FEDERAL MAGISTRATES COURT OF AUSTRALIA

SZIOK v MINISTER FOR IMMIGRATION & ANOR *[2007] FMCA 618*

MIGRATION – Review of RRT decision − where the applicant gave evidence at the Tribunal hearing that he obtained a passport by bribery − where the applicant gave evidence he was not apprehended upon leaving the country as he used a different name than the one known to the alleged persecutors − where the Tribunal found the applicant's claims of persecution to be implausible on the basis of its conclusion the applicant could not have left the country if his claims of persecution were true − whether the Tribunal complied with s.424A − where the Tribunal did not investigate evidence provided by the applicant in response to its questioning or seek elaboration of the points made − whether the Tribunal's reasons evidence apprehended bias − whether the Tribunal failed to consider the evidence put forward by the applicant − whether the Tribunal failed to exercise its inquisitorial function in accordance with the principles of procedural fairness.

Migration Act 1958, ss.420, 424A, 425, 430

NBKT v Minister for Immigration [2006] FCAFC 195
Minister for Immigration v Wu Shan Liang (1996) 185 CLR 259
Refugee Review Tribunal, Re; Ex parte: H (2001) HCA 28
NADH v Minister for Immigration [2004] FCAFC 328
WAIJ v Minister for Immigration (2004) 80 ALD 568
Re Minister for Immigration; Ex parte Applicant S20/2002 (2003) 77 ALJR 1165
SZIYX v Minister for Immigration [2007] FMCA 308
WAEH of 2002 v Minister for Immigration [2002] FCAFC 364
Minister for Immigration v SGLB (2004) 207 ALR 12
Applicant S214 of 2003 v Minister for Immigration [2006] FCAFC 166
Seyfarth v Minister for Immigration [2004] FCA 1713
Re Minister for Immigration; Ex parte Cassim (2000) 175 ALR 209
Applicant M164/2002 v Minister for Immigration [2006] FCAFC 16
SZEJF v Minister for Immigration [2006] FCA 724
Re Minister for Immigration; Ex parte Applicant S20/2002 (2003) 183 ALR 58

Applicant:	SZIOK
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP

Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	SYG 903 of 2006
Judgment of:	Raphael FM
Hearing date:	13 April 2007
Date of Last Submission:	13 April 2007
Delivered at:	Sydney
Delivered on:	26 April 2007

REPRESENTATION

Counsel for the Applicant:	Mr J R Young
Solicitors for the Applicant:	Simon Diab & Associates
Counsel for the Respondents:	Mr J Mitchell
Solicitors for the Respondents:	Clayton Utz

ORDERS

(1) Application allowed.

(2) There be a writ directed to the Respondents to quash the decision.

(3) The Respondents to pay the Applicant's costs assessed in the sum of $5000.00.

(4) The First Respondent's name be amended to "Minister for Immigration and Citizenship".

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 903 of 2006

SZIOK
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

1. The applicant is a citizen of Nepal. He arrived in Australia on 8 July 2005. On 5 August 2005 he lodged an application for a protection (Class XA) visa with the Department of Immigration & Multicultural and Indigenous Affairs. On 25 October 2005 a delegate of the Minister refused to grant a protection visa and on 17 November 2005 the applicant applied for review of that decision. The Tribunal invited the applicant to a hearing which he attended. On 30 January 2006 the Tribunal determined to affirm the decision not to grant a protection visa and handed that decision down on 21 February 2006.

2. The applicant sought protection from Australia upon the Convention ground of political opinion. At the time of the hearing before the Tribunal he was a twenty nine year old married Hindu Nepali citizen who had come to Australia as part of a Tae-Kwan Do team representing Nepal. He told the Tribunal that he had long been sympathetic to the Maoist cause in his country and had provided

training and support to the Maoists in the local area in which he lived between 2003 and 2004. There had been confrontations between Maoists and the government in his own home village in 2005 and that he was involved in that confrontation:

> *"He states that when an inspection was made at the site of the incident and further enquiries were held it was proved that he was involved in person and had provided Maoists with assistance from his area. He states that as such the government security forces would be taken action against him any time he is found anywhere in Nepal. He states that he had tried to go to other countries but had no success. He states that while he was in Australia to take part in the world championship he requested protection as Nepal is not safe for him."* [CB 102]

