


/SG  
IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)

DATE:  
CASE NO: A831/2005

DELETE WHERE NECESSARY IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
05 May, 2008	
DATE	SIGNATURE

In the matter between:

THE TRUSTEES OF THE TIME BEING  
OF THE BIOWATCH TRUST

Appellants  
(Applicants *a quo*)

And

THE REGISTRAR, GENETIC  
RESOURCES

1<sup>st</sup> Respondent  
(1<sup>st</sup> Respondent *a quo*)

THE EXECUTIVE COUNCIL  
FOR GENETICALLY MODIFIED  
ORGANISMS

2<sup>nd</sup> Respondent  
(2<sup>nd</sup> Respondent *a quo*)

THE MINISTER FOR  
AGRICULTURE

3<sup>rd</sup> Respondent  
(3<sup>rd</sup> Respondent *a quo*)

MONSANTO SOUTH  
AFRICA (PTY) LTD

4<sup>th</sup> Respondent  
(4<sup>th</sup> Respondent *a quo*)

STONEVILLE PEDIGREED  
SEED COMPANY

5<sup>th</sup> Respondent  
(5<sup>th</sup> Respondent *a quo*)

D&PL SA SOUTH AFRICA INC

6<sup>th</sup> Respondent  
(6<sup>th</sup> Respondent *a quo*)

THE OPEN DEMOCRACY  
ADVICE CENTRE

*Amicus Curiae*

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JUDGMENT

POSWA, J

**Introduction and History of the case**

- [1] The introduction and the history of this case are set out in the majority judgment. Suffice it to say that it is an appeal against costs only.
- [2] I am in agreement with the following statement by my brother, MYNHARDT, J, giving the majority judgment, that although it is disputed in the papers that Biowatch was acting in the public interest, he is prepared to accept, as a factual finding of the Court *a quo*, that Biowatch acted, indeed, in the public interest in instituting the proceedings in the Court *a quo*. In my view, the finding was appropriately made. There are, in my view, major considerations, on the basis whereof the judgment in the Court *a quo*'s correct in this finding. I deem it necessary to give a more detailed history of the case, somewhat more than appears in the

majority judgment, to illustrate where, in my view, the Court *a quo* went wrong in its judgment.

[3] The applicant initially brought the application against the first, the second and the third respondents, respectively. In its notice of motion the appellant asked for an order whose relevant terms read as follows:

- “1. *Directing the first respondent, alternatively the second respondent, alternatively the third respondent, alternatively the first, second and third respondents, to provide the applicant with the information requested in annexures ‘EPS8(1)’, ‘EPS8(2)’, ‘EPS8(5)’ and ‘EPS9’ to the founding affidavit, save insofar as such information has already been provided in annexures ‘EPS8(4)’ and ‘EPS8(6)’ thereto;*
2. *Directing such persons as may oppose this application to pay the costs thereof.”*

[4] Before bringing the application, the applicant wrote a number of letters to the Directorate: Genetic Resources, in which it sought certain information related to the applicant's mission. Some of the letters e-mailed to the directorate are attached as annexures in the papers. The applicant subsequently had communication directed to the Directorate by its attorneys, which communication is also annexed to the papers. From the papers, it appears that the first letter was e-mailed on 17 February 2000 and that the last communication was from the appellant's attorneys to the Directorate on 29 March 2001. That was before the applicant issued the application.

[5] It was not until 22 August 2002 that the applicant filed the notice of motion. The appellant explains this delay in paragraph 19 of its founding affidavit as follows:

*"19. The applicant has not been in a position to proceed with legal action to enforce its rights until now. The reasons for this are twofold: In the first instance, the applicants needed to raise the appropriate monies to fund legal action. In the second instance, I was unable to allocate the time required to draft this*

*affidavit for personal reasons beyond my control.”*

(Emphasis added)

### Parties

[6] A brief description of the parties is, in my view, necessary. I have already mentioned the three initial respondents. Three other respondents, from the fourth to the sixth, subsequently joined at various stages along the way, of whom only the fourth respondent is of great consequence for purposes of this judgment.

