CITATION: *Dick v Northern Territory of Australia* [2006] NTMC 022

PARTIES:	NAOMI DICK
	v
	NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	Local Court
JURISDICTION:	Local Court
FILE NO(s):	20417133
DELIVERED ON:	15 March 2006
DELIVERED AT:	Darwin
HEARING DATE(s):	24 November 2005
JUDGMENT OF:	Dr J A Lowndes

CATCHWORDS:

Crimes (Victims Assistance) – Section 15A – Appeal – Costs – Liability of Legal Practitioner

Crimes (Victims Assistance) Act – s 15A
Local Court Rules – Part 37.09, Part 38.09
Local Court Act – s 32

REPRESENTATION:

Counsel:

Plaintiff:	Mr Davis
Defendant:	Ms Tregear

Solicitors:

Plaintiff:	Davis Norman
Defendant:	Hunt and Hunt

Judgment category classification:	B
Judgment ID number:	[2006] NTMC 022
Number of paragraphs:	46

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20417133

BETWEEN:

NAOMI DICK
Plaintiff

AND:

NORTHERN TERRITORY OF AUSTRALIA
Defendant

REASONS FOR DECISION

(Delivered 15 March 2006)

Dr LOWNDES SM:

RULING ON COSTS

1. The applicant's appeal against the decision of Judicial Registrar Fong Lim dismissing an application for victims assistance was dismissed by the Court on 17 October 2005: see written reasons for decision delivered on that day.

2. The respondent not only seeks costs of and incidental to the unsuccessful appeal but has submitted that this is an appropriate case for a personal costs order against Mr Davis, the legal practitioner for the applicant. Mr Davis opposes the making of such an order and indeed submits that it is appropriate in this case not to make an order for costs against the applicant. Mr Davis has filed two affidavits in support of the opposition to the application for costs: see Mr Davis' affidavit sworn 22 November 2005 and his further affidavit sworn 27 February 2006. Mr Davis has also made written submissions in relation to the issue: refer to his written submissions dated 22 November 2005 and 27 February 2006.

3. The starting point is a consideration of the power of this Court to award costs to a successful respondent in the circumstances that pertain here, that is where the applicant has unsuccessfully appealed a decision of a Judicial Registrar.

4. As the present appeal was instigated under Part 37 of the *Local Court Rules*[1], the issue of costs is governed by Rule 38.09 of the *Local Court Rules*:

> "In an appeal under Part 37.09, each party is to pay his or her own costs subject to –
>
> (a) the Act under which the appeal is made;
>
> (b) disciplinary and case management costs orders;
>
> (c) a public interest costs order under rule 38.10;and
>
> (d) any other costs orders the Court considers appropriate."

5. For the sake of completeness the *Crimes Victims (Assistance) Act* – the Act under which the appeal was made – contains no provision that deals with costs in relation to an appeal brought under s 15A of the Act[2]. As sub-paragraphs (b) and (c) of rule 37.09 of the *Local Court Rules* have no application in the present case, then the appropriate order is that each party bear its own costs unless the Court considers some other order appropriate.

6. The reference in Part 37.09 of the *Local Court Rules* to "any other costs order the Court considers appropriate" must include a costs order under s 32 of the *Local Court Act* which provides:

> "(1) Where a legal practitioner for a party to a proceeding, whether personally or through a servant or an agent, has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default, the Court may make an order that-

[1] See s 15A(3) *Crimes Victims (Assistance) Act*
[2] S 24 *Crimes Victims (Assistance) Act* only deals with applications for assistance.

(a) all or any of the costs between the legal practitioner and the client be disallowed or that the legal practitioner repay to the client the whole or part of any money paid on account of costs;

(b) the legal practitioner pay to the client all or any of the costs which the client has been ordered to pay to any party; or

(c) the legal practitioner pay all or any of the costs payable by a party other than the client.

(2) Without limiting the generality of subsection (1), a legal practitioner is in default for the purposes of that subsection if a proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, because the legal practitioner failed to –

(a) attend in person or by a proper representative;

(b) file a document which ought to have been filed;

(c) lodge or deliver a document for the use of the Court which ought to have been lodged or delivered;

(d) be prepared with proper evidence or an account; or

(e) otherwise proceed."