3. Also at [CB 102] the Tribunal noted the evidence given to it by the applicant in relation to his leaving Nepal:

> *"The Tribunal put it to him that he had gained a passport from the Nepalese authorities in April 2005 and so if the Nepalese authorities had any suspicions that he was a Maoist supporter they would not have issued a passport to him. He said there was a lot of corruption in Nepal and he had gained a passport through bribery. The Tribunal put to him that he had then used the passport two months later to depart Nepal through the international airport and if the authorities had been looking for him he would have been apprehended at the airport. He stated that he was scared that in the village he had been known by a different name. The Tribunal put to him that if he were competing internationally on behalf of his country the authorities would have knowledge of him and would have apprehended him if they wished to. He said he did not know to what degree the Nepalese authorities knew of the international tournament."*

4. In its findings and reasons the Tribunal said:

> *"The Tribunal found the applicant to be unconvincing in his evidence and does not accept his claims that he had assisted the Maoists by providing training. The Tribunal finds as implausible and does not accept that the applicant has been assisting the Maoists for the following reasons. The Tribunal finds that he is able to be issued with a passport two months prior to departing from Nepal and use that passport to pass through the international airport to represent his country overseas. The Tribunal finds that were the Nepalese authorities seeking him as he claims that he would in fact have been apprehended prior to departing from Nepal. Given that the authorities are waging a military struggle against the Maoists and regularly apprehend all those to be found associated with Maoists or believed to be so doing the Tribunal does not accept his evidence that he could have escaped government attention by using a different name in the village and that he paid a bribe to secure its passport. The Tribunal also finds it implausible and does not accept his claim of "luck" that he was able to pass through immigration departure at the airport while he was being sought. Rather, the Tribunal finds this as evidence of his not being*

sought by the authorities because he in fact had not ever helped the Maoists as he claims. In the light of the evidence of his having departed Nepal using a passport in his name, the Tribunal finds he is not being sought by the Nepalese authorities."

5. The applicant filed in court at the hearing an affidavit of Simon Diab to which was annexed a copy of the transcript of the hearing before the Tribunal. He also filed an amended application under the *Migration Act 1958* (the "Act") which sets out seven grounds for the application. I do not propose to deal with them *seriatim* as the case was not argued in that way by counsel for the applicant. He argued firstly that the Tribunal failed to comply with the provisions of s.424A by failing to give particulars of information that it considered would be the reason or part of the reason for affirming the decision under review the information being that:

> The applicant was issued with a passport two months before departing Nepal.
>
> It was issued by the proper authorities in his name.
>
> The applicant used that passport to depart Nepal and enter Australia.

The applicant argued that although he had been asked to bring his passport to the Tribunal hearing and did so the Tribunal never called for it and therefore the information about the passport did not come within the exception to s.424A provided in s.424A(3)(b). The Tribunal had relied on information about the passport which it had gleaned from the delegate's decision. The respondent referred me to page 2 of the transcript at [45] where the following interchange takes place:

> "T: Your passport was issued in April 2005 and two months later you came to Australia?
>
> A: That is right."

This form of provision of information by way of a response to a question where the information *"comprises no more than basic facts known to the appellant which are foundation of the review"* was found by the Full Bench of Gyles, Stone and Young JJ in *NBKT v Minister for Immigration* [2006] FCAFC 195 as not being information to which s.424A applied. The applicant argues that the information volunteered by the applicant at T2 [45] is not information that his actual passport was issued in April 2005 and that he used it two months later to come

to Australia. It is only information about "some passport". I agree with Counsel for the respondent that there is a compelling inference that when the Tribunal used the words to the applicant "your passport" it meant the passport that was actually used and issued in April 2005. I believe that to consider otherwise would be to be looking at the reasons of the Tribunal with an eye too finely attuned to error; *Minister for Immigration v Wu Shan Liang* (1996) 185 CLR 259 and that a Tribunal is not required to ask questions with such precision that a failure constitutes a failure of jurisdiction. I would also have some doubts as to whether this "information" did constitute the reason or part of the reason for affirming the decision under review. The decision was affirmed not because a particular passport was used but because a passport that had been issued in 2005 was used.

