***FORM A***
**FILING SHEET FOR EASTERN CAPE JUDGMENT**

ECJ NO: 025/2006

PARTIES: **THE STATE**

**vs**

**THEMBINKOSI HENA**
**MFUNDO NGAPHI**

REFERENCE NUMBERS -

- Registrar: **CC 1/2006 (PORT ELIZABETH)**

DATE DELIVERED: **08 MARCH 2006**
JUDGE(S): **PLASKET J**

LEGAL REPRESENTATIVES -
*Appearances*

*:*

- for the State/Applicant(s)/Appellant(s): **J. THYSSE**
- for the accused/respondent(s): **C. VAN ROOYEN (ACC. 1)**
  **H. AYERST (ACC. 2)**

*Instructing attorneys:*

- Applicant(s)/Appellant(s): DPP
- Accused: Legal Aid Board

CASE NO. CC1/06

IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH EASTERN CAPE LOCAL DIVISION)

Date: 8 March 2006

THE STATE VERSUS: 1. THEMBINKOSI HENA

2. MFUNDO NGAPHI

J U D G M E N T

PLASKET, J:

On the night of 31 July 2004 the complainants in this matter were walking in Philani Ntsiko Street, KwaNobuhle, when they were accosted by three men armed with knives. The men stole two cell phones, R20,00 in cash and jewellery from them, brandishing the knives to force the complainants to part with their possessions. One of the men went so far as to tell the complainant in count 2 that if she was not able to remove a ring from her finger he would cut her finger off. The assailants then ordered the complainants to enter a church situated at the corner of Philani Ntsiko Street and P J Gomomo Street. Inside the church each of the three men raped each of the complainants.

Arising from these facts the two accused were charged with two counts of rape and with robbery with aggravating circumstances. The central issue in this trial is whether the State has proved beyond a reasonable doubt that the accused were two of the three men who robbed and raped the complainants. In their evidence the complainants were not able to identify the accused as their assailants.

Both accused pleaded not guilty to all of the charges against them.

Accused no. 1 tendered an alibi as a plea explanation and accused no. 2 decided, as he was entitled to do, to tender no explanation of his plea.

The State relied principally on the evidence of the two com-plainants and of Mr Khayaletu Lucas, the admissibility of whose evidence was placed in issue by counsel for accused no. 1, Mr Van Rooyen. In addition, a number of documents tendered as evidence by the State were admitted by the defence, and an affidavit tendered in terms of Sec.212(4) of the Criminal Procedure Act 51 of 1977 was also handed in by the State.

At the end of the State case Mr Van Rooyen applied unsuccess-fully for the discharge of accused no. 1. He thereafter closed his case without calling accused no. 1 or any witness on his behalf.

Ms Ayerst who appeared for accused no. 2 also closed her case without calling her client or any witness on his behalf.

The fact that no evidence has been led to gainsay the evidence tendered by the State does not mean that the accused must automati-cally be convicted. The central question that must be answered remains whether on that evidence the State has proved its case beyond reason-able doubt. If that evidence is deficient in that it does not prove an element of the offence, or is vague or contradictory to the point of not being acceptable, the fact that the accused opted to remain silent is irrelevant. Silence cannot, in other words, supplement deficiencies in the State case and the evidence adduced by the State still has to be properly evaluated "in order to determine whether it measured up to the standard required for its acceptability". See S v FRANCIS 1991(1) SACR 198 (A) at 203f - i.

I intend dealing with accused no. 2's position first as, on the view I take of the evidence, the issue relating to the admissibility of the evidence of

Lucas does not arise in the case of accused no. 2.

The evidence of the complainants is that soon after their ordeal had ended they reported what had happened to them to the police. They were taken to the Uitenhage Provincial Hospital where they were medically examined. This evidence is confirmed by Inspector Deon Arnolds of the South African Police Service who took them to the hospital and then took them home after they had been examined.

The J88 forms completed by the doctor who examined them, which were admitted by consent, also confirm that they were examined and that specimens were taken from both complainants. It is admitted by counsel for the accused that these specimens, and blood samples later taken from the complainants and the accused, were properly dealt with and sent to the Forensic Science Laboratory of the South African Police Service where they were properly analysed. The results of that analysis are contained in an affidavit made in terms of Sec.212(4) of the Criminal Procedure Act by Inspector Hugh-Marie Alicia Damon, a forensic analyst attached to the forensic laboratory. That affidavit, it is conceded by Ms Ayerst for accused no. 2 (and correctly so) complies with the terms of the section. As a result, "upon its mere production" it constitutes prima facie proof of the facts contained in it. The affidavit is to the effect that DNA of accused no. 2 was present in the specimens taken from both of the complainants. That evidence stands uncontradicted and unexplained

by accused no. 2.

