

**IN THE LABOUR COURT OF SOUTH AFRICA**  
**(HELD AT CAPE TOWN)**

CASE NUMBER : C88/2007

DATE : 4 NOVEMBER 2009

5 In the matter between:

**DAVID ROBERT LEWIS** Applicant

and

**MEDIA 24 LTD** Respondent

---

10 **COURT ASSEMBLES ON 4 NOVEMBER 2009 (at 14:18)**

MR LEWIS: I'm representing myself personally.

COURT: Mr Lewis, won't you speak into the microphone? So that...

MR LEWIS: I'm representing the applicant in my personal  
15 capacity as the applicant.

COURT: Thank you, Mr Lewis.

MR KAHANOVITZ: May it please the Court, I appear on behalf of the respondent.

COURT: Mr Kahanovitz.

20 MR KAHANOVITZ: M'Lord, maybe I could just assist by dealing with some housekeeping matters in relation to documents and so on and so forth before the applicant proceeds with his case. In relation to pleadings, M'Lord, we found that we could not actually work with the pleadings file as  
25 it had been put together by the applicant, so we have prepared

a new file of pleadings with documents in consecutive chronological order and we would respectfully submit that it would be better for all parties concerned if it's... There's no difference in the contents of the documents. It's just that they  
5 have been ordered in the correct...

COURT: The chronological order.

MR KAHANOVITZ: Chronological order, so therein one can follow the sequence of the pleadings. If I may beg leave to...

COURT: Well let's just, has Mr Lewis seen the new list?

10 MR KAHANOVITZ: No he has not, M'Lord.

COURT: Shouldn't he, shouldn't he look at them and satisfy himself that...?

MR KAHANOVITZ: I have no problem with that, M'Lord, and maybe just while – I should just explain that the rules of court  
15 require the pleadings to be paginated in a chronological sequence and the manner in which you paginated the court file was not in a chronological sequence and we have therefore ordered it in the correct sequence and we have also added the pleadings that have been filed in the last week. I don't – Mr  
20 Lewis, maybe I can just, have you got a copy?

COURT: Let me have a look at a copy as well.

MR KAHANOVITZ: Alright. M'Lord, we have divided it into two sections, one with the pleadings proper and another which we have called "Index to Additional Documents" as there are a  
25 number of documents that were in the court file that fall into  
04.11.2009/14:03-16:07/EdB /...

let's call it a grey category. If I can hand that up as well. So various letters sent to the registrar and so on and so forth and we've referred to those as additional document, Mr Lewis.

COURT: Now with these documents all together, they all  
5 include all of Mr Lewis's documents?

MR KAHANOVITZ: Yes.

COURT: Just reordered?

MR KAHANOVITZ: Yes M'Lord.

COURT: So in other words there's nothing different here other  
10 than the order and bring it into a chronological sequence?

MR KAHANOVITZ: Yes M'Lord and obviously at the time that Mr Lewis paginated the file some of the document were not yet in existence.

COURT: Had they not been filed? Yes.

15 MR KAHANOVITZ: No, so they would not have been in his index.

COURT: Mr Lewis, do you have any difficulty with this?

MR LEWIS: H'm, it doesn't appear – it doesn't appear so.

COURT: You must approach the mic before you speak.

20 MR LEWIS: Sorry. It..., it doesn't – there doesn't appear to be a problem. I'm just a bit concerned. There was an earlier attempt to change the order of proceedings with regard to the pre-trial minute and the certificate of outcome. So I'm just a bit concerned that the respondent is attempting to go back –  
25 backwards to the CCMA, overturn the certificate of outcome.

COURT: I don't think you need to worry about that. This is – all that's happened here is that all the documents that you had in your file, in your, sorry, your indexed pleadings I'm advised are included in these too. If at any stage something is missing or is not correct you would be quite entitled to raise it. But really, what Mr Kahanovitz says is really all that is done is these documents have now been put in the order that they should have been put in terms of the rules and all the documents are here. To the extent that any document is missing and you come to realise that...

MR LEWIS: H'm.

COURT: Then you can raise it with me.

MR LEWIS: Thank you very much.

MR KAHANOVITZ: M'Lord, then we would beg leave to hand up the respondent's bundle which, as I indicated to Your Lordship, hopefully all of these documents will be put into lever arch files for Your Lordship too in the tea break. M'Lord, there are...

COURT: And Mr Lewis, I see you've got a copy?

MR KAHANOVITZ: He was given before. Yes he does have a copy. There are four, is it four or three? There are three subpoenas that have been issued by – issued out of the registrar's office by the applicant, by the applicant in respect of – one is in respect of Shelagh Goodwin, another in respect of Hanlie Gouws and the third is Brian, Brian Gaffney. Now

M'Lord, might I ask...? I need to address you in due course on the validity of those subpoenas. We undertake, should Your Lordship find that the subpoenas are valid and that these witnesses need to be in attendance at court, we undertake to, on Your Lordship so requesting, to ensure that they are brought here posthaste. But on the face of the documentation they are required to be here for the next three days and we would ask that they be provisionally excused until such stage as both of the parties have had an opportunity to address Your Lordship on the question of the relevance or otherwise of any evidence which they may give in these proceedings.

COURT: Just let me know who they are. I – In...

MR KAHANOVITZ: I don't – if they're in your... The subpoenas are ...(intervention)

15 COURT: I only got one subpoena here and that was in relation to Shirley(sic) Goodwin.

MR KAHANOVITZ: Yes and Your Lordship also should have ...(intervention)

COURT: And she's the HR manager.

20 MR KAHANOVITZ: Yes and Your Lordship should also then have an affidavit in Your Lordship's file in which we deal with that subpoena.

COURT: Yes.

MR KAHANOVITZ: We didn't actually get copies of the other  
25 subpoenas except – because as Your Lordship is aware the  
04.11.2009/14:03-16:07/EdB /...

process is not one which is done via us or through the attorneys.

COURT: Yes.

MR KAHANOVITZ: We only – we heard about it from our staff.

5 So h'm...

COURT: Are these, are all these three people from the respondent?

MR KAHANOVITZ: Yes, they're all from the respondent and what we advised them to do...

10 COURT: And you give an undertaking.

MR KAHANOVITZ: ...was to be here today as they are.

COURT: Alright.

MR KAHANOVITZ: To comply and that we would then address the Court on their behalf. So I have, I don't have a copy but I  
15 have the original of – as served on Hanlie Gouws of Media 24 and Mr Gaffney does... We don't have his subpoena but we know he has been subpoenaed.

COURT: Okay.

MR KAHANOVITZ: I don't know in what file. We're assuming  
20 they are in a file at the Labour Court.

COURT: Yes, that's fine. Mr Lewis, do you have any objection? They will be made available at any time.

MR LEWIS: As the Court pleases.

COURT: If you're happy with that.

25 MR LEWIS: Alright.

COURT: Then I think rather than keeping them here for three days, let's determine the validity of the subpoenas.

MR LEWIS: H'm...

COURT: And it may be that that, the evidence becomes  
5 relevant in which case the other side have given an undertaking to call them at short notice.

MR LEWIS: As the Court pleases. I have no objections to that, thanks.

COURT: Okay, then Mr Kahanovitz, then the three  
10 witnesses...

MR KAHANOVITZ: Where are they? I think they need to come into court, M'Lord.

COURT: Yes of course. I wanted to call them.

MR KAHANOVITZ: Ja.

15 COURT: In the meantime I want to just place on record the issued that I raised in chambers. I raised with both the, with the application and the respondent that the law firm with which I'm associated has – was approached by the applicant on one occasion and on a matter distantly related to this application  
20 and that other members of my law firm had given advice on one or two occasions to the respondent. I personally have not been involved in any of these matters. I raised this issue with both the representatives of the respondent and the applicant and they had no objection to me continuing to hear the matter.  
25 Just wish to place that on record. Are the three witnesses

subpoenaed in court, Mr Kahanovitz?

MR KAHANOVITZ: Yes, yes. Maybe M'Lord, just to get it on record we should just... Maybe each of you could just tell us what your names are.

5 MS GOODWIN: I'm Shelagh Goodwin.

MS GOUWS: Hanlie Gouws.

MR GAFFNEY: Brian Gaffney.

COURT: You've been subpoenaed to be in this court and to be here for three days. The representative of the – legal  
10 representative of the respondent has requested that you be provisionally excused from being in court for these three days. The applicant has agreed. But it's on this basis, that Mr Kahanovitz has undertaken that you will make yourself available at short notice should the Court require it, together  
15 with the documents that you've been asked to bring.

MS GOODWIN: Thank you.

COURT: Thank you, you're excused.

MS GOODWIN: Thank you very much.

MR KAHANOVITZ: Thank you, M'Lord. Then just to continue  
20 then with housekeeping matters. The parties were unable to conclude a pre-trial process by themselves. Pre-trial conference was then convened in front of Judge Moshwana AJ (M-o-s-h-o-a-n-a). That, the minute... Well, let's put it this way, the document that purports to be the pre-trial minute of  
25 that process is at pages 45 through to 54. Your Lordship will



note that it's not signed and the reason for that appears from the document which is at page 55 of the pleading, which is called a dissensus (d-i-s-s-e-n-s-u-s) and Your Lordship will note that in that the applicant records his "dissensus and  
5 dissatisfaction with the manner in which the pre-trial minute have been recorded and/or failure to amend the said document". Your Lordship will, however, note that Mr Lewis's objections to the content of the minute are limited in nature. So when he took the... What he has done is that in effect he  
10 says if the changes that are reflected on page 56 are incorporated, then he's happy with the pre-trial minute. What I would suggest as a practical way forward, M'Lord, is the following, that it strikes me that it's pointless for the parties to debate whether the name of A Cassim(?) as the minute-taker  
15 should or shouldn't be in the minute. It's pointless for the parties to debate whether the wording that Mr Lewis has of 5.7.3.11 is a more accurate reflection of what was said than the way in which my instructing attorney recorded it and it's also pointless to have a discussion about whether what should  
20 be the new paragraph 14.3 should be included because nothing is actually going to turn in the end result on any of these issues. So I think it would just waste time for there to be a debate on who was right or who was wrong in the way in which the pre-trial minute has been reflected. What we do  
25 know and I think that's sufficient for trial purposes, is that

04.11.2009/14:03-16:07/EdB /...

besides those paragraphs noted in the dissensus the rest of the pre-trial minute is, it is agreed the rest of the pre-trial minute is a proper reflection of the pre-trial process and what is therein contained sufficiently complies with the rules of this court. So my submission is that subject to what Mr Lewis has to say, that we don't debate this issue any further and we just proceed on the basis of the documents as they are now before the Court.

COURT: Thank you. Mr Lewis.

10 MR LEWIS: I just want to record the problem with the *in limine* point which was raised with regard to the certificate of outcome. The respondent objected to the certificate of outcome at pre-trial and the motion was denied, that that wasn't recorded in the minutes. The minutes were not signed for the reason that the respondent proffered a fraudulent contract, a contract claiming to have been signed by my good self. I have not seen that document. The document which bears my signature has a signature on the – on the back page of the document. The document hasn't been – none of the pages have been signed. So just in view of the fraudulent document and the failure to amend the pre-trial minute and also in view of the fact that I'm not represented, I don't have access to an attorney I have not signed that document. I am prepared to sign such a document if the amendments are included in that document. Thank you.

COURT: Just to help you. Really what a minute is, it just records that what is agreed and that what is not agreed. So I would like to suggest that what we do is we take the minute as it stands, you don't have to sign it, that we record your views  
5 of that particular standpoint. So if we take one on attendance we just record that A Cassim is the minute-taker; that in regard to the material facts which are in dispute, 5.7.3.11, that this is your version of what took place and that the current 5.7.3.11 is the respondent's version and that we do the same  
10 thing with 14.3. In other words all that the minute now reflects is everything as agreed, subject to these three amendments. The respondent is not agreeing to your changes and you're not agreeing to their version and that then is simply recorded. Is that in order, Mr Kahanovitz?

15 MR KAHANOVITZ: Yes M'Lord.

COURT: Are you happy with that, Mr Lewis?

MR LEWIS: Yes I am, thank you very much.

COURT: So for the purposes of the minute we will read in the changes that the applicant wanted to have in the minute and  
20 it's recorded that those changes are the applicant's standpoint in respect of those issues and that the current paragraphs as they are contained in that minute, 5.7.3.11 to – and 14.3 reflect the respondent's version of what has taken place.

MR KAHANOVITZ: As the Court pleases. M'Lord, just to place  
25 on record, insofar as it may be relevant, that my instructions

are that there was no challenge to the certificate of outcome as part of the pre-trial conference process and it would not have been legally competent for any such challenge to have taken place. So it's just, I mean I must just put that on record  
5 because it's been said that..., it's been recorded that respondent raised the point *in limine* and that the motion was denied. We note that that is what is said. We have a different view. We say that didn't happen. So let's – and we just leave it at that.

10 COURT: Yes. I think that's... Ja, yes. That's a dispute that we will resolve in the course of evidence.

MR KAHANOVITZ: Yes M'Lord.

COURT: If it remain – if it's an issue.