6. The next point made by the applicant concerned the reasoning of the Tribunal. The following is a relevant extract from the transcript:

> "T: If the army and the authorities were looking for you because you were a Maoist, I wouldn't think that they would give you a passport.
>
> A: In Nepal it's not like here, the law and enforcement is not very strict like here. You can get, you know, whatever, you know, there's a lot of corruption.
>
> T: Do you say that you got your passport through corruption?
>
> A: Yes, I had to do bribery.
>
> T: And then once you got your passport, you had to go through airports and security checks. Again, if they were looking for you, they could picked you up then, because of course they're at war with the Maoists.
>
> A: You know, I was not scared going through the security because there was, you know, danger for me to stay in place and also in the village, they used to call me – I was also known by another name.
>
> T: And what was that?
>
> A: They used to call me Mila (?).
>
> ……
>
> T: I do find it hard to believe that if you were sought by the authorities that you could get a passport and leave the country and represent the country abroad.

A: I already mentioned that the law, you know, how the law imposed (?) here and over there is completely different, it's not, you know, as strict like here in Nepal.

T: Yes, I heard that. I also heard you say that you had a different name in the village. I don't have any other questions. Is there anything that you still wanted to tell me that we haven't discussed?"

7. This extract appears on the second and third pages of a four page transcript. It will be seen that although the applicant says that he obtained the passport by bribing somebody and that he got through the airport checks because he was known by another name there is no attempt by the Tribunal to investigate these matters or to seek elaboration of the points made. It will also be seen from the extract of the decision found at [4] of these reasons that the Tribunal found that the issuing of the passport and the ability to utilise it to pass through customs without being apprehended meant that the applicant's claim that he had assisted the Maoists was implausible and could not be accepted. This method of reasoning the applicant says is circular. The Tribunal starts from the proposition, based upon country information, that a Nepali citizen is unlikely to be issued with a passport if he is wanted by the authorities and that a Nepali who owns a passport is unlikely to pass through customs without being apprehended if he was a person in whom the Government were interested. It then asked the applicant how he managed to do both of those things. The applicant gives a response in relation to obtaining the passport. He says that he did this by bribery or corruption and the independent country information before the Tribunal at [CB 65] states:

> *"Under Nepalese law prominent activists are not able to leave Nepal by air legally. They would be arrested at exit points …* ***They further clarified by saying that it would not be difficult for activists to leave the country if legal means were unavailable. They said that activists could easily change their identities and leave the country by bribing immigration officials or police****."* [Emphasis added]

There was also information concerning the issue of a passport at [CB 65] that in the past a police investigation was also conducted prior to issuing a passport. However, this is no longer done.

8. The Tribunal having put its basic premise to the applicant is provided with responses that are entirely consistent with the independent country information. The Tribunal completes the circle of effectively

finding that the applicant could not have acted in the way in which he said he did because of the facts contained in the general rule articulated by the Tribunal that persons could not obtain a passport or pass through customs if they were wanted. In acting in this manner the Tribunal fell into jurisdictional error in a manner of ways.

9. Firstly, the applicant argues that the finding of the Tribunal illustrated apprehended bias because it exhibited pre judgment and a mind closed to the issues which were raised or might be raised. He argued that the Tribunal had such a fixed view about the effect of obtaining a passport and passing through customs that it would appear to a fair minded lay person who is properly informed as to the nature of the proceedings that the Tribunal might not bring an impartial mind to the resolution of the question to be decided. I am not convinced of this. This is not one of those cases where the transcript reveals overbearing or intimidatory conduct by the Tribunal such that a fair minded lay observer or properly informed lay person might readily infer that there was no evidence that the witness could give which might change the decision maker's view *Refugee Review Tribunal, Re; Ex parte: H* (2001) HCA 28.

10. In *NADH v Minister for Immigration* [2004] FCAFC 328 at [19]-[20], Allsop J stated that "[t]he Tribunal which has to reach a state of satisfaction may want to test and probe a recounted history". However, His Honour considered, "in the absence of the identification of some prejudice or interest in the Tribunal", a complaint of apprehended bias must at least "carry with it an assertion of the apprehension of a possibility of predisposition."