The evidence of the complainants was not subjected to any signifi-cant criticism, and nor could it be. Their evidence was mutually corro-borative and both were, in my view, good and honest witnesses in all material

respects. I accept their evidence that they were indeed robbed and raped as alleged in the indictment. I find that the State has proved beyond reasonable doubt that the offences com-plained of were committed and that the Sec.212(4) affidavit proves beyond a reasonable doubt that accused no. 2 was one of the three men who raped the complainants.

I find too that, as it has been proved beyond reasonable doubt by the evidence of the complainants that the same three men acted in concert and robbed the complainants of cell phones, money and jewellery, accused no. 2's guilt on count 3 has been satisfactorily proved.

I turn now to accused no. 1. The position of accused no. 1 is different. The Sec.212(4) affidavit states that he cannot be linked to the rape by way of DNA evidence. The State's case in respect of accused no. 1 is built on the doctrine of recent possession. It is that he was in possession of the cell phone stolen from the complainant in count 1 shortly after the offences were committed and that the only inference to be drawn from his possession is that he was one of the three men who stole the cell phone. If that is accepted, it follows logically that he was also one of the three men who raped the complainants. In order to decide this issue it is necessary to set out the evidence in some detail.

The complainant in count 1 testified that about a week after the incident she received information of a cell phone having been sold by a person who lived in P J Gomomo Street. She reported this information to a Mr Mzwandile Somya, a member of an anti-crime committee in the area. She did so because she had been advised to do so by the investigating officer dealing with this matter at the time. On 7 August 2004, both complainants accompanied Somya and other members of the anti-crime committee to P J

Gomomo Street where they found accused no. 1. He was placed, against his will, into the boot of the vehicle in which they were travelling and taken to a container that served as the offices of the anti-crime committee. Because, says the complainant, he "did not want to tell the truth" he was held there for what she described as a long time, was interrogated about the cell phone, and was assaulted by members of the anti-crime committee during this interroga-tion. As a result of information then given by accused no. 1, the complainants, the anti-crime committee members and accused no. 1, again in the boot of the car, went to Lindipasi Street. It would appear that he tried to escape there but his escape was foiled when Somya drew a fire-arm. It is not clear from the evidence of the complainant in count 1 what precisely Somya did with the fire-arm.

In due course accused no. 1 led his captors to Khayaletu Lucas. He was not at home in Lindipasi Street, but they found him at a tavern. He fetched a purple cell phone from his home and handed it over to the complainant who identified it as her property. Accused no. 1 was then handed over to the police.

The investigating officer at the time, Inspector Khaya Msinekelwa, was cross-examined by Mr Van Rooyen about the working relationship between the South African Police Service and the anti-crime committees. His evidence in this respect was forthright and candid. I have no reason to disbelieve it. He stated that it was practice for the police to involve community organisations in the investigation of crimes. He is familiar with anti-crime committees and knows Somya. He stated that Somya used to come to his office and that he would task him to seek informa-tion about crimes. He said that Somya volunteered to help the police in their investigations and that he

was involved in the investigation of this matter. Inspector Msinekelwa had briefed Somya on what had happened in this case and had asked him for his help. He said that Somya had arrested both of the accused.

The evidence that is under challenge in respect of accused no. 1 is that of Khayaletu Lucas. He stated, in brief, and I shall return to his evidence in due course, that on a day in 2004, the date of which he cannot recall, accused no. 1, accused no. 2 and a third man arrived at his house and offered a purple cell phone for sale to a person who lodged there, one Zane. Lucas was asked by Zane to purchase the cell phone for him. He spoke to accused no. 1 while accused no. 2 and the third person spoke to Zane. He tried to switch the cell phone on, but it was not in working order. He told accused no. 1 that he intended keeping it for its owner because he suspected it was stolen. Accused no. 1 and the others left, but said they would return the next day for their money. They returned the next day and Lucas refused to give them the cell phone or

the money for it. They offered to sell him another cell phone. The three men left, again without the purple cell phone, and some time later Lucas handed it over to members of the anti-crime committee when they found him.

