved the recommendation that the allocation of the properties to the deceased be revoked and that the sale of transfer of the properties be made directly to the appellant the matter was placed before the fourth respondent with a draft recommendation, along the lines approved by the third respondent, in accordance with the delegations conferred upon the fourth respondent in terms of section 4(1) of the Housing Second Amendment Act

1994, read with section 53(1) and 53(2) of the Housing Development Act (House of Delegates) Act 4 of 1987. It was further recommended that upon granting approval the fourth respondent sign certificates of alienation in respect of the properties. These recommendations were approved by the fourth respondent. Annexed to Bedderson's affidavit was a certificate of alienation, issued in terms of section 53(1) and 53(2) of the Housing Development Act (House of Delegates) 1987, Act 4 of 1987, read with section 4(1) of the Housing Second Amendment Act 1994, and signed by the fourth respondent on 7 August 1997.

[30] Bedderson also stated in his affidavit that in arriving at its decision the third respondent relied on the advice and guidance of the State Attorney and the sixth respondent. 'Furthermore', he said, 'the Third Respondent also took into account the consideration that there were insufficient funds

available to pay the costs of transfer of these properties into the name of the estate.'

[31] In paragraph 19 of his affidavit he explained the policy behind the allocation of properties to displaced traders as follows:

> 'The policy behind the allocation of properties to displaced traders was primarily to benefit displaced traders themselves or their heirs and not third parties. Where a displaced trader had died after an allocation of property has been made to him, it has been the policy of the Third and Fifth Respondents to re-allocate these properties to the heir if such a request is made. The Third, Fourth and Fifth Respondents have no interest in the private arrangements that may have been made by the late Gopal Reddy nor do they consider it appropriate or necessary for them to adjudicate upon these matters.'

[32] An affidavit by the second respondent was filed on his behalf and on behalf of the appellant. In it he denied that there was any substance in the grounds on which the third respondent's decision to revoke the allocation of the properties to the deceased and to re-allocate them to the appellant was sought to be attacked by the first respondent. *In limine* he submitted that the first respondent had no *locus standi* to challenge the decision in question.

[33] The learned judge in the court *a quo* held that ground (b) on which the first respondent sought to attack the third respondent's decision *viz* that his representations had not been taken into account, had been established. He held further that the first respondent had had a legitimate expectation to be heard and that his right to procedurally fair administrative action where his legitimate expectations were affected, a right entrenched in item 23(1) of Schedule 6 to the Constitution, Act 108 of 1996, had been infringed. He also held that because his legitimate expectations had been affected by the decision the first respondent had *locus standi* to attack the decision.

DISCUSSION

[34] When the application was launched in this matter the national legislation required by section 33(3) of the Constitution had not yet been passed, the rights to just administrative action set out in sections 33(1) and

(2) of the Constitution were suspended and the topic was governed by item 23 (2)(b) of Schedule 6 to the Constitution, which reads as follows:

> '(2) Until the legislation envisaged in [section] 33(3) of the new Constitution is enacted ...
>
> (b) section 33(1) and (2) must be regarded to read as follows:
>
> Every person has the right to -
>
> (a) lawful administrative action where any of their rights or interests is affected or threatened;
>
> (b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;
>
> (c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and
>
> (d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened.'

What may be called the 'transitional' section 33(1) and (2) is based, save for minor and insignificant differences made in conformity with the plain-language drafting conventions of the Constitution, on section 24 of the Interim Constitution, Act 200 of 1993.

[35] The first respondent's attack on the decision based on ground (a) as summarised above is founded upon paragraph (a) of transitional section 33(1) and (2) and invokes the principle of legality, *ie.,* that the exercise of power must be authorised by law. In *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374(CC) at 400 (paragraph 58), in a joint judgment written by Chaskalson P, Goldstone J and O'Regan J, the following was said:

> 'It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'.

[36] No provision in any of the statutes from which the third and fourth respondents derive their powers which authorises a revocation of an allocation of property made under Act 4 of 1987 was referred to by counsel

who appeared before us and we were unable to find any such provision by our own research.

