

IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE

CIVIL CASE NO. 3130/2009

IN THE MATTER BETWEEN:

SIPHO ITALY NYATHI	1 ST APPLICANT
NTOKOZO MABUZA	2 ND APPLICANT
MENZI DLAMINI	3 RD APPLICANT
SANDILE DLAMINI	5 TH APPLICANT
MELUSI QWABE	6 TH APPLICANT
SAKHILE NDZIMANDZE	7 TH APPLICANT
WISEMAN DLAMINI	8 TH APPLICANT
BHEKITHEMBA DLAMINI	9 TH APPLICANT
SWANE JOSEPH DLAMINI	10 TH APPLICANT
MARTIN AKKER	11 TH APPLICANT

And

JUDICIAL SERVICE COMMISSION	1 ST RESPONDENT
SHERIFF OF SWAZILAND	2 ND RESPONDENT
SWAZILAND GOVERNMENT	3 RD RESPONDENT
ATTORNEY GENERAL	4 TH RESPONDENT

CORAM:

FOR APPLICANTS:

Q.M. MABUZA -J
ADVOCATE LUCAS MAZIYA
INSTRUCTED BY MR. T.L. DLAMINI
OF T.L. DLAMINI AND ASSOCIATES

FOR RESPONDENTS:

MR. S. KHUMALO

ATTORNEY GENERAL'S CHAMBERS.
JUDGMENT 12.02.2010

[1] This application seeks an order in the following terms:

- (a) **Dispensing with the forms of service and the time limits provided for by the rules of this honourable court and hearing this matter urgently.**
- (b) **An order interdicting and restraining the first and second Respondents from employing new Deputy Sheriffs.**
- (c) **Directing the second Respondent to renew the Applicants' Identity Cards for the period 31st July 2009 to 31st July, 2010.**
- (d) **Costs of suit as against all the Respondents jointly and severally one paying the other to be absolved.**
- (e) **Granting such further and/or alternative relief.**

[2] The application is opposed by the Respondents. At the hearing hereof it was agreed that the points in limine would be argued simultaneously with the merits as they were inseparable.

[3] The Applicants are deputy sheriffs for different districts in Swaziland. The first Respondent is the Judicial Service Commission, the second Respondent is the Sheriff of Swaziland, the third Respondent is the Swaziland Government and the fourth Respondent is the Attorney General who in effect is the representative of all the Respondents.

[4] The 1st Applicant was appointed Deputy Sheriff on or about the 28th June 2005 for the Hhohho Region by the then Sheriff of Swaziland Mr. Shiyumhlaba Dlamini. The 2nd to 10th Applicants received similar notices of appointment with differences in dates of appointment. I hereinunder set out the contents of the letter of appointment in respect of the 1st Applicant:

**"Sipho Italy Nyathi
P.O. Box 913**

Mbabane

Dear Sir,

RE: YOUR APPLICATION FOR APPOINTMENT AS DEPUTY SHERIFF

Your letter of 2nd June 2005 refers.

I am pleased to inform you that I have appointed you Deputy Sheriff for the Hhohho Region in terms of Section 4 (1) of the Sheriffs Act of 1902 and that you shall so act in that capacity until further notice.

Your identity card shall be issued to you upon the production of a certificate of professional indemnity issued by a lawfully registered insurance company.

I take this opportunity to congratulate you on your appointment and to urge you to always act within the confines of the law and the High Court Rules in the execution of your duties as Deputy Sheriff.

Yours faithfully,

SHIYUMHLABA N. DLAMINI
SHERIFF OF SWAZILAND"

[5] The Applicants contend that in terms of their letters of appointment, they were appointed for an indefinite period. The Deputy Sheriffs are given identity cards which are renewed every year. It is contended that these identity cards which are renewed every year are for purposes of the public being able to identify and confirm that the Applicants are indeed Deputy Sheriffs.

It is submitted by the Applicants that their identity cards are as of the 26th August 2009, the date on which the applicant deposed to his affidavit, the identity cards were due for renewal and the 2nd Respondent refused to have them renewed.

[6] The second denied that the Applicants had similar notices of appointment as the 1st Applicant. She submitted that some of the Applicants had fixed contracts of twelve months. She denied that the other nine Applicants' contracts were indefinite. In their replying affidavit the Applicants maintained that their contracts were open-ended and that they were appointed "until further notice". They replied that the second Respondent had appointed five Deputy Sheriffs during her tenure and it is these five whose tenure was twelve months.