It was argued by Mr Van Rooyen that the evidence of Lucas should be excluded because it was derived from evidence that was obtained by unconstitutional means. He placed reliance on Sec.35(5) of the Constitution which states:

> "Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the

administration of justice."

Usually issues of admissibility, both generally and in cases involving Sec.35(5) of the Constitution, are dealt with in a trial-within-a-trial. The purpose of following that procedure is to safeguard the accused from the possible prejudice of exposing himself or herself to cross-examination on the merits (i.e. on his or her guilt) when the issue to be decided at that stage is one of admissibility, and so that, at the end of the State's case, an accused knows what case he or she has to meet in the full knowledge of what evidence has been admitted and what has not been. See SCHWIKKARD & VAN DER MERWE, PRINCIPLES OF EVIDENCE, 2nd Ed. para 12.11.1.( I shall refer to this work in the remainder of this judgment as SCHWIKKARD & VAN DER MERWE.)

In this case the admissibility of the evidence of Lucas can properly be decided without a trial-within-a-trial being held. I say this for two reasons. The first is that the parties agreed that the issue was to be dealt with in argument when the evidence had all been heard and not in a trial-within-a-trial. There can thus be no question of prejudice to accused no. 1 and Mr Van Rooyen stated expressly in argument that accused no. 1 stood to suffer no prejudice from the procedure agreed to.

Secondly, the facts upon which the issue is to be decided are common cause as accused no. 1 did not testify and the evidence of unconstitu-tional conduct was given by State witnesses - the complainant in count 1 and Inspector Msinekelwa. See SCHWIKKARD & VAN DER MERWE paragraph 12.11.1 and S v KIDSON 1999(1) SACR 338 (W) at 340e - f (and the cases cited therein) in which counsel also agreed to deal with the question of admissibility "on the basis of the evidence as a whole", on facts that

CAMERON, J described as being "almost wholly common cause".

The admissibility of the evidence of Lucas raises most important questions of how courts should maintain the balance between "on the one hand, the public interest in bringing criminals to book and, on the other, the equally great public interest in ensuring that justice is manifestly done to all, even those suspected of conduct which would put them beyond the pale". KEY v ATTORNEY-GENERAL, CAPE OF GOOD HOPE PROVINCIAL DIVISION 1996(4) SA 187 (CC) paragraph 13. I would have preferred a great deal more time than I have at my disposal to consider this issue. Unfortunately that is not available to me. I record that I derived substantial assistance in what follows from the

judgment of KROON, J in S v SWANEPOEL & 'N ANDER South Eastern Cape Local Division 20 December 2004 (Case No. CC85/03) unreported, which is encyclopedic in its references to the case law, and from the work of professors SCHWIKKARD & VAN DER MERWE to which I have already referred.

In order to balance the interests mentioned in KEY's case, Sec.35(5) of the Constitution contemplates a discretionary power in the hands of the court to exclude unconstitutionally obtained evidence in one of two sets of circumstances, namely either when its admission would render a trial unfair or when its admission would be otherwise detrimen-tal to the administration of justice. See S v M 2002(2) SACR 411 (SCA) at paragraph 30.

This case involves evidence that is derived from evidence that was unconstitutionally obtained. The existence of Lucas and his possession of the cell phone only came to light because Somya and the anti-crime committee abducted accused no. 1, took him to their office, interrogated him and

assaulted him until he told them "the truth" as it was put by the complainant in count 1. That this evidence was obtained in violation of a constitutional right is patent on two scores. First the fundamental right involved, Sec.12(1)(c) of the Constitution, binds both the State and private persons. It provides that "[e]veryone has the right to freedom and security as a person, which includes ... (c) the right to be free from all forms of violence from either public or private sources". Secondly, the evidence of Inspector Msinekelwa establishes that, in this case, the anti-crime committee acted in a capacity similar to agents of the police /... conducting the investigation on their behalf. It is clear that the police, being organs of State, are directly bound by the Constitution. See Sec.8(1).

