REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

CASE NO. 13859/08 AND 55 RELATED CASES

In the matter between:

E SIBIYA	**APPLICANT**
and	
DIRECTOR-GENERAL : HOME AFFAIRS	**FIRST RESPONDENT**
MINISTER OF HOME AFFAIRS	**SECOND RESPONDENT**
AND 55 RELATED CASES	

J U D G M E N T

DELIVERED ON: 18th March 2009

WALLIS J:

[1] The social security applications that previously occupied a very large proportion of the Motion Roll in this Court and also in the Durban and Coast Local Division of the High Court have largely disappeared from the Court rolls consequent upon the implementation of the practice directive flowing from the judgment in *Cele v The South African Social Security Agency and 22 Related Cases*[1]. However, their place has been taken by an equal volume of cases directed against the Minister and

1 2008 (7) BCLR 734 (D). In consequence of approaches to the Deputy Judge President the practice directive will be reviewed by the Court during a hearing in March 2009.

the Director-General of the Department of Home Affairs relating to the issue of identity documents. These cases bear a marked similarity to the social security cases dealt with in *Cele* notwithstanding the fact that both the subject matter and the identity of the respondents differs. Accordingly when twenty such applications came before me in the Motion Court in Pietermaritzburg on the 27th January 2009 I adjourned them to the Motion Roll on the 5th February 2009 for the purpose of hearing full argument and seeing whether there is a way to address the issues arising in these matters in a more effective and less costly way. In doing so I was mindful of the fact that Ms. Nkepu, from the State Attorney's office, who appeared on behalf of the respondents, indicated that there is a considerable problem with these matters and that it is desirable that some attempt be made to address the problem.

[2] When adjourning those applications I gave certain directions intended to facilitate a consideration of the broader problems raised by these cases. The directions read as follows:-

> 2.The respondents are to be represented at the resumed hearing by the member of the staff of the State Attorney's office responsible for dealing with cases arising out of the alleged failure of the respondent to issue bar-coded identification documents.
> 3.A representative of the respondents is to be present at Court, such representative to be able to explain to the Court the position within the administration of the Department in dealing with applications for identification documents and the problems experienced therewith, as well as the Department's policy in dealing with letters of demand, such as those forming part of the papers in each of the cases...
> 4.In each of cases 10 - 29, where the applicant's claim is initially attended to by an agency other than an attorney, an affidavit is to be filed by an appropriate representative of the agency ... explaining:-
> (a) The basis upon which they advertise for or otherwise secure clients.
> (b) The basis insofar as remuneration is concerned upon

> which they represent their clients in applications of this type. Where one agency represents more than one applicant it will suffice for a single general affidavit to be delivered on behalf of that agency. In the case of the agencies known as Siyathuthuka Advisors and Magnavolt Trading, the affidavit must include an explanation of the basis upon which they operate under those different names from the same postal address.
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> 5.In the seven applications that I identified in the course of this morning's proceedings where the applicants are reflected on the Independent Electoral Commission website as being registered as voters, an explanation must be given as to the basis upon which they secured that registration and when they obtained the necessary bar-coded identification documents required for such registration.
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> 6.In matter number 11, which is reflected on my Roll as the matter of Shezi, where there are also application papers in a matter of Dlamini, the attorneys must furnish an explanation for the fact that there appear to be two sets of papers under the same case number but different names.
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> 7.In each application the instructing attorney is to deliver a notice setting out the basis upon which they (and any other legal practitioner such as counsel or a correspondent attorney) are acting insofar as the recovery of fees and expenses is concerned and what payments are made by the attorney in relation to that application."

[3] I thought that it would assist in the consideration of the issues arising in these applications for the papers to be considered by independent counsel who would be able to identify any difficulties therewith and provide submissions thereon from a non-partisan perspective, as well as address submissions on the broader problems raised by these applications. I was also concerned that the relationship between the various firms of attorneys acting on behalf of the applicants and the agencies through whom they appeared to obtain their instructions might raise ethical issues that require the attention of the KwaZulu-Natal Law Society. Accordingly I requested Mr. A. Dickson SC of the Pietermaritzburg Bar to assist the Court as

amicus curiae and he and Ms E Bezuidenhout willingly undertook that task. I have had the benefit of full submissions from them on the relevant issues in these cases and it is appropriate for me to express my gratitude to them for their contribution.

[4] When the matters again came before me on the adjourned date there were, in addition to the original twenty cases a further thirty six cases of the same nature, so that in the result there were fifty six cases requiring my attention[2]. Some of these were new cases and others had been adjourned by other judges to be dealt with together with the general body of such cases. At the hearing on the 5th February 2009 Mr. D.J. Shaw QC appeared together with Mr. D. Woodhaymal for a number of the applicants; Mr. A. Findlay SC, together with Mr. R. Ungerer, for others and Mr. R. Nirghin for the balance. The respondents were represented by Mr. M. Bofilatos and Ms G Kyriazis on the instructions on the State Attorney, Pretoria, and the State Attorney in Durban, Mr. K. Govender, appeared together with Ms. M Jonas and Ms N Nkepu. As argument could not be completed on that day, because counsel for the applicants wished to have additional time in which to respond to the submissions by the *amici curiae*, the case was then further adjourned to 13 February 2009, when argument was completed and judgment reserved. This judgment first addresses the general issues in these applications and then the specific applications.

[5] The first thing that becomes apparent on reading the files in these applications is that the attorneys concerned are using a standard precedent as was done in the *Cele* case. In each case an order is sought in the following, or substantially the following, terms, in some cases omitting the alternative prayer:-

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2 In two cases there were no papers in the files and in the one referred to in paragraph 6 of my directions I was informed that the papers in the file are the incorrect papers. This effectively reduced the number of applications to be considered to 53.

"1. The First Respondent is directed to process the applicant's application for an identity document made on the (date) at the **...** Office of the Department of Home Affairs, within 30 days from the date of this order.

2. The First Respondent is directed to do all such things as may be necessary to ensure that the Applicant's identity document is available at the District Office of the Department of Home Affairs for collection by the Applicant within 45 days of the date of this order.

Alternative to paragraph 2

3. The First Respondent is directed to provide the Applicant's Attorney of Record with reasons stating why the identity document cannot be issued and made available for collection, in the event of his inability to comply with the terms of paragraph 2 above, such reasons to be provided within 35 days of the date of this order.

4. The Respondents are ordered to pay the costs of this application, jointly and severally;

5. The Applicant be granted further or alternative relief."

[6] The accompanying affidavit is likewise in standard terms common to each of the applicants, with only minor and irrelevant variations[3]. The central allegations (taken from the affidavit in the case of Mr. E. D Sibiya) read as follows, without emendation in regard to the many grammatical errors:-

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3 The only significant difference lies with those attorneys who themselves write letters of demand on behalf of clients where no agent is involved on the face of the papers. Even there in most cases it is apparent from the typographical layout and wording of the affidavits that the attorneys have used the same draft affidavit as every other attorney. This is clearly the precedent on their computers and they simply fill in the gaps. That is on the assumption that the attorneys themselves prepare the affidavits as opposed to the agents through whom many of them obtain this work. I suspect, at least in relation to matters emanating from two agents and three firms of attorneys, that the agent prepares the affidavits. This seems to be the only reasonable explanation why the affidavits are identical, not just in their contents but in their appearance, something which is explicable if they come off the same computer.

"4.

The facts stated herein are true and correct and fall within my personal knowledge save where I have indicated otherwise. Wherever I make an averment relating to a statute or to the law, I do so on the basis of having received legal advice.

5.

This Application concerns the Identification Act, No. 68 of 1997 to which I hereinafter refer to as "The Act".

In terms of Chapter 2 thereof, the First Respondent has the duty to maintain a population register and in terms of Chapter 3 it is his duty to receive applications for and to issue identity document to South African Citizens and to persons lawfully and permanently resident in the Republic of South Africa.

6.

The purpose of this application is to obtain an order which would ensure that the First Respondent issue me with an identity document for which I had made application at the Pinetown District office of the Department of Home Affairs on the 23rd June 2008.

7.

Annexed hereto, marked "annexure A", is a copy of the acknowledge of receipt given to me by the District Office on the occasion I made the application.

8.

I was told that it would take about three months for my application to be processed and for my identity document to be issued.

9.

I have returned to the District Office on several occasions however was notified by the official who had attended to me that my identity document had not arrived and that I was to keep contacting them to check whether same had arrived.

10.

This process eventually frustrated me and I was forced to seek advise. An advisory firm called Magnavolt Trading addressed a letter on my behalf of the district office. A copy of the said letter is attached hereto marked annexure B. However, despite this assistance I am still without an identity document and I still do not have an official explanation why this is so.

11.

In the letter to the district office, the advisory firm requested that my identity document be made available for collection within 30 days of dispatch of the said letter, alternatively, that a full explanation be given why it cannot be issued.

12.

A copy of the letter is annexed hereto marked 'B' together with the registered slip.

13.

At the time of deposing to the affidavit, I understand that Magnavolt Trading has still not received a response from the district office.

14.

Neither the Act nor the Identification Regulations published in terms of the Act in Government Notice R978 of 31 July 1998 fix a time period within which an application for an identity document is to be processed and responded to. In the absence of such a provision it must be done within a reasonable period of time.

15.

Considering what I was told at the time I made the application, a reasonable period seems to be three months. It is clear from annexure 'A' which bears the date stamp the application was made that I have waited well in excess of three months and I have still not received my identity document.

16.

It is disappointing to note that none of the officials who assisted me when I personally called upon the district office for my identity document

could either furnish me with my identity document or a suitable reason why same could not be processed. This lack of assistance is further amplified by the fact that the letter referred to in annexure 'B' has gone unanswered.

If there was a problem in the way of issuing an identity document to me and I was at fault, I could have tried to resolve it if I was notified. However there seems to be total silence on the part of the Respondents.

17.

I have complied fully with all the requirements expected of me in an application for a bar coded identity document.

18.