[7] A close scrutiny of the letter of appointment of the 1st Applicant reveals that indeed the 1st Applicant was appointed "until further notice."

However, in my view this open ended contract is illegal because is not supported by the Sheriffs Act. Section 4 and 5 of the Sheriffs Act 1902, provides as follows:

"Duties of Sheriff and his Deputies.

4. (1) Where the Public Service Commission appoints a sheriff he shall, by himself, or his deputies, appointed by him and duly authorised under his hand and seal, and for whom he shall be responsible during his continuance in such office ..."

Names of deputies to be submitted

5. The Sheriff shall, upon the appointment of a deputy, transmit to the registrar of the High Court his name and place of abode, stating the district within which he is to act for him."

(My emphasis and underlining)

It is therefore clear to me that any appointment in terms of the aforesaid Act shall be permanent. Any variation by the Sheriff is illegal.

[8] The identity cards themselves are not provided for in the Sheriffs Act, 1902. They do not have any statutory basis but merely serve to identify the Deputy Sheriffs when carrying out

their work. Whether the second Respondent renews them or not is immaterial. The affected Deputy Sheriff can still carry out their work unhindered by not having them. Having them is a salutary practice but the Applicants cannot in my view be held to ransom by the withholding their identity cards. The cards should not even be such an issue that they ground a cause of action. In fact I believe that they were introduced during Judge Annandale's term of office as Registrar of the High Court by mutual understanding of the then Deputy Sheriffs. They were not a sole initiative of the Sheriffs office. They were never linked and are not linked to Deputy-Sheriffs' appointments.

[9] The second Respondent has submitted that there are presently numerous complaints and/or allegations of misconduct against the Applicants hence their cards and or contracts could not be renewed. She further states that the Applicants were advised of the complaints against them and responses were sought from them. However, most of the responses provided were unsatisfactory hence she could not renew their contracts and or cards. In support of her response, the second Respondent filed a bundled book of complaints against the Applicants.

[10] The Applicants in their reply have refuted that the complaints in the bundle relate to them nor that their responses if any were unsatisfactory. They state and indeed this is correct that the bundle contains complaints of the following persons who are not part of the applicants; namely Pat Jele, Sandile Myeni, Mandla Dlamini, Lindiwe Matsebula, Rudolf Diamond, Bheki Mavuso, Similo Dlamini and Sabela Maziya. The Applicants further state that the bundle does not have any complaints against Ntokozo Mabuza and Melusi Qwabe; the second and fifth Applicants respectively.

[11] It is the Applicant's further response that the said bundle is said to consist of complaints yet this is not the case. According to the first Applicant in the bundle is a letter he wrote to the second Respondent where he sought her assistance in the recovery of his fees for work done as a Deputy Sheriff from certain Attorneys. He is surprised that same is listed as a complaint. He further states there is a letter addressed to Attorneys Sibusiso Shongwe which is listed as a complaint against Sandile Dlamini the fourth Applicant. There is also a letter from the Swaziland Building Society addressed to the second Respondent complaining about delays in the signing of court process. This is also said to be a complaint. In the said bundle there are similar letters of the above nature which are said to be complaints yet they are not.

[12] The first Applicant has further stated that the other Applicants are said to have complaints outstanding against them yet the said complaints were answered. The second Respondent never advised them that their responses were unsatisfactory. The said bundle does not contain letters that the Applicants answers were unsatisfactory. The second Respondent renewed the

Applicants identity cards for June 2008 to July 2009 because the answers to the complaints were satisfactory.

A complaint for 2009 is that of Sakhile Ndzimandze who filed a response to same which is not in the said bundle.

[13] A copy of Sakhile Ndzimandze's (6th Applicant) response is annexed to the replying affidavit. It is too long and detailed to print. Suffice it to say that there was no response thereto by the second Respondent as to whether or not the explanation given by the 6th Applicant therein was satisfactory to the Second Respondent.

[14] The Applicants had also challenged the authority of the Judicial Service Commission the first Respondent who had caused an advertisement to be published in one of the daily newspapers inviting persons interested in being appointed as Deputy Sheriffs to submit their applications. The Second Respondent upon the advice of the Attorney General has prudently elected to cancel the interviews called by the 1st Respondents and has indicated that she will call fresh interviews herself; as the 1st Respondent has no legal authority to appoint Deputy Sheriffs.