7. Despite the submission made by Mr Davis that this was a "test case" and the appellant's case was "not without merit and involved uncertain areas of the law",[3] I do not consider that it would be appropriate in this case to order that each party pay its own costs. The appeal was unsuccessful and was dismissed for the following reasons:

(a) Neither the evidence presented to the Judicial Registrar nor the fresh evidence adduced on the appeal was sufficient to establish a compensable injury;

[3] See p 2 of Mr Davis' written submissions dated 22 November 2005

(b) It was claimed by the appellant that the assault had been a source of great humiliation to her and made her fear for her safety. However, as observed in the written reasons for decision dated 17 October 2005, no direct evidence was adduced as to the way in which the offence caused the appellant great humiliation – the manner in which the offence caused the appellant humiliation was a matter of mere conjecture. The evidence as to the fear she says she experienced was scant. Again as observed in the reasons for decision, there was a body of evidence which did not sit comfortably with the appellant's allegation that she suffered humiliation and feared for her safety.[4] Furthermore, such evidence as there was as to humiliation and fear did not satisfy the requirements for compensation laid down in *Chabrel's case*.[5]

(c) There was insufficient evidence to establish a compensable injury in terms of depression.[6] In particular, the assertion that humiliation resulted in depression was not supported by the evidence.[7]

(d) The fresh evidence relied upon by the appellant did not advance the appellant's case – had that evidence been before the Judicial Registrar that evidence would not have produced an opposite result.[8] The fresh evidence in relation to distress, shame and insecurity did not go far enough in establishing a compensable injury. Furthermore, the fresh evidence in relation to loss of amenities was grossly deficient. [9]

8. In my opinion the appeal, which focused on the failure of the Judicial

[4] See in particular p 9 of the written reasons for decision.
[5] See pp 9-10 of the reasons for decision.
[6] See p 10 of the reasons for decision.
[7] See p 11 of the reasons for decision.
[8] See pp 13 of the reasons for decision.
[9] See pp 12-13 pf the reasons for decision.

Registrar to find a compensable injury, was completely without merit, at least in terms of the manner in which it was ventilated before the Court. As noted above, the appeal failed in terms of both original and fresh material. The award of costs should be decided "by exception to the general approach that each party bear its own costs…": see *Yow v Northern Territory Gymnastic Association Inc* [1991] 1 NTLR 180; *Otter Gold NL v Barcon P/l and Ors* [2000] 10 NTLR 189. In my opinion, the successful respondent should have its costs of the appeal.

9. That would normally translate into an order that the appellant pay the respondent's costs. However, this is not an ordinary case and there are, in my opinion, circumstances that justify the making of an order pursuant to s 32 of the *Local Court Act*.

10. The costs of the appeal were wasted due to default or negligence on the part of the appellant's legal practitioner. The default consisted of the appeal failing on account of Mr Davis' failure to be prepared with proper evidence, that is to say a failure to take proper instructions and to obtain the necessary detail which would support the appellant's appeal in court: for an example of a comparable situation see *Laird v Mossesson* [1990] Aust Torts Reports 81-058.[10]

11. Having been engaged to act on behalf of the applicant in relation to her appeal, Mr Davis was under a duty to take such instructions and to obtain such evidence as was necessary to properly prosecute her appeal. The circumstances of this case disclose a failure to fulfil that fundamental duty. In obtaining instructions and preparing for the appeal Mr Davis failed to "act with the competence reasonably to be expected of ordinary members of the legal profession": see *Ridehalgh v Horsefied and Anor [1994] Ch 205.*

[10] In that case a solicitor claimed immunity in respect of negligence alleged in the course of preparation of litigation in circumstances where in due course the solicitor appeared on behalf of the client at the hearing. The Full Court of the Supreme Court of Western Australia concluded that as the solicitor was not acting as an advocate at the material time he enjoyed no immunity in respect of any failure to adequately prepare for the hearing.

12. That conclusion has not been arrived at lightly. It has only been reached after carefully considering all the circumstances of the case, including the nature of the proceedings and relief sought, the nature of the client, the nature of the professional relationship and any circumstances that rendered solicitor –client contact and communication more difficult than is usually the case.