### Appellant

The appellant is described adequately in annexure EPS9, the first letter written by its attorneys to the directorate on 26 February 2001, the relevant portions thereof reads:

*“As you are aware, Biowatch is a non-governmental organisation formed in 1997 for the purpose of researching and monitoring the implementation of South Africa’s obligations under the Convention on Biological Diversity. Biowatch is concerned that genetically modified organisms (‘GMO’s’) may pose a threat to human health and to the environment, and is committed to ensuring that the*

*constitutional right of all South Africans to an environment that is not harmful to their health and well-being is respected, protected, promoted and fulfilled. Moreover, Biowatch is committed to ensuring that the environment is protected, for the benefit of present and future generations, by means of adequate legislative and other measures. In furtherance of its objectives, Biowatch requires access to certain information held by the Directorate: Genetic Resources and/or the NDA [National Department of Agriculture]. More particularly, Biowatch requires access to all the information listed in the schedule to this letter held by the NDA.” (Emphasis added)*

It is not necessary, for purposes of the description of the appellant to annex the schedule. In annexure EPS1, the curriculum vitae of Ms Elfrieda Christine Pschorn-Strauss, deponent to the appellant’s founding affidavit, it is stated that the appellant was established in October 1999, with ten trustees.

In a confirmatory affidavit by one Christian Leon Jardine, a microbiologist and environmental scientist, who was a consultant to the appellant, a number of documents that reveal, in greater

detail, the nature of the appellant's preoccupation are referred to.

I mention the titles of two of such documents, viz:

- (a) A document marked CLJ7, whose title reads:  
**"DEGRADATION OF TRANSGENIC DNA FROM  
 GENETICALLY MODIFIED SOYA AND MAIZE IN  
 HUMAN INTESTINAL SIMILATION,"** (It is in Vol. 2,  
 pages 121-130);
- (b) **"THE IMPACT OF GENETIC MODIFICATION ON  
 AGRICULTURE, FOOD AND HEALTH,"** containing  
 "Recommendations: Environmental precautions and public  
 health risks". [Page 155]

From these annexures and others whose titles I have not mentioned, it is quite evident that the appellant is or was concerned with matters of health, a concern that it shares or shared with other like-minded organisations internationally. It is a non-governmental organisation (NGO).

The applicant has described itself as follows in paragraph 10 of the founding affidavit:

*"10. ... a civil society organisation that is acting in the public interest in bringing this application."*

### **Respondents**

[7] The first, second and third respondents are described, respectively, as follows in the founding affidavit:

#### **First respondent**

*"7.1 In terms of section 8(2) of the GMO Act (the Generally Modified Organisms Act, 15 of 1998), the first respondent is charged with administration of the GMO Act and may also exercise powers and functions assigned to him under this Act or by the second respondent.*

*7.2 The first respondent is cited in his capacity as the administrator of the GMO Act. (The applicant's various requests for excess to information held by the department of agriculture ('the department'), described below, were addressed to the third respondent.)"*

**Second respondent**

*“8.1 The function of the second respondent in terms of section 4 of the GMO Act is to advise the first respondent on all aspects concerning the development, production, use, application and the release of GMO’s, and to ensure that all activities with regard to the development, production, use, application and release of GMO’s are performed in accordance with the provisions of the GMO Act.*

*8.2 The second respondent is cited as a co-respondent in this application because it is vested with certain powers and duties under section 18 of the GMO Act relating to the disclosure of information which may not be kept confidential, and because of the fact that the first respondent has relied on the failure (or refusal) of the second respondent to acquiesce in the disclosure of information, as the basis for his (i.e. the first respondent’s) refusal to provide the information requested.”*

**Third respondent**

*“9.1 The third respondent is sited as a respondent because of her potential interest in the matter. In this regard, the information to which the applicant has requested access is in the possession of the department which falls under her control.*

*9.2 Save in relation to the information specified, no specific relief is sought against her.”*

The first, second and third respondent are collectively referred to as “the statutory respondents”.