[15] The contents of the advertisement are worrisome to the Applicants and in order to deal effectively with their concerns I set them out hereunder. Even if the 2nd

Respondent reissues the advertisement herself the Applicants believe that its contents will not change.

"People interested in being appointed as Deputy Sheriffs are invited to submit their applications to the Judicial Service commission Secretary, P.O. Box 19, Mbabane, for appointment by the Sheriff of Swaziland after due interview by the Judicial Service Commission.

Candidates should be at least 40 years old or above and should have the following qualifications and personal attributes:

1. Bachelor of Laws Degree (LLB) and/or
2. Bachelor of Arts in Law (BA Law)

Minimum Requirements:

1. Integrity, responsibility and good judgement, demonstrated by personal, work and criminal histories.
2. Good conflict management skills.
3. Ability to understand, interpret and apply State and local laws and departmental policies; react quickly and calmly in emergency situations and adopt an effective course of action.
4. Faithful performance of their duties.
5. No criminal record.

Duration:

Appointment will be for a period of six (6) months only and shall be renewable once with the discretion of the Judicial Service Commission.

Deputy Sheriffs will not be allowed to appoint their own Assistants without the approval of the Sheriff..."

[16] The Applicants contend that the contents of the advertisement has set conditions that are calculated to exclude them. Some of the conditions stipulate that an Applicant must have a Bachelor of Laws or Bachelor of Arts (Law) degree and be above the age of 40.

[17] The Applicants do not have the aforesated degrees and some are below the age of 40. Their ages are given as follows:

- (i) Siphon Italy Nyathi - 45 years
- (ii) Ntokozo Mabuza - 47 years
- (iii) Menzi Dlamini - 33 years
- (iv) Sandile Dlamini 37 years
- (v) Sakhile Ndzimandze - 26 years
- (vi) Bhekithemba Dlamini - 27 years
- (vii) Wiseman Dlamini - 41 years

- (viii) Melusi Qwabe - 41 years
- (ix) Martin Akker - 45 years
- (x) Swane Joseph Dlamini - 39 years

[18] The Applicants contend that even though they do not have the said degrees they have attended numerous workshops for Deputy Sheriffs. When they were appointed the condition they had to meet was that they had to be conversant with the rules of the High court as amended.

[19] The Applicants further contend that they have not been given notice to the effect that their appointments have been revoked by the 2nd Respondent. Neither were they notified that their services were not satisfactory. In fact they state that they were taken by surprise when they saw the advertisement as they legitimately expected their cards to be renewed. They further submit that the revocation of their appointment has been done in complete violation of the rules of natural justice as they were not given a hearing. They submit that in terms of the Constitution they are entitled to reasons for the decision taken by the 2nd Respondent for not renewing their identity cards; instead the 2nd Respondent has simply kept quiet.

[20] The second Respondent denies that calling for applications and or appointing more Deputy Sheriffs has the effect of terminating the Applicants' appointments. She verily believes that she has the power to appoint as many Deputy Sheriffs as it is necessary. This in my view is a salutary response by the second Respondent which can be construed as her not having closed the doors finally to the Applicants. However, she should also consider whether it is economically viable to have a large number of Deputy-Sheriffs.

[21] Although she has stated that she never made any promises to the Applicants she encouragingly denies that the conditions set in the advertisement are calculated to exclude the Applicants. She states that the conditions set out in the advertisement are an administrative measure aimed at improving the office of the Sheriff. My view is that the Sheriffs Act does not state that Deputy Sheriffs should hold any degrees.

[22] The Respondents raised a point in limine to the effect that this Court has no jurisdiction to entertain this application as the dispute had arisen out of the employer and employee relationship. It was contended that section 8 (1) of the Industrial Relations Act no. 1 of 2000 gives exclusive jurisdiction to the Industrial Court; it states that:

"the court shall, subject to section 17 and 65 hear, determine and grant any appropriate relief in respect of an application, claim or complain of an infringement of any of the provisions of this (Act) the court shall, subject to section 17 and 65 hear, determine and grant any appropriate relief in respect of an application, claim, or complain an infringement of any of the provision of this (Act), the Employment Act, the Workman's Compensation Act, or any other legislation which extends jurisdiction to the court or in respect of any matter which may arise at common law between employer and employee in the course of employment or between an employee's association, a trade union, a staff association and a member thereof."