MR KAHANOVITZ: If it remains a dispute, alright. Then  
15 M'Lord, Your Lordship will have seen that we have filed a notice of intention to amend which is at pages 57 through to 75. There seems to be some form of an objection and maybe I must just explain the purpose of the amendment and why the notice has been filed and why I don't think that the problems  
20 that the respondent – that the applicant envisages with that notice are real problems. M'Lord, I was not previously involved in this matter and in – I was not involved in the process of pleading the statement of defence, but on getting instructions and on reading the pleadings I thought it important  
25 to attempt to distil from the, let's call it the wider set of claims,  
04.11.2009/14:03-16:07/EdB /...

which of those allegations appear to be the main tenets or threads of the applicant's case. His statement of claim, although it was drafted by an attorney is not, with respect, a model of clarity. So on looking at the documentation that had been discovered and also then in looking at what is in pages 21, this is the pleadings file, and following which is a response drafted by the applicant himself in relation to an exception that was threatened whenever proceeded with, it became apparent to me that the – some attempt should be made to distil what, at least according to our understanding, are the claims that are being made by the applicant. What we did was we looked at how he had articulated his claim in the first instance when he had referred it as a dispute and what were the central pillars or his central grievances and we in essence have said that, in our notice of amendment, this is what we think are his causes of action and if his causes of action are indeed what we think they are, then this is our version. Because it was..., it was not a very constructive process to merely put before the Court a set of documents that say, “We deny and put you to the proof”, which is what the essence of the original statement of response was. So Your Lordship will notice that the amendment that the amendment does not seek to amend anything contained in the original statement of response. All it does is seek to amplify what is contained in the original statement of defence and with respect, there is no prejudice to

04.11.2009/14:03-16:07/EdB /...

the applicant which can result from this. If anything, it would put the applicant in a far better position to now being aware of the case that the respondent intends putting up in response to his claims. There is no endeavour on our part, as appears to  
5 be suggested, that in somehow or other we are not attempting to revisit or reopen the question of what is contained in the certificate of outcome. Firstly we don't do that and secondly it would not be open to us to do so, even if we had wanted to do so. So I don't think that the applicant needs to perceive that  
10 there is some or other threat from our side that through this amendment we are seeking to undermine or undercut the conciliation process. Those are my submissions, M'Lord, unless you have any questions.

COURT: Well let me hear Mr Lewis.

15 MR LEWIS: Your Honour(sic), with – for the purposes of the claim which is before the Court, which is contained in my filing sheet, there are two grounds essentially that are contained. The one is a religious belief and the other one is political outlook. The nature of the complaint which was put before the  
20 CCMA contained five basic sort of issues. One of those issues is the religious issue and the other issues have been subsumed under the filing sheet in the form of the political outlook and then also the secondary issue of harassment. So they're only really three of the, what one could term the initial  
25 complaint, the grounds of that complaint we've contained. I've

now responded to the – this amendment. I've no objection to the manner in which the amendment has been adopted, just that I have been now been given an opportunity to address the initial grounds and that the..., just for sake of clarity, the – I've  
5 been forced to essentially address the structure of the initial case at the CCMA. So there is a problem of order with regards to the – my response to the amendment.

COURT: Let me just be clear. One moment you say you don't oppose the amendment. You don't oppose the amendment?

10 MR LEWIS: No.

COURT: But you..., but what you do oppose is the content of the amendment in the sense of the – there's a real disagreement between you as to what the respondent is saying, which is of course the nub of the case that we're  
15 dealing with.

MR LEWIS: Right and I would also oppose the form or the structure of the amendment because it's – the respondent is attempting to address the initial filing sheet which was at the CCMA.

20 COURT: But...

MR LEWIS: I'm forced to go with the filing sheet which is before the Court.

COURT: Okay.

MR LEWIS: So the structure of that filing – the structure of  
25 the filing sheet before the Court should be the one that is

addressed. The documents that are at the CCMA would fall under the filing sheet before the Court. I'm just a bit concerned that the respondent is essentially undermining my application before the Court on the grounds.

- 5 COURT: I... You see, I don't understand. I don't understand. What they're seeking to do and I've read the papers, is really to amplify what might be called a very..., a bare denial in the response.

MR LEWIS: Right.

- 10 COURT: They just deny by and large. They do set out certain facts et cetera.

MR LEWIS: Right.

COURT: What they've done now is amplify those facts. They have to prove them.

- 15 MR LEWIS: Right.

COURT: Just as you have to prove your case.

MR LEWIS: Yes.

COURT: Well this is just paper at the moment. We are going to have to have oral evidence.

- 20 MR LEWIS: H'm.

- COURT: So my sense is that to the extent that you are concerned about the structure of it, that can be addressed later. You don't have objection to the amendments, so I just need to record the fact that you have concerns about the structure and you can address that in evidence as we go
- 25



along. You're not in any sense being required to concede that.

MR LEWIS: Alright.

COURT: I don't quite understand what you mean but maybe it will become clearer when you give evidence.

5 MR LEWIS: Alright.

COURT: So are you happy then for me to grant the application to amend the response?

MR LEWIS: Yes.

COURT: Subject to your concerns that you may raise at any  
10 point regarding the structure and what matters were brought  
...(intervention)

MR LEWIS: Sorry, I'm requesting the Court to preserve the order of the documents with regard to the initial filing sheet.

COURT: Now...

15 MR LEWIS: I've got a problem with the attempt to undermine the filing sheet, essentially... ja.

COURT: Alright, you must tell me what filing sheet you're talking about.

MR LEWIS: The filing sheet before the...

20 COURT: Well...

MR LEWIS: It should be: Applicant's statement of case. So I've got a problem if "Applicant's statement of case" is no longer the first document before the Court.

COURT: "Applicant's statement of case" is the first document  
25 before me.

MR LEWIS: Right, so I'm just – just trying to preserve that.

COURT: And the filing sheet:

“Applicant serves and files herewith his statement of claim in the above matter.”

5 And that's page 1. Have you got it in front of you? It will be much easier if we work off the same document. No please stand here.

MR LEWIS: I'm sorry.

COURT: Mr Lewis, you must... Alright, do you have page 1?

10 MR LEWIS: H'm.

COURT: And then page 2 is the address and page 3 is the statement of case and then there's a schedule of documents on pages 6 and 7.

MR LEWIS: Alright, I have no objection to that.

15 COURT: Okay. Well of course they're your papers, I'd hope so. Alright then what is your concern then in relation to the amendment? So the structure is now being kept, is that correct?

MR LEWIS: H'm, it's just a question of preserving the  
20 certificate of outcome and the..., ja.

COURT: Yes. The certificate of outcome is stated here at 10.1

MR LEWIS: Right.

COURT: And then an article with a spelling mistake as to  
25 the..., as to Jimmy Dlodlu but nevertheless and the article. So

that structure is retained in the documentation.

MR LEWIS: Thank you very much. Right.

MR KAHANOVITZ: M'Lord, might I be of assistance here? I think I understand maybe what the problem is. If Your  
5 Lordship has a look at respondent's bundle at page 55.

COURT: That's the..., now is that the index pleadings or the bundle?

MR KAHANOVITZ: No this, sorry, the bundle, the witness bundle.

10 COURT: The bundle, okay. 55.

MR KAHANOVITZ: Well you'll see this is the referral of the dispute.

COURT: Yes.

MR KAHANOVITZ: And annexed to the referral is the  
15 applicant's summary of the nature of the dispute.

COURT: Of the five issues.

MR KAHANOVITZ: The five issues. Those are the issues that we then refer to in the amendment. I think what the applicant is saying when he talks about a filing sheet, this was the way  
20 in which he'd framed his dispute at that stage.

COURT: Yes.

MR KAHANOVITZ: I think he is saying that he has framed his dispute differently for purposes of the Labour Court proceedings. I'm not..., in other words I'm not sure what the  
25 difference is between the two, but I think what the applicant is

saying is that some of these disputes are not ones which he is still pursuing in this court and if that is correct, then he's saying we're barking up the wrong tree if we assume that all of these issues are still part of his case. I don't...

5 COURT: Mr Lewis.

MR LEWIS: H'm..., sorry, the respondent is partially correct. The issue isn't the contents. The issue is the grounds, the heads of argument. So the – some of those grounds have been subsumed under a wider, more broader term. It's just a  
10 question of terms.

COURT: Okay. So look...

MR LEWIS: Right.

COURT: You know, I think it's very awkward for you to sit at the back there. I think you should sit up front.

15 MR LEWIS: Alright.

COURT: And you should have all your documents on the table.

MR LEWIS: Yes.

COURT: Otherwise it's just really... What Mr Kahanovitz has  
20 done as indicated in...

MR LEWIS: Sorry?

COURT: Mr Kahanovitz has indicated in his bundle of documents, sorry the respondent's bundle of documents. Have you got the respondent's bundle of documents in front of you?

25 It's called: Index to Respondent's Bundle of Documents.

MR LEWIS: No. Index to respondent's...

MR KAHANOVITZ: It looks like this.

MR LEWIS: H'm, I don't have it.

MR KAHANOVITZ: There you do.

5 MR LEWIS: Oh this bundle?

COURT: Will you look at page 52? Have you got page 52?

MR LEWIS: H'm.

COURT: So that's the part A of the CCMA referral.

MR LEWIS: Right.

10 COURT: And then you've got 53, 54 and then 55 and 56 are  
the five points that you raised earlier in your discussion. So  
these are preserved subject to the changes you've made  
during the course of this application and as I understand it  
you're saying that some of these are now subsumed under the  
15 broader categories?

MR LEWIS: Right yes, yes.

COURT: Okay and am I right in saying, Mr Kahanovitz, that  
nothing that you have done in your application to amend in any  
way affects that?

20 MR KAHANOVITZ: H'm, I'm not sure what effects what  
because I'm not sure I understand what's going on. So I can't  
really...

COURT: The point is that, as I understand it, is that he had  
five issues.

25 MR KAHANOVITZ: Yes.

COURT: He's proceeded with three, but that doesn't mean that the other two aren't subsumed within the five and to the extent that...

MR KAHANOVITZ: Yes.

5 COURT: To the extent there's a structure there. I certainly don't see your amendments having that effect, so...

MR KAHANOVITZ: No, I mean maybe once again we can just, we can note what has been said and I'm not sure what is subsumed under what other heading.

10 COURT: What, yes of course.

MR KAHANOVITZ: But I don't think there's any point again in discussing that. There's no intention on our part to in any way affect the way in which the applicant has framed his claim at any stage.

15 COURT: Right, thanks Mr Kahanovitz. So then the application for amendment is granted, subject to the concern raised by the application that the..., what he does not concede is the undermining of the structure of the dispute referred to the CCMA and subject to that reservation we can then proceed to  
20 the next housekeeping issue.

MR KAHANOVITZ: Thank you, M'Lord. Then I have a short opening address. I don't know if... The applicant obviously is entitled to proceed with his opening address first.

COURT: Yes I think...

25 MR KAHANOVITZ: If he wishes to make one.

COURT: No I think before we do opening addresses I just need to hear you on who commences with evidence, the duty to begin. That's been agreed.

MR KAHANOVITZ: It's been agreed in the pre-trial minute.

5 COURT: And that's on page 50. Okay.

MR LEWIS: Your ...(intervention)

COURT: Are there any other housekeeping matters?

MR KAHANOVITZ: No M'Lord.

MR LEWIS: Sorry M'Lord, I've no objection if the respondent  
10 wishes to proceed.

COURT: Ja no, no but you are under the agreement at page 50. Look at the pre-trial minutes, right. Have you got page 50?

MR LEWIS: Ja.

15 COURT: And you will see at the bottom there, 11:

“Duty to begin: Applicant must begin leading evidence.”

MR LEWIS: Right.

COURT: And by the way, that's, you know, subject to what you have to tell me. That is standardly what would happen.

20 MR LEWIS: Right, yes.

COURT: You'd have to demonstrate the discrimination or the differentiation.

MR LEWIS: Right.

COURT: You have to establish all the policies. You have to  
25 place yourself in the category that you do – this is oral

evidence. There's plenty of paper here which makes out your case, but you now have to in fact give evidence to that effect.

MR LEWIS: Right. M'Lord and there's a..., there are various categories of evidence before the Court with regard to the  
5 dispute. There's an issue of the fraudulent contract tendered by the respondent and the nature of the contractual issues surrounding the dispute. There's the secondary issue which is the strange claims made by the respondent with regard to my religious outlook and whether or not I am in fact a Jew or in  
10 fact Jewish. Then there's the objections that have been placed by the respondent with regard to my political views, with regard to racial profiling in the newsroom and there are also the harassment and intimidation/victimisation issues. So as the Court pleases, I can proceed with the evidence under  
15 those categories.

COURT: That's fine. Who is your first witness?

MR LEWIS: Shelagh Goodwin would... I need to speak to a Human Resources person with regards to the contract. There is no *bona fide* contract before this Court.

20 COURT: Well, I think you have to demonstrate that.

MR LEWIS: Right so...

COURT: I mean, my sense is that you, you know, it's subject to how you want run your case.

MR LEWIS: Ja.

25 COURT: But you need, I think you need to get into the box



and give evidence.

MR LEWIS: I can demonstrate this...

COURT: No, no just don't grandstand, Mr Lewis, don't grandstand, alright? Everything that I've got in front of me is  
5 paper.

MR LEWIS: Right.

COURT: Nothing's proved.

MR LEWIS: Yes.

COURT: Alright. You need to get into the box and prove it.  
10 So what you would need to do...

MR LEWIS: Oh right thank you.

COURT: You'd have to go into the witness box and what you would do is you would take the oath and then you would give evidence.

15 MR LEWIS: H'm.

COURT: Then Mr Kahanovitz would be entitled to cross-examine you and then you'd be entitled to make any additional statements that you might want to make. You might have to answer questions that I might make.

20 MR LEWIS: H'm.

COURT: After that you may then call other witnesses that might support your case and then you close your case and then the respondent has to give evidence to counter the evidence that you've given and then you will be entitled  
25 ...(intervention)

MR LEWIS: Your Honour, I'm at a severe disadvantage. Well, how is it possible for me to cross-examine my own – my evidence if I'm now expected to give...