**Fourth respondent**

[8] On 14 May 2003, the fourth respondent filed an answering affidavit, dated 9 May 2003, having served both documents on the appellant on 13 May 2003. That was in consequence of a successful application by the fourth respondent for leave to intervene in the application “on the grounds that it [had] a direct and substantial interest in the subject matter [thercof]”, (paragraph 5 of the fourth respondent’s answering affidavit.) In paragraph 3

of its answering affidavit, under the heading "introduction", the fourth respondent describes itself as follows:

"3. *Monsanto is a diversified biotechnology company which is involved, inter alia, in the research, development and sale of genetically modified organisms ('GMO's') in South Africa. These activities are comprehensively regulated by the State in terms of the Genetically Modified Organisms Act (No 15 of 1997) (the 'GMO Act').*" The deponent then proceeds: "*To the best of my knowledge, Monsanto is the (sic) one of the leading participants in the South African GMO industry. Both before and since the commencement of the GMO Act, Monsanto has been active in applying for permits, approvals and authorisations for GMO commodity imports, trial releases and general releases in South Africa. This is reflected in the list of GMO permits attached to annexures 'EPS8(6)' of Biowatch's founding affidavit. As appears therefrom, at least 23 GMO permits have been issued to Monsanto since January 2000.*" (Emphasis on the words "and sale" is added.)

**Issues**

[9] It must be evident from what has been stated above in this judgment that the appellant sought information related to GMO's from the statutory respondents. The following, *inter alia*, appears in paragraph 12 of the founding affidavit:

*"12. The requests that are dealt with in this application concern information relating to GMO's. I will thus briefly outline the issues and concerns arising from the use, control and the release of such GMO's in South Africa.*

*12.1 Genetic engineering is a process that is used to modify life forms by introducing molecular material (i.e. deoxyribonucleic acid, or DNA) from other life forms in order to alter their genetic makeup and inheritable qualities permanently. The modified life forms are referred to as GMOs.*

*12.2 Genetic engineering is different from the traditional breeding of plant varieties. The latter consist of mating selected individuals of the same or closely related species for generations in order to develop specific properties in the offspring. Genetic engineering, on the other hand, permits the insertion of DNA into one organism from a completely unrelated organism, thereby forming transgenetic organisms. For example, genes from a virus or bacteria, or from an animal, can be inserted into a plant.”*

(Emphasis added)

- [10] In its answering affidavit, when dealing with the various paragraphs of paragraph 12 of the appellant's founding affidavit, the fourth respondent does not deal with subparagraph 12.1 and 12.2. In fact, paragraph 12 of the appellant's founding affidavit has the following further subparagraphs, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8 (with subparagraphs 12.8.1 to 12.8.7), 12.9 (with subparagraphs, 12.9.1 and 12.9.2), 12.10 (from 12.10.1 to 12.10.6) and 12.11. Only subparagraphs 12.3 to 12.5 and 12.8.3 to 12.8.7

are challenged in the fourth respondent's answering affidavit. I consider the challenge to subparagraphs 12.3 to 12.5 of the founding affidavit of no great significance. Subparagraphs 12.6( referring to world-wide concerns being voiced about "increased commercialization of GMOs) and 12.7(about an escalation in the number of permits granted in relation to genetically modified crops," i.e. an increase "from one application in 1990 to 122 in 2001) have not been disputed by the respondents.

Paragraphs 12.8, together with its subparagraphs 12.8.1 to 12.8.7 are disputed by the fourth respondent, in paragraph 78 of its answering affidavit. It relates to an alleged debate "[in] Europe and the rest of the industrialised world," a debate referred to as "the GMO debate...centred on public health and environmental safety issues." In response to this paragraph, the fourth respondent says the following in paragraph 78:

“78. Ad founding affidavit, paras 12.8.3 to 12.8.7

79.1 I deny that GMOs have had a negative socio-economic impact on the livelihood of farmers in South Africa. The benefits offered by GMOs to the farming community has been recognised by the allowance of farming with GMOs in South Africa **subject to the provisions of the GMO Act**. Farmers choose to use GMOs on the grounds that they have a positive socio-economic impact on such farmers' livelihood. The submissions made by Biowatch in these paragraphs represent an attempt by Biowatch to advance and promote its own views and opinions on GMOs **without regard to the stated position of the legislature in this regard and the choice of farmers and consumers to accept the benefits of GMOs**. In this sense, *inter alia*, Biowatch is clearly not acting as it alleges, **'in the public interest'**.