[23] To fortify his argument, Mr. Khumalo has cited the case of Delisile Simelane v The Teaching Service Commission and Another: Supreme Court of Appeal case no. 22 of 2006 (unreported) wherein Zietsman JA said the following:

""or in respect of any matter which may arise at common law between an employer and employee" stand alone in the section and are not governed or qualified by any other words or phrases in this section. The section provides, in specific terms, that the industrial court shall have exclusive jurisdiction to hear, determine and grant appropriate relief in respect of any matter which may arise at common law between an employer and employee in the course of employment.

The learned judge goes on to say "In my opinion the wording of section 8 (1) of the 2000 Act can be interpreted in one way only and that is that the Industrial Court now has exclusive jurisdiction in matters arising at Common Law between employers and employees in the course of employment. The fact that special procedures for the determination of disputes have to be followed before that matter comes before the Industrial Court does not alter the position."

[24] The Respondents have further cited section 151 (1) and (3) of the Constitution which provides as follows:

"151 (1) ...

151 (3) notwithstanding the provisions of (1), the High Court.

(a) Has no original appellate jurisdiction in any matter in which the Industrial Court has exclusive jurisdiction."

[25] The case of **Swaziland Brewers Ltd and Sicelo Mabuza v Constantine Ginindza**, Supreme Court of Appeal case no. 33 of 2006 (unreported) wherein Ramodibedi JA stated:

"In my view section 151 (3) does two things in so far as is relevant to this case:-

(1) In plain and unambiguous language, the section ousts the jurisdiction of the High Court in any matter in which the Industrial Court has exclusive jurisdiction. To that extent, therefore, it stands to reason that there can be no question of the High court and the Industrial Court enjoying concurrent jurisdiction.

(2) In terms of the section the inherent original jurisdiction ordinarily vested in the High Court does not detract from the exclusive jurisdiction of the Industrial court in dealing with matters provided for under the act. This brings me to section 19 (5) of the Act. It reads as follows "A decision or order of the Court or arbitrator shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at common Law. The word "Court" is defined in section 2 of the Act to mean the Industrial Court.

...I'm satisfied that the intention of the legislature has to confer exclusive original jurisdiction on the Industrial Court in matters provided for under the Act. Put differently, all such matters must go to the Industrial Court."

[26] Mr. Maziya's response thereto is that the relationship of the Sheriff and the Deputy Sheriffs is not one of master and servant as envisaged by the common law. He contends that it is a notorious fact for example that the Deputy Sheriffs do not get any remuneration from the Sheriff. Instead Deputy Sheriffs charge fees regulated by a tariff which is prepared by the Chief Justice in terms of the Sheriffs Act of 1902. Such fees are paid by the litigant whose attorney has enlisted the services of that particular Deputy Sheriff. The Sheriff has nothing to do with it.

[27] Mr. Maziya has fortified his submission by citing a work by Sonia Bendix: Industrial Relations in South Africa 2nd edition 1992 at page 438 which states:

"... Once a contract of employment has been entered into, whether in writing, verbally or tacitly, it is accepted that the parties have by implication agreed to certain rights and duties at common law. The common law duties of the employer include the following:

- **To pay the employee**
- **To provide safe and healthy working conditions**
- **To provide work for the employee.**
- **Not to make the employee do work junior to the status for which he was employed.**
- **Not to contract the employee's services to another employer without the employee's consent.**

It is understood that the employee will in return:

- **Perform his work faithfully and diligently,**
- **Obey reasonable orders given to him in the normal course of his employment,**
- **Not deal dishonestly with the property of the employer,**
- **Not compete, in his private capacity, with the business of the employer."**

[28] Mr. Maziya concludes his submission by stating that all the characteristics stipulated by Sonia Bendix hereinabove are lacking in the relationship between a Sheriff and the Deputy Sheriffs. Consequently he says the three Supreme Court of Appeal cases cited by the Respondents are distinguishable on the issue of jurisdiction.

[29] I agree with Mr. Maziya's exposition and conclusion of the law. I further agree that there is a relationship between the Sheriff and the Deputies as does Mr. Khumalo. The point of departure with Mr. Khumalo and myself is that I agree with Mr. Maziya that such a relationship is not a contract of employment as envisaged in the Industrial Relations Act, 2000.