COURT: No, no you won't do, no, no you don't cross-examine  
5 your evidence.

MR LEWIS: I'm supposed to give evidence...

COURT: You just give evidence. You give evidence and I will assist you as much as I can.

MR KAHANOVITZ: M'Lord, before he goes into the box, might  
10 I address one or two issues?

COURT: Yes, yes okay.

MR KAHANOVITZ: In opening.

COURT: But Mr Lewis hasn't really opened and he's...

MR KAHANOVITZ: Well, I don't know if he...

15 COURT: We've had a bit of a discussion about the issue, so...

MR KAHANOVITZ: So...

COURT: Mr Kahanovitz, let me just hear Mr Lewis.

MR KAHANOVITZ: Ja.

COURT: Mr Lewis, why don't you open your case and make  
20 your case? Give me – give me a conspectus of your case.

**MR LEWIS ADDRESSES COURT**: Page 5 of the index to respondent's bundle of documents, there's a contract of service for temporary staff, fixed term contract. On page 15 my signature as an employee with witnesses.

25 COURT: Yes.

MR LEWIS: The – if you notice on page 5 on the right-hand bottom corner of the page there's no initial.

MR KAHANOVITZ: M'Lord sorry, might I indicate? I think there is some confusion here. I think we are getting into the  
5 giving of evidence and...

COURT: No, no. I was going to let him finish, Mr Kahanovitz. Can you just...?

MR KAHANOVITZ: Yes.

COURT: Really what I want to do is... What you are doing  
10 now is giving evidence. I don't want you to give evidence from there. You just need to, if you want to do so, just give a broad outline what the thrust of your case is.

MR LEWIS: Oh right.

COURT: To be quite frank, I've read the papers and I have a  
15 fairly clear idea, other than some of your arguments which I'll come to in due course. I have an idea of what your case is, but if you want to address me, this is the opportunity to do it.

MR LEWIS: H'm, right.

“Applicant was employed by respondent on or about  
20 March 2006 as a journalist in terms of a three-month contract which was entered into at Bellville, Cape Town. At Media 24 a system policy exists in terms of which it caters to and maintains previously segregated areas by printing newspapers that comply with racial profiling and  
25 thus of upholding racial divisions. The above

“discriminates against applicant in that *inter alia* compliance with him by the above policy is contrary to his religious and political views. During his employment, which took place within the jurisdiction of this Honourable Court, applicant endured the following harassment. Applicant's right to express his cultural life as a person of Jewish descent was denied in that he was forced to work seven-day weeks. Respondent was aware that applicant was Jewish and that the above work week would prevent him from observing particular Jewish cultural expressions such as *Shabbat*. Sedrick Taljaard, manager for WP Koerant and Newspapers, harassed applicant by making an appointment with applicant at 4:00 a.m. in the morning, requiring applicant to distribute newspapers every Tuesday morning from 5:00 a.m. to 7:30 a.m., requiring applicant to work 14-hour days, by stating that in the event that applicant is dissatisfied with working in terms of the above work parameters he can attend the terminus and go home. Warren Charles, Human Resources Manager for respondent made offensive remarks regarding applicant's observance of Sabbath and applicant's observance of his cultural heritage. Respondent failed to accept a number of applicant's articles for arbitrary reasons, these being *inter alia*: It's above system or policy, which

“discriminates against applicant for the reasons as stated above. Applicant was dismissed without a hearing for arbitrary reasons, these being *inter alia* his religious, cultural and political views. Respondent failed to comply with its obligations in terms of the employment contract, despite a legitimate expectation on the applicant's part that same would be renewed, especially in light of an oral, alternatively a tacit, alternatively implied term that there would be a renewal. The reasons for the non-compliance were arbitrary.

The legal issues that arise from the above facts

The discriminatory system policy as applied by respondent amounts to unfair discrimination and is prohibited by Section 6 of the Employment Equity Act 55 of 1998. The harassment set out above amounts to unfair discrimination and is prohibited by Section 6 of the Employment Equity Act 55 of 1998. The failure of respondent to renew applicant's contract for the above reasons is also prohibited by Section 6 of the Employment Equity Act, the following relief which is sought: An order that respondent unlawfully contravenes Section 6 of Act 55 Of 1998 by applying a discriminatory practice and harassing applicant. Respondent unlawfully failed to renew applicant's contract due to arbitrary prohibited reasons and respondent is to pay applicant an

“amount...”

It says here of... I'm seeking 12 – 12 months. This is drawn up by my – an attorney. Anyway...

“Respondent is to pay applicant an amount of  
5 R100 000,00, being a compensation for the above-mentioned unfair discriminatory practises, further and/or alternative relief, costs of suit.”

There's a schedule of documents which is attached to the filing sheet. There's a certificate of outcome. There's an article on  
10 Jimmy Dladu and:

“Articles referred to above which were rejected by respondent shall be provided shortly.”

COURT: Thank you.

MR LEWIS: This is the filing sheet before the Court.

15 COURT: Thank you, Mr Lewis. Mr Kahanovitz.

**MR KAHANOVITZ ADDRESSES COURT**: Thank you M'Lord. I just want to draw some features of the pleading to your attention. This is not a claim for unfair dismissal, in other words one might have imagined from some of the factual  
20 allegations that the actual claim would be one where the applicant was claiming that this was an automatically unfair dismissal based on discrimination. But it's not. There's not a claim brought under the Labour Relations Act. It's a claim brought under the Employment Equity Act only and we will  
25 obviously defend the case on that basis.

Just a little bit about who the respondent is. Media 24 consists of *inter alia* the following divisions: Media 24 Newspapers, Media 24 Magazines, 24.com and Paarl Media. Media 24 Newspapers publishes almost 60 titles and 341 million newspapers annually. Daily circulation is about 800 000 and the bigger titles are Beeld, Rapport, City Press, The Witness which I think was previously called The Natal Witness. I think it's called The Witness now.

One of its subdivisions is Western Province Newspapers which publishes a title called People's Post and it is the applicant's employment with People's Post that is the subject of these proceedings. People's Post is a free community newspaper so its purpose is to focus on community issues and to produce revenue by attracting advertising to a particular model which is a local-based community newspaper.

The applicant worked on in total two editions of the People's Post before he was asked to leave the premises after he became wildly abusive when the quality of his work was challenged. He then decided to launched a full-frontal attack. Not merely content to challenge the fairness of the non-renewal of his fixed term contract, he has invoked grandiose claims of vast conspiracy stretching back decades.

It seems that everyone is to blame for his life's woes, so whatever happened in that very short period at People's Post is the consequence of anti-Semitism, racism, is somehow

linked to the Nazis, to a process of racial profiling and so on  
and so forth and what we will proceed to show in due course is  
that none of the issues relied on by him had any relevance  
whatsoever to the event which led to him being asked to  
5 please leave the premises on the basis that the respondent  
would agree to pay him out for the balance of his contract, but  
in circumstances where he was asked to please not be  
physically present at work during the remainder of his contract.

He received that money. There is a document in the  
10 bundle which says that the money was received in full and final  
settlement that I in due course will ask the applicant what he  
meant when he signed that document, but I cannot argue on  
the basis of what is contained in that letter alone, that all or  
any disputes between the parties have been settled. That in  
15 short, M'Lord, is our case.

COURT: Thank you, Mr Kahanovitz. Mr Lewis, I think you  
should come and take the oath.

MR LEWIS: Oh must I give evidence? We...

COURT: Ja, ja no you must come to the witness box. Take  
20 your papers with you so that you can refer to them.

MR LEWIS: Certain of my papers...

COURT: Because you claim you're going to need them.

MR KAHANOVITZ: M'Lord, might I indicate, we've put bundles  
there for witnesses. Just..., we don't want it then to get  
25 confused.



COURT: Okay.

MR KAHANOVITZ: If the registrar could just uplift the...  
Maybe we should, yes, can we just hold on to them unless...

MR LEWIS: Sorry Your Honour, I object to being put in this  
5 position.

COURT: Okay well...

MR LEWIS: H'm, I'm prepared to answer questions put to me  
by your good self. I'm not prepared to answer questions put to  
me by the respondent without the aid of an attorney.

10 COURT: Well...

MR LEWIS: I have a right. I have a right. I have approached  
the High Court as an *in forma pauperis* requesting an attorney  
from your company and I haven't – I don't have an attorney  
now to – so that there can be some kind of mediation between  
15 the – the attacks that I – I'm being attacked by the respondent.

COURT: Mr ...(intervention)

MR LEWIS: Now how am I supposed to – how am I supposed  
to respond?

COURT: Mr Lewis, you've entered into litigation here.

20 MR LEWIS: Right.

COURT: You've demonstrated more than a working knowledge  
of the different provisions of the different statutes.

MR LEWIS: Right.

COURT: For a lay person you have structured many of your  
25 arguments, based on both the statutes and the principles of

law. You must have understood what was going to happen today, that in a trial you have to give evidence.

MR LEWIS: Right.

COURT: Evidence has to be done in this instance by you  
5 giving oral testimony.

MR LEWIS: Right.

COURT: And you have to take the oath and then you give evidence, evidence in support of your case.

MR LEWIS: Yes h'm...

10 COURT: And as – and... Please don't interrupt me.

MR LEWIS: Sorry.

COURT: And when that, when you've given your evidence, then it's absolutely standard in courts of the land...

MR LEWIS: H'm.

15 COURT: You have to take questions under cross-examination from the other side. There's no question of attacks. These are simply questions that are asked and you have to answer them honestly and on the basis of your answers I will make assessment on the probabilities, after having heard their  
20 witnesses and I'd make an assessment on credibility and that's the way in which I would be able to resolve the clear disputes of fact between yourself and the respondent. Just as you have the right to come to court and give evidence...

MR LEWIS: Right.

25 COURT: So they have a right to respond to the evidence that

you call.

MR LEWIS: Yes right.

COURT: To question you and to lead their own witnesses.

You in due course, when they lead their witnesses, you may  
5 cross-examine them. You've come to this court knowing full  
well that you have to give evidence and you've done so without  
an attorney.

MR LEWIS: Right.

COURT: So...

10 MR LEWIS: I'm, Your Honour I'm...

COURT: And – please – by the way...

MR LEWIS: Right, right.

COURT: This is a court, the status of the High Court.

MR LEWIS: Right.

15 COURT: It's not Your Honour, it's M'Lord.

MR LEWIS: M'Lord, right. So M'Lord, h'm, I'm prepared to  
take questions from M'Lord. I am not prepared to take  
questions from the respondent, h'm, to be cross-examined by  
him. He's welcome to put his questions in writing. I'm  
20 disadvantaged. I'm supposed to now represent myself and  
give evidence at the same time and I'm – it's two completely  
different roles that I have to – two different functions within the  
court. I've been denied legal representation, partly to do with  
the attacks by the respondent. I had legal insurance which  
25 was repudiated on the basis of those attacks. I've approached

the courts, requesting legal representation and there's still an application pending before the High Court with regard to that representation. So I will refuse to give – to answer any questions under oath towards the..., put to me by the – by the  
5 respondent. I'm quite prepared to answer questions put to me by your good self.

COURT: That's not how courts work and I'm not going to sit here and give you legal advice. The issue here is you can refuse to answer the questions put to you by the  
10 representative of Media 24, the respondent.

MR LEWIS: Right.

COURT: But your difficulty is that then I'm going to have to assess the veracity of your evidence, which is untested because you won't answer the questions being put to you by  
15 the other side, which means that when I have to balance the probabilities between the evidence that they put forward and the evidence that you put forward, you will be at a disadvantage.

MR LEWIS: Right.

20 COURT: Whole point about this process, Mr Lewis, is that you give your evidence.

MR LEWIS: Yes.

COURT: And you allow the other side, which is a right that they have, to question you.

25 MR LEWIS: Alright.

COURT: And you can answer or not answer.

MR LEWIS: Alright.

COURT: If you don't answer you must understand what the inference is.

5 MR LEWIS: H'm yes.

COURT: The inference is that – an inference one might draw is that you do not want to answer a difficult question. That then leads me to an inference that I find either your evidence not credible...

10 MR LEWIS: Alright.

COURT: Or not probable. So you really have to make a decision as to whether you are going to conduct this case as any lawyer, sorry as any witness, any applicant does in every court in this land.

15 MR LEWIS: Alright.

COURT: Okay? There's no special dispensation for you, no question about putting questions in writing. You either answer the questions put to you by the respondent or you don't and then this Court then draws the inference from your failure or  
20 your refusal to do so. It's now teatime.

MR LEWIS: Right.

COURT: And I suggest that we take the short adjournment and that you seriously think about how you want to proceed and then I'll hear from you at 11:30.

25 MR LEWIS: Right.

**COURT ADJOURNS (at 15:17)**

**COURT RESUMES (at 14:03)**

**PART OF RECORDING AFTER PREVIOUS ADJOURNMENT  
IS MISSING**

5 **EVIDENCE FOR THE PLAINTIFF (CONTINUED)**

**DAVID ROBERT LEWIS:** (s.u.o.)

COURT: Mr Lewis. Mr Lewis, you're still under oath and you  
were describing what happened at the meeting on 30 May  
when we adjourned. --- Right. H'm... I'm looking for one of  
10 the documents that... Okay the extract from People's Post,  
page 29. Right.