The evidence establishes that, but for the violation of the funda-mental rights of accused no. 1, the existence of Lucas would have been unknown to the State. There is no hint in the evidence that he could have been found by constitutionally acceptable means, and to find this to be so would be speculative. Given that accused no. 1 tried to exercise his right to silence until he was assaulted, it is likely that if he had been warned of his rights, and if his rights had been respected, he would have continued to exercise his right to silence. The link between the assault on accused no. 1 and the evidence derived from that tainted source is clear. To ignore it, to downplay it or to deny the cause and effect of the violation of the fundamental right and the evidence thus discovered would, in my view, ignore a stark reality that has to be confronted. It is also necessary to confront squarely the fact that while Sec.205(3) of the Constitution places the duty on the police service to "prevent, combat and investigate crime", it has, in this case, sought to "privatise" the investigative function, which it is not entitled to do, by allowing

the anti-crime committee to assume policing functions. Experience has shown, not only in this country but elsewhere too, that vigilantism and violence against suspected law-breakers tend to go hand in hand. That is precisely why civilised systems of government such as ours expressly and unequivocally place policing powers in the hands of the State and build in safeguards to control those potentially oppressive powers.

In this case, during the course of their investigation, the anti-crime committee members appear to have committed at least two offences. The first is that of kidnapping. The second is that of assault. There may also have been a fire-arm related offence committed by Somya. The official complicity in the fundamental rights violation and the close connection between the violation and the evidence discovered as a result lead me to the conclusion that the evidence of Lucas was unconstitu-tionally obtained. It was the fruit of a poisoned tree. In this regard, SCHWIKKARD & VAN DER MERWE, at paragraph 12.8.4, say the following:

> "Sec.35(5) also applies to the situation where the prosecution wishes to introduce evidence unconstitutionally obtained by private individuals who, in obtaining this evidence, had acted quite independently from the State and its law enforce-ment officers, officials or agents. The courts should not permit a "silver platter" situation, i.e. a situation where the provisions of Sec.35(5) can be ignored on account of the fact that the impugned evidence was not procured by the unconstitutional conduct of the State, but only made available to it

> by a private individual who had secured it in breach of constitutional rights."

I take the view on the facts before me that, subject to my discretion to nonetheless admit the evidence of Lucas, to which I shall return, the admission of his unconstitutionally obtained evidence is detrimental to the administration of justice.

I turn now to consider whether notwithstanding this conclusion I should nonetheless admit that evidence in my discretion. The factors that are relevant to the exercise of my discretion are discussed in SCHWIKKARD & VAN DER MERWE at paragraphs 12.10.1 to 12.10.6. Before setting those out it is apposite to cite a general statement made by them at paragraph 12.10 on the nature of the discretion. They say:

> "There appears to be a general trend to permit the impugned evidence once the court is satisfied that its decision to admit will not create a precedent which would encourage the police to procure evidence unconstitutionally."

I take this factor into account in the exercise of my discretion too. The factors that are of relevance to the exercise of my discretion include, but are not necessarily limited to: (a) the presence or absence of good faith and reasonable conduct; (b) public safety and urgency; (c) the nature and seriousness of the violation; (d) the availability of lawful means of securing the evidence; (e) whether or not the impugned evidence is real evidence; and (f) whether the evidence would otherwise have been discovered. See too S v SWANEPOEL & 'N ANDER (supra) paragraph 92(j) in which slightly different factors were considered in the context of the unfairness of the trial as the

basis for exclusion.

On taking office, judges take an oath of office in which they swear or affirm to "uphold and protect the Constitution and the human rights entrenched in it" and to administer justice "to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law". See item 6(1) of schedule 2 of the Constitution.

The situation must be actively guarded against where the protec-tion afforded all of us by the Constitution may be eroded through a lack of vigilance or for the sake of expedience. Central to the role of the judiciary is the protection of the integrity of the criminal justice system and the promotion of proper and acceptable police investigation tech-niques. In this case, there is evidence of an abdication of responsibility on the part of the police, of the police, as a matter of policy or practice, "sub-contracting" their investigation functions to anti-crime committees. The unlawfulness of that is patent, and the consequences that flowed from it in this case should not surprise anyone. Untrained civilians, not subject to the hierarchial discipline of the police service, and not subject to political and administrative oversight, took the law into their own hands. (I have had occasion previously to warn of the consequences of this. See S v T 2005(2) SACR 318 (E) at paragraphs 37 to 40). It would undermine both the Constitution and the integrity of the criminal justice system to allow this systemic abuse to go unchecked. This is clearly a factor that weighs heavily against the admission of the tainted evidence. The conduct complained of - the abduction and assault of accused no. 1 to force him to incriminate himself and lead his captors to other incriminating evidence - could not conceivably have been committed in good faith. It must have been committed in bad faith. Whether the police can be said to have