13. This was an appeal against the decision of a Judicial Registrar dismissing an application for victims assistance on the basis of there being insufficient evidence of a compensable injury. Mr Davis was aware, as a result of the recent decision in *Gibson v Northern Territory of Australia*, that fresh evidence could be adduced at the hearing of such an appeal. Clearly, the evidence presented at the hearing before the Judicial Registrar was deficient. In those circumstances the need to take proper and detailed instructions from the appellant was paramount – equally so the need to present further cogent evidence in support of the appeal.

14. The nature of the appellant was also an important aspect in this case. The appellant was an indigenous female living in Tennant Creek, lacking the sophistication of an urban litigant who was acquainted with the processes of litigation and aware of the importance of presenting evidence to a court of law. In those circumstances the need to ensure proper instructions were taken from the client would have been obvious.

15. The relationship between the solicitor and the appellant was described by Mr Davis as being a “pro bono” legal aid assignment. The terms of that engagement are set out in Mr Davis’ affidavit sworn 27 February 2005. The point that needs to be made is that the nature of the solicitor-client relationship does not in any way alter any duty that Mr Davis owed to the client in relation to the taking of proper instructions and obtaining proper evidence in support of the appeal.

16. Finally, but not least, the geographical distance between the appellant and Mr Davis, the impracticality of Mr Davis travelling to Tennant Creek to take instructions and the general difficulties in him establishing and maintaining contact with the appellant from a distance are duly acknowledged as factors that would make the performance and fulfilment of the duty owed to the appellant more difficult than usual.

17. Taking all of those considerations into account, the steps taken by Mr Davis in preparation for the hearing of the appeal fell short of what is expected of ordinary members of the profession.

18. It is necessary to examine the history of solicitor-client contact and communication, and the form it assumed in this case, in order to locate and identify the deficiencies in Mr Davis' pre-trial preparation of the appeal.

19. The solicitor-client relationship appears to have begun mid 2004. The application was filed by Mr Davis on behalf of the applicant on 20 July 2004. An application to extend the time for bringing an application for assistance was brought on behalf of the applicant. On 3 November 2004 Judicial Registrar Monaghan ordered that the time for filing the application be extended.

20. According to Mr Davis' affidavit sworn 12 August 2005, he obtained instructions to conduct the original claim by means of the services of the Katherine Aboriginal Family Services Unit. Mr Davis went on to say that his original instructions included a short written statement prepared by a person at the Katherine Aboriginal Family Services Unit. He said that he obtained a police report which included a copy of his client's statement to police. Mr Davis said that he then requested instructions from his client by means of a letter addressed to the Katherine Aboriginal Family Services Unit. He was hoping that a field officer would visit the applicant at her community camp. Mr Davis stated that he was then told that the applicant was difficult to contact, and she had told community members that she felt ashamed by what

the offender had done to her and was too embarrassed to talk about her experience. He went on to say that he could not contact the applicant direct and was dependant upon the limited information provided.

21. According to Mr Davis' affidavit sworn 22 November 2005, he sent a letter to the applicant on 5 November 2004 requesting her to go to KAFSU and speak to a field officer. In that letter he stated: "I need your help to fix up your claim. You may not get any money unless I get more evidence." On the same day Mr Davis sent a letter to KAFSU enclosing a copy of his letter to the applicant and stated: "I need some information from Naomi so I can draft an affidavit explaining the effects of the indecent assault. For example was Naomi depressed and did she stop going out with friends".

22. Returning to his affidavit sworn 12 August 2005, Mr Davis said that he drafted the affidavit sworn by the applicant on 7 January 2005. He stated that he sent the draft of the affidavit to his client with a request that she have a person read her affidavit to her, and if she required any amendments to write the changes on the drafted document and return it to him. The sworn affidavit was returned to Mr Davis. Mr Davis said that prior to 18 February 2005 – the date on which the application was heard by the Judicial Registrar – he did his best to contact the applicant but failed.

23. In accordance with his affidavit sworn 22 November 2005, Mr Davis said that he sent a letter to the applicant on 22 February 2005 advising her that her application had been refused. He went on to say: "

> The problem is Ironbark assaulted you but there is no evidence to explain what happened to you. There are no medical reports. If you appeal to a Magistrate, I must show that the Judicial Registrar was wrong. I cannot do that unless you give me better evidence. Please go to KAFSU and get some help. There is a cost order risk. That means that the Court may order you to pay the legal cost of the Government. If that happens, I will tell you what to do."