Is that 29 of the applicant's bundle of documents or the  
respondent's? --- H'm, respondent's bundle of documents.  
So the issue is what occurred at the evaluation meeting. The  
15 respondent was very unhappy with my performance. Dean  
raised the issue of, I would take it it would be this page. The  
problem that I've got is one of the reasons why I called the  
witnesses was to provide the Court with some indication as to  
what the production process is at Media 24, how they  
20 comprise... There's – there's several processes, distinct  
processes in the production process. I've got a notebook  
which records – I actually haven't brought it here for some  
reason. There're different colours associated with whether a  
page is for instance in gathering or – or in layout or ready for  
25 publication. So one of the tasks that I had in production was  
04.11.2009/14:03-16:07/EdB /...

layout and subbing of pages. As the Court has already heard I attended a – an Eidos retraining program at – at Media 24 in which I was retrained. I'm proficient in QuarkXPress and I was retrained on their..., they've got a very particular system. It's  
5 a linear editing suite in which pages can come from any number of areas in the company and – and go through various processes. In this instance there was a process where I was expected to put various stories onto the page and lay them out. It's not uncommon in my experience with public –  
10 publishing of this nature that the late advertising affects the composition of the page. If you notice on this page there is – there's an advert which hasn't been placed. And so the nature of the program, the Eidos program, h'm, it's a very particular program. There was an issue with the metadata and the data  
15 line which I... One of the reasons I wanted to call Hanlie Gouws is to avail of some information with regard to the metadata. This is a – was an isolated instance in which the page wasn't properly laid out because either (a) there was not enough content or (b) the advertising hadn't been finalised. I  
20 notice that the author of the page is D Lewis. I've – there's no indication as to what – at what stage this – this page was at. I don't believe this would have been submitted for publication. It wasn't ready and would have gone through some kind of quality control. Be that as it may, this was an isolated  
25 incident. The reason I wanted to call Brian Gaffney is that his  
04.11.2009/14:03-16:07/EdB /...

signature is attached to a page in the applicant's bundle of documents. Item 9:

"Signed off page ready for publication".

Page 25.

5           Sorry, you've lost me. Where am I? --- Sorry. H'm,  
page 25 of index to applicant's bundle of documents.

Applicant's bundle? --- Applicant's bundle of documents.  
There's a People's Post sports page signed by Brian Gaffney  
and myself and some other person.

10           Okay. --- Ostensibly this would be a page ready for  
publication. It's my experience in laying out, subbing pages  
for the Cape Times that this would be considered *de rigueur*  
and in terms of quality control this would have been the... If  
Dean had actually referred to a similar page there would have  
15 been maybe an issue. She's referring to a ...(intervention)

Now just explain to me. --- Right.

I don't understand the..., why you've referred to page 25  
and... --- Right, this is with regard to the allegations of  
gross..., it wasn't misconduct but inability to complete work in  
20 a, you know, she alleged that I effectively was not capable of  
doing the task that I was tasked with.

So really what you're saying is that what page 25 does is  
it's an example of your work? --- Right.

Now and then this person Brian who? --- Gaffney.

25           Gaffney. --- He's..., right.



And you want – and why do you want to call him? ---  
H'm, it was just to...

To confirm? --- Confirm that this is indeed his  
signature.

5 Okay and what is Mr Gaffney again? --- Mr Gaffney is  
the sports writer for the People's Post.

And would he, just to understand this, why would he sign  
it? --- By signing it he was okaying the contents of his own  
writing, h'm, since there was an issue as to the quality control  
10 in the company. The page is – is laid out and ready for print.

So if the respondent didn't contest, doesn't contest that  
this is his signature, would you need to call him? --- No.

Sorry now, so you're still at the meeting. --- Right.  
So...

15 Okay so the one issue that's raised is the page on page  
29 of the respondent's bundle. --- Right. It was an isolated  
instance of a page which hadn't been signed off or wasn't  
ready for publication.

Okay. --- Right. I was then subject to abuse and  
20 intimidation by Sedrick Taljaard. Hy het vir my gesê as: Ons  
het die geld gegee waar ons hom – dis ons pond vleis. I wish  
the Court to – to note the obvious..., I think it's The Merchant  
of Venice, the, was it...? One of the characters actually says  
the exact same words in the then context of was it Iago, one of  
25 the Jews. It was one of the – one of the very few

Shakespearian Jewish characters. The exact same words are used in – in Shakespeare. I was then also subject to abuse and victimisation with regard to the Jewish Sabbath.

Now before we get there, in the meeting. --- Right yes.

5 Oh sorry, was this raised in the meeting? --- This is the meeting. This was raised in the meeting.

Okay now I just want to finish off to be quite clear. --- Alright I..., yes.

So this is the – this is one issue they – he raises with  
10 you? --- Right.

Then the, okay the next issue is...? --- H'm...

Is this your complaint, your overtime complaint? --- Yes, in the evaluation.

Okay so now this is in response to the overtime  
15 complaint. Is that right? --- Right, it's contained in the – my bundle of documents.

Okay, so what did they say? --- H'm alright, what did they say.

Or first of all just to, first of all please explain the  
20 overtime complaint. What is it precisely? --- The problem was that in order to fulfil the – the demands made upon me I was working well into the Friday *Shabbat*. For me *Shabbat* is my quality time, it's my private time. I've grown up with in the context of an Orthodox community in which *Shabbat* is a Friday  
25 affair. The – the company, as far as I'm concerned, has

absolutely no business dictating to me what I do on a Friday night. Nevertheless, when I raised this issue Warren Charles objected. He essentially said that if I'm, you know, what exactly was I doing on Friday nights. He objected to the fact  
5 that on one of the Friday evenings I had actually gone to a club on the West End and was listening to jazz music. In fact I was listening to the Glenn Robertson Jazz Band after they extended me an invitation. As far as I'm concerned the company has absolutely no business enquiring into my  
10 observances. I – I wish the Court to hear expert testimony with regard to what those observances should or shouldn't be with regard to what is considered usual, normal practice within the Jewish community. Also I – I don't regard – I don't – I don't believe this Court has jurisdiction to determine what  
15 Sabbath, Friday night observances should be. There's quite an extensive response to the recent allegations made by the respondent in the latest amendment. I would like to visit that if possible. On page 91.

Of? --- Of my – of the plead – he index to pleadings.

20 91? --- Yes.

“Applicant has shown that he is a member of the Jewish faith.”

I don't want you to read it out. --- Not?

I just want you to... You can refer to the page. --- Refer  
25 to it.

You can refer me to the page, just and remember what we're dealing with here is Mr... --- Warren Charles.

Warren Charles's objection. --- Right.

And so let's just... --- Yes, he objected. He said...

5 To what you were doing on a Friday night. --- Right, it's that what I do on a Friday night on ...(intervention)

And you've said that that's your time and it's not for the respondent to enquire. --- Precisely.

Okay. Okay so what else? --- H'm... The respondent's  
10 Sedrick Taljaard then unilaterally terminated the contract of employment, which was in any event invalid.

The... If it was invalid it couldn't be terminated, so I guess... --- Precisely. I don't – I don't actually know how they've managed to concoct such a story.

15 So he terminated the contract? --- Right, without any reference to the Labour Relations Act or the Employment Equity.

And how did he do that? --- By physically removing me from the premises.

20 Did he say anything? --- H'm, he... What did he do? He – he made some kind of grunting sound. He threatened, intimidated me with his – he's a much larger person than I am and he...

So you infer that he had terminated the contract by removing you physically? He didn't say anything? He just,

well... --- No he said he's terminating the contract.

Right and so really there were two issues at the meeting.  
The one was the complaint concerning the layout of that  
particular article and the other one was your overtime  
5 complaint, about being required to work on Friday, Friday  
afternoons. --- Right.

And evenings. --- Right.

And then their response to that. So were those the two  
issues that were at the...? --- Yes, I would say those were the  
10 main issues.

Okay. --- I just wish to point out that the respondent has  
actually contested whether or not I am a Jew and it's  
...(intervention)

My understanding and I might be wrong and Mr  
15 Kahanovitz can confirm, is that I understood them to make the  
concession that you are a Jew. Is that correct, Mr Kahanovitz?  
MR KAHANOVITZ: Yes M'Lord. Might I just explain where  
some of this confusion came in and it still remains? The  
applicant says that he is a philo- or philo-Semite (different  
20 pronunciations) and you will see in our bundle there there's a  
letter which he wrote to the Jewish Board of Deputies.

COURT: Yes.

MR KAHANOVITZ: Which we will argue that by definition it  
postulates that he's not Jewish but that... In other words  
25 there's no point in a Jew being a philo-Semite. It's some – it's

an attribute that certain Gentiles have where they have a particular attraction to Judaism for reasons best known to them. Then there were various documents filed about I think some – there were stuff about whether or not he'd been for a  
5 mikvah at the Long Street swimming pool et cetera, et cetera.

COURT: Ja no but all of these issues, Mr Kahanovitz, as I understood it you did raise it in your application to amend that he wasn't a Jew.

MR KAHANOVITZ: Yes, yes.

10 COURT: But what I understand you now to say is that all of this is no longer an issue.

MR KAHANOVITZ: Yes. The only thing is in issue now is whether there was ever any discussion where he raised his Judaism and said that in consequence of his Judaism he needs  
15 his working hours altered.

COURT: Ja.

MR KAHANOVITZ: Secondly, if he is a Jew, is he in fact what is called a practising Jew for whom observance of the Sabbath would be an important issue.

20 COURT: Okay. But the issue, the testimony is quite clear here.

MR KAHANOVITZ: Ja.

COURT: The question is that whether he's a Jew or not is no longer a matter in dispute.

25 MR KAHANOVITZ: Exactly M'Lord, yes.

COURT: So Mr Lewis, they have now conceded the issue. ---  
Right.

And as you heard, there are issues of course flowing...  
--- I've heard, right and I'm very interested.

5       Flowing from it that you – that you probably have to  
address ...(intervention) --- Yes I'm very interested in these  
issues because you know, obviously this would probably be  
worded differently, but in their notice of intention to amend  
they're saying that even if I had asked to alter the working  
10 hours on the grounds of my endurance(?) to the Jewish faith,  
that the request would have been denied.

Okay, let me just... Which page number are you referring  
to? --- H'm, I'm looking at page 97, point 47 which refers to  
point 42.1(?) of notice of intention to amend.

15       That's right, it's page 97? --- 97 of the pleadings.

Of the pleadings, I've got that and it's... --- Point 47.

Point 47.

MR KAHANOVITZ: No, (indistinct – speaking away from  
microphone).

20 COURT: Okay let me just ask you. One of the issues raised  
by Mr Kahanovitz is one that I think you need to address. ---  
Right.

Did you ever advise the respondent that you were  
Jewish? --- Well, this is an interesting point because it's one  
25 of the reasons I've called Shelagh Goodwin who – of the  
04.11.2009/14:03-16:07/EdB /...

Human Resources department. My question is, is it acceptable in today's age to – for this to be an issue? Surely Human Resources being what it is, this is a questionnaire that one fills out. When you enter a company the size of Media 24 you can't  
5 just... A company that size can't assume that everyone is a member of the same faith and you know, with regard to the issue of disparate treatment and differentiation this – the question is are the tests that are being put, are those, you know, is this reasonable? A Christian for instance seeking  
10 employment at the company, would the – a Christian – person of Christian faith have undergone the same kind of test? And what is the policy with regard to members of the Christian faith who have different – a different approach to Christianity? It's not a monolithic tradition and neither is Judaism. Judaism is  
15 not monolithic. So I have a – I have an expert here also willing to testify with that regard.

MR KAHANOVITZ: M'Lord, might I just indicate? Maybe be of some assistance if... The points we make at page 67 of the pleadings file and maybe I should just formally... The  
20 paragraph 41 is the one point we make which the witness might want to address, that he never complained that his working hours conflicted with his religious beliefs. 42, 42.1 we'd ask that that now be deleted because we're not pursuing that and then the words “also”, “also unsurprisingly” should  
25 come out. So the contention would be now he is not an  
04.11.2009/14:03-16:07/EdB /...



observant Jew and does not observe the Jewish Sabbath and keep it holy.

COURT: So what is being changed from 42.2? Just the word “unsurprisingly”?

5 MR KAHANOVITZ: The phrase... Yes, yes. Just take out the words “also unsurprisingly”. I mean there is obviously some difficulty with pleading this because our case is simply that the issue actually never arose. But insofar as the Court may find that there was indeed a discussion about whether or not the  
10 respondent was prepared to accommodate his religious beliefs, I intend to cross-examine him on whether those beliefs actually would have required him to work or not work certain hours.

COURT: But I think, but I think honestly I'm going to leave that for you to do under cross-examination.

15 MR KAHANOVITZ: Yes.

COURT: He just has to set out his case and all I'm trying to do is to ensure that he sets his case out.

MR KAHANOVITZ: Yes M'Lord.

COURT: And certainly these are issues that you would cross-  
20 examine him on.

MR KAHANOVITZ: Yes M'Lord. --- H'm...

COURT: Alright. --- So what is the question then?

The question simply was that did you advise the respondent that you were Jewish and what – and I understood  
25 you to say that you didn't and you don't have to. --- No, you

see the thing is that I – they- the respondent was on – under the advice that I was Jewish. The – the – they're contesting the manner in which my observance of the Sabbath occurs. The issue of whether or not I'm Jewish is not relevant.

5 Did you tell them that you were Jewish at any point? ---  
H'm... I was – I assumed that they knew that I was Jewish. I assumed that since I was having a discussion as to the nature of Judaism that one wouldn't have had such a discussion if I was of – of another faith.

10 When was this discussion? --- During the evaluation meeting. I – I do realise that – that the dictates of the company was such that if I was more – if I had objected more strongly perhaps it might have resulted in a better outcome. This is the first time I've actually experienced working  
15 conditions in which I've had to, you know, which have been so beyond the pale. There was also intimidation by – by Sedrick Taljaard with regard to the work parameters. So – so the issue only came up in evaluation.