[37] That being so it seems to me that the matter must be governed by the general rule of our administrative law which applies to all powers conferred by a statute, *viz* that 'although the same authority which introduces something may withdraw it, it cannot affect or abolish the rights which its previous act has already created' (Baxter, *Administrative Law,* p 373, citing *Brown v Leyds NO* (1897) 4 OR 17 at 39 and *Holden v The Minister of the Interior* 1952(1) SA 98(T) at 102 A-B).

Baxter continues:

'Thus favourable decisions may only be revoked with the beneficiary's consent.'

[38] Mr *Shaw,* for the appellant, accepted that the legal position was as stated by Baxter and contended that as it was clear that the appellant and the second respondent, who were respectively the executrix and the executor in

the deceased's estate, had agreed to the revocation of the allocation of the properties to the deceased (indeed they had actively sought such revocation from the third respondent) the third respondent had indeed had the power, in the circumstances of this case, to revoke the allocation.

[39] The correctness of this submission depends upon the validity of the consent by the appellant and the second respondent to the revocation. (Although no such consent appears expressly from the papers I shall assume, in favour of the appellant, that such consent was purportedly conferred.)

[40] Was the consent given validly?

In *L Ferera (Private) Ltd v Vos N.O. and Others* 1953 (3) SA 450 (A) Greenberg ACJ referred (at 464H-465A) to the following statement by Buchanan ACJ (with whom Hopley J concurred) in *Johnson v le Grange* (1908) 18 CTR 925 at 927:

> 'I may say broadly that executors have no right to create a debt against the estate of their principal' [at this point Greenberg ACJ inserted the following observation 'whether this is a correct description of the relationship of an executor to the deceased is irrelevant'] 'which did not exist at the time of the death of their principal and for which the principal was not liable.'

Greenberg ACJ added:

> 'In view of the scope of the duties of an executor who is given no power under the will – and it is on this basis that the question is now being considered – it seems clear that the passage I have just cited is a correct statement of the general rule.'

[41] In *Major's Estate v De Jager* 1944 TPD 96 it was held that an executor has the power to enter into a contract which binds the estate, even if that power is not contained in the will, where the transaction in question concerns the estate's assets and is not manifestly unreasonable and unnecessary for the liquidation of the estate. This decision has been criticised (see *Meyerowitz on Administration of Estates and Estate Duty,* 2001 edition, (para 12.39, footnote 3) as in conflict, *inter alia,* with *Ferera's* case. I am prepared, however, for the purposes of this case to assume that it was correctly decided.

[42] In this case the deceased's will did not empower his executor or executors to consent to the revocation of the allocation of the properties to him. It is clear that their conduct in so doing would, if valid, have exposed the estate to a substantial claim for damages. The estate, by reason of the obligations assumed by the first respondent, was well able to meet its commitments in relation to the purchase of the properties. In the circumstances it follows that the 'consent' purportedly given by them to the revocation of the allocation of the properties to the deceased was manifestly unreasonable and unnecessary for the liquidation of the estate. The 'consent' was accordingly given invalidly.

[43] It follows further that, absent such valid consent, the third and fourth respondent were not empowered to revoke the allocation and that the first ground advanced by the first respondent for the setting aside of the decision

would have to be upheld if the first respondent had the necessary *locus standi* to apply for such relief.

[44] In view of the fact that the case is covered, as I have said, by paragraph (a) of the transitional section 33(1) and (2), it is necessary to consider if any of the first respondent's rights or interests were affected by the decision.

[45] In arguing the case for the appellant on the *locus standi* aspect, Mr *Shaw* pointed out that the first respondent had no rights as such to the properties. He had a contractual right to obtain transfer in due course from the estate of the shares in the seventh respondent, the company to which the deceased had sold the properties. The first respondent's rights, so Mr *Shaw* submitted, were too indirect and remote to confer *locus standi* on him in this case.

[46] For the purposes of this case I am prepared to assume in favour of the appellant that it cannot be said that any of the first respondent's 'rights' were affected by the decision and shall concentrate on the question as to whether any of his 'interests' were so affected.