11. His Honour went on to say:

> "[115] Where fact-finding has been conducted in a manner which can be described, as here, as in substantial respects unreasoned, and mere assertion lacking rational or reasoned foundation, at times plainly and *ex facie* wrong and as selective of material going one way, these considerations may found a conclusion that the posited fair-minded observer might, or indeed would, reasonably apprehend that the conclusions had been reached with a mind not open to persuasion and unable or unwilling to evaluate all the material fairly."

12. Here, although the Tribunal gave greater weight to the independent country information that stated that activists would not be able to leave Nepal legally, this fact, taken alone, would not be sufficient to make out the ground of apprehended bias.

13. A more substantive argument put by the applicant was that in pursuing what is described in his written submissions as *"a question begging formula"* the Tribunal did not consider the evidence put forward by the applicant at all and thus failed to provide him with a hearing that complied with the provisions of Division 4 of Part 7 of the Act and in particular ss.420, 425 and 430 of the Act. The Tribunal provided no basis for rejecting the assertion of the applicant that he obtained his passport by bribery and that he had passed through the airport because he was known by another name in his village, those areas of the applicant's testimony were not examined in any way. This might have been permissible if they were to be rejected for reasons of demeanour or of comprehensive findings of dishonesty or untruthfulness of the type considered by the Full Bench in *WAIJ v Minister for Immigration* (2004) 80 ALD 568 at [26] or *Re Minister for Immigration; Ex parte Applicant S20/2002* (2003) 77 ALJR 1165 at [49] and as Barnes FM opined in *SZIYX v Minister for Immigration* [2007] FMCA 308 (a case in which a similar claim concerning the ability to pass through customs was considered by the Tribunal) nor is it a case in which the Tribunal had regard to implausibilities, inconsistencies or other deficiencies in the applicant's evidence in relation to what occurred such that there could be said to be "*cogent material to support the conclusion that the [applicant] had lied (*WAIJ *at [27]). Rather the Tribunal simply did not accept that the applicant was a Falun Gong practitioner in China because she had been able to leave China on her passport in her own name."*

14. The respondent submits that it is not the duty of the Tribunal to prompt elaboration from an application. This submission that the Tribunal has inquisitorial powers but is not obliged to exercise them is well supported: *WAEH of 2002 v Minister for Immigration* [2002] FCAFC 364 at [19]-[24]; *Minister for Immigration v SGLB* (2004) 207 ALR 12 at [43]. Allsop, Jacobson and Graham JJ stated the principle in *Applicant S214 of 2003 v Minister for Immigration* [2006] FCAFC 166:

> "[26] Proceedings before the Tribunal are inquisitorial rather than adversarial. A Tribunal member conducting an enquiry is obliged to be fair. However, the Tribunal is not in the position of a contradictor of a case being advanced by an applicant. In a case such as that brought by the appellant under his application for review to the Tribunal, it was for him to advance whatever evidence or argument he wished to advance and for the Tribunal to decide whether his claim that he was a refugee, within the meaning of the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 as amended by the Protocol Relating to the Status of Refugees done at New York on 31 January 1967 ('the Refugees Convention') had been made out. The Tribunal was not obliged to prompt and stimulate an elaboration which the appellant may have chosen not to embark upon. The rule of fairness expressed in *Browne v Dunn* (1894) 6 R 67 has no application to proceedings in the Tribunal (per Gummow and Heydon JJ in *Re Ruddock (in his capacity as Minister for Immigration and Multicultural Affairs); Ex parte applicant S154/2002 ('Re Ruddock')* (2003) 201 ALR 437 at [57]-[58])."

15. The Tribunal must however exercise its inquisitorial function in accordance with the requirements of procedural fairness. A distinction has been drawn between cases where the Tribunal is not considered obliged to investigate a matter where it finds a submission made by the applicant not to be credible, and cases where the Tribunal commits jurisdictional error in not investigating a claim made by the applicant where it is unreasonable or unfair in the circumstances to do so. The distinction was considered by Hely J in *Seyfarth v Minister for Immigration* [2004] FCA 1713 at [95]:

> "There is no general duty on a decision-maker *'to prompt and stimulate an elaboration which the applicant chooses not to embark upon'*: *Re Minister for Immigration; ex parte Applicant S154/2002* (2003) 201 ALR 437 at 451 (Gummow and Heydon JJ). …A failure to make enquiries may sometimes be a breach of the rules of natural justice or render a decision unreasonable (*Re Minister for Immigration; ex parte Cassim* (2000) 175 ALR 209 at [12]-[14] (McHugh J)…"