I can state from personal knowledge that I am a South African citizen by birth and that I am a person who is lawfully and permanently resident in South Africa. This is the second category of persons, together with citizens, identified in Section 3 of the Act, as being subject to its provisions and therefore obliged to apply for an "identity card" referred to in Section 14 of "THE ACT".

19.

Such cards are not yet being issued and what I am entitled to receive, in terms of section 25 of the Act, is a green bar coded identity document.

20.

I have suffered a measure of indignity in having been denied the official document by which I can identity myself in the same manner as most other persons. It leaves me with the feeling that I do not exist in the eyes of the government. There have also been practical difficulties that have come my way.

20.1 I will not been able to vote in the election.
20.2 I have been refused the benefit of having a bank account in my own name.
20.3 I have been unable to take out an insurance policy to cover the costs of my funeral, or life insurance for that matter.
20.4 I have been also unable and have been experiencing difficulty in obtaining gainful employment.
20.5 I have also been unable to obtain credit from any financial institution or departmental stores.

The reason for the above was that I could not prove my identity as a bar coded identity document is always needed.

21.

I have a right to an identity document and the first respondent is obliged, in terms of the Act, to issue me with one in accordance with my application which was made as set out in Annexure 'A'. Should there be a sound reason why he cannot do so, then he should disclose those reasons to me so that he can try to address the problem and assist him in performing his statutory duty.

22.

The Respondents action or lack thereof in not responding to my application for a bar coded identity document is clearly unlawful."

[7] A number of legal issues arose and were debated before me arising out of these relatively simply allegations. Counsel were agreed that in the light of the judgment in *Cele's* case[4] the provisions of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002 do not apply to these applications. That leaves two other questions. The first is whether, as alleged the applicants' claims lie in terms of the Identification Act 68 of 1997 or in terms of its predecessor the Identification Act 72 of 1986 ("the 1986 Act"). The second is whether, and if so to in what pertinent respects, the provisions of PAJA[5] apply in respect of these applications. Apart from the bald allegation that the Identification Act 1997 applies neither of these questions is addressed in the applications, nor, it is fair to say, were they questions on which the counsel who appeared before me at the initial hearing were prepared to address me.

[8] The question of which Identification Act is applicable arises because the 1997 Act provides for the issue of identity cards rather than the familiar green bar coded

4 *Supra,* paras. [43] to [45]

5 The Promotion of Administrative Justice Act 3 of 2000

identity document. The latter form of identity document was issued in terms of the 1986 Act. That Act was repealed in its entirety by section 24 of the 1997 Act but, presumably because the Department was not yet in a position to issue the proposed identity cards, transitional arrangements were made in section 25 of the 1997 Act. Some confusion arose in the course of argument as to the wording of this section but the position has now been clarified.[6] The section as amended in 2000 reads as follows:-

> "1. Until a date determined by the Minister by notice in the *Gazette* the Director-General shall continue to issue the green, bar coded identity documents in accordance with the Identification Act 1986 (Act No. 72 of 1986) despite the repeal of that Act by section 24.
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> 2.Any green, bar coded identity document issued in accordance with the Identification Act 1986 shall remain valid until it is replaced by an identity card issued in terms of section 14 or until a date contemplated in subsection (4), whichever is the sooner.
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> 3.As from the date of commencement of the Identification Amendment Act 2000, all forms of identity documents other than the green, bar coded identity documents issued in accordance with the Identification Act 1986, will cease to be valid.
>
> 4.The Minister may by notice in the *Gazette* fix a date for the replacement of green bar coded identity documents referred to in subsection (2) and may make regulations regarding such replacement."

[9] Mr. Shaw QC for certain of the applicants pointed out that the language of section 25(1) requires the Director-General to "continue" to issue the green, bar coded identity documents "in accordance with the Identification Act, 1986" notwithstanding the repeal of that Act. The more natural sense of the language used is that until the identity cards are available to be issued in terms of the 1997

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6 It appears that the Department's official publication or hand book containing the Act is printed with the original text of section 25, overlooking the fact that it was amended in 2000.

Act there is to be continuity in that applications will be made and processed under the 1986 Act resulting in the issue of a green bar coded identity document. There is force in this contention and it is supported by the fact that elsewhere in the Act there is no reference to the green, bar coded identity document. Had it been the intention that this would simply be issued in lieu of an identity card one would have expected that the definition of 'identity card' in section 1 of the 1997 Act would have included a green bar coded identity document, but that is not the case. Instead the definition section refers only to identity cards, temporary identity certificates and birth, marriage or death certificates issued under the 1997 Act. That in turn creates difficulties under section 18 of the 1997 Act which deals with criminal offences including those involving the unlawful or fraudulent use of identification documents.

[10] On the other hand, however, the 1997 Act is explicit in saying that the 1986 Act is repealed. Had it been the intention to preserve the 1986 Act in force until the new identity card could be issued under the 1997 Act nothing would have been simpler than to say so. Alternatively the 1986 Act could have been retained and the 1997 Act not brought into force until it could be applied and identity cards issued. The preservation of the power to issue the green bar coded identity document is expressly said to be a transitional provision.

[11] Clearly section 25 has not been well thought out and is poorly expressed. In my view however (and I understood in the course of argument that Mr. Shaw was inclined to accept this) the better construction of section 25 is that it does nothing more than provide that until it is possible to issue identity cards as contemplated under the 1997 Act the Department will continue to issue the green, bar coded identity documents provided for in the 1986 Act, but will do so under and in accordance with the terms of the 1997 Act. I reach that conclusion essentially for three reasons. Firstly the clearly expressed intention of the 1997 Act was that the 1986 Act would be repealed and would fall away. Secondly I can find nothing in

the language of section 25 that is directed at maintaining the whole of the 1986 Act in force, as opposed to permitting the continued issue of the green, bar coded identity document. Thirdly, unless the 1986 Act were kept in force in its entirety it would be difficult to prosecute cases of identity fraud, save under the common law offence of fraud, and other improper and undesirable uses of identification documents would probably not be capable of being prosecuted at all. If the green, bar coded identity document is taken to be issued in lieu of the identity card provided for under the 1997 Act that problem can be overcome because the references to identity cards in section 18 can then be construed as including the green bar coded identity document. That is because the definition of that term only applies unless the context otherwise indicates.[7] In my view, once it is recognised that the continued issue of green bar coded identity documents is purely a transitional provision until identity cards can be issued, it would be incongruous or absurd to construe the expression "identity card" in the various subsections of section 18 as excluding such documents.

[12] I accordingly hold that the 1997 Act is the proper statute under which the applicants' claims to be entitled to the issue of identity documents lie.

[13] Turning to the application of PAJA the attitude of the various applicants differed. Mr. Shaw accepted that if an application for an identity document has not been dealt with at all that constitutes a failure to take a decision and this is administrative action as defined.[8] In heads of argument, however, he had submitted that if an identity document had been issued but not delivered to the relevant applicant this fell outside the definition of administrative action although he did not press this in oral argument. In my view that cannot in any event be

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7 *Town Council of Springs v Moosa and Another* 1929 AD 401 at 417; *Hoban v ABSA Bank Limited t/a United Bank and Others* 1999 (2) SA 1036 (SCA), para. [18] approving the judgment in *Canca v Mount Frere Municipality* 1994 (2) SA 830 (Tk) at 832B-G.

8 See the definitions of "administrative action", "decision" (para. (g)) and "failure" in section 1 of PAJA.

correct because subparagraph (f) of the definition of "decision" includes a decision relating to "retaining or refusing to deliver up an article." That seems to me to be broad enough to encompass a situation where the Department has produced an identity document in response to an application but has failed to make that identity document available to the applicant. I also think that it is immaterial for the purposes of PAJA at what stage of the process of producing and making available an identity document that process breaks down. The applicants make a single application for an identity document and do not receive it. To say that there is administrative action when the Department fails or neglects to attend to the application, but not when they have produced an identity document in response to the application but failed to make it available to the applicant, seems to me to involve a distinction without any material difference to the applicant. In either case the applicant has not received that to which they claim to be entitled. In my opinion it is inappropriate to fragment what should be a single administrative process into component parts and then to classify some of those parts as administrative action and others as falling outside that field. This is particularly so when the basic remedy in either event will be the same, namely a mandatory order requiring the Department to perform the task of providing the citizen with an identity document.

[14] This is also consistent, as Mr. Dickson pointed out in reply, with the fact that there is no longer a distinction between administrative law under the Constitution and administrative law under the common law.[9] PAJA is the statute enacted to give effect to the constitutional right to just administrative action and the underlying intention is that it is comprehensive and should cover the entire field of administrative law.[10] Whilst PAJA itself refers to administrative action as

9 *President of the Republic of South Africa v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) at para [135]; *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) at para [33].

10 *Bato Star Fishing (Pty) Limited v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) at para. [25]; *Minister of Health v New Clicks SA (Pty) Ltd* 2006 (3) SA 311 (CC) at para [95].

constituting either a decision or a failure to take a decision it is apparent from the definition of "decision" that it extends to the basic conduct of administrative functionaries in dealing with ordinary citizens in circumstances which can adversely affect the rights of those citizens and which has a direct, external legal effect on them. The failure by the State to provide an identity document to a citizen who is entitled thereto, whatever the reason for that failure may be, clearly affects the rights of that person and has a direct, external legal effect upon them. It would be surprising were this not so bearing in mind that even under our pre-constitutional dispensation it was held that the withdrawal of such a document could be the subject of judicial review, albeit within the narrow constraints of our administrative law at the time.[11]

[15] It follows that each of the applications in the present case is properly an application in terms of PAJA. As I have said that is nowhere recognised in the application papers. The fault in this regard lies with the attorneys who prepared the application papers. It is extraordinary that they should not have applied their minds to this possibility nor been advised by the various counsel who appear regularly in these matters of the potential application of PAJA. What is even more extraordinary is that a number of the attorneys and counsel who are regularly involved in these cases were formerly regularly involved in the social security cases dealt with in *Cele.* The judgment in that case dealt with the implications of PAJA in regard to applications for social security grants and appeals against refusals of such grants. The type of proceeding was fundamentally similar to the present applications. It was there held[12] after a consideration of the authorities, that PAJA was applicable to those applications. I said there that the failure by the applicants' legal representatives to recognise the potential application of PAJA was deplorable. It is even more deplorable in the light of that judgment that the practitioners involved in these cases have continued to ignore the implications of

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11 *Sachs v Dönges NO* 1950 (2) SA 265 (A) at 276E-F where Watermeyer CJ described the grant of a passport as an administrative act.