Okay. Anything else on the meeting of 30 May? ---  
20 H'm...

There's the meeting and then after the meeting you're physically removed from the premises. --- Yes I was physically...

And you are told by Mr Taljaard – it's your version, as I  
25 understand it, that the contract was terminated. ---

Terminated. Following the termination there was a request by a legal advisor to – for a copy of the contract. The request was denied. It took about a month. There is a correspondence in my bundle of documents. There's also a  
5 letter by Michael Bagrain.

Is it relevant now? --- H'm, it's relevant in – in determining what the circumstances of the termination or dismissal, how – what the circumstances were. There's a – there's a letter actually with... I just want to see if it is 41(?).  
10 H'm, 41... Actually it's in the – the respondent's bundle of documents actually.

Again is that letter...? I mean the point is it's been refused. That's what you say. --- Right.

But the contract that's presently before us is  
15 ...(intervention) --- The – the letter actually, it's quite an interesting use of words. The legal advisor said it was a well-known fact that I'm not an Orthodox Jew.

Alright, which page is that? --- H'm, 41... Page 41 of respondent's bundle. It says here:

20 "It's a well-known fact that our member is not an Orthodox Jew, hence he observed the Sabbath on Friday evening sunset until Saturday evening sunset but was demanded by Mr Sedrick Taljaard to work on this holy period. Our policy holder's contract was terminated by  
25 Media 24 before completion thereof. Our policy holder

“instructs us to request you to reimburse our member for one month's outstanding salary.”

Okay well, I can read the letter. --- There's also correspondence...

5       What is the relevance of the letter? --- H'm... The relevance of the letter, it was – it was written by an uninformed individual with very low level of education.

With? --- I – I presume if I'd had access to better legal assistance at that point things would have been a lot easier.

10      There're also – there's also similar correspondence in my bundle of documents.

Again, what does the correspondence demonstrate? That's really what I'm wanting to know from you. --- It demonstrates that there was an attempt to resolve the issue  
15      with regard to my – to the – to the problem of whether or not I was a Jew, what I was entitled to in terms of the contract and how the contract was terminated.

Okay. Alright then... --- So then – then there's the issue of – that's been raised here in court about this doctrine  
20      of philo-Semitism.

Do we really have to go into it, given the fact that they have made the concession that you're Jewish? --- Yes, because they seem to be making some kind of statement with regard to my observance. They – they seem to be making  
25      some kind of allegation that, h'm...

Well, let them... --- What is that allegation?

Let Mr Kahanovitz ask the questions. --- Please.

And you answer them when he does. --- Right.

So I don't think it's... --- Alright.

5 As far as I can see at the present moment, moment  
they'd made that concession to you the issue falls away. Then  
I want you to go back to the statement of facts, page 4. We've  
dealt with 4.2.

“4.3 The above discriminates against applicant in that it  
10 is contrary to his religious and political views.”

Now insofar as your religious views are concerned, are the  
facts that they required you to work seven days a week and on  
Friday evenings? Is that the issue? --- Right, that's generally  
against what I consider to be normal practice. It's  
15 discriminatory.

Okay so the discrimination is requiring you... --- Right.

...as a Jew to work on Friday, on what's it? --- *Shabbat*.

*Shabbat*. Is there any other discrimination conduct? ---

Well, well the discrimination against my political beliefs.

20 Alright. --- Which are actually informed by my Judeo  
beliefs.

Okay. Now the discrimination on political beliefs. ---  
Right.

What conduct of theirs..., in what way did they  
25 discriminate against you? --- H'm, just in terms of the

demographics. They – they essentially forced me into a racial category. They were expecting me to deliver articles that complied with some kind of policy that was a racialized policy. So there's a – there's a response in the – I've responded in the  
5 – my response to their amendment.

Then in 4.4 you say that your right to express your cultural life as a person of Jewish descent was denied. --- Right.

In that you were forced to work seven days. Is that the  
10 same issue that we've been dealing with all along? --- H'm, I believe so. That would be the issue.

Then 4.4.2 you state that the applicant was – the respondent was aware that you were Jewish. --- Right.

But you've given evidence to the fact that they only learnt  
15 of it at the evaluation meeting. --- H'm no, no that wouldn't be correct.

Well, you tell us what... --- They only have – only have evidence to corroborate that they can't deny that I was Jewish. They would have known that I was Jewish because I'm  
20 accepted as a Jew by members of the community. It's no – it's no secret. I – I can prove that – that people have always known that I was a Jew. It's not an open secret. The – the question is, was Human Resources in dereliction of some duty by not... You know, were the policies of Human Resources  
25 discriminatory of – by any nature; is there some kind of  
04.11.2009/14:03-16:07/EdB /...

omission or failure on their part.

To find out? --- Right, well – well surely if – if there was a problem, surely Human Resources... It's a – it's a pro forma questionnaire one fills out when you join a large concern. I –  
5 presumably if I had been relocated to China the – the company has publications and periodicals in China – that I would have similar issues by I'm not Chinese. I don't think Chinese people would necessarily know my history.

Then 4.4.3 you record the harassment. --- Right.

10 In four incidents. --- Right.

Would you (indistinct) lead evidence in that? --- H'm, right, 4.4.3.1 it's specious. It's – it's just indication of the manner in which the company commandeered my time and taking my time carte blanche without any reference to the  
15 Labour Relations Act.

Right, maybe you can just explain to me what happened and just on the facts. --- Right, h'm...

Just give evidence here, not an argument. Evidence. --- Right the... Right yes, right. The – the respondent made an  
20 appointment at 4:00 a.m. in the morning. My diary records that the dispatch was, for the newspaper arose at 4:00 a.m. I only actually got to work must have been half past five. There is correspondence between myself and the company in which the – Sedrick Taljaard requests my presence. What's quite  
25 interesting is – is the way he requested it.

H'm... --- If I can just find that document. It's in respondent' bundle of documents, item 6, page 19 to 20 I believe.

Right, say that again. --- Page 19.

5 Of? --- Of the respondent's bundle of documents, and also 21. You'll notice that there are different times. Page 19 records that there's a Tuesday morning 23<sup>rd</sup> of May from 6:00 a.m. to 8:00 a.m. they're going to dish out hundreds of the new publications, but on page 21 he talks about from six o'clock  
10 until eight. Sorry. (Indistinct – speaks in an undertone). Ah, here we go. A more detailed email with a description of all the specific hit points:

“...where you need to be at 5:30 to put up banners. Will be sent to you later today.”

15 It's sort of a – it's an example of the manner in which the respondent conducted business. So a six o'clock appointment turned into 5:30 appointment and so it went. So you would end up for instance a deadline at four o'clock, your contract saying that you work until five but now you're sitting there  
20 working until 10:30. The same thing happened, so on this particular occasion I was expected to be there no later than 5:30 but in fact that became a 4:30 appointment.

Well let's just, let's just be... I'm referring to the 4.4.3.2.  
--- Right.

25 “Requires the applicant to distribute newspapers every  
04.11.2009/14:03-16:07/EdB /...



"Tuesday morning from 5:00 a.m. to 7:30 a.m."

Is it every Tuesday throughout your period or just on those –  
on that date, 23 May? --- H'm well, I had no way of knowing.  
This was in the last – the last two weeks prior to the dismissal  
5 or termination. H'm... The Tuesday morning appointments,  
initially they were a once-off promotion. I would have  
considered it – I wouldn't have had an issue with it even as –  
as a sort of corporate teambuilding exercise, but the – it's an –  
it's sort of similar to if a media manager had to enrol me in a  
10 Saturday morning rugby team, once-off as a – as a corporate  
teambuilding exercise is all very well...

Alright. --- But to enrol me for the next couple of  
months at that time...

Alright now let me just get from you quite clearly. ---  
15 Right.

The email that you've referred me to on page 19 and  
page 21... --- Alright there's... Right.

...is referring to Tuesday 23 May. --- Right, and at 5:30  
p.m. in the morning – a.m.

20 Well, we'll... Ja, so and that's what it says, they're going  
to dish out from six o'clock but you have to be in position at  
5:30. --- I've got to be there at 5:30 ja.

Alright and then to that extent 4.4.3.2 is not 5:00 a.m.  
but 5:30, am I right? --- H'm, it would be correct if there was  
25 actually any control over the time. There – there are no  
04.11.2009/14:03-16:07/EdB /...

timesheets. I've requested timesheets from the company. So one of the reasons I called Shelagh Goodwin was to verify the exact working hours. So I've got no actual way of proving, h'm... But it's – it's similar to...

5 But let's say on 23 May. --- Right.

It's 5:30, will you – is that right? --- H'm, I would – I would agree 5:30 a.m. instead of 5:00 a.m.

Okay, alright. Now you say this is every Tuesday. --- Yes.

10 When did it first start? --- On this, what is the date here? 23<sup>rd</sup> of May.

So 23 May was the first occasion? --- Right and the second occasion would have been the 30<sup>th</sup>. I didn't actually arrive on the 30<sup>th</sup> and it's probably one of the reasons why I  
15 was – my contract was terminated.

Now you say probably. Are you saying it was a reason and were you told that that was the reason or not? --- H'm, no it was – it was the, just the manner in which the whole incident occurred, the termination. It would appear that Sedrick was  
20 upset that I hadn't actually availed myself. So the – it's a intimidatory, it's just, it's an example of the victimisation and intimidation. It's just, just my time was just taken wholesale.

Alright. Then on 4.4.3.1 you say that Mr Taljaard made an appointment with you at 4:00 a.m. in the morning. --- H'm.

25 Now when was that? --- That – that would have been...

And what was it about? --- That was the 21<sup>st</sup> of May.

21 May. --- He expected me to be there to monitor the  
dispatch of the and receipt of the periodicals. As – as a  
member of production I would have actually been – it would  
5 have been immediately under my, you know, purview that, the  
dispatch of the newspapers. The workers who were working,  
they had to get up even earlier. So in order for the People's  
Post to be delivered at 5:00, 5:00 a.m. or 5:30 someone would  
have had – had to actually load a lorry and present them.

10 Now that's 21 May? --- That's the 21<sup>st</sup>.

We're not talking about 23 May now, are we? --- Sorry.

Is it a separate, is it separate or the same? --- I'm  
getting lost. I'm sorry, I'm getting lost. I'm getting confused.  
The 23<sup>rd</sup> of May. I was just looking at the... The email was  
15 issued on the 21<sup>st</sup> of May. Sorry.

So the incident that you refer to in 4.4.3.1... --- Right.

When is that incident? --- The 23<sup>rd</sup> of May.

Alright, 4.4.3:

“Requiring applicant to work 14-hour days.”

20 Do you want to set the facts out on that? --- Right. The  
production cycle was Friday until Monday. The – the  
newspaper was printed Monday evening. Tuesday morning it  
would have been distributed. The working hours on the Friday  
and the Monday were completely, h'm, ja it was just  
25 impossible. I was – I was getting to work at – at 8:00 a.m. and

leaving work at – at roundabout ten. The – the night before  
the – the Monday night was – was impossible. It was – it was  
just... This is all noted in my evaluation report. I attempted to  
actually bring up this issue but it just, the – the respondent  
5 was so intent on bullying me and intimidating me and keeping  
me in line, essentially oppressing me as an individual that  
none of these issues were actually dealt with.

The evaluation report, what document is that? --- That  
is the, in my – in my bundle item 11, pages 27 to 28.

10 That's your bundle? --- That's right, applicant's bundle  
of documents.

Is it the second or the first? --- The first bundle.

I'm afraid I... It's the applicant's bundle of documents?  
--- Right.

15 I've got: Ethical code for reporters, photographers and  
graphic artists. --- Page 27.

Alright, okay. You call this an evaluation report. ---  
Right, these were my – my notes that I made the – the night  
before the evaluation.

20 And what, was that on the... That's 29 May now? The  
meeting was on 30 May. --- Right ja, right, right.

And did you hand this to them? --- No I – I didn't  
actually have the opportunity to do that. They were too busy  
intimidating me.

25 Alright so did you raise the issue of the time, the 14...?

Did you raise it at all in the meeting? --- H'm I attempt...

I see that you raised it in your notes. --- Right. Yes I...

But did you raise it in the meeting? --- I attempted to raise that, the issue, but the evaluation meeting got stuck on  
5 the Jimmy Dlodlu/Robbie Jansen article. So we were talking at cross-purposes. The only sense actually that came out of the meeting was Warren Charles objecting to my manner of my observance on a – on a Friday evening. He also actually started asking me strange questions about do I even know  
10 where Manenberg is, you know. He started making for instance that I actually didn't know what I was talking about. The – the three, the four titles were Landsdowne, Retreat, Athlone and Grassy Park editions of the People's Post. Each one of those editions is in itself, its own editorial. There's a –  
15 there's a reporter attached to that title. So it's four new titles.

Now, okay so in your earlier evidence you said that the issue that was discussed was the layout. --- Right.

But now is it – are you now saying that it's also, the Dlodlu matter was also raised at that meeting? --- I – I raised  
20 the issue of the Robbie Jansen/Jimmy Dlodlu story.

Okay, then in 4.4.3, you've given evidence that that's what Mr Taljaard is alleged to have said. --- Right.

Alright and then 4.4.4? --- Ja:

“Warren Charles made offensive remarks regarding  
25 applicant's observance of Sabbath and applicant's

“observance of his cultural heritage.”

Well the..., do you want to expand on that? What remarks did he make? --- He insinuated that I was contradicting myself as a Jew; that I had no right to the Jewish Sabbath; that there was no basis for anyone inferring that – that I was Jewish or deserving; that I had no right to – that if I was Jewish, certainly a good Jew wouldn't be seen in a – a nightclub listening to jazz music.