79.2 *Biowatch also misrepresents the facts when it states that the duty to pay royalties for GMO products has been extended to those whose crops have been 'contaminated' by such GMOs (founding affidavit, para 12.8.5). Biowatch refers in this regard to the case of one Percy Schmeiser, a Canadian farmer who was allegedly ordered by a Canadian Court to pay royalties to Monsanto "notwithstanding that his crops had been genetically polluted". In fact, the court in question found that Mr Schmeiser had intentionally and knowingly exploited Monsanto's patent by using its GMO products, without authorisation, in his crops, and this finding was confirmed on appeal. Copies of the relevant judgments will, if necessary, be placed before this Honourable Court at the hearing of this application."*

It is significant, by way of background, in my view, that paragraphs 12.9 to 12.11 have not been challenged. They relate to South Africa signing the "Convention on Biological Diversity," which was agreed for signature at a United Nations Conference on Environment and

Development in Rio de Janeiro, Brazil, which came into force on 29 December, 1993 (12.9) ; the British Medical Association's Board of Science and Education joining "arguments against GMOs" by issuing "recommendations regarding environmental precautions and public health risk (12.10)," and "many countries around the world [having] banned commercial use and release of GMOs (12.11)."

[12] The purpose of referring to paragraph 12 of the appellant's founding affidavit, as well as to the fourth respondent's responses to the allegations contained in that paragraph, is to indicate that, from the unchallenged portions of paragraph 12 of the appellant's affidavit, it is evident that the appellant was, in approaching the statutory respondents for information, actuated by genuine concerns about public interest. Moreover, it is evident, in my view, that NGOs such as the Appellant have both a national and an international obligation to vigilantly monitor South Africa's role in the field of GMOs. It is also important, in my view, to highlight that the fourth respondent vehemently and relentlessly disputed that Biowatch was acting in the public interest. In the light of its attitude in this regard, there is, in my view, nothing that the appellant could have done, short of abandoning the entire

application, to cause the fourth respondent to relent in its opposition. The fourth respondent's opposition was far more deep-rooted than an objection to the *manner* in which the appellant presented its application. I seek, further, to emphasise and illustrate that, unlike the Court *a quo* and the majority judgment in this Court, I do not merely accept that the applicant acted in the public interest but find that it demonstrated that with convincing evidence. In my view, *the fact that the fourth respondent denied that the appellant was acting in the public interest is not a matter of mere observation. It went into great detail to support its submission in that regard. A finding that Biowatch has standing and is acting in the public interest is, in my view, a comprehensive success by Biowatch and a comprehensive loss by the fourth respondent.*

#### **Biowatch's submissions with regard to costs**

[13] In its heads of argument, the appellant dealt with the costs order on two bases. Firstly, the decision not to grant an order of costs in its favour against the statutory respondents. Secondly, the decision to grant costs, against the appellant, in favour of the fourth respondent. These two sets of costs are referred to as "the first costs order" and "the second costs order", respectively. It is

apposite, at this stage to cite paragraph 68 of the judgment of the Court *a quo*, in which the costs aspect is dealt with. It reads:

*“[68] As far as costs are concerned, the general rule in mitigation is that the cost should follow the result regard. However, although Biowatch has been partially successful in obtaining some of the relief sought, the manner in which some of the its request for information is formulated, as well as the manner in which the relief claimed in the notice of motion was formulated, has convinced me that it should not be granted a costs order in its favour in these circumstances. Furthermore, the approach adopted by it compelled Monsanto, Stoneville and D & PL SA to come to court to protect their interest. The issues were complex and arguments presented by them were of great assistance. Stoneville and D & PL SA did not seek any cost order against the applicant. On behalf of Monsanto its counsel sought an order for costs against the applicant. In my view the applicant should be ordered to pay Monsanto’s costs. No other*

*order as to costs is warranted in the circumstances of this case.”*

It is, in my view, important to mention that that is all that the Court *a quo* said with regard to costs. The significance thereof will be more apparent, later, when that approach is compared with that of other courts where parties that litigated in the public interest were, nevertheless, mulcted in costs, with full reasons for such decisions set out in detail.