12 In para. [47]

PAJA for their applications. It is typical of the superficial and inadequate approach that is adopted to the preparation of the papers in these cases and, regrettably, until the involvement of leading counsel in the argument before me, in the presentation of these cases by counsel.

[16] The conclusion that PAJA is applicable brings into focus section 7(1) of PAJA which provides that any proceedings for judicial review in terms of section 6(1) of PAJA must be instituted without unreasonable delay and not later than 180 days after the date upon which the applicant became aware of the administrative action or might reasonably have been expected to have become aware of the administrative action. (I appreciate that section 7(1)(b) deals with the reasons for the administrative action but where the characteristic of the administrative action in question is inertia on the part of the Department that ceases to be relevant.) The determination of the date when the applicant became aware or should reasonably have become aware of the Department's default in providing the requested identity document is a matter of some nicety as no time is fixed in the Identification Act or the regulations for the delivery of the identity document and accordingly the question in every case is whether a reasonable time has elapsed from the time the application was made so that the applicant can legitimately claim that the Department is in default of its obligations. It is only at that stage that the period of 180 days provided in section 7(1) of PAJA can commence to run.

[17] Without any significant evidence on these questions or any reasonably comprehensive attempt to address them it is well-nigh impossible to say when the time period in each case commenced to run or when it would have expired. It is equally impossible to say which of these applications was brought timeously. In a number of the cases before me a reasonable approach to the time that has elapsed would suggest that they have. However, in a number of others, it is plain on any basis that the 180 day period must have expired long before letters of demand

were written or proceedings were commenced and accordingly that it was necessary for the applicant to seek an extension of time in terms of section 9(1) of PAJA. I have no doubt that in most, if not all, of the cases where the time limit of 180 days had been exceeded the Court would look favourably upon an application in terms of section 9(1). However, it is not open to the applicants' attorneys (for the applicants themselves would be wholly unaware of these technical requirements of PAJA) to ignore these requirements and assume that the time period will either be overlooked or extended notwithstanding the absence of an application for an extension of time. That is an impermissible approach to the preparation of application papers.

[18] The order sought in each of these cases presupposed that the respondents had not dealt with the applications for the issue of identity documents. That was the correct approach because it cannot matter where the problem has arisen in processing the application. In each instance an application had been made and no identity document had been forthcoming, at least as far as the application papers go.[13] This approach means that when viewed in terms of PAJA the complaint in each case is of a failure to take a decision in terms of section 6(2)(g). That brings section 6(3)(a) into play. This section reads as follows:-

> "If any person relies on the ground of review referred to in subsection (2)(g) he or she may in respect of a failure to take a decision, where:-
>
> (a)(i) an administrator has a duty to take a decision;

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13 I add this qualification because it is a fairly regular occurrence in these cases to discover that the required identity document was issued but is awaiting collection or in default thereof has been returned to the Department's offices in Pretoria. This is only discovered when the State Attorney becomes involved and investigates the matter. In my own preparation of this judgment I checked on the Department of Home Affairs website in the case of applicants for whom I had an identity number and discovered that in a number of instances (12 out of the 22 where I had identity numbers) the website reflects that the applicant's identity document has been delivered to them. In 5 others it reflects that the identity document is ready for collection. In 2 others I was informed from the Bar that the identity document had been received.

(ii) there is no law that prescribes a period within which the administrator is required to take that decision; and

iii)the administrator has failed to take that decision,

institute proceedings in a Court or tribunal for judicial review of the failure to take the decision on the ground that there has been unreasonable delay in taking the decision."

To some degree this is foreshadowed in the founding affidavits in these cases where it is alleged that neither the Act nor the Regulations under which the application is make fix a time period within which the application is to be processed. It is then alleged that "a reasonable period seems to be three months". This is said to be based on what each applicant was allegedly told when the application was made[14].

[19] My difficulty with this is that it presupposes that applications for the issue of an identity document are all of precisely the same type and involve precisely the same issues. However, that is patently not the case. There is a difference between those who are seeking the issue of an identity document for the first time and those who are seeking a replacement identity document. These applications are made under different regulations and raise different issues. In regard to initial applications for an identity document they are frequently accompanied by an application for the late registration of the birth of the applicant. This much emerges from many of the receipts in the cases before me[15]. That process of registering the person's birth and including them on the Population Register constituted in terms of section 5 of the 1997 Act must necessarily precede the issue of an identity document, because the identity document can only be issued to someone whose name has been entered in the Population Register. Bearing in mind that many of the people concerned in these applications are relatively

14 In the cases where Mr Soodyall is the attorney of record the affidavits all make this standard allegation although in the letters he wrote on behalf of the clients after he had procured that they sign the affidavits he said that they had been told to return in two months to collect their identity documents.

15 Of the 53 applications 15 involved a late registration of birth.

unsophisticated and not well educated the registration of their birth may involve queries and investigation from the side of the Department to satisfy itself as to the accuracy of the information furnished in support of the application.[16] Very often the only information available to the Department will be that contained in an affidavit sworn in support of the application for late registration. It requires little imagination to realise that the information contained in this affidavit may require further investigation. All of this will delay the process of issuing the identity document. The importance of ensuring that the information about a person's date of birth is correct hardly needs to be emphasised. In the absence of prior registration of birth it is difficult to see on what basis all of the applicants can confidently say when they were born, that being a classic example of hearsay. If the letters of demand and the founding affidavit set out the information that had been made available to the Department in support of such an application it would be possible to make a proper assessment of how long it should take the Department to confirm the correctness of that information and proceed to registration. If it would probably be necessary to undertake an investigation that would also emerge from a consideration of the information supplied. In its absence it is not possible to determine what is a reasonable time to complete the process.

[20] In other instances the application may involve an amendment to the applicant's date of birth. That possibility is expressly recorded on the standard receipts that appear in the application papers. Mr. Bofilatos told me, without challenge, that such applications almost invariably involve the applicant claiming to have been born on a date earlier than that currently reflected in the population register. Manifestly such applications will need to be investigated because, if they are granted, the applicant's entitlement to receive social security benefits, such as a pension, will be accelerated. There is accordingly the possibility that any such application may be tainted with fraud. In one instance the receipt rather

16 A number of receipts do not reflect that any supporting documents were put up in support of the application.

confusingly stated that the applicant wanted both to register the applicant's birth late and amend their date of birth, which *ex hypothesi* would not yet have been recorded. Again in the absence of adequate information no assessment of what would be a reasonable time in which to process the application is possible.

[21] Even applications for an identity document unaccompanied by these complexities may pose administrative difficulties. It should be reasonably straightforward where the applicant is able to provide details of the registration of his or her birth and indeed in many cases where their identity numbers accompanied the applications it appears from the Department's website that the document has either been furnished or is in the course of being processed, but very often this basic information is missing. In a number of cases the receipts suggested that no information at all had been furnished in support of the application. Other evidence may be sparse or incomplete. It cannot be assumed that in every case the application papers will be meticulously in order and the processing thereof simple. The administrative nightmare arising from the attempts by the previous regime to balkanise South Africa are too well-known for it to be assumed that the processing of all these applications is a matter of plain sailing.

[22] Turning to cases where a replacement identity document is being sought the reasons for that may be many and varied. The applicant may say that their original document was lost or stolen or has become damaged in some way. In each case the Department must satisfy itself of the correctness of the explanation and that the issue of a duplicate identity document is truly justified. Various problems were mentioned to me in the course of argument. Sometimes it transpires that the Department has two people who apparently share the same identity number or two applications in respect of people with the same name and no apparent distinguishing feature. Details of a person's marriage must be properly captured. No doubt where there has been a divorce or a spouse has died this too will impact upon the process.

[23] It should not be thought that I am suggesting that every application for an identity document or a duplicate identity document involves complex investigations. Were that so then the recent public statement by the Director-General that his Department is issuing fifty thousand identity documents a week could not possibly be true. I am merely indicating the nature of the problems that may arise in any particular instance in dealing with an application. I have examined each of the receipts given to the applicants in these cases. They are extremely confusing. Many of them contain no information concerning the person's birth other than the date of birth and their name. They do not suggest that any supporting documents have been furnished. Indeed many of them do not record that the two identity photographs that are a prerequisite to such an application have been furnished. Sometimes the receipt reflects a new application but then shows that a fee has been paid, which suggests that it is an application for a duplicate identity document. Some contain what appears to be an identity number but most do not. In a few cases an identity number is furnished but the Department's website indicates that there is some error with the identity number. It is unclear from some of them whether the receipt is in respect of an application for a temporary identification certificate or one for a permanent identity document. One or two receipts indicate that the identity document has been delivered.

[24] As the question of whether the Department has delayed unreasonably in attending to an application is a question of fact in my view if an applicant wishes to satisfy a Court that there has been unreasonable delay in dealing with their application they must furnish sufficient particulars of their personal circumstances and the nature of their application so as to indicate on what basis the reasonable period has been determined. Enough information must be furnished to convey to the Court the reasons why they contend that there has been undue delay in dealing with their application and why they allege that the Department is in default. In other words their application must be tailored to their own situation. Whilst one must be

cautious of applying statements made in the wholly different context of what constitutes a reasonable time for performing a contractual obligation in the different environment of administrative action it has there been held[17] that what is a reasonable time will depend amongst other things on the particular circumstances surrounding the performance of the contractual obligation in question and the difficulties, obstacles and delays in performing that were actually foreseen or would be foreseen by a reasonable person. It has also been said that one is entitled to expect reasonably prompt and appropriate action and due diligence on the part of the party obliged to perform. Suitably adapted these seem to me to be appropriate matters to take into account in determining whether a reasonable time has passed after the lodging of an application so that it can properly be contended that the Department is in default.