Okay. Then 4.5.1 you've dealt with. That's the two  
10 Dludlu articles. --- H'm.

The first one and the second one. --- Right.

Then 4.5.2, I think you've dealt with that, you were – that you were physically removed from the premises and for those reasons and then 4.5.3? --- H'm yes, on the contractual  
15 issues. I've dealt with at length the contractual issues in my various documents. The – and this is all actually a pre – the pre-trial issues actually summarise some of those arguments.

Do you want – shall we turn to the pre-trial? --- So I don't know, then maybe we should go to the pre...

20 And then do it in the pre-trial? --- And then do it like that.

Ja alright. Turn to page 45 then. --- So I appear to deal with the manner in which I entered the contract and...

Alright, let's just go – I want to go through just each of  
25 those. --- Alright, do you want to go each? Alright.

So 5.1 you've dealt with. --- Right.

5.2 you haven't dealt with. --- H'm, ja no there was an *error in corpore, error in persona* and *error in substantia*.

Okay. --- The *error in persona* is that they actually  
5 misrepresented their relationship to the TRC. I didn't actually  
know at that time which I entered the contract that the  
company hadn't been cleared. Had I have known I wouldn't  
have entered the agreement to begin with. There's a  
substantive case to be made with regard to the mis-  
10 representation of the working hours, including the obligation to  
work on the Sabbath.

Just before we go any further, so okay... How..., what  
about 5.3? --- H'm..., right. The respondent contends that  
the contract was – the term expired.

15 Expired. --- And I – I contest it.

They can ask you questions on that. --- Alright.

Alright and 5.4? I think you contend that you're  
discriminated against. --- H'm.

You've indicated the conduct. --- Right.

20 That you claim is discriminatory. Alright 5.5? --- Yes, I  
mean this is actually the crux of the issue. In any event, the  
contract has a clause with regard to the negotiation.

Alright, will you show it to me? --- H'm... (Witness  
perusing document). I'm just going to quick have a look at  
25 the..., because this isn't the actual contract. I've got to look at

the – we can presume what was in the contract. I've got to  
look at the – the responses to the questions at pre-trial. I've  
got some indication as to where everything is. So this is the  
problem. This index to pleadings I don't think even has the –  
5 that document.

Well is it in your documents then? --- H'm..., could be in  
my filing pleadings. Here we go. It's item 16: Applicant's  
response to pre-trial. 80 to 86. Alright, it's actually, I found  
the reference. It's in – on page 88 of the initial item  
10 pleadings. 1.2.3:

“Any negotiations regarding the renewal of the contract  
...(intervention)”

Just wait, please. Please wait for me to find it. ---  
Sorry.

15 Page 88... --- Of the item pleadings.

Of your pleadings? --- My pleadings, ja.

So what document is this? “Respondent's list of  
questions”, yes, where is that? --- H'm...

88, yes I've got page 88. --- Right, point 1.2, 1.2.3:

20 “Any negotiations regarding the renewal of the contract  
will take place within the last two months of its duration.  
If not renewed, the contract of employment would  
terminate on 30 June 2006 in terms of clause 3.3  
thereof.”

25 MR KAHANOVITZ: Sorry M'Lord, I'm lost.



COURT: Well...

MR KAHANOVITZ: What document – is this something that's now in what's in the additional documents?

COURT: Well, remember right at the very beginning the  
5 applicant the idea was that all documents in your revised bundle would include all documents that he had put...

MR KAHANOVITZ: Yes they should be there, but it may well be in what is now called the “Additional documents”. --- Oh, I found – I found it.

10 COURT: Are these called the...? --- I found it in the – this contract that's purporting to the contract.

MR KAHANOVITZ: Ah, it's the respondent's bundle of documents. --- 3.3. I just couldn't find the...

COURT: No, let's not get confused now. Just let me just stick  
15 with this. The document that he read out was the respondent's list of questions for pre-trial conference. It's page 87 of his indexed pages and it's dated... --- Sorry, page 88.

It's dated 14 October 2008. So it emanates from the respondent's attorneys and what is required to be admitted in  
20 paragraph 1.2.3 is that it was a term of the agreement that:

“Any negotiations regarding the renewal of the contract will take place within the last two months of its duration. If not renewed, the contract of employment would terminate on 30 June 2006 in terms of clause 3.3  
25 thereof.”

MR KAHANOVITZ: Yes M'Lord, that's at page 24 of the additional document section on the pleadings file.

COURT: 24. Ah, ah okay. Alright, have you got that? It's the same document. --- Right, right.

5 And it has been supplied. --- Yes.

So it's in the additional... --- It's point 3.3.

It's the additional documents, index to additional documents. --- Right, it's point 3.3 of page 6.

Of what? --- Of the current pleadings. Sorry index,  
10 index to respondent's bundle of documents.

Page 6? --- H'm.

And where? --- Item 3.3.

3.3? --- Yes.

On page 10? --- Sorry, page 6 of the respondent's  
15 bundle of documents.

Okay, well so that was in the agreement. --- Right.

And you agree that that was in the agreement? --- I agree with that.

Okay. --- The issue is the negotiation of termination of  
20 the contract.

Well now you say here in 5.5:

"The applicant contends the respondent denied him the opportunity to renegotiate his contract with the respondent."

25 What are the facts that you base that conclusion on? ---

H'm... I was denied..., what? (Witness chuckles).

It was never raised? --- It was... I hadn't – I wasn't even given the opportunity to – to even look at my contract.

Well, what are you saying? That they didn't give you the  
5 opportunity or that you didn't – you didn't know what was in the contract? --- What I'm, no what I'm – what I'm alleging is it's a failure to renew a contract of employment for a prohibited reason, the reason being discrimination and there's considerable case – case law.

10 This is not an argument now. I just want to know the facts upon which.., your evidence as to why you say it was denied. --- Right. It – it...

It was never raised with you. Is that what you're saying?  
--- It – it was – it was unilaterally terminated. There was  
15 absolutely no attempt to engage in any discussion.

5.6, that's section 6 of the Employment Equity Act. I'm still on page 47 of the index pleadings and I'm dealing with the matters in dispute, that you'd put in dispute. --- Sorry, 47. Oh right. So I – I'm contending:

20 “The respondent contravened the provisions of section 6...”

Yes.

“...of the Employment Equity Act 55 of 1988(?) as amended.”

25 Alright, ja and as I understand your pleadings, that's for

religious and political reasons. --- Precisely.

5.7.1, that you've dealt with in evidence. --- H'm.

Are you...? That's the system policy. It's really the wording that comes out of your statement of claim. --- Right.

5 Is there anything additional in 5.7.1 you want to raise?  
--- Just the issue of the demographics.

Yes you have raised that. --- I don't believe I've – I've raised the issues, the nature of the discussions and the problems at the company.

10 Okay. Do you want to do that? --- Right. H'm, I – I was party to a – a number of discussions when the issue of the demographic – demographics of the target market arose and that there was a general failure to abide by the terms of the equality clause in the Constitution and various other  
15 documents. The target market was consistently referred to in terms of the old apartheid categories. So I actually took – take exception to the manner in which the respondent has – has raised the demographics issue in – also as part of the – their denial that I have a right to – to..., you know my rights as  
20 a journalist. They believe that they can dictate to me the – not only the content of – of my writing but who it is that I write about, what their opinions are and so on. It's a systematic abuse. It's – it's part and parcel of their policies which have a chain of abuse going all the way back to – to H F Verwoerd, D  
25 F Malan, P W Botha and Arrie Rossouw, current editor of Die  
04.11.2009/14:03-16:07/EdB /...

Burger.

5.7.2, you've dealt with that. --- Right.

Then 5.7.3.1 you – this is one of the issues, if I remember correctly, that this was a – there's a difference of  
5 wording but again the issue here... And this is again the requirement that you work on Friday. --- Right.

5.7.3.2 you allege:

“The respondent was aware that the applicant was Jewish and that a seven-day workweek would prevent  
10 him from observing *Shabbat*.”

--- Right.

Is there anything further you want to say on that? ---  
H'm, well this is the (indistinct) where I would need to call Shelagh Goodwin with regard to my – my question as to is it a  
15 reasonable..., in terms of Human Resources. I'd also like to enter into evidence some of the other statements in my response to the current amendment, their... And I'd like to – to call an expert witness to – to determine what is considered the usual practice in terms of Judaism or what – what laws am I  
20 expected to abide by, what exactly is the – the Sabbath, what leeway is given to me. There seems to be a general attack against my person since I – the respondent maintains that since I agreed to work on a Saturday morning I shouldn't be entitled to *Shabbat*.

25 Well, let's see what's asked. Then the harassment

you've dealt with in detail. --- Right.

We've gone through this quite carefully and the same with Warren Charles. It's 5.7.3.4. and then 5.7.3.5 that you've been forced to work seven days per week. Again you restate  
5 the fact that "The respondent was aware that the applicant was Jewish", that you were Jewish. Right, 5.7.3.7 you've dealt with the reasons for your articles not being accepted and you dealt with your dismissal hearing. Now in 5.7.3.9 you enjoyed a legitimate expectation. --- Right, this is an interesting issue  
10 because Auf der Heyde is a case law with..., goes into that.

Ja please let's not deal with case law. --- Sorry.

You can address me on the law. I just want to know on what factual basis... --- Right.

...do you conclude that you had a legitimate expectation.  
15 --- There must be facts to demonstrate it. You must tell me, you must tell the Court what those facts are. --- H'm..., legitimate expectation since I – I was employed. There was a – a tacit agreement with the Human Resources department which it can be inferred. There was actually a promise to  
20 renew my contract.

Who made the promise? --- Warren Charles.

When? --- Within – that was in the first – first week. There were various reassurances that were given to me. In fact those reassurances were also given to me by Dean. It  
25 was the sort of cherry that was held out.

So and the promise made by Annelien Dean, can you be more specific? And can we... --- It was one of the reasons why I agreed to provide the People's Post with – with articles in the first place. I – I was told that I would get a better  
5 contract.

So really there were two occasions by two different people? --- Right.

You say they promised you a renewal of contract? --- Right and h'm, ja. Ja Sedrick Taljaard was just his abusive...  
10 He was, if I – if I actually even discuss my contract he's going to fire me.

And 5.7.3.11? --- H'm, it says:

“Where the applicant establishes an obligation to negotiate the renewal of his employment contract, where  
15 the respondent failed to comply with any of its obligations in terms of the negotiation, renewal of the employment contract and whether(?) any of the reasons for that alleged non-compliance were arbitrary.”

So that's, I take it I've been requested to prove this. Is that  
20 true?

No I think it's for the respondent to prove. --- Oh alright.

Is there anything else that you think you need to say or cover that you haven't already covered? You will have an  
25 opportunity after cross-examination to supplement what you

say, as long as it's – remains within the ambit of the cross-examination. I might ask further questions and Mr Kahanovitz would then be entitled to cross-examine you on the questions that I ask. But you will have plenty of opportunity to  
5 supplement what you have to say. --- Good.

Mr Kahanovitz.

MR KAHANOVITZ: Thank you, M'Lord. M'Lord, insofar as it's relevant, that is the clause... The last one that you referred to, that is the clause that the applicant mentions at page 56  
10 where he had a difference of opinion as to how it should be phrased.

COURT: Phrased yes. Thanks for bringing it to...

**CROSS-EXAMINATION BY MR KAHANOVITZ**: Mr Lewis. ---  
Right.

15 Who is the editor of Die Burger? --- The current editor I believe is Arrie Rossouw.

Well, can I put it to you that... --- It might be someone else.

...that he's not the editor of Die Burger. --- No longer?

20 Have you heard of Henry Jeffreys? --- H'm no.

Do you know what racial group he belongs to? --- Got no idea.

Well, I just want to put it to you and you can't dispute this, the current editor of Die Burger is Henry Jeffreys and in  
25 using the old categorisations he would be a so-called coloured



person. Right, let's – the legal phraseology that you use in your documents and the Latin phrases and the references to cases and so on, where does that come from? Is it based on your own research? --- No.

5 Or you received advice or where does it come from? ---  
H'm, I've – I've studied at length at the Labour Law Library at Community House and I've received...

Excuse me, the Labour Law...? --- The Labour Law Library.

10 Yes. --- I've received assistance from ILRIG, the Labour Research Unit.

Yes. --- The references are to Labour Law reports. I think they are referenced correctly, the – wherever I have referenced.

15 Now you have a university degree. --- Indeed.

What degree is that? --- I have a Bachelor of Arts from the University of Cape Town.

Alright and I think in summary you mentioned that you briefly studied Law? --- Post – passed Roman Law I. I  
20 haven't passed my Private Law exam.

And somewhere else you also I think say that you have seen in excess of 40 lawyers who you tried to get to take on your case. --- H'm, I've been from pillar to post. Most individuals require some kind of a deposit of – of money.

25 But what we do know is that lawyers who have

represented you, then on... We know Mr Michael Baynham(?) Attorneys, someone by the name of Mr Stevens(?) was representing you for a time because he's the person who signed the pleadings on your behalf, correct? --- Right, right.

5           There's also reference in one of your documents to an Adv Caiger, Andrew Caiger. --- Right.

          Where does he fit in? --- H'm, this is quite bizarre. The... Dale Stevens, after the documents were actually filed at Labour Court I was taken to meet Adv Caiger. Adv Caiger  
10       was presumably asked to render an opinion as to the merits of the case for the purposes of an insurance claim. The only – the only thing I can see in Adv Caiger's opinion was that he thought my prospects were better with regards to a dismissal case than to a discrimination case under the Employment  
15       Equity Act.