[14] In paragraph 6.4 of the appellant’s heads of argument, the following is stated:

*“6.4 The objects of the trust are set out in the trust deed, a copy of which is annexed marked ‘EPS3’.”*

In paragraph 2.3 of the Deed of Trust, a number of words and expressions are defined. I extract some of those, in respect whereof the respondents could, in my view and in the light of their attack on the appellant’s claim to be acting in the public interest, have commented:

1. In 2.3.7.1, there is reference to conservation activities which include

2.3.7.1 monitoring biodiversity prospecting in South Africa;"

"2.3.7.1.2 establishing legal and institutional mechanisms to control access to genetic resources;"

"2.3.7.2 monitoring the use, control and release of genetically modified organisms in South Africa."

"2.3.7.4 assisting in building the capacity of government officials to deal with issues relating to biodiversity;"

"2.3.7.5 building awareness among civil society, and so allow for representative and informed policy to be developed;"

2.3.7.7 taking measures, including legal action, to ensure compliance with the principal object.”

In paragraph 1.7 of Biowatch’s heads of argument, it is submitted that the public interest nature of Biowatch’s activities in general is underlined by the provisions of Biowatch’s trust deed, which was annexed to the founding affidavit. Then, in subparagraphs 1.7.1 to 1.7.3, support for this submission is obtained from certain clauses in the deed of trust for Biowatch, Annexure “EPS3”. Believing that it was acting in the public interest, the appellant then went about seeking information, from the first respondent, from which it, the appellant, would be able to determine that the Government is, or was, complying with international requirements as well as those of the GMO Act. It sought to monitor “the implementation of South Africa’s obligations under the Convention on Biological Diversity” (Annexure EPS9).

### **The Respondents’ Responses to Paragraph 6.4 of the Founding**

#### **Affidavit**

#### **Statutory Respondents**

[15] In paragraph 22 of their answering affidavit, in response to, *inter alia*, paragraph 6.4 of the appellant's founding affidavit, the statutory respondents merely state that "this is noted". This in spite of the contents of the trust deed, "EPS3", concerning the purpose for which Biowatch was formed, its objectives and its functions. Paragraph 15 of the founding affidavit, which relates the appellant's desire to obtain the information it sought in relation to the purpose for which it was formed, including its aims and functions, which are of a public nature. It reads:

*"15. The applicant seeks the information to which this application relates, both in the public interest, as well as for the protection of the rights which the applicant enjoys." (Emphasis added)*

However, in response to paragraph 15 of the applicant's founding affidavit, the statutory respondents reply:

*"It is denied that the appellant has established any right to any information for itself 'in the public interest'."*

This, in my view, is a strange reply when the contents of the trust deed, in the context I have referred I have highlighted, are not contested. The Court *a quo* made no comment about this contradictory reaction on the statutory respondents' part.

#### **Fourth respondent**

[16] In his response to the applicant's assertion that it is a "civil society organisation that is acting in the public interest", the fourth respondent challenges the applicant's *locus standi*, in paragraphs 13 to 21 of its answering affidavit, the latter of which reads as follows:

*"21. For all the reasons stated above, I am advised and respectfully submit that Biowatch does not enjoy locus standi to bring the current proceedings and this application should be dismissed on that basis alone."*

The applicant's *locus standi* is that challenged and denied by both the statutory respondents and the fourth respondent.

[17] In paragraph 16 of its answering affidavit, the deponent on behalf of the fourth respondent specifically and says:

“16. *I am advised that Biowatch does not make out any case and has not established, that it is acting as a ‘member of, or in the interest of, a group of class of persons’ within the meaning of section 38(c) [of the Constitution]. In addition, I as the fourth respondent’s deponent deny that Biowatch is truly acting ‘in the public interest’ within the meaning of section 38(d) in bringing this application. Biowatch is a private organisation that simply represents and advocates the personal interests and opinions of its trustees. Further argument would be made in this regard at the hearing of this application,” (emphasis added).*

No mention was made by the fourth respondent, in all the paragraphs I have mentioned, of paragraph 6.4 of the appellant’s founding affidavit, neither was there allusion to the trust deed. How the fourth respondent reconciles its attack on the appellant’s *locus standi* when it does not challenge its averments in the trust deed is, in my view, incongruous.