[25] If, after taking into account all the potential vagaries of the situation, whether those referred to above or others not identified by me, one could be satisfied that a period of three months would be an adequate period in every case within which the Department should either provide an identity document or refuse to do so, then the standard allegation in this regard could be accepted. However, it would require considerably more information than is at present available on these papers to satisfy me on that score. The consequence of considering as many applications as I had before me and requiring the parties to address a broad range of issues is that what has been presented hitherto as monolithic turns out to be more fragmented and diverse than could have been suspected. The potential diversity of these applications having become apparent and the broader problems that they raise for the administration in dealing with such applications having been brought to the fore, it would be quite unsafe to accept that the period of three months is a reasonable period in all cases. It may well be an appropriate period in certain or even many cases but once it appears over and over again in mass-produced

17 *St Martin's Trust v Willowdene Landowners Ltd* 1970 (3) SA (W) at 135-136; *Willowdene Landowners (Pty) Ltd v St Martin's Trust* 1971 (1) SA 302 (T) at 305G.

affidavits, having no regard for personal circumstances beyond the name of the applicant, their date of birth and the date upon which they applied for an identity document and which disregard the differences that exist between different applications, the allegation ceases to be credible in any case. One of the dangers of such mass-produced affidavits is that once it is shown in some instances that a particular allegation is of doubtful validity the Court is unable to discern in which cases it may be sound and which unsound.[18] Here the affidavits are identical even though they are made by different people who are differently circumstanced.

[26] It is I suspect for this reason that the practice of sending a letter of demand to the Department has evolved, putting the Department on terms to issue an identity document or provide reasons for not doing so.[19] However, the usefulness of such a notice depends upon it being couched in terms that will enable the Department to identify the applicant in question and their application and give them a meaningful response. If it merely compounds existing confusion it is of little help. That is the case with the letters of demand attached to the affidavits in these applications. Like the affidavits themselves they are in standard terms and they furnish the minimum of information. At most they contain the name of the applicant, their date of birth, identity number if they have one, or the reference number of their application, the date of the application and the office at which it was made and nothing more. In the case of notices emanating from agents they use the terminology "her/his" so that it is not apparent whether the "client" is a woman or a man. The Ubuntu Pension Services agency makes it even more difficult for the Department by only furnishing the initials and surname of the applicant. Others furnish only one first name even if the applicant has more than one. Copies of the receipts, which might provide a mechanism for identifying the application, are not attached to the notices. The notices are then usually sent in bulk by the agents

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18 In *Premier Trading Co. (Pty) Limited and Another v Sporttopia (Pty) Limited* 2000 (3) SA 259 (SCA) at 270F the Court said that certain affidavits "were rightly criticised... as being suspiciously alike".

19 The concept appears to be similar to that which underpins the giving of notice to place a debtor *in mora*. *Nel v Cloete* 1970 (1) SA 150 (A).

from whom they emanate. The papers before me show that often a single registered letter is sent containing letters on behalf of anywhere between sixty and ninety applicants. Whilst it is said in the affidavit that the letter is addressed to the District Office, thereby suggesting that it will be received by the officials dealing with the particular applicant, as a matter of fact the letters are sent to an official in the Department of Home Affairs in Pretoria. Inundated as the Department is with such letters they attract no response. In anticipation of this one firm of attorneys in the matters before me adopted the practice of obtaining an affidavit from the applicant in advance of sending the letter of demand. In the affidavit the deponent would nonetheless swear that the letter of demand had been sent and that no response had been received from the Department.

[27] It is of course, as I pointed out in argument, a deplorable situation that the Department simply does not respond to letters of this type even by way of a formal acknowledgement of receipt. The Constitutional Court has recently had cause to comment adversely on a failure by Departments of State and their legal representatives to respond to court processes.[20] The Court there said:-

> "This is not the first occasion that the State has not responded to a matter that is before this Court. This failure on the part of the State is regrettable. The State has an obligation to respond to Court processes. It cannot simply disregard Court processes. It must lead by example."

Transposed to the administrative field it seems to me that those comments are equally apposite. We will not be able to build a culture of openness and transparency in the administration of the government of this country when a matter as simple and straightforward as replying to correspondence as and when it is received is ignored. This is not only a matter of simple courtesy. If citizens are confronted with an unresponsive bureaucracy when they are constrained to have

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20 *Van Straaten v President of the Republic of South Africa and Others* [2009] ZACC 2, at para. [9].

dealings with State departments they will be far more likely to resort to tactics such as the procurement of false identity documents than would otherwise be the case. Even if this is an extreme situation, incompetence, bungling and unresponsiveness from the bureaucracy diminishes the respect in which State institutions are held by the population and if the institutions of State are undermined in this fashion the whole fabric of our democratic society is harmed.

[28] Having said that, the Department's lack of response to these letters cannot be decisive of the question whether the fact that such a letter is sent and attracts no response, in conjunction with the fact that the application has been made and no identity document has been issued[21], suffices to establish an answerable case that a reasonable time has elapsed since the application was made and accordingly that the Department is in default. If the letters had been properly informative and directed the Department's attention to the correct application and the nature of that application my inclination might have been to say that they did. However, as I have already noted, the letters do not. They all assert that the application is simply one for the issue of an identity document when manifestly that is not correct in many instances. They make no attempt to distinguish between an initial application and one joined with an application for the late registration of the applicant's birth. They do not distinguish between those instances and an application for a replacement identity document, whether with or without a change in information concerning the applicant. In other words they do not disclose whether the application is one that first requires an entry in the Population Register or an alteration to such an entry or neither of these. Other than mentioning the office where the application was lodged no address or contact detail for the applicant is given. If it were, that in itself would facilitate the resolution of cases where the identity document had been issued but not yet collected or delivered.[22] In some instances the letter may be confusing if not

21 I also bear in mind the standard allegation that everyone is told that their identity document will be ready in three months although this is of doubtful worth.

22 According to the public statement by the Director-General mentioned above

positively misleading. Thus in one of the cases before me the letter simply indicated that the application had been made at Mpumulanga, without indicating whether that was the province by that name or Mpumulanga in KwaZulu-Natal.

[29] My conclusion is that on this ground alone each of these applications is fatally defective. Mr. Shaw conceded as much in relation to the cases in which he appeared and indicated that I should dismiss the applications with no order as to costs. Mr. Findlay, whilst accepting these defects as posing some difficulty, rather more boldly asked for positive orders in favour of the applicants. In each of the ten cases in which he appeared, all on the instructions of the same attorney, he asked for an order in terms of paragraph 1 of the prayer, save for two cases where he conceded that identity documents had been furnished to the applicants[23], where he asked for leave to withdraw and costs. Mr Nirghin, who appeared in six matters, asked for leave to withdraw two applications and for the others to be adjourned to enable the papers to be supplemented. In the light of my conclusion that all these applications are fatally defective no positive orders and no costs orders in favour of the applicants can be granted. In this event Mr Findlay asked that the remaining matters in which he appeared be adjourned *sine die* to enable the applicants to supplement their papers with a view to remedying the deficiencies. In considering that suggestion it is appropriate for me to deal with certain other matters arising from the applications.

[30] Each of the applications contains allegations concerning the prejudice that the applicants allegedly suffer in consequence of the non-delivery of identity documents. With one or two exceptions where no allegations are made in this regard, the complaint is that the applicant will be unable to vote at the forthcoming election; is unable to open a banking account or obtain an insurance policy; is

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there are at least ten thousand identity documents awaiting collection. In 4 of the cases before me the Department's website reflects that the identity document is ready for collection.

23 There were in fact three cases emanating from this attorney where the identity document had been received. These were the two to which Mr Findlay referred and one other in regard to which his attorney had filed an affidavit arising from my querying the fact that the person concerned was a registered voter.

unable to obtain a job and unable to obtain credit from financial institutions. Whilst notionally plausible in isolation if these allegations appeared in a single case, when they are made as a matter of rote in hundreds or even thousands of cases they induce a measure of scepticism and a need for closer scrutiny.

[31] I start with the allegation in regard to voting at the next general election. Firstly, in terms of the Electoral Act 73 of 1998 a person not in possession of an identity document may nonetheless register to vote and vote by obtaining a temporary identity certificate. None of the applicants deal with this possibility. In addition, in nine of the cases that originally came before me the receipt for the application for an identity document bore an identity number. If one is in possession of a person's identity number it is possible by visiting the IEC website to ascertain whether they are registered as a voter. I did this in preparing for the hearing of the original applications and discovered that seven of the twenty people who had deposed to affidavits saying that they would be unable to vote at the forthcoming election were in fact duly registered as voters[24]. Although I raised this matter specifically in the directions I gave for the further hearing of this case I received only three explanations. In one it was stated that the applicant had received their identity document at the same time as the application was launched and had then registered as a voter. In another that the applicant's identity document had been stolen and in the third that the applicant sought a new identity document because her date of birth was incorrect. In the other four cases I have not been furnished with any explanation of how they managed to register as voters if they did not have an identity document and more importantly how they came to make the allegations that they did in their affidavits. It is I suppose notionally possible that all of them, having registered as voters at some stage in the past, have

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24 There were ultimately 11 registered voters amongst the applicants in 53 cases. Only 4 people who gave identity numbers and were old enough to vote were not registered as voters and some of the responses from the IEC website suggested that the problem might be that the numbers given in the receipts are incorrect. For the remainder no identity number appeared on the receipt so it was not possible to check their status.

subsequently lost their identity documents and need new ones. If that were the case they should have said so in their founding affidavits and explained their circumstances. In addition, were the situation that each of them had lost their identity documents, I would have expected the receipts proffered in support of their application to show that their applications were not for a new identity document but for a replacement. However, that is not the case. Even then they would have been able, as would all of the applicants who qualify to be on the voters roll, to address the problem of voting by simply approaching the IEC. I say all of the applicants who qualify for inclusion on the voters roll, because close examination of the papers revealed that 12 of the applicants are not so qualified because they are under the age of 18. In other words of the 53 people making the allegation that they could not register as voters, 11 were in fact registered and 12 were not entitled to be registered. Save for the 4 mentioned in footnote 24, I was unable to check the position with the remainder because no identity numbers were given on the receipts they presented.