24. On the same day Mr Davis sent a letter to KAFSU in the following terms:

> "The Judicial Registrar rejected the claim. Whilst a crime was committed there is no evidence of any injury to Naomi.
>
> I enclose copy of letter to Naomi. Unless she gives evidence that the assault had a serious effect there is no real prospect of winning the appeal.
>
> Would you please explain this problem to Naomi? The matter is very urgent because there is an appeal time limit."

25. On 25 February 2005 Mr Davis sent a letter to KAFSU advising that the applicant had not returned her affidavit. He stated that if he did not receive the affidavit her appeal would be dismissed. In that letter he also stated:

> "If I get her affidavit the result of the appeal is open ended. I have done the best I can on the available instructions. The absence of medical evidence may be fatal. When I last spoke to Naomi I told her I needed the affidavit. I also told her that the Court may reject her appeal. Naomi believes 'it is not fair' because she lives in a remote community without support. I told her Legal Aid will not pay any cost orders made against her."

26. A file note dated 28 February 2005 which was annexed to Mr Davis' affidavit sworn 22 November 2005 read as follows:

> "The Director position is vacant. Naomi attended today. Naomi telephoned KAALAS and requested advice.
>
> KAFSU and KAALAS see this as a test case. Many women live on remote communities and do not have access to medical treatment.
>
> Syrine told me on behalf of Naomi to issue an appeal. The Court is to rule on the issue. I said Naomi needs a better affidavit to win.
>
> A field officer from KAFSU will speak to Naomi and explain the problem. Naomi also has a female friend at the Kiana School who will try and help."

27. In his affidavit sworn 12 August 2005 Mr Davis deposes that the supplementary affidavit sworn by the appellant on 4 August 2005 was drafted after he was able to obtain instructions direct from the applicant with the assistance of her friend who worked at the school. Mr Davis says

that it was not until he had the assistance of the friend that he could attempt to reduce to affidavit form the effects of the assault on the appellant. Mr Davis added:

> "…it was not possible for the applicant to telephone me direct or for I to telephone her direct because the Community telephone at Kiana Station cannot be pre-booked and the service is unreliable. I could not set firm date when I would telephone the applicant or she telephone me."

28. It is clear from the preceding history that Mr Davis had real difficulties in communicating with his client. However, the critical point in the solicitor-client relationship came when he eventually managed to establish direct contact with the appellant and obtained instructions to draft the supplementary affidavit. Presumably the instructions were obtained over the telephone with the assistance of the appellant's friend. This was a critical stage in the solicitor – client relationship. Mr Davis was very much aware of the importance of obtaining a proper and more detailed affidavit from the appellant. He had acknowledged in previous communications with the appellant and KAFSU that the original application had failed due to the insufficiency of the evidence relating to injury. It seems that Mr Davis was well aware that fresh evidence could be led at the hearing of the appeal. The interview with the client was of critical importance to the success of the appeal. However, as observed in the written reasons for decision delivered on 15 October 2005, the contents of the appellant's supplementary affidavit did not advance the appellant's case. The reason for that is self-evident: the structure and contents of the affidavit demonstrate a clear failure to take proper and detailed instructions from the appellant.

29. A considerable amount of care must be taken by legal practitioners in relation to the preparation of applications for victims assistance and subsequent appeals, particularly as these days the proceedings are dealt with "on the papers". Freckelton has stressed the need for effective advocacy on

behalf of victims and the standard required of advocates practising in the criminal injuries compensation jurisdiction:

> "Effective advocacy on behalf of applicants seeking criminal injuries compensation…is a product of inducing informed and emphatic understanding on the part of the decision-maker in relation to the seriousness of the crime that has been committed, the responses of the victim to the violence and the nature of the applicant's ongoing sequelae from the violence. Such advocacy entails providing information of such a kind and in such a way that it will rouse a decision – maker, who may well routinely receive large numbers of such submissions, into a responsive attitude toward the particular circumstances of the particular applicant.
>
> The information must be individualising, memorable and plausible…The essence of effective advocacy in the context of criminal injuries matters lies in assembling material that is detailed and person –specific. It must be individualising and yet cover all key aspects of the adverse impact that has been wrought upon the victim as a result of the criminal act or acts.
>
> The nature of the injuries must be fully and meaningfully conveyed. The real impact of what has happened for the victim must be communicated, both insofar as that related to pain and financial losses that have been engendered by the criminal act or acts of violence and the practical outcome for the victim on a day-to-day basis. The extent to which the consequences of the assault still interfere with the victim's life and functioning needs to be brought to life for the decision-maker.
>
> Criminal acts have profoundly different associations, meanings and impacts upon different victims. One of the challenges for lawyers working with and for crime victims is to draw out these issues from each of their clients and then to help them to bring them home to the compensation decision-maker."[11]