The distinction was also drawn in *Re Minister for Immigration; ex parte Cassim* (2000) 175 ALR 209, where McHugh J notes at [13]:

> "Decisions and dicta in the Federal Court of Australia indicate that a failure by the tribunal to make inquiries about the claims or the evidence of an applicant may sometimes be a breach of the rules of natural justice or render the deicsion unreasonable: *Yao-Jing v Minister for Immigration* (1997) 74 FCR 275; *Minister for Immigration v Singh* (1997) 74 FCR 553. Even if that proposition is valid, those cases and dicta recognsie that the tribunal has no general duty to make inquiries about an applicant's claim. They declare that ordinarily the tribunal should only make inquiries if the material is "readily available"."

In *Applicant M164/2002 v Minister for Immigration* [2006] FCAFC 16 the Full Court considered the Tribunal was under a duty to use its powers of investigation where it concluded that documents submitted to it by the applicant were fraudulent, without a reasoned basis. The documents were discussed by the Tribunal and the applicant at the hearing, but the Tribunal did not further investigate its doubts relating to their authenticity. Tamberlin J considered the Tribunal had failed to properly deal with the claims made by the applicant on the basis of the manner in which it dealt with the applicant's evidence:

> "[117]…in the present case, several important documents have been dismissed without any proper investigation, examination or consideration. These omissions have had a signficiant bearing when balancing considerations for and against a finding of lack of credibility.
>
> [118] I consider that the Tribunal did not properly deal with the claims made by the appellant in this matter. This is because of the critical role played by the finding on credibility and the importance of the letters, which, on their face, are reliable and supportive of the appellant's case, and because of the failure of the Tribuanl to make a number of simple phone calls to verify the authenticity of the documents. The failure of the Tribunal to deal with the case sought to be made by the appellant and the documentary evidence called for findings by the Tribunal as to the authenticity and weight of the documents. This was not done. To some extent, the reasons for decision reflect such a closed state of mind in relation to the claims of the appellant that there was, on the face of the reasons, ostensible bias. Consequently, there was a failure by the Tribunal to properly exercise its jursidction in such a way as to give rise to jursidcitonal error…."

16. Further, whilst the Tribunal is under no obligation to investigate, it has a duty to consider each claim made by the applicant and that consideration must be genuine: the *"function of an administrative decision-maker is to give genuine and real consideration to the material before it"*: *SZEJF v Minister for Immigration* [2006] FCA 724 per Rares J at [55]. In *SZEJF* the applicant successfully argued the Tribunal's dismissal of evidence given in support of a claim of persecution was not supported by a reasoning process which addressed the claim made. His Honour stated at [38]:

> "In exercising its function of conducting a review of a decision under s 414(1) of the Act, the tribunal cannot simply act perfunctorily. Nor can it shut its ears or eyes so as to ignore, consciously or inadvertently, the claims made by the applicant for review (cf: *Dranichnikov v Minister for Immigration* (2003) 197 ALR 389 at 394 [24]-[25] per Gummow and Callinan JJ, 406-407 [86]-[87] per Kirby J, 408 [95] per Hayne J).

[39] In arriving at what it considers to be the correct or preferable decision (*Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1 at 18) at the conclusion of its review under ss 414(1) and 415 of the Act, the tribunal must give 'proper, genuine and realistic consideration to the merits of the case' (*Khan v Minister for Immigration and Ethnic Affairs* (1987) 14 ALD 291 at 292 per Gummow J, *Zhang v Canterbury City Council* (2001) 51 NSWLR 589 at 601 [62] where Spigelman CJ collected the authorities; *Minister for Immigration v Yusuf* (2001) 206 CLR 323 at 367 [138] per Kirby J.

[40] So, in *Re Minister for Immigration and Multicultural and Indigenous Affairs: Ex parte Palme* (2003) 216 CLR 212 at 223-224 [39] Gleeson CJ, Gummow and Heydon JJ referred to the inference which is open to a court exercising the function of judicially reviewing a decision of the executive government that if the decision-maker does not give any reason for his or her decision the court may be able to infer that he or she had no good reason."