[32] In this situation a concern naturally arises as to whether all of the applications for the issue of an identity document are indeed genuine and proper applications. I am mindful of reports that in the case of *Richter v Minister of Home Affairs and others*, which was heard in the Constitutional Court commencing on the 4th March 2009, the Minister of Home Affairs filed an affidavit in which she stated that fraud in relation to identity documents is rife in South Africa and that this type of problem lay at the root of the decision by the British government to require South African visitors to obtain visas. Accordingly where one is confronted with an application concerning that subject matter and containing allegations that are on their face inconsistent with other facts that emerge, one's suspicions are automatically aroused. This would not, of course, arise if the attorneys had taken proper instructions from their clients and furnished a proper explanation in relation to the nature of each of their applications for an identity document.

[33] A further and related issue arose in the case of the 12 applicants who *ex facie* their dates of birth had applied for identity documents when they turned sixteen, as required by the Identification Act, and who were accordingly not entitled in any event to be registered as voters. In these cases, which I will identify later in this judgment, the applications were brought by people who were still under the age of eighteen and who accordingly lacked the requisite legal standing (*locus standi in judicio)* to bring legal proceedings unassisted. A number of these applicants appear to still be at school. Nonetheless they made allegations about their inability to obtain jobs or enter into basic commercial transactions which one would not have expected them to be involved in at this time of their lives. Even with the adult applicants it is difficult to believe that all of them have tried and failed to open bank accounts or obtain insurance or credit or jobs. What is credible in one individual loses its credibility when every applicant says the same thing.

[34] I trust that I have said enough to demonstrate that the allegations of prejudice, like the other standard allegations in these affidavits, are of little or no probative value. Whilst I am sure that in individual cases problems of the type mentioned have arisen in respect of people who have applied for identity documents and not obtained them, it is simply untenable to accept that every single person in that situation suffers from these same handicaps and disadvantages. Again this illustrates the flaw in trying to standardise these applications without any regard for the personal circumstances of each applicant. It is obvious that there is no endeavour by the attorneys concerned to ascertain from each of their clients the nature of the difficulties they have encountered in consequence of not receiving an identity document[25]. This is not a particularly difficult task. Since I reserved

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25 If as I suspect may be the case in certain instances the agents are procuring the affidavits using a standard form the position is if anything worse, because it raises an additional and serious problem in regard to the fee claims of the attorneys. Whilst I would not expect such agents to know how to prepare a proper affidavit the attorneys are rendering bills of costs in which they claim to have taken instructions from the applicant and also usually claiming for spending time in consultation over the terms of the affidavit. If they do not take instructions, prepare the affidavit or consult with the client it is grossly improper to claim a fee for doing so.

judgment in these cases I have seen no less than three articles in the local press in which people who have applied for identity documents and not received them have told their stories to newspaper reporters indicating the precise nature of their problems and their experiences with the Department. I would have expected an attorney to be able to ascertain that information and put it in affidavit form with little difficulty provided they were willing to apply their minds and energies to the task.

[35] It is apparent from the two bills of costs with which I have been furnished in these matters, which all counsel accepted as typical, that the attorneys are charging for taking instructions from and consulting with the applicants in each case. In the two bills a fee was charged in each instance for drafting the affidavit at a rate of R125 per page, which is handsome remuneration for getting a clerk or typist to enter a few personal details and a couple of dates in a standard document and then pressing the "print" button. In the one case a further consultation with the client in order to traverse the affidavit was claimed. A further R100 was charged for drafting the notice of motion. In each instance the fees charged amounted to about R1800 by the time the application papers had been prepared. All the fees were charged on the maximum rate permitted under the tariff in Rule 70. I have considerable reservations whether any such consultation or process of taking instructions or drafting actually occurs beyond perhaps a clerk recording the name and some minor and routine personal particulars about the applicant in order to feed them into the computer program and print off the application papers. The grounds for my reservations arise not only from these two bills and the application papers themselves. One attorney, Ms Oodit, attached to her notice provided in response to my order what she described as a typical bill of costs. It included a fee for consulting with her client to take instructions to set the matter down. Yet in three of her cases the applicant's identity document had come to hand before the matter was heard, in one of them at least well before any discussion about a date of set down could have taken place. Yet in that case she was obviously unaware

that the client had received her identity document and indeed it appears that she could only contact the client through the agent. In the other cases I am told that it is not possible to contact the client.

[36] The remaining items in the bills I have seen have a similarly surreal air. Both have claims for consultations with the client in regard to the notice of set down and taking instructions to proceed. In the one case these were charged for separately. A fee is raised for attending to sort and arrange counsel's brief, yet even with the benefit of notice and preparation, including the instruction of leading and junior counsel, it was apparent in the cases before me that counsel had not been briefed with full sets of the papers. Even if they had I fail to see what is difficult about photocopying 12 to 15 pages and placing them in a brief cover. I would also be interested to see the instructions to counsel for which R125 is charged when counsel does nothing more than adjourn cases or take orders by consent in every case. I have already noted the fact that at the original hearing the counsel who appeared were utterly unprepared to deal with any of my queries. Yet the standard charge by counsel derived from these bills is R750 and for some extraordinary reason I am told by one of the attorneys that this is an amount that has been agreed with the State Attorney, although the Taxing Master has now indicated that only R300 will be allowed. This change caused Ms Oodit to complain that she will not be able to get counsel for this fee because:

> "Very few of these matters are settled before Counsel is briefed and accordingly I cannot brief counsel simply to record consent orders. Counsel is briefed to obtain the order and has to prepare accordingly"

The problem with this explanation and complaint is that in a number of these files, that had previously come before the court there were typewritten standard orders for adjournments or the like, including orders for costs that had manifestly been prepared in advance with only the case number, name of applicants and dates left blank and inserted in manuscript. Accordingly someone, whether counsel or

attorney, does come to court prepared to adjourn and, as there was no sign of any attorney being present on the first day that these matters came before me[26], I assume that it is counsel. In any event, how much time and effort goes into preparing half a dozen or more standard cases of a type that one has seen countless times before and which experience tells one are 99% certain to be adjourned? I repeat that I saw no sign of such preparation and none of my colleagues to whom I have spoken have had any different experience.

[37] As with the social security cases, when the attorneys succeed in obtaining orders for costs in these matters the bills of costs that are produced reflect that this work was done and claim amounts of, on average, R4000,00 to R5000,00. If one assumes on a conservative basis that ten cases appear on the Motion Roll every day during the year in Pietermaritzburg and a similar number on the Motion Roll in Durban[27] there are at least five thousand such cases being heard annually in the Courts of this province. If orders for costs are made against the State the total bills will be of the order of R20 to R30 million a year leaving aside the cost in terms of the State Attorney's office having to attend to these applications and the time and effort of the Department's officials who have to attend to these matters. Yet apart from the production of application papers that are run off on a word processor in standard form no significant legal effort is involved in dealing with these matters. In the social security cases I described this as a profitable cottage industry for the legal practitioners concerned. It remains such even though the focus of the cases has shifted. Indeed if anything the cottage has grown into something more substantial and all this at the cost of hard-pressed taxpayers who are having to cut their own spending in response to current economic circumstances.

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26 Notwithstanding the charge raised in both bills that I have seen for the attorney's attendance at court and, in the one, travelling for that purpose

27 In Durban the Registrar informs me that she limits the number of cases of this type to 10 a day and that she has set down cases until December 2009.

[38] A variety of other difficulties emerge when the affidavits are scrutinized. Many of these only became apparent because of the number of cases that ultimately accumulated on my roll and then only after I had spent several days in careful scrutiny of each set of the papers with the benefit of being able to cross-refer to other applications. Quite a few of the worst would simply not be apparent in the course of an ordinary motion court. I start by pointing out that all of the affidavits claim that the applicants are adults. This was false in 23% of cases. The standard affidavit says that the notices are sent to the district office concerned - which is incorrect in every case - and gave the Department thirty days in which to issue an identity document. The letters from Magnavolt Trading and Ubuntu Pension Services only give the Department fourteen days. Notwithstanding the attenuation of the notice period, in five cases involving Magnavolt Trading the affidavits were signed before the expiry of the period and overall I found eight cases where the affidavit was sworn less than 30 days after the demand. In two cases the letter of demand was written within two weeks of the application for an identity document being made. In the case of Ubuntu Pension Services there were five cases in which the affidavit was sworn within less than a 30 day period from the date of demand. The affidavits all say that the applicant was told at the time of applying for an identity document that it would take about three months to arrive. In the nine applications where Mr Soodyall is the attorney his own letter (sent in each case the day after the affidavit was signed) claims that the period was two months. In every case it is alleged that the period of notice has expired and there has been no response from the Department. In many cases that is factually untrue that the period has expired although it is correct that in none was there a response from the Department.

[39] All of this displays a flagrant disregard for truth and accuracy in these affidavits. The problems I have identified are not occasional or incidental so as to be ascribable to inadvertent clerical error. When only a few cases are dealt with emanating from different attorneys it is easy to overlook these difficulties.

However, when one is seized with fifty six such applications, as I was, and they are carefully perused these deficiencies become glaringly obvious. I am well aware that a Court does not lightly disbelieve what is said on oath in an affidavit, especially in circumstances where no opposing affidavits have been filed and the allegations made by the applicants have not been directly challenged. However, the deficiencies in these standard affidavits are so extensive and demonstrate such a disregard for accuracy and completeness that I am compelled to say that I regard any such affidavit in standard form as being thoroughly untrustworthy. That is a misfortune for those applicants who have genuinely been the victims of bureaucratic incompetence and I lay the blame squarely on the shoulders of the legal practitioners responsible for the preparation of the applications.