30. As to the treatment of potential sequelae of criminal acts, Freckelton offers practitioners the following guidance:

> "The extent of the consequences of violence can be broad indeed. Often the victim may not be conscious of the connection between how she or he feels and what happened in the incident that forms the basis for the application for criminal injuries compensation. The

[11] Freckelton " Criminal Injuries Compensation: Law, Practice and Policy" (2001) LBC Information Services Sydney

> ‘ripple effects’ of the crime… can be complex in both a personal and a pecuniary sense.
>
> This means that it is the responsibility of victims’ legal representatives to canvass such potential matters with them. Such an exercise takes time and it requires some knowledge and experience of the sequelae of violent conduct from a victim’s perspective. It incorporates among other things the need for awareness of cultural factors, gender, ethnicity, age, mental state, and social and vocational milieu…
>
> From the point of view of the success of the criminal injuries compensation application, much depends upon the extent to which the decision-maker can be brought to appreciate the full impact of the criminal act upon the victim. If this does not happen, the result can be profoundly unsatisfactory for the applicant for compensation; a partial and inadequate impression may be given of the extent to which the violent conduct has affected the person or the extent to which they have recovered from it.”

31. The observations made by Freckelton have equal application to appeals under s 15A of the *Crimes Victims Assistance Act* which permit the presentation of fresh evidence at the hearing of the appeal.

32. Furthermore, the observations and recommendations made by Freckelton accord with the level of competence usually expected of members of the legal profession.

33. The amount and quality of the fresh evidence presented at the hearing of the appeal speaks volumes. In my opinion, it disclosed a lack of preparation in relation to the hearing of the appeal and the gathering of cogent fresh evidence. In particular it indicated that only minimal – and therefore inadequate - instructions were taken during the telephone interview between Mr Davis and the appellant. The approach recommended by Freckelton does not appear to have been followed by Mr Davis, and one is left with the distinct impression that the interview was of short duration, when in fact the exercise at hand required a considerable amount of time and due diligence. The evidence, as presented, lacked detail, was not sufficiently individualising, and, in the final analysis, failed to fully and meaningfully

convey the nature and extent of the injury or injuries that the appellant claimed that she had suffered as a result of the assault.

34. Those deficiencies are illustrated by the following examples taken from the appellant's supplementary affidavit sworn 4 August 2005.

35. In paragraph 5 of that affidavit the appellant stated that for a period of several months after the incident of 23 May 2003 she was very distressed. She also stated that she did not deserve to be treated by the offender in that way, referring to the indecent assault. This paragraph is intended to convey the mental and emotional effect that the assault had on the appellant. Distress amounts to mental pain or anguish and usually manifests itself in a set of symptoms. If the appellant was distressed, then presumably she was displaying symptoms. However, no attempt was made in paragraph 5 or any other paragraph of the appellant's affidavit to set out the phenomenon or circumstances accompanying the alleged distress, which could be regarded as evidence of, or an indication, of its existence. It is difficult to see why this information could not have been elicited from the appellant. Of course, any such evidence obtained from the appellant would have to fulfil the requirements outlined in *Chabrel's* case in order to lay the foundation for a compensable mental injury. That is all the more reason why the account of distress needed to be elaborated upon and more fully and meaningfully conveyed to the Court.

36. It was difficult to know how to treat the appellant's belief that she did not deserve to mistreated by the offender. If it were intended to relate that to the complaint of distress, then the connection should have been clearly drawn. However, if the belief was intended to form the foundation for some additional emotional injury, that should have been elaborated upon, again attempting to bring it within the parameters of *Chabrel's* case. This was yet another example of the general lack of preparation that was apparent on the face of the appellant's supplementary affidavit.