The Tribunal found to be implausible the proposition that members of the Jirga group in Pakistan would be aware of the opposing NGO for which the applicant worked. His Honour considered this dismissal, without expressing reasons for its decision, to be jurisdictional error on the part of the Tribunal:

"[43] …The tribunal was required by s 430 of the Act to express reasons as founding its decision, why it was 'somewhat implausible' that the Jirga was aware of the appellant's group. Yet according to the express words of the newspaper article the Jirga, had in fact, made the very connection. The tribunal merely asserted, without referring to any basis in the evidence before it, that it, the Tribunal, found it 'implausible' or unbelievable that the Jirga made the connection it was reported to have made. This ignores the fact reported, namely that the Jirga did just that. There was no reasoning process by the tribunal for doubting this, let alone one based on any evidence.

[44] Whether or not the tribunal would have made the connection were it in the place of the Jirga is entirely irrelevant to its task. The tribunal was required to consider the appellant's claim which was supported by the newspaper reports of the Jirga having made the connection, then banishing the appellant and calling on his family to explain itself. While the tribunal was not bound to accept such a claim, it was obliged to give reasons, not mere assertions, for rejecting it.

…

[59] I am of opinion that by the way in which it dismissed the objective evidence provided in the two newspaper articles, the tribunal ignored relevant material (the newspaper articles) and relied on irrelevant material (namely its bare, unsupported assertions that the objective facts demonstrated in the newspaper articles were 'somewhat implausible' and gave 'no evidence' of the Jirga's activities). That was a

> jurisdictional error: see *Craig v South Australia* (1995) 184 CLR 163 at 179; *Secretary of State for Education and Science v Thameside Metropolitan Borough Council* [1977] AC 1014 at 1047D-E; *Minister for Immigration v Rajamanikkam (*2002) 210 CLR 222 at 233 [27], 241 [58], 250 [97] and *SZGDB v Minister for Immigration* [2006] FCA 431 at [33]-[38]."

17. The Tribunal in the instant case does not at any stage say that its failure to accept the applicant's evidence that he paid a bribe or escaped attention by using a different name was because of anything other than that he had obtained a passport and passed through customs. Thus, as submitted by the applicant, those claims were not rejected, they were ignored in a situation where the Tribunal is under a duty to consider all integers of an applicant's claim. As FM Barnes indicated in *SZIYX at* [52]:

> "The Tribunal was required to reach its state of satisfaction in a "*reasoned fashion"* (see Allsop J and *NADH* at [355]). As Madgwick J suggested in *SZAPC* "*the powers of decision makers such as the Tribunal are not to be exercised capriciously – not according to humour but according to law."* It is in this sense that Madgwick J summarised what was said by Gummow and Hayne JJ in *SGLB* at [38] as a requirement that *"the determination must be a rational one"*."

18. If the Tribunal expresses itself as failing to be satisfied that the applicant was a Maoist and was not a person in whom the authorities had an interest because he was able to leave the country, then the manner of his leaving the country must become an integer of his claim. This is particularly the case when the independent country information appears to corroborate the applicant. The Tribunal is not bound to believe the applicant but it is bound to indicate why it does not do so and absent the *"poisoned well of testimony"* discussed in *Re Minister for Immigration; Ex parte Applicant S20/2002* (2003) 183 ALR 58 or other contradictory evidence this requires the Tribunal to embark upon an investigation with the applicant of that part of the claim that relates to those matters. The Tribunal cannot use as the reason for rejecting evidence that contradicts its basic assumption that assumption itself. I am of the view that to do so fails to conduct a hearing in a manner that allows the Tribunal to reach its state of satisfaction in a reasoned manner or to give genuine or real consideration to the material before it. A decision reached in the absence of these requirements is not a decision made within

jurisdiction: *Applicant M164/2002 v Minister for Immigration* (supra) per Lee J at [63]-[69]; per Tamberlin J at [117]-[118].

19. I accept the submission of the applicant that this is a case where the constitutional writ should be granted. I will make the necessary orders. The Respondent must pay the applicant's costs assessed in the sum of $5000.00.

I certify that the preceding nineteen (19) paragraphs are a true copy of the reasons for judgment of Raphael FM

Associate:

Date: 26 April 2007