[40] Apart from the problems I have identified with the contents of the affidavits the manner of their execution also gives rise to suspicion. Of the fifty three affidavits in the applications before me, sixteen where Magnavolt Trading or Siyathuthuka agencies are involved are executed at the same police station in Umlazi - not of itself a cause for suspicion -and purport to be sworn before either Constable Ntokozo P Gumede, whom telephonic enquiries disclosed is stationed there, or Inspector Ntobelo P Gumbi, who according to the same enquiry is not stationed there. I was first curious as to the reason why applicants from a variety of places within the greater Durban area should all go to the same police station in Section BB, Umlazi . I became suspicious in the case of Sibiya, which was the first case on my roll of the fifty-six that I am dealing with. I noticed that although the receipt described the applicant as being Mr. Ernest Dan Sibiya, both the letter of demand sent on his behalf and the affidavit omitted his second name. However, the signature on the last page of the affidavit was that of E D Sibiya. I mean no disrespect when I say that the signature is written in a relatively unformed and unskilful hand as if the deponent is not accustomed to writing. However, the first six pages of the affidavit bear the initials “E.S” in the bottom right hand corner. The contrast between these initials and the signature of the deponent on the last

page is marked and startling. One requires no expertise in the analysis of handwriting to realise that the signature and the initials are not from the same hand.

[41] That caused me to examine the signature of the Commissioner of Oaths, Constable Gumede. Again it seems apparent that the initials "N.P.G." on the first six pages of the affidavit were not written by the same person who wrote the name of the constable "Ntokelo P Gumede" after the attestation. Leaving aside any other differences, the "G" of the initials is formed by writing the letter "C" and executing a separate right angle that meets the lower curve of the C at its extremity. However, the letter "G" where it appears on the attestation is wholly different consisting of a fluent and uninterrupted semi-circle which at the point where the circle is broken returns towards the main curve. The difference is absolutely obvious to the naked eye.

[42] Having noticed this problem I then compared the various signatures purporting to be those of Constable Gumede that appeared on the affidavits in subsequent matters. The variations between them are such as to convey to me the distinct possibility that not all come from the same hand. In addition the printing of the Constable's name, address, area and rank underneath the attestation as well as on the stamp certifying the document to be a true copy of the original appears to be in a different hand from both the signature and in some instances the initials appearing on the various pages of the affidavit. It is also the same printing that appears on the affidavits purporting to be sworn before Inspector Gumbi. In one case (number 45) whoever wrote that started out by writing Gumede and changed it to Gumbi. What is more the signature of Inspector Gumbi is extremely similar to that of Constable Gumede

[43] It will be obvious that problems such as these cast doubt not simply on the reliability of the affidavits but on their genuineness. I find it puzzling in the

extreme that the three attorneys involved in the cases emanating from these two agencies, who practise in different centres as far apart as Queensburgh, in the vicinity of Pinetown to the west of Durban, in the centre of the city and Phoenix to the north of Durban, should have all their affidavits executed before a Commissioner of Oaths situated in Umlazi. I would not have expected this if their clients had been to their offices and consulted with them over the preparation of affidavits. Attorneys invariably have arrangements with other attorneys, post office or bank officials, or their local police station for clients to be taken to their offices for the purpose of having affidavits attested and commissioned. The matters I have noticed are consistent with some other person, probably the agent, attending to the commissioning of the affidavit and errors subsequently detected in that process being remedied at a later stage. As these are the affidavits referred to in footnote 3, *supra,* that would not surprise me. Each of the affidavits where these two agents are involved is identical in layout, typeface, justification of the margins and contents including a gross misspelling of the address of the State Attorney[28]. None of them bear any resemblance to documents that undoubtedly are prepared by the attorneys as these are typed in a different font, with different margins and justification and a wholly different layout, different for each attorney. The obvious explanation is that the attorney does not in fact prepare these affidavits at all and they are prepared by the agent. That is significant if these attorneys are claiming in bills of costs for taking instructions and preparing the affidavits. The same is true if the notices of motion are being prepared by the agent from a precedent.

[44] There is one other curiosity in regard to the execution of the affidavits in all cases. It is that whilst each affidavit itself purports to be signed by the applicant and a Commissioner of Oaths and each page of the affidavit is initialled at the foot by

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28 In the cases emanating from two of the attorneys, Clinton Short and Arif Mahomed and Associates, the notices of motion also appear to be prepared on the same computer and with the same layout as the affidavits. It is noticeable that this is not the same as the font and layout of, for example, the notices of set down, which are clearly prepared by the attorneys.

both the deponent and the Commissioner of Oaths[29] the annexures to the affidavit are almost invariably not initialled by either the applicant or the Commissioner of Oaths[30]. That suggests to me that they may not have been attached to the affidavit at the time it was sworn. All of this raises the distinct possibility that what actually happens in these cases is that a standard form affidavit is presented to the "client", who signs it when first approached by the agent or attorney and that thereafter arrangements are made for the affidavits to be "attested and commissioned", the annexures are added and what appears to be a complete affidavit is then given to the attorney for the purpose of preparing a notice of motion and filing the application with the Court.

[45] Apart from the question marks over the execution and attestation of these affidavits I also came across cases where there were other disturbing features. In matter number 26 the applicant is reflected as Njabulo Thabiso Mbatha, yet the signature and initials are those of one G B Mbatha. This applicant is only 16 years old. The affidavit purports to be sworn in Pietermaritzburg, but the commissioner of oaths is an attorney practising in Westville, who apparently carries his stamp with him against such eventualities as being required to act as a commissioner whilst away from the office.[31] In matters number 38 and 51 the signatures and initials on the affidavit are clearly by the same person. Both emanate from the same attorney. In matter number 16 the receipt attached to the founding affidavit states explicitly that the identity document was posted to the applicant long before the date of the letter of demand. Neither the letter nor the affidavit deals with this.

[46] To complete this sorry litany of incompetence, slovenliness and disregard of applicable law, I should briefly mention the fact that, as pointed out by the *amici*

29 Subject to one or two exceptions to which I will refer later where the affidavit appears to be signed by someone other than the applicant and those I have mentioned where the initials appear to have been inserted by someone else.

30 There are some cases where the receipt is initialled but none where the letter of demand and proof of posting are initialled.

31 This attorney acted as commissioner of oaths in respect of at least one other affidavit sworn in Pietrmaritzburg (Matter no 47).

curiae, in many instances the notice of motion did not comply with the requirements of rule 6. There were two principal problems. Although the applicants' attorneys practised in and around Durban the proceedings were all brought in Pietermaritzburg[32]. However, the address for service given in the notice of motion in each instance is the address of the Durban attorney rather than that of the correspondent attorney in Pietermaritzburg. There was accordingly non-compliance with the requirements of rule 6(5)(b). Secondly, in a number of instances, whilst the notice of motion was in accordance with form 2(a) either no date was inserted for the giving of notice of intention to oppose or no date was inserted in the final paragraph to indicate when the case would be heard if it was not opposed. Apparently because of the difficulty of finding a place on the motion roll for these matters due to the number of such cases being enrolled, the attorneys adopt the practice of simply serving a notice of set down once they obtain a date for hearing on an unopposed basis. In some instances, as for example in Sibiya's case, that notice of set down for hearing on the unopposed motion roll was given prior to the expiry of the *dies* within which notice of intention to oppose could be given. Whilst these may seem to be relatively minor problems, and they certainly pale into insignificance in relation to the difficulties with the merits of the applications, they provide a further indication of the approach adopted to these applications. In cases where the State Attorney delivered notices of intention to oppose and notices in terms of Rule 7(1) these were ignored and the cases were left on the unopposed roll.

[47] Mr. Bofilatos, on behalf of the Department, made the point that if one examines the time periods in many of these cases they suggest that the priority of the legal practitioners involved (perhaps spurred on by the agents through whom most of them were obtaining this work) is simply to get to the stage as quickly as possible where a set of application papers can be issued and served on the State Attorney.

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32 No reason is given for adopting this more expensive mode of procedure but I assume that it enables each attorney to have more cases heard than would be the case if they confined their activities to their local court.

The reason is obvious, namely that once that occurs, the attorney can be reasonably assured that in due course an order for costs will be obtained and they will be paid. A similar incentive would underpin the conduct of the agents because of the manner and circumstances in which they are to be remunerated. This is something that I will deal with in the latter stages of this judgment. For now it is sufficient to say that on the face of matters there was frequently an unseemly rush on the part of the attorneys to reach the stage where a set of application papers could be issued. In the process corners were cut, there was a lack of investigation of the facts, elementary rules were disregarded and defective application papers issued and the entire process is infected with an air of impropriety.

[48] Against this background I have considered whether the cases in which Mr. Findlay appeared, where he sought leave to supplement the application papers, are sufficiently different from those in the other cases before me to warrant the grant of that indulgence. In my view they are not. Not only are they all fatally defective for the reasons already given but the source of the attorney's work is Ubuntu Pension Services whose letters to the Department are unhelpful, uninformative and in certain respects misleading. These are not the kind of matters that can be cured by way of supplementary affidavits. The proper way to address them is with a clean slate from the start.

[49] In the matters in which Mr. Nirghin appeared he asked that matter number 30, where the incorrect papers are in the file, should be adjourned *sine die*. As it is unclear which matter is in fact before me it seems preferable to strike the case off the roll. In matter number 42 it emerged that the applicant had received her identity document and he asked for leave to withdraw the application with no order as to costs. In matter 55 he likewise asked for leave to withdraw the application on the basis that the applicant is an unassisted minor. As the applicant has in any event according to the Department received the sought for identity

document that seems a proper approach. That left only matters 25 and 56 where, like Mr. Findlay, he asked for leave to supplement the papers. Again I have considered whether the papers prepared by his instructing attorney, Mr. Voller, are sufficiently differentiated from the other applications to justify that indulgence. In my view they are not. They are also based upon letters from Ubuntu Pension Services the defects in which cannot be cured by way of a supplementary affidavit. In addition in these applications there is the curious feature that the notice of motion in each instance is signed and dated before the founding affidavit is signed, although only issued out of the High Court after the papers are complete. This merely gives a further indication of the "production line" approach to these applications. In my view it is not appropriate to grant leave to supplement the application papers.