[30] That being the case this point in limine seeking to oust my jurisdiction fails and is dismissed.

[31] Mr. Khumalo advanced another interesting argument namely; that if the court found that the relationship between the Sheriff and the Deputies is not a contractual one as envisaged by the Industrial Relations Act; then the court should find that it is one of agency. That being so the Principal being the second Respondent can terminate the authority of the agents being the Respondents. Mr. Khumalo's argument was that the Principal can terminate even though it

appears irrevocable if there are circumstances that make it so; further stating that the Applicants' appointment was not indefinite. In support of this argument, he cited the case of Pretorius v Erasmus 1975 (2) SA 765.

[32] Interesting though the argument is, I hardly think that it applies in this case. For example the Sheriff is not personally liable financially in the relationship that exists between the Deputy Sheriffs and the litigating party. If there is financial mal-administration by a Deputy Sheriff the Sheriff is hardly called upon to make restoration as would a Principal in a Principal and agent relationship. Equally the agent (Applicants) cannot enter into a contract that binds the Sheriff.

[33] Alas, this argument must also fail as it does. The Respondents raised a further point in limine being that should this court issue an order directing the second Respondent to renew the applicants' identity cards for the period 31st July 2009 to 31st July 2010, it would be usurping the second Respondents statutory powers as the court has no power to do. The argument by the Respondents being that the appointment and overall administration of Deputy Sheriffs is vested with the second Respondent who derives such power from the Sheriffs Act of 1902.

[34] In support of the above contention the Respondents cite the case of Muziwethu Simelane and Others v The Ministry of Housing and Urban Development and Another, High Court case no. 2390 of 2007 (unreported) wherein the Applicants applied for an order directing the Respondents to forthwith issue the applicants with written permission approval in terms of section 10 (16) of the Urban Government Act 1969. It was held that this Court had no jurisdiction to issue such an order for it would be usurping the Principal Secretary's statutory-powers. This decision say the Respondent's was confirmed by the Supreme Court of Appeal.

[35] The Applicants response to the argument above is that there is no section in the Sheriffs Act that talks about identity cards. The introduction of identity cards was an administrative measure aimed at monitoring the performance of each particular Deputy Sheriff who had already been appointed and executing her/his duties as such. It has nothing to do with one's appointment as Deputy Sheriff.

[36] The Applicant's further argument is that the Respondents have approached the issue of identity cards from a wrong premise in that they confuse it with a contract. "Contract" is a legal term with legal characteristics as shown by Sonia Bendix in her textbook cited above. They further contend that the case of Muziwethu Simelane and Others v The Minister of Housing

and Urban Development and Another cited by the Respondents above, is distinguishable in that the public officer (i.e. the Principal Secretary) was being sought to be compelled to exercise his discretion in a particular way in the performance of a function stipulated by a section in an Act of Parliament. In casu the court is not being implored to order the second Respondent to appoint the Applicants as Deputy Sheriffs; they were appointed a long time ago even before the second Respondent was herself appointed. Herein she is being sought to perform a function which does not emanate from a statute but is necessary in the execution of the duties of a Deputy Sheriff. I am persuaded by Mr. Maziya's argument and I agree with him that in directing the second Respondent to renew their identity cards I would not be usurping the second Respondent's powers.

[37] It is a notorious fact that in the past Deputy Sheriffs have held these positions for life. Without seeming to give evidence and having worked as an attorney for many years Deputy Sheriffs such as Mr. Long (Hhohho) Mr. Dyson (Lubombo) Mr. Kelly (Manzini) and Mr. Rijkenberg (Shiselweni) worked for life as such. The first three died at a ripe old age while still Deputy Sheriffs. In some cases after their deaths a wife and or son carried on the work. Mr. Douglas Littler's appointment as a Deputy Sheriff has never been terminated.

[38] Furthermore, Mr. Maziya has correctly pointed out that there are some cases whereby it would be futile to direct a public officer to merely exercise a discretion invested in him or her. For example in a case where it is clear that the officer had already made up his/her mind that he was refusing to perform his/her duty or as in the case of *Cineland (Pty) Ltd v Licensing Officer, Hhohho District and Others* 1977 - 78 S.L.R. 106. In that case Nathan CJ, had no option but to compel the licensing officer to grant the application for a cinematograph film exhibitor's licence since directing him to exercise his discretion in the application would have been a futile exercise given that he had already made up his mind that he was refusing the application on the facts.