37. In paragraph 6 of her supplementary affidavit the appellant says that for several months she was limited in her social activities, and if she came into contact with Ironbark he would threaten her and say that the police would do nothing. This part of the appellant's affidavit was dealt with in the Court's reasons for decision dated 17 October 2005.[12] The Court considered the evidence presented in that paragraph of the affidavit to be problematical on two bases. First, the evidence was equivocal in identifying the triggering event. Secondly, the necessary groundwork for the claim for loss of amenities was not laid. It pays to repeat the following observations made by the Court in its reasons for decision:

> "There is no evidence of her level of activity within a social environment prior to the assault, that is to say as to the nature and extent of her social activities prior to the incident. Nor is there any evidence as to the nature and extent of her social activity following the assault (or the subsequent threats). There is no cogent evidence of a marked change in her enjoyment of life's amenities. There is merely a bald assertion that for several months she was limited in her social activities."

38. In my opinion the evidentiary deficiencies in relation to the claim for loss of amenities can be fairly attributed to a lack of instructions and lack of proper preparation and presentation of all the potentially available evidence in relation to that aspect of the appeal.

39. In paragraph 7 of her supplementary affidavit the appellant deposed that as a result of the assault she experienced feelings of shame and insecurity. She also stated that she did not want other males believing that they could treat her in the same way as Ironbark had treated her. The contents of paragraph 7 bespeak a lack of proper instructions and inadequate presentation of the evidence elicited from the appellant. In order for this evidence to lay the foundation for a compensable injury it needed to be presented with the guidelines set out in *Chabrel's* case being kept firmly in mind.

[12] See paras [39] – [42] of the reasons for decision.

40. Given the opportunity to an appellant in an appeal of this type to adduce fresh evidence – of which Mr Davis was well aware – it would have been open to the appellant (within the limits set out in *Gibson v The Northern Territory* supra) to revisit the evidence presented in her affidavit sworn 7 January 2005, in support of her application for assistance, and to modify that affidavit in an endeavour to bring the evidence more into line with the guidelines established in *Chabrel's* case. That is not to say that the evidence would have ultimately been enough to establish a compensable injury – it may or may not have been sufficient. However, what is telling against Mr Davis is that no reasonable efforts were made to bring the evidence up "to scratch". Furthermore, no reasonable efforts were made to connect the contents of the appellant's supplementary affidavit with her original affidavit so as to present a complete picture of the effects of the assault.

41. In my opinion the evidence in support of the appeal was very sketchy. It amounted to a brief account without any detail – a general outline. In my opinion the evidence could have been elaborated upon simply by obtaining more detailed and proper instructions during a more intensive interview process.

42. The fact that there was no available medical evidence to support the appellant's case is no excuse for not fully developing the lay evidence. In fact, the absence of medical evidence increased the need to realise the full potential of the lay evidence.

43. A distinction needs to be drawn between a well prepared case criminal injuries compensation case, which although it deals fully and comprehensively with all relevant aspects ultimately fails to persuade a court, and an ill- prepared case which fails to canvass and fully develop all potentially relevant areas, and because of its lack of breadth and detail fails on those grounds. In the latter case it is possible that the application might have succeeded had the information been more fully and comprehensively

presented to the court. In my opinion, the present case falls with that category, and not the first.

44. For the foregoing reasons I order that the appellant's legal representative, Mr Davis, pay the respondent's costs of and incidental to the appeal.

45. The respondent urged the Court to also make an order that Mr Davis pay its costs in relation to the application for assistance which was heard by the Judicial Registrar. I decline to make such an order for the following reasons.

46. This was an appeal brought on behalf of the applicant. The respondent did not cross-appeal the Judicial Registrar's decision in relation to costs. In the absence of any argument in relation to the powers of this Court on the hearing of an appeal pursuant to section 15A of the *Crimes (Victims assistance) Act*, I incline to the view that this Court is limited to either allowing or dismissing the appeal and making any consequential orders for costs relating to the appeal. In any event, on 17 October 2005 the Court dismissed the appeal. That had the effect of upholding the Judicial Registrar's decision which included an order that the applicant pay the respondent's costs. The only matter that was reserved for further consideration was the question of costs in relation to the appeal.

Dated this 15th day of March 2006.

_____

Dr John Allan Lowndes SM
STIPENDIARY MAGISTRATE