[50] In reaching these conclusions I have borne in mind the probability that many of the applicants are poor and disadvantaged people, who may well have been the victims of an unsympathetic bureaucracy. I have also borne in mind that the Constitution specifically protects the right of access to courts. However the exercise of this right is still dependent upon an applicant for relief establishing their entitlement thereto. The defects I have identified are defects of substance not procedure and they have the result that the acceptable evidence before me does not suffice to establsih a *prima facie* case. Sympathy for the applicants does not entitle a court to disregard this. I am sure that some of them have not been well treated by the Department in their dealings with it. The fact that their true circumstances are not before the court arises solely from the failure, unwillingness or inability of their attorneys to obtain proper instructions and then to prepare a proper set of application papers. The way in which the cases are prepared suggests that the attorneys' concern is with their own remuneration rather than the interests of their clients.

[51] I have referred in the preceding portions of this judgment to the information that I

was able to ascertain by way of accessing publicly available websites intended to make that information available. There is not the slightest indication that the attorneys have undertaken similar investigations on behalf of their clients. Had they done so I would expect reference to the results of their research to appear in the affidavits. I have referred to this material in this judgment, not as additional evidence, but to highlight the lack of research and consideration that goes into the preparation of these cases. There is no indication that either the attorneys or the agents seek to follow by these means the progress of their clients applications and the correctness of factual allegations in their affidavits. If their purpose was to facilitate their clients obtaining identity documents this should be a first resort not something that is disregarded. One would then expect letters of demand to be nuanced and to ask in cases where it is said that the identity document is being printed how much longer it will take before it becomes available for collection. Where the website shows that the application has been captured the enquiry could be directed at how long the process of consideration and production will take from there. However, this is not done even though one would expect it to be the first stage in a process of seeking to help a client to obtain an identity document. Litigation is not necessarily the best way in which to obtain bureaucratic efficiency. A courteous phone call is usually more effective. The overall impression is that it is not the procurement of an identity document that matters but procuring an order for costs payable from the public purse. Neither sympathy for those who have been ill-served by their lawyers nor the provisions of the Constitution are such as to rescue the present cases from their deficiencies.

[52] That leaves as the penultimate matter to be addressed in this judgment the issue raised by paragraphs 4 and 7 of the directions that I gave at the first hearing. In that regard I have been furnished with affidavits by three agents, a Mr. Karl Smith on behalf of Magnavolt Trading and Siyathuthuka Advisers, Mr. Barnabas-Joshua Jina on behalf of Ubuntu Pension Services CC and Mr Mzwakhe Armstrong Mbuyazi on behalf of Horizon Pension Services. I will deal with each in turn.

[53] Mr. Smith describes himself as a director of Magnavolt Trading, which he claims is a community based organisation. If that is in fact correct it is odd for such an organisation to choose a name that suggests it is a trading business possibly active in the electrical industry. He says that he was previously employed as a manager by Siyathuthuka Advisers and that when that firm closed their offices in about October 2008 he subsequently opened the office of Magnavolt Trading and used the same postal address. He does not identify who, other than himself, was involved in the business of Siyathuthuka Advisers nor does he explain why it closed. As there are letters from Siyathuthuka Advisers dated in October and letters from Magnavolt Trading dated in September there appears to be some overlap. The letters sent by each are identical, save that under Maganvolt Trading the period within which a resposne is demanded has been reduced from one month to 14 days. One suspects that it is merely the same business carried on under a different name. On the critical questions of where and how they secure their clients and how they are remunerated for their services his affidavit is extremely terse. The relevant paragraphs read as follows:-

"6.

Magnavolt Trading secures their clients via Councillors and the constituents that they serve.

7.

Magnavolt Trading generates its income from the attorneys in respect interpretation fees, transport costs, etc."

The three attorneys whose application papers included letters of demand emanating from one of these two agencies are equally terse in the notice they signed. They say:-

"With regard to agents they assist in the interpretation, the transportation of clients and similar services. The amounts paid to

> them are not recoverable in the bills of costs which are taxed and these amounts are paid by the attorneys. The agents are not paid any amount for introducing clients or any fee of that nature."

That statement was signed by Mr. Clinton Short, Mr. Arif Mohamed and Ms Ashieka Naidoo. In the same document they made it clear that they act on the basis that they will only be paid the amount of any bill of costs taxed in a successful application and they will not look to the client for any further payment.

[54] Mr. Jina, on behalf of Ubuntu Pension Services CC put up two affidavits, differing only slightly in their terms. He says that he obtains his clients mainly from rural areas as a result of the relationships he has formed with traditional leaders such as chiefs and indunas or ward councillors. He says that he travels to the required areas and obtains all the necessary details from the respective clients so as to enable him to formulate a letter to the Department of Home Affairs. He explains he does this because the clients generally cannot afford to travel to Durban, cannot speak English and are insufficiently educated to formulate such a letter. He does not charge for these services as in most cases it will be an exercise in futility due to the clients being impoverished. If he receives no reply to his letter to the Department he refers the matter to an attorney, usually Ms. Oodit (who instructed Mr Findlay), although in some of the cases before me he referred the matters directly to her Pietermaritzburg correspondent, Mr. Marco Voller. In regard to remuneration he is very nearly as terse as Mr. Smith, saying only that:-

> "The attorney thereafter deals with the matter and if ultimately successful the attorney reimburses me my expenses and pays for any translation services rendered as the attorneys concerned do not have full time employees that are able to act as translators."

Ms. Oodit, in her response to my directive, said that she did not charge any client anything in excess of what she could recover for each individual application by

means of taxation on a party and party basis of a bill of costs. She attached the bill of costs to which I have already referred in this judgment. After taxation it shows a recovery of R4378,68. She then says:-

> "Out of the amount received in payment of the taxed bill I pay disbursements in accordance with the bill, including stamps, Sheriff's fees and Counsel's fees. As there are no provisions for the recovery of disbursements paid to translators and the like, I pay the expenses and translation services of whoever assists me in the individual applications."

Mr. Voller, in his affidavit, simply does not deal with the financial relationship between him and the agents. He confines himself to saying that he pays counsel in accordance with certain tariff guidelines within two weeks of presentation of a fee note.

[55] The third agent to put up an affidavit is Mr. Mbuyazi on behalf of Horizon Pension Services. It is unnecessary to deal with his affidavit as it is a carbon copy of one of the affidavits by Mr. Jina, surprising though that may seem.

[56] Two of the attorneys in matters before me, Mr. R. Soodyall and Ms F. Karodia do not appear from their application papers to have matters referred to them by agencies. Ms. Karodia filed no response to my directions. Mr. Soodyall, somewhat surprisingly, signed the same notice as had been signed by Messrs. Short and Mohamed and Ms. Naidoo. There is accordingly nothing on the papers before me to indicate how either of these two attorneys obtain their clients. It may be that they are so well known in this field of work that clients come to them unsolicited, but bearing in mind the nature of the clients this seems slightly improbable. It may be that the clients are referred to them by agencies but they prefer to write their own letters to the Department. It may be that they advertise in suitable media. Certainly there are attorneys who do so in relation to this type of

work. During the course of preparing this judgment one of my colleagues drew my attention to an advertisement in a regional newspaper circulating in the Durban area involving another firm that is active in this field, although not in any of the cases before me, and reading as follows:-

"PROBLEMS GETTING YOUR IDENTITY DOCUMENT?

(INGABE UNEZINKINGA NGOKUTHOLA UMAZISI WAKHO)?
We will help you get your Identity Document Quickly.
YOU DO NOT HAVE TO PAY."

The advertisement continues in English and Zulu and urges people to come and see the attorneys immediately, no appointment being necessary.

[57] I find the relationship between the attorneys and the agents in the cases before me troubling and Mr. Dickson submitted that they should be referred to the KwaZulu-Natal Law Society. It is perfectly plain that the only reason that this work is being undertaken is the expectation that an order for costs will be obtained against the Department of Home Affairs and that payment to the attorney, counsel and agent will be forthcoming from the public purse. This clearly provides an incentive to rush into litigation without adequate enquiry and investigation.[33] Leaving that aside it seems to me that the answers furnished in response to my directions about the payment of fees to the agents by the attorneys are deliberately opaque. No indication is given of the basis upon which the agents compute their charges for travelling and translation work, much less the "etc." of Mr. Smith's affidavit. It is unclear whether they are paid a fixed fee in each case or whether the fee varies

33 This is plainly the case here as evidenced by the instances where the identity documents had in fact been issued. It is also evidenced by the failure to differentiate the cases and enquire into such obvious matters as a note on the receipt that the identity document had already been furnished or that a temporary identity document had been furnished. It is also evident in the number of cases where litigation was commenced on behalf of minors even though the attorneys knew their dates of birth. It is apparent from the cases where letters of demand were rushed out within a matter of a few weeks of the application being made and the cases where the founding affidavits was deposed to prior to the letter of demand being sent.

from case to case depending upon what work is done. There is, for example, no reason to believe that all of the applicants require translation services to communicate the relatively simple facts of these cases.

[58] It is said that translation services cannot be taxed as a recoverable disbursement but I do not think that is correct. If translation services are required they are properly a cost between party and party. That much is evidenced by the fact that item 2 in section D of the tariff in rule 70 is a fee payable to the attorney for:-

"Attending to arrange translation and thereafter to procure same, per quarter of an hour or part thereof..."

Item 5 in section D reads:-

"Testimony : Fair and reasonable charges and expenses which in the opinion of the taxing officer were duly incurred in the procurement of the evidence..."

That seems to cover translation services. Equally if travelling costs have to be incurred to take an affidavit to a client and to have it sworn or for the attorney to travel to a place where they can conveniently take instructions from their client, these are disbursements that can be recovered. Indeed not only are disbursements recoverable for this but under item 11 of section A in rule 70 additional remuneration can be claimed for time spent travelling.