[39] Mr. Maziya drew my attention to certain issues that made him believe that the second Respondent had clearly made up her mind and was not prepared to work with the Applicants. I do not wish to delve much with the criticisms levelled at the second Respondent as these are very personal.

I shall merely deal with the issue that Mr. Khumalo advanced that the Second Respondent is not prepared to renew their cards because of the numerous complaints against the Applicants.

[40] On the face of it this reason is based on a genuine concern. It is the way the Second Respondent handled the issue of the complaints against the Applicants that raise issues of

unfairness, unreasonableness and arbitrariness. Mr. Khumalo has argued that as the administrator; if the second Respondent feels that in exercising her powers it will no longer be in the interests of justice to renew the Applicants contracts, she has a discretion to do so.

[41] An important decision such as this one which impacts on the ability of the Applicants to make a living for themselves and their dependants should not be lightly made on how the second Respondent feels; but should be made very carefully as the loss of employment affects the livelihood of many people together with their dependents.

[42] Mr. Maziya has addressed the issue of the complaints against the complainants most adequately. The identity cards of the 2nd and 5th Applicants have not been renewed and there are no complaints against them. There is substance in Mr. Maziya's submission that the complaints should have been properly investigated and adequately addressed before the decision not to renew the cards was taken. There is no evidence before this Court that this was done. In an ordinary workplace environment these are what are termed fair labour practices. At the very least the second Respondent should have applied these instead of unilaterally deciding not to renew the identity cards

[43] The final complaints by the Applicants is that the second Respondent did not afford them an opportunity to defend themselves before the decision not to renew their cards was taken. It is the Applicants submission that the failure by the second Respondent to afford them a hearing violated their constitutional rights in particular section 21 and 33 of the Constitution as well as the rules of natural justice. The latter as espoused in Swaziland Federation of **Trade Unions v The President of the Industrial Court and Another** (appeal case no. 11/97) (unreported).

[44] In his submissions Mr. Khumalo stated that the second Respondent did call the Applicants and gave them a proper hearing. He was not able to give the Court real evidence about the details of these hearings. He did not give the Court records of proceedings of these hearings. Consequently, I find that section 33 (1) and (2) of the Constitution has been violated: it provides as follows:

"33. (1) A person appearing before any administrative

authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law including the requirements of fundamental justice or fairness and has a right to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved.

(2) A person appearing before any administrative authority has a right to be given reasons in writing for the decision of that authority."

[45] It is clear to the Court that in order for both the Sheriff and the Deputies to carry out their mandates effectively the Sheriff Act of 1902 has to be replaced as it is outdated. Work relations nowadays rely on a legalistic framework which provides the relevant policies and procedures for the enforcement of rights and duties. This framework should provide as a minimum policies for the engagement and termination of the services of Deputy-Sheriffs, codes of conduct, discipline procedures with graduated sanctions and dispute resolution mechanisms.

[46] Because of the absence of the framework referred to above, at the very basic level, the rules of natural justice must be applied in all instances where there are complaints. At a Constitutional level the tenets of the rule of law should be observed by all public functionaries and abuse of power avoided at all costs. Any powers of the second Respondent that are found in the Sheriffs Act are now subject to the tenets of the rule of law set out in the Constitution.

[47] In fact section 5 of the Sheriffs Act envisages a situation where the Sheriff is a separate person from the Registrar. It states that the Sheriff shall upon appointment of a Deputy transmit to the Registrar of the High Court the Deputy's name and place of abode and the district within which he is to act for him.

[48] The Sheriffs Act is not even gender sensitive. It refers to a Sheriff being a male person and not a woman; which makes it most imperative that it should be done away with as soon as possible.

[49] I have already expressed my views concerning the identity cards as a non issue but since the matter is at the core of the Applicants' concern I find for the Applicants.

- (a) The application is granted with costs.
- (b) The Respondents are ordered to pay costs of suit jointly and severally one paying the other to be absolved; together with the certified costs of Counsel in terms of rule 68.
- (c) Further and alternative relief.

Q.M. MABUZA- J