[47] Before 1994 the leading authority at common law on the question as to whether a person had an interest to attack an administrative decision was *Jacobs en 'n Ander v Waks en Andere* 1992(1) SA 521(A). This case concerned the *locus standi* of three persons (who were all respondents in the case) to attack the validity of a decision by a municipal council to reserve certain parks for the exclusive use of whites. The first respondent concerned was a ratepayer of the municipality and a director who was in full control of a hardware store in the municipal area in question. The second respondent was a resident of a black residential area outside the municipal area. The third respondent also did not live in the municipal area but he was the

manager of and had an interest in a clothing shop in the municipal area. Both the hardware store and the clothing shop were affected by a consumer boycott organised as a result of the decision to reserve the use of the parks for whites. This court held that it was not necessary that a litigant should have a financial or legal interest in a business before a finding could be made that he or she had *locus standi.* It was enough that the first and third respondents had an interest that the businesses in question should prosper, which would undoubtedly happen if the decision to reserve the parks for whites were set aside and the consumer boycott brought to an end. The second respondent did his shopping in the town and his *dignitas* was injured by the ban on his using the parks. Each of the three respondents was held to have a sufficient interest in the matter so as to have *locus standi.* It was stressed that 'interest' in a context such as this is not a technical concept

with circumscribed boundaries but that it must not be too far removed, abstract, academic or hypothetical.

[48] Both the Interim Constitution and the present Constitution mandate a broad approach to standing for the purpose of the enforcement of the rights entrenched in chapter 2, including the right to administrative action which is here relevant.

[49] In *Ferreira v Levin NO and Others* 1996(1) SA 984(CC), which concerned section 7(4)(b)(i) of the Interim Constitution (the equivalent of section 38(a) of the present Constitution) which provided that relief in respect of an infringement of or a threat to a right entrenched in the Bill of Rights might be sought by 'a person acting in his or her own interest', Chaskalson P, writing on behalf of the majority, said [at paragraph 165]:

> '... it is my view that we should rather adopt a broad approach to standing. This would be consistent with the mandate given to this Court to uphold the

> Constitution and would serve to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled.'

In my view, even on the common law approach set out in the *Jacobs* case, *supra,* the first respondent had *locus standi* to complain of the fact that his interests were affected by the decision of the third and fourth respondents to revoke the allocation of the properties to the deceased. The approach under the Constitution being at least equally broad it is clear that he had *locus standi* to complain of an infringement of his right to lawful administrative action under transitional section 33(1) and (2)(a).

[50] In view of the fact that I have based my decision on a breach of the right to lawful administrative action and not, as the judge *a quo* did, on a breach of the right to procedurally fair administrative action, it is clear that it is unnecessary for the matter to be remitted to the third respondent for reconsideration.

[51] It appears from what was said in Bedderson's affidavit that the decision that was set aside was approved by the fourth respondent before he signed the certificates of alienation annexed to Bedderson's affidavit.

[52] Accordingly it is clear that though the appeal must be dismissed the order made by the court *a quo* will have to be amended to provide also for the setting aside (in so far as it may be necessary) of the fourth respondent's approval of the third respondent's decision, with no further order for the remittal of the matter for reconsideration.

[53] For the sake of completeness it should be stated that no contentions were advanced before us as to the costs order in the court *a quo*.

ORDER

[54] The following order is made:

'1. Subject to paragraphs 2 and 3 below, the appeal is dismissed with costs including those occasioned by the employment of two counsel.

2. Paragraph 1 of the order of the court *a quo* is replaced by the following:

"1. The decision of the third respondent rea`ched at its meeting held on 9 July 1997, and of which the applicant was given notice by letter dated 10 July 1997 (Annexure WR 94) and, as far as it may be necessary, the approval of such decision by the fourth respondent are hereby set aside."

3. Paragraph 2 of the order of the court *a quo* is set aside.

4. Paragraph 3 of the order of the court *a quo,* renumbered as paragraph 2, is confirmed.'

.....
IG FARLAM
JUDGE OF APPEAL

CONCURRING:
SMALBERGER ADP
OLIVIER JA
MTHIYANE JA
HEHER AJA