Similarly, when dealing with the applicant's reliance on also s 32(1)(c) of NEMA, the fourth respondent writes:

*“In the event, I deny that Biowatch has made out a case, or established, that it is acting ‘in the interest of or on behalf of a group of or a class of persons whose interest are affected’ within the meaning of section 32(1)(c) of the NEMA in bringing these proceedings. I also deny that Biowatch is truly acting in the ‘public interest’ or in the ‘interest of protecting the environment’ within the meaning of sections 32(1)(d) and (e) respectively. As stated above, Biowatch is a private organisation that simply represents and advances the person interest and opinions of his trustees.”*

*“21. For all the reasons stated above, I am advised and respectfully submit that Biowatch does not enjoy a **locus standi** to bring the current proceedings and its application should be dismissed on that basis alone.”*

[18] Determination of the question as to whether the applicant acted “in the public interest” is one of the main issues that the Court *a quo* had to decide. The nature of the information sought by the

applicant was such that it could have been entitled to it only if it was acting in the public interest. As I have illustrated, both the statutory respondents and the fourth respondent denied that the applicant was acting in the public interest, totally unjustifiably. They denied that up till the time of judgment and a lot of time was, unnecessarily in my view, spent in dealing with their respective objections in this regard.

- [19] One of the facts of this case is that the Court *a quo*, having found that "Biowatch did achieve substantial success in the relief it sought against the first to third respondents, i.e. the Registrar, the Council and the Minister", went on, in respect of the first cost order, to refuse "to grant an order for costs against the first to third respondents" (para [8] of the judgment in the application for leave to appeal). In the case of the second cost order, it granted an order of costs against the applicant, in favour of the fourth respondent, adding that "the provisions of section 21A of the Supreme Court Act 1959, 59 of 1959, are applicable". Of crucial importance is also the fact that, as a matter of fact, the applicant did make requests for information related to its mission from the statutory respondents. The fact that the applicant directed no request to the fourth respondent, before bringing the application and . the nature

of the relationship between the statutory respondents, on the one hand, and the fourth respondent, on the other hand, were, in my view, important factors for consideration by the Court *a quo*. Related to the latter aspect is the question as to how the fourth respondent reacted when it learnt that the applicant was making requests, to the statutory respondents, for information of a nature that the fourth respondent had an interest in. It did nothing and joined the application only after it had been set down and had fortuitously been postponed before starting. That conduct does not, in my view, demonstrate the fourth respondent's lack of genuine concern about the risk of some protected information being provided, by the first respondent, to the appellant, or reckless disregard for the consequences thereof.

#### **Discretion of the Court *a quo* in Respect of the Award of Costs**

[20] It is submitted, on the applicant's behalf, that the Court *a quo* "failed to take a number of relevant considerations into account in making [its] award as to costs, including its own finding that Biowatch was litigating in the public interest". (Paragraph 4.4 of the appellant's heads of argument.) As I understand the submissions on the appellant's behalf in this regard, the court *a quo* misdirected itself with regard to "two basic principles"

developed by the courts in relation to costs. (*Ferreira v Levine NO and Others; Vryenhoek and Others v Powell NO and Others 1996 2 SA 61 (CC) at para [3]*” (para 5.1 of the applicant’s heads of argument)).

[21] With regard to principles applicable in respect of the discretion of the Court *a quo* with regard to costs, the appellant elaborates as follows in its heads of argument:

“5.2 *These principles are as follows*

5.2.1 *The award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial official and is ‘in essence a matter of fairness to both sides’.*

*Kruger Bros and Wasserman v Ruskin 1918 AD 63 at 69; Rondalia Assurance Corporation of SA Ltd v Page and Others 1975 1 SA 708 (A) at 720C; Ward v Sulzer 1973 3 SA 701 (A) at 706G.*

5.2.2 *The successful party should, as a general rule, have his or her costs. ...*

*Fripp v Gibbon and Co 1913 AD 354 at 357; Merber v Merber 1948 1 SA 446 (A) at 452.*" (Emphasis added)

[22] The submission is qualified as follows:

"5.3 *The Constitutional Court, however, stated that 'the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation.' Although the general principles 'of a useful point of departure ... [if] the need arises, the rules may have to be substantially adapted; this should however be done on a case by case basis'.*

*Ferreira (supra) at paragraph [3]*". (emphasis added).

I did not understand either Mr Bester, on behalf of the statutory respondents, or Mr Snyckers, on the fourth respondent's behalf, to disagree with the submissions made, above by Mr Moultrie, on