[59] The explanation for not including the agents' charges in the bills of costs presented for taxation does not appear to be well grounded. The bills are clearly prepared by people familiar with the tariff. Were the position that proper accounts had been rendered for translation services and travelling on the part of the agents one would have expected them to be included. Their omission and the fact that no accounts have been put up in support of these claims casts doubt upon the correctness of what I have been told in this regard.

[60] It is unnecessary for me to canvass in any detail the relevant rules of the KwaZulu-

Natal Law Society. A payment to secure work is a fundamental breach of those rules falling under the general rubric of touting. An agreement to pay a fee to a party who refers work to an attorney on a fixed basis is either touting or an impermissible sharing of fees with the third party. It is a serious breach of the ethical rules governing the attorneys' profession.[34] The fact that the payments are described by some other name can make no difference if in truth and in fact they are paid for the purpose of procuring the work from or through the third party. Mr. Dickson SC in his reply submitted that on these facts:-

> "The agents are paid from the proceeds of the application on success. *Prima facie* this is a fee sharing arrangement or an inducement to secure work."

I agree with that submission and this judgment will be referred to the KwaZulu-Natal Law Society for it to consider whether the payments made to agents by the firms of N.Oodit and Associates, Clinton Short Attorneys, Arif Mohamed and Associates, Ashieka Naidoo & Company and any such payments by Marco Voller Attorneys constituted improper payments by the attorneys in that they were either given to secure work improperly or constituted an improper sharing of fees. The true position will no doubt be established quite readily by an exercise of the Council's powers of inspection in terms of section 70(1) of the Attorneys Act 53 of 1979.

[61] Regrettably that is not my only concern in these matters. I have drawn attention earlier in this judgment to the basis upon which bills of costs are prepared in these cases and presented for taxation. For reasons already given I have substantial reservations as to whether the bills of costs presented for taxation by these attorneys are in fact an accurate reflection of the work that they perform or whether they are, like the application papers, prepared as a matter of rote in the knowledge that they will be agreed with the State Attorney. The ability of the

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34 *Law Society, Cape of Good Hope v Berrangé* 2005 (5) SA 160 (C).

State Attorney to investigate and challenge the bills is limited because, so I am told by Mr. Govender, the Registrar is in the practice of setting down thirty, forty or fifty bills for taxation on the same day and relying on the attorneys to settle on a figure. Not only am I concerned whether the bills of costs being presented in these cases accurately the reflect the work done by the attorneys but I am also concerned, bearing in mind the production line manner in which the papers in these cases are produced, whether it is permissible or appropriate for the attorneys simply to charge in accordance with the tariff laid down in rule 70 or whether this constitutes a form of over-reaching. I appreciate that it is not over-reaching of their own client because they are not charging their clients fees. However, it seems to me equally inappropriate for an attorney to present a bill of costs for taxation to the opposing side where the fees claimed are exorbitant in relation to the amount of work actually done and the nature of that work. That is inconsistent with the bill being a party and party bill. This concern applies to all of the attorneys involved in these matters and I will likewise forward my concerns to the KwaZulu-Natal Law Society for it to consider whether these are questions that ought to be the subject of investigation by it.

[62] Lastly, there is the case of Mr. Soodyall who deliberately prepared and had sworn affidavits that contain statements of fact which he knew were not at the time truthful. I asked Mr. Shaw QC whether Mr. Soodyall realised that this was gravely improper and his answer was : "He does now, M'Lord". Salutary though the admonitions of a counsel of Mr. Shaw's standing may be I nonetheless think that this question should also be referred to the KwaZulu-Natal Law Society. In *Incorporated Law Society v Bevan*[35], Innes CJ said:-

> "Any practitioner who deliberately places before the Court, or relies upon, a contention or a statement which he knows to be false, is in my opinion not fit to remain a member of the profession."

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35 1908 TS 724 at 731-2

That statement has recently been endorsed by the Supreme Court of Appeal in *Van der Berg v General Council of the Bar of South Africa*[36] In deciding that this question too should be referred to the Law Society I am mindful of the fact that in three of the nine cases involving Mr. Soodyall the applicants were minors *ex facie* the information in his possession and in all of the cases the letters that he prepared and wrote to the Department are inconsistent with the affidavits in that they say that the applicants were told to return in two months to collect their identity documents, whilst the affidavits say that the applicants were told that the identity documents would be ready in three months. My overall concern is that he simply shows no regard at all for accuracy in the preparation of affidavits.

[63] Finally it was suggested to me by Mr. Bofilatos that it would be appropriate for me (obviously only after I had obtained the consent of the Judge President and referred the matter to the other judges of this Division) to lay down a practice directive in this Division and in the Durban Court in relation to matters of this type, along the lines of the practice directive set out in *Cele's* case. To this end I have been furnished with drafts of such a practice directive not only by Mr. Bofilatos, but also by Mr. Findlay SC and Mr. Shaw QC. After reflection I am not satisfied that it is appropriate at this stage in regard to these matters to issue such a directive. It is plain that the Department of Home Affairs is seeking to address the inefficiencies that have led to the present situation. I may say that nothing in this judgment should be read as suggesting that the Department is a model of efficiency or that the complaints about bureaucratic incompetence on its part are unfounded. Mr. Bofilatos fairly acknowledged that such problems did exist although he claimed that they are compounded by the approach adopted by the agencies and the attorneys in these matters. It seems clear that there is inefficiency in the Department in dealing with these applications. Were the Department fully on top of the situation and keeping careful and accurate records of every application as and when made, there should be very little difficulty in this

36 [2007] 2 All SA 499 (SCA) at paras. [16] and [17].

age of computerised technology in identifying the applications referred to in the letters of demand sent to it, within a very short time of receiving those letters. That is so even if several hundred of such letters are received daily. Entering the information from those letters into a properly computerised system and generating a standardised response depending upon where the application stood in the process of obtaining an identity document should be relatively straightforward. It is the kind of activity that is undertaken all over the world in bureaucratic institutions and the fact that the Department seems unable to do so or unwilling to make the effort is not acceptable. That people, many of whom are poor, ill-educated and ill-equipped to deal with a bureaucracy, cannot find out by simple resort to the regional offices of the Department what is happening to their applications for identity documents is unacceptable. The situation should in practice never have to arise where they must have resort to agents and attorneys. The fact that the agents and attorneys have been able to create the cottage industry of which I have already spoken is itself a condemnation of the efficiency of the Department.

[64] Having said all that, however, it is plain that the Department is trying to address the matter and there is some force in the criticism that the agents and attorneys are less concerned with extracting an answer from the Department than they are with extracting an order for costs. It seems to me that before any practice directive is issued it is desirable to see the nature and extent of the problem that exists if the letters of demand sent to the Department contain full information concerning the applicant, including the receipts and contact details, and any applications that are thereafter brought set out in full the circumstances of the particular applicant. Only if the Courts then continue to be inundated with these matters should consideration be given to putting in place a practice directive. That can then be done in the light of a greater body of information than is at present available to me.

[65] In the result I make the following orders in the following cases:-

a)Matters 15, 30 and 40 being the applications by T Ngubane (13038/07), B.M. Dlamini (10546/08) and L.S. Sosiba (5460/08) are struck off the roll, with no order as to costs.

b)In matters numbers 26, 42, 49 and 55 being the applications of N.T. Mbatha (12393/08), T. Buthelezi (10537/08), S.P. Gasa (12445/08) and N. Zulu (11910/08) the applicants are given leave to withdraw the applications. There will be no order as to the costs of the applications.

c)In matters numbers 2, 3, 8, 17, 21, 27, 32, 33, 38 and 51 being the applications of N Maphumulo (13838/08), N. Mkhize (13221/08), N. Ndlovu (11862/08),P. Barath (14808/08), B. Magcaba (14894/08), P. Ngcawebi (11867/08),), O. Melazi (14810/08), M. Cele (13833/08), N. Sisi (12535/08) and S Xolani (12485/08) the applications are dismissed on the basis that the applicants do not have *locus standi in judicio*. There will be no order as to the costs of these applications.

d)Each of the remaining applications, being the matters numbered 1, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 22, 23, 24, 25, 28, 29, 31, 34, 35, 36, 37, 39, 41, 43, 44, 45, 46, 47, 48, 50, 52, 53, 54 and 56 being the matters of E. Sibiya (13859/08), N. Tshezi (13860/08), M. Cele (13217/08),C.Z. Nsindane (14808/08), S.J. Khambule (14809/08),S. Zihlazi (11853/08), T.Z. Shoze (12413/08), S.T. Ngomane (12422/08), Z.P. Sibiya (12559/08) T.G.

Mazibuko (12484/08), L. Sibeko (13044/08), M. Mpanza (5468/08), G.L. Mbele (14035/08), T.M. Sithole (12473).T. Sokhulu (12363/08), T.L. Nzuza (14811/08), M.J. Ngcobo (13121/08), M.W. Cele (13108/08), P.E. Sibiya (11925/08), M. Mhlangu (13877/08), N.P. Mhlongo (12450/08), T. Xaba (13834/08), S. Ndimande (14828/08), K. Ebrahim (14829/08), M.A. Funeka (11421/08),B. Ndabetolo (12549/08), P.F. Mnqele (5464/08), D.Z. Doncabe (13223/07), D. Manqele (11861/08), L. Mthembu (11857/08), N. Mazibuko (11822/08), B.C. Phewa (12398/08), A.M. Gwala (12386/08), K. Maphumulo (10207/07), T.B. Dlamini (12521/08), D. Zathu (13852/08), S. Mhlanga (13837/08), N.P. Msomi (12482/08) and N.P. Shezi (11946/08) is dismissed. There will be no order as to costs in each of these applications.

[66] The Registrar of this Court is directed to send a copy of this judgment to the KwaZulu-Natal Law Society and to draw their attention to paragraphs 2 and 3 and 51 to 60 thereof, paragraph 61, read with paragraphs 35 to 37 and paragraph 62 thereof.

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DATE OF JUDGMENT : **18 March 2009**

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