          Alright, okay. I should not actually – I didn't want to ask you about what his opinion was, but I see at some or other stage there's correspondence where you point out that your insurance contract was – that provided you with legal  
20       assistance was cancelled and I think you referred them to some or other body. Just tell us about that. --- It was referred to the office of the short-term ombudsperson for the..., sorry, short-term insurance ombud. They came to the startling conclusion that since the..., that even though the case  
25       was framed within the terms of the Labour Law, that the cause

had arisen from an act of defamation and therefore the insurer wasn't obliged to render services. So the fact that I was defamed in the process of being fired had absolutely – it was actually prejudicial to my prospects. If I'd been fired without  
5 any words being said, without there being any – any conflict I would have been in a better position.

But we do know that LegalWise in fact represented you, page 41 of the respondent's bundle. It's a letter sent by LegalWise on your behalf. --- Right.

10 Addressed to Mr Warren Charles, dated 6 June 2006. --- Right.

Are you there? --- Sorry, what page?

Page 41 of the respondent's bundle. --- 41. Right there were – there were also several other letters.

15 No but this is a letter which says that money is being demanded on your behalf. --- Right.

Because it is, and I quote:

“It is a well-known fact that our member is not an Orthodox Jew...”

20 I assume that's a mistake? --- I – I believe it's an error.

Yes and what it should read is:

“It is a well-known fact that our member is an Orthodox Jew...”

--- H'm.

25 “...hence he observed the Sabbath from Friday evening  
04.11.2009/14:03-16:07/EdB /...

“sunset until Saturday evening sunset, but was demanded by Mr Sedrick Taljaard to work on this holy period. Our policy holder's contract was terminated by Media 24 before completion thereof.”

5 And then the amount of one month's salary is demanded, correct? --- H'm, that's correct.

Alright. --- There were – there is also correspondence requesting the contract of employment which was not..., there was no – it wasn't tendered. It wasn't – I didn't have – still,  
10 still waiting to receive that contract.

Then please go to page 48 in the same bundle. It's a document dated 5 July 2006. --- Right.

Is that your signature? --- Indeed it is.

And it says – it's on a LegalWise letterhead and I assume  
15 that means that LegalWise drew up this document. --- Right, it's – it's a document without prejudice for the receipt of a salary without any reference to any other document.

But it says:

“I, D Lewis, hereby confirm that I received my  
20 outstanding salary from Media 24 as a full and final settlement.”

--- In full and final settlement of what? In full...

Now what are we supposed to make of that document?

--- That's, I was actually forced into this position because the  
25 – I didn't have access to an – a proper attorney. There was no

contract. There's an invalid contract and how am I expected to  
– to live? I need my salary. You – I was paid a salary in  
settlement of what?

Well, you have already made it clear that you are a man  
5 of principle who is not intimidated by authority. When you  
have rights to stand up for, you stand up for that. --- Right,  
but I – I don't have the ability to write legal letters of demand.  
I don't have that. I – I'm not a practicing attorney.

Yes but this letter is not particularly complicated. It  
10 says:

“I, D Lewis, hereby confirm that I received my  
outstanding salary from Media 24 as a full and final  
settlement.”

--- Of what?

15 Yes well of what? The only way to answer that question  
is to look at the letter of demand which gave rise to the  
settlement. --- There – there's also a letter of demand for a  
contract of employment.

Well that dispute would, I believe, be settled on the basis  
20 set out in the letter at page 48. --- Well...

I don't think it's particularly complicated what is... What  
the letter clearly says is: Our client, Mr Constable, says that  
his client has been discriminated against. He has got a three-  
month contract. He only received two months. You must pay  
25 a further and if you don't do so legal action will be instituted.

Correct? Got anything wrong? --- (No audible answer).

Page 41. --- It says there "without prejudice".

Yes, but all letters which constitute an offer to settle or deal with negotiations about settlement are marked "without  
5 prejudice". --- My rights, my rights were reserved.

COURT: Mr Lewis, let Mr Kahanovitz ask the question and then you can respond. --- Sorry.

MR KAHANOVITZ: You see, Mr Lewis, the way this normally works is that the one party's legal representative writes a  
10 letter, right, and they may add on it "without prejudice", but if an agreement is reached which actually settles the case, then that gives rise to an enforceable contract. --- Sorry Mr Kahanovitz, the – the letter says "without prejudice". If your company had seized its prejudice against me I would have  
15 been able to seek employment with the company. I – I'm stuck in a legal quagmire as a result of this – this whole saga. So – so I'm allowed to – to apply for – for employment at any one of the 250 jobs which I actually am capable of – of doing.

Can I get back to...? --- It says there without prejudice  
20 your company is expected not to discriminate against me. Your company hasn't ceased to discriminate against me. It's on-going discrimination. I'm – I'm here to protect my – my rights. The Court is obliged to protect my rights to negotiate and – and to do so without prejudice.

25 Well simply put, your – the fact that you took this money

and signed the document settled the dispute. There isn't a dispute. --- No, the – the – it settled the issue of the – of the overtime. There was an overtime amount.

Oh, but there's no reference made to that in the letter on  
5 page 41. --- No, there were – there were monies outstanding and – and overtime was settled. I was – I was paid an amount. My rights were reserved.

But the letter speaks for itself:

“Our policy holder instructs us to request you to  
10 reimburse our member for the one month's outstanding salary.”

And then the answer signed by you is:

“I, D Lewis, hereby confirm that I received my  
outstanding salary from Media 24 as a full and final  
15 settlement.”

What's difficult to understand? --- This is a settlement of what?

Settlement of the claim which you ...(intervention) ---  
There is no valid...

20 COURT: Please, please. --- There isn't a valid document between – between me and the company. You have tendered a fraudulent document.

MR KAHANOVITZ: What document is fraudulent? --- Show me the contract.

25 What has this got to do with the contract? --- Show me

the contract of – that I signed. I – I haven't seen that contract.

What would that have to do with the question of whether or not there was a settlement? --- We asked – show me the contract that – that I supposedly settled. I haven't settled  
5 anything. Where's – where's the – where's my contract?

Well Mr Lewis, on your own version what is in that contract would be entirely irrelevant because on your own version the contract was invalid. It has no legal force in effect. --- It has no, right, it has no legal force and effect. I  
10 have a...

So what difference would it make if I had to show you the contract? --- The... Well the – precisely. The – the – I have an employment relationship. The – the contract has – has essentially fallen away. There is no contract. It's a – it's a  
15 invalid termination of an invalid contract.

Alright well, let's move then on, but I'm going to argue at the end of this case that any disputes that existed about the ending of the relationship, employment relationship between the two parties was in fact settled when you accepted an  
20 amount of money, full and final settlement of that dispute and you will no doubt argue differently. Do you want to comment?  
--- H'm... It's a failure to – to renew a contract of employment for a prohibited reason.

Alright. --- The – the contract essentially has gone up in  
25 smoke. (Witness chuckles).



Maybe while we're busy with that issue, one of the things you've now said to the Judge was that you..., one of the things you claim is that... Let me get your language. You said that the employer was obliged to negotiate a new contract with you.

5 --- Or to provide valid reasons for dismissal.

No, that's not what you said. --- All I'm saying is – is it's just on a – on a basis of what would be lawful. One would have expected reasons for, *bona fide* reasons for termination or dismissal. I haven't received anything in writing.

10 No I'm not – we're talking at cross-purposes. No, I'm not talking about anything to do with termination. There's a point that you made where you referred the Judge to paragraph 3.3 of the contract of employment at page... It's respondent's bundle page 6. The clause reads as follows:

15 “Any negotiations regarding the renewal of the contract will take place within the last two months of its duration. Should this contract not be renewed, termination will take place at the expiry date mentioned in paragraph 3.1.”

--- Right.

20 And if I understood your argument, you say this clause was breached. --- Precisely.

But now how can one – but on the other hand you say that this contract was invalid. --- Well you see is that why – why we need a judge, is the – the case law determines specifically in Auf der Heyde that notwithstanding the contents

of the contract a reasonable expectation of renewal exists.

No, no we're not talking about reasonable expectations of renewal at the moment. We're talking about whether or not my client breached the terms of this contract. I'm putting to you  
5 what is actually a fairly simple proposition. --- Right. There should have been a clause in the contract essentially setting out the manner of the termination.

No, we're not talking about termination. --- It's a prejudicial...

10 We're talking about renewal. --- Right if – if this was actually a *bona fide* contract, which it's not and this – we're going to presume that this is just a facsimile of the document. So we're talking really hypothetically here. This is an abstract argument that we're using. Hypothetically speaking, if I had  
15 been given the right to amend my contract, which I clearly wasn't, in fact my request for an amendment of my contract resulted in a more deleterious situation where..., clearly prejudicial. If – if there had been an amendment I would have suggested an amendment 3.4, setting out the manner of the  
20 termination which *bona fide* reasons would have to be supplied by the respondent.

Alright so you're not alleging anymore that the respondent breached clause 3.3 of the contract? --- H'm... (Witness chuckles). You're talking a completely abstract. It's  
25 a..., completely hypothetical. I'm alleging the breach of a

document. The document is not even a *bona fide* document. You haven't managed to show that document in court. This is a reasonable facsimile. So if you want to say yes, there was a reasonable breach – there's a breach of the reasonable  
5 facsimile of a document, then what are you getting at?

It's not what I'm getting at. The Judge asked you what was the point that you wished to make in your pleadings where you said... I'll read you the sentence in your – in the statement of claim. --- Right.

10 Paragraph 4.5.3:

“Respondent failed to comply with its obligations in terms of the employment contract despite a legitimate expectation on the applicant's part that same would be removed.”

15 And then you were asked to explain what you meant by that.  
--- Right.

And then you referred us to clause 3.3 of the contract.

--- Well I've also pointed to Auf der Heyde.

Alright. For what it's worth I will put to you that you  
20 haven't produced any evidence to show that clause 3.3 of the contract was breached and to the extent that you're claiming that it was breached, it is in conflict with your assertion that this contract is invalid. Your comment? --- You're entitled to your opinion.

25 Alright, then just so that I can understand your

contention that this contract is a fraud, you recognise that's strong language? It means that what you're accusing my client of doing for purposes of this trial... --- Right. Right.

...is inventing... --- Yes.

5 ...a document and falsifying your signature? ---  
Precisely, forgery – forging, uttering, falsifying, attaching my signature to a document which I didn't sign.

If your contention was to – can you explain how would it actually help their case to do that? --- H'm, one can presume  
10 any manner of reasons. You – you're desperately trying to demonstrate the *bona fides* of your client where in fact there's an issue of malevolence.

No, let's just ...(intervention) --- But the – the other document, the other document, if it was actually shown in  
15 court, would clearly be evidence of the malevolent nature of the intimidation and the policy of discrimination at the company.

Just let's stick with the – let's assume for sake of discussion that this document that has been placed before the  
20 Court is a fraudulent document and let's assume for sake of discussion that there is another different document elsewhere. Logically we would produce a fraudulent document because by using that document we would advantage our case. I mean otherwise there's no point in going off and ...(intervention) ---  
25 Yes, unless the contents of that document was so beyond the

pale that actually the – your – your client sees, perceives this document to be the more true, you know... It's between – it's between your client and – and his – and his creator, not – I'm not God.

5           How does this – can you show me anything in this document that helps my client's case? Any...? --- Anything.

Anything in here that would have made someone go to the extraordinary length of taking the risk of putting a fraudulent contract in front of the court? --- Right, yes.

10          Precisely because the work, in this document it says in – in – on page 7 number 7: Working hours.

“Working week will be from Monday to Friday.”

Yes. --- And then periods refer to... It's an, sorry:

15          “Employee's normal working hours will be eight hours a day.”

Yes. --- So the – your client would be in breach of this document.

Yes. --- Right?

20          Yes. --- It's – it's a fact..., it's a material fact before the Court that the – that your client is in – in fact in breach of this document, if it were in fact a legitimate document, that I – that you're not contesting that I worked a seven-day week for four, in fact 14 days without a break.

25          But Mr Lewis, this case isn't about whether you worked overtime and if you worked overtime, how much extra money

my client should or should not have paid you. --- Right it's...

Why would we actually...? Are you seriously suggesting that paragraph 7.1 of the contract is a fraud? --- No, I'm saying is that if this was a legitimate contract, if this in fact  
5 was not a facsimile of a document which – which exists, your – your client would be in breach of this document. I think your client fears for some reason that introducing the other document puts him at some kind of a disadvantage. It would – because of the issue of the Sabbath.

10 But Mr Lewis, the argument you've just put up is self-destructive because what you've now pointed out is that we've put up a fraudulent document which has resulted in ourselves shooting ourselves in the foot. --- Right.

Because we now concede that you worked an eight-hour  
15 day. --- No, you're conceding I worked a – a 14-day week.

Yes but on your version now we put a contract in front of the Court that hurts us because it's so obvious that we've breached it. Why...? --- Why would you do such a thing?

Yes, why would we do such a thing? Can you think of a  
20 reason? --- Honestly I would love to know. I'd love to cross-question Sedrick Taljaard and Warren, Warren Charles and the Human Resources person. We could find out.

This, this signature at page 15, is it your signature? --- H'm, it appears to be my signature here.

25 Yes. --- So, so...

Well it does appear to me – are you suggesting that someone has falsified your signature or is it your signature?

--- No, no this is – this is my mark.

Now were you present when the parties signed this  
5 contract? I take it you must have been because that's your signature. --- I was present when the parties signed the last page.

Yes. --- Page 15. When page 15 was signed I was present. I can't vouch the same for the other pages. There's  
10 a serious oversight.

What's a serious oversight? --- Well, I would expect that for a *bona fide* document there would – one would have to countersign, initial the other pages. I've never – I've never seen a contract in which that hasn't been done. I – I would  
15 presume that – that the Court would be able to assist me in – in determining what a valid contract is or is not.

So why is it important to your case to say that the contract is invalid? --- H'm it's...

How does it help your case? --- It's a material – it's  
20 material evidence before the Court as to the discrimination that occurred.

You've lost me. --- It's just in the manner it's... Hey?

You've lost me. --- This is...

If this contract is invalid... --- Right.

25 How does it help your claim of discrimination? --- Well,

first of all your – your – my – your attack against my grounds  
kind of falls flat, doesn't it?

Well, what attack against which grounds? --- (No  
audible answer).

5 The respondent's defence is not based on the terms of  
the contract. --- You're – you're right.

So the respondent doesn't ...(intervention) --- Your –  
your defence up until today, well, till yesterday morning was  
based on the fact that I'm not a Jew.

10 What has that got to do with the contract? --- H'm, you  
were contesting that if I had signed a contract where I worked  
on Friday night for instance, that I wouldn't be able to claim  
discrimination based upon my Jewish identity.

Look Mr Lewis, can you read what the respondent had to  
15 say about the problems with what is stated in the written  
contract? Go to page 58 of the pleadings file. --- Right.

Let's start paragraph 16:

“Prior to his appointment applicant was interviewed by  
the editor, Annelien Dean, HR manager Warren Charles,  
20 the publisher Sedrick Taljaard.”

So far so good, you don't dispute that? --- H'm, I – I was  
interviewed, ja.

Excuse me? --- I was interviewed by those people at my  
appointment.

25 Yes okay and I take it that you discussed what the



production run...? --- No you see, this is the problem, is – is that there was no discussion. I – I joined the company under the assumption that it was a Monday to Friday. This is completely incorrect. There was a unilateral change to the  
5 terms and – terms and conditions of the contract at a meeting. I can give you the date.

When...? Well you're saying there's no discussion whatsoever that ever took place about the day on which the newspaper was going to...? --- H'm, I was under the  
10 assumption that it was a Monday to Friday.

No, you're not answering my question. --- Sorry, there was no discussion as to the...

What day of the week was the newspaper going to come out on? --- I – I started working on a Monday and h'm, I was  
15 given Wednesday afternoon off and worked until Friday, Friday afternoon. Ja, I...

No, you're not, you're still not answering the question. --- It was a five-day week.

Well, let's ask which days of, yes, which days of the  
20 week were you supposed to work on? Because ...(intervention) --- Monday, right Monday, Tuesday, Wednesday, Thursday and Friday.

No... Because you would know from working on newspapers that obviously you need to tailor your working  
25 hours in relation to publication. --- Oh this is an interesting...

I've – I am aware of these arguments. I didn't count...

No, it's not an argument. --- No it's an argument. It's an opinion. It's not – it's not in the contract. The – the facsimile of the contract says Monday to Friday.

5 Well strangely enough, that's – one of the things I'm pointing out to you is that we agree with you that this contract does not correctly reflect the working hours that... What we say what was agreed between the parties was that you would work... Let's take this in stages. On Mondays you would work.  
10 Do you agree with that? --- H'm, perhaps I can – can I help you? The – on the 18<sup>th</sup> of the 5<sup>th</sup> '06 there was a meeting, a one-on-one in which I was told that I would be working on a Saturday and would get afternoon off on a – on a Tuesday.

COURT: Which day was that again, sorry? The 18<sup>th</sup>...? ---  
15 18<sup>th</sup> – 18<sup>th</sup> of June I think.

18 June '06? --- Sorry, January, February, March, April, May. Sorry May.

MR KAHANOVITZ: So what are you reading from there? ---  
I've just got a timeline that I've managed to distil from my –  
20 from my diary.

Yes. Yes. --- On the 18<sup>th</sup> of the 5<sup>th</sup> I had a meeting with Sedrick Taljaard and Annelien Bean in which I was unilaterally told that I would be working on a Saturday.

And you say, are you now claiming that at that meeting  
25 you raised the question of your Jewish faith? --- H'm I – I

wish had objected with the knowledge that I have today. I – I've had to operate under the assumption that most other South African Jews have operated under. This country isn't Israel. If I was in Israel things would be a little bit clearer.

5 But you've actually filed a document somewhere here in which you point out that you actually do not have a problem with working on Saturdays. --- Right it's..., right.

You've said that the way in which... --- It's a status quo. I grew up playing rugby on a Saturday. No-one objected, no-  
10 one suggested that I wasn't a good Jew. My father worked on a Saturday morning.

Well... --- I've grown up in the shadow of the Half-holiday Act. That's the status quo, *Shabbat* is a Friday evening.

15 Alright so let's proceed from that premise. If that is so then you would not have been particularly worried about whether or not you had to work on a Saturday? --- No, the – the issue isn't whether or not I worked on a Saturday. The issue is whether or not I objected to working on the Friday  
20 evening.

Alright, so when we say that the question of you working on a Saturday was not an issue that was ever raised by you, that would be consistent with the views that you hold that working on a Saturday is not an issue for you? --- Precisely.

25 Now the reality – we can have a fight later about what

the contract provided or should have or should not have provided for, but the reality was that the production cycle was that, to use the jargon, the production run for the People's Post was Saturday to Monday and the newspaper would then  
5 come out on the Tuesday? Do you agree with that? --- H'm, that's not entirely...

That's what happened? --- No, it's not entirely true. The production actually started on Thursday.

Well, I don't want to split hairs. What was done on a  
10 Thursday? --- News gathering.

Alright, well some people use the word it's in production.  
--- Right.

But the – when did you start editing? --- H'm the..., this is the problem, you see. The Friday, Friday deadline for – for  
15 editing was supposed to be 12:00 a.m. but the deadline was moved forward to four – four o'clock. So it just became impossible.

Right, I understand what you're saying. Now you didn't have to work on Sundays, correct? Sunday was a day off? ---  
20 H'm, not – not. I was actually brought in because the – the – there were problems with some of the – the editions. There were four – four editions that we were working on so I worked on a – on a Sunday from..., the same as the Saturday actually.

Mr... --- Saturdays were till three – three o'clock in the  
25 afternoon.

Mr Lewis, the picture here is this was a new publication, correct? --- Right.

There were teething problems as tend to happen with new publications, correct? --- Right.

5 And in consequence of that people had to work irregular hours to ensure that the publication was on the street by the date on which it was scheduled to appear. --- But not in – in terms of the contract. It – it – it's sort of like a...

Forget about the contract. --- Ja.

10 That's what happened. --- Right.

You can argue later it's a breach of your contract, I don't mind. That's what happened. --- Alright.

You agree with me? That's what happened? --- Yes.

Yes and for the two editions that you worked on, both of  
15 them did not follow some pre-planned regular set of hours because everybody was learning as they were going along. --- H'm, it was an exceptional period.

Exactly. --- Right.

Exactly. And the other thing you would know, that in this  
20 field of journalism, when you're working to deadlines things don't always go according to some preordained plan. --- Right.

That means that journalists and subeditors who need to work on ensuring that tomorrow's newspaper comes out,  
25 sometimes do not and cannot leave at set hours. On a good

day maybe they can, but on other days things have to be flexible because that's in the nature of the profession. --- I believe, I've always believed it's the sort of prerogative of the journalist or worker concerned. It's not something that can be  
5 explicitly demanded, the same way loyalty is not something that you can demand from somebody.

Yes but Mr Lewis, if, if you're busy working on the newspaper on tomorrow's edition and the World Trade Centre is blown up, people do not say: Five o'clock is the time I'm  
10 going home. We're not going to run this story on tomorrow's front page. --- Right, but I'm not... Right but it's not a key, it's not a key industry. There's no legislation in place. This is not – it's not the army. It's – it's loyalty to the, h'm, to the title of the person concerned. If – if the paper can't – can't  
15 command loyalty through just policies and ethical management, it has no, strictly no right to expect workers to – to avail themselves of their private and free time.

But if keeping to fixed hours is so important to you, why would you want to be a journalist or a subeditor for that  
20 matter? --- H'm, I've worked in many public – on many publications and production public, h'm..., publishing departments. My – my time at Sunrider International for instance was pretty much tiptop working hours. No problem with me being Jewish. The same thing at Independent  
25 Newspapers Cape, not a problem. There was a legitimate

contract. There was no force, no duress, no intimidation, no bullying.

But Mr Lewis, you took Independent Newspapers to the CCMA. --- Right.

5 Because you claimed that you were an employee of Independent Newspapers and they denied it. --- H'm... (Witness chuckles).

Correct? --- I've got a contract but that's beside the point.

10 Well, the... --- It – I was a *de facto*... Right.

The arbitrator decided that ...(intervention) --- Right, the arbitrator decided that for the purposes of the Act I'm an independent contractor.

Now how can you, how can you tell the Judge that you  
15 didn't have – there was no problem with your working hours at Independent Newspapers where you were in fact not an employee? --- H'm, I beg your pardon.

You were not an employee according to ...(intervention)  
--- I beg, I beg your pardon. I've got a contract. I can show  
20 you a legitimate contract with the Independent Group.

Well let me show you what the arbitrator found. It appears at respondent's bundle at page 77. --- H'm, can I show you the – my contract in my applicant's bundle of documents?

25 COURT: Let's just start with Mr Kahanovitz. What page in  
04.11.2009/14:03-16:07/EdB /...

which document?

MR KAHANOVITZ: I don't know. There seems to be more than one version on his bundle. On mine it's page 77. Mr... My instructing attorney says it's page 78.

5 COURT: Ja, 78 on mine.

MR KAHANOVITZ: Okay. --- Sorry, can I refer you to pages 83 to 84?

COURT: Just wait. We'll come to that in a moment. Let's just – let me just record this. This is respondent's bundle, 78 and  
10 yes Mr Lewis, what did you want to refer to? --- My contract with the Independent Group on page 83 and 84 of my...

Of the same bundle? --- My bundle. Applicant's bundle.

MR KAHANOVITZ: Mr Lewis, what is the relevance of the contract at page 83? --- H'm, you seem to be suggesting that  
15 there – I wasn't employed.

Well, if you look at that contract, that and the case in the CCMA deal with completely different periods in time. The contract at page 3 is a fixed term contract as a subeditor from the Cape Times from January 1 2000 to February 29 2000. It's  
20 a two-month fixed term contract. --- It was an extended...

As a subeditor. --- Ja it was extended for a couple of months.

The... --- The – the problem is – is I was actually working at the Independent Group without a..., a just it was a  
25 strange situation where I was providing copy to the daily pages



without a contract.

But the issue that you took to the CCMA had nothing to do with subediting. --- Right I – I didn't... The problem is, is that the case was – was – at the time when the Basic  
5 Conditions of Employment Act had just come out. There wasn't any relevant case history.

Sorry, the case you took to the CCMA had nothing to do with your contract ...(intervention) --- And it's absolutely irrelevant to this case.

10 Excuse me? --- It's irrelevant.

COURT: Oh please, please let Mr Kahanovitz finish his question. --- Sorry.

And then answer. Do not interrupt. Part of the problem is that we don't then record and I can't recall what you've got  
15 to say. Just... Mr Kahanovitz, ask that question again because I've now lost it. --- Yes.

MR KAHANOVITZ: You raised the relevance of your employment history in Independent Newspapers, correct? You raised it because you said there was no problem there in  
20 relation to your ability to practice your faith, in relation to working hours. --- Sorry? Sorry yes, there was no issue at – at Independent.

Yes and I then asked you whether you had indeed worked for Independent Newspapers and I raised the fact that you had  
25 taken the case to the CCMA. --- Right.

In which you had in essence claimed that a freelance journalist is an employee. --- No, I think I claimed that a *de facto*..., I was a *de facto* employee and that in the absence of a contract I – I wasn't covered. The – there was a problem  
5 with – with contracting my labour.

And... --- It was an *in limine* point so the – they found that I was a – that I – essentially they turned me into a independent contractor.

And there was a similar theme here you can see, if you  
10 look at page 79. You talk about, in the middle of the page, the “old regime, a system which had been an obstacle...”

--- Sorry, which – which..., of the pleadings?

No the bundle, page 79. --- Your – your bundle?

Respondent's bundle: The decision from the CCMA by  
15 Cecilia Brummer. The gist was that you argued that Independent Newspapers were perpetuating a system of exploitation against... --- Indeed, right indeed.

Yes. Yes.

COURT: I don't see that, sorry Mr Kahanovitz.

20 MR KAHANOVITZ: In the middle of the page, M'Lord. It says:

“In addition to the above, which is common cause, Mr Lewis also submitted the following arguments for consideration. During the old regime the system was an obstacle and journalists could not fight battles against  
25 exploitation to be (indistinct – counsel speaking away

“from microphone) a living wage.”

Et cetera, et cetera. These were arguments put up, M'Lord, by Mr Lewis.

COURT: Mr Lewis. --- Right.

5 MR KAHANOVITZ: As to why he should be classified as an employee. M'Lord it's – I'm happy to go on but it is ten past four so...

COURT: Yes certainly.

MR KAHANOVITZ: I don't know. I'm in Your Lordship's hands  
10 and we're not, certainly not going to finish today, so...

COURT: No, no certainly not. No I think this was an appropriate time to adjourn. Mr Lewis, you remain under oath and we'll recommence at 10:00 tomorrow.

MR KAHANOVITZ: Thank you, M'Lord.

15 **COURT ADJOURNS AT 16:07 UNTIL 5 NOVEMBER 2009**