had actual knowledge of the unlawful methods used has not been established, but their abdication of responsibility cannot have been in good faith either. Every policeman must be taken to know that he or she has been clothed with statutory authority to investigate crime and that this function cannot be "sub-contracted" to untrained civilians. To do so could not be reasonable and, in my view, the police cannot distance themselves from the consequence of doing so. These factors also operate against the admission of the evidence. There is no indication of any public safety concerns or urgency that could have served as justifi-cation for the violations of rights. The violation of fundamental rights was serious. This case does not involve a technical infringement or the omission of a procedural step, but the deliberate interference with the liberty of a person, the indignity attached to that and of forcing him into the boot of a car whenever he was transported, and the deliberate infliction of physical violence and pain on him in order to force him to implicate himself against his will, even though no attempt was made to use this evidence, but its product. The fact that the violation of rights involved the deliberate infliction of violence also weighs against the admission of the impugned evidence.

There can be no doubt that lawful means were available to the police to obtain the tainted evidence. All they had to do was investigate the case themselves and do so lawfully. Whether they would have found the evidence in due course is another matter, but no good reason existed for them to "sub-contract" their investigative functions, and no basis has

been disclosed by the evidence as to why they could not have done their job in accordance with the dictates of the Constitution and the law. This factor also weighs against admissibility of the evidence. The evidence that is

impugned was not real evidence that speaks for itself, but the oral evidence of a person who was found in possession of a stolen article in circumstances in which accused no. 1 was in the custody of the anti-crime committee. These facts also weigh against admissibility.

Finally there was no evidence on record on which it could be concluded that the evidence of Lucas would have been discovered in any event. The indications are that if accused no. 1 had been warned of his rights and had not been assaulted he would have exercised his right to silence. While the existence of Lucas may have come to light by other means, for example by proper, thorough and lawful police work, on the facts before me it would be speculative to conclude that this would have happened as a matter of probability.

I accordingly find that the admission of the evidence of Lucas would be detrimental to the administration of justice and that no basis exists for admitting it nonetheless. I thus hold that his evidence is inadmissible. That being so, the State has failed to prove that accused no. 2 was in recent possession of the cell phone of the complainant in count 1. The result of that is that no admissible evidence links accused no. 1 to the commission of the offences with which he is charged. He is thus entitled to his acquittal.

Even if I am wrong in respect of the constitutional issue, I take the view that the evidence of Lucas is not of a sufficiently acceptable standard to constitute proof beyond reasonable doubt of accused no 1's
recent possession of the cell phone. I now turn to that issue.

The evidence of Lucas was criticised by Mr Van Rooyen and Ms Ayerst on a number of grounds. There is cogency in their criticisms. He was a poor witness whose version was often confused, was vague, was

sometimes contradictory, was not forthright, and, in important respects, was improbable. His evidence was vague as to when the cell phone was offered to Zane and him for sale. All he could say was that this happened in 2004. He was also vague, initially at any rate, about the purchase price. In his evidence in chief when asked about the purchase price his precise words were: "I do not recall but it seems to me it was R200,00". Later when he was cross-examined, however, he said he was certain that the purchase price was R200,00 having thought further about this. He was confused and contradictory about the sequence of events. In his evidence in chief he said that after he had checked the cell phone, discovering that it did not work, he told the accused and the third person that he intended keeping the cell phone for its owner because he sus-pected it had been stolen. The accused and the third person said they would return the next day to collect their money. They returned the next day and Lucas still refused to pay them or give them the cell phone. They again left without the cell phone but said they would bring another cell phone. When he was cross-examined, he said that he had kept the cell phone after checking it because they had promised to bring Zane another one. When it was put to him that in his evidence in chief he had said that the second cell phone was mentioned only on the second visit by the accused, he first denied having deviated from his earlier evidence, but then confirmed his evidence in chief. When he was asked in the very next question to explain the confusion he again set out his version of what had happened but immediately gave an account in which the second cell phone was offered to Zane on the first visit of the accused. His evidence was not forthright in certain important respects, among these being whether he knew accused no. 1 and how he knew him. In his evidence in chief he said that he

knew accused no. 1 because they lived closed to each other. He added that he was not a friend of accused no. 1. During cross-examination he said that he knew accused no. 1 because their mothers are related and that he was once sent by his mother to collect money from accused no. 1's mother. Still later in his cross-examination he said that they knew each other because accused no. 1 used to drink at his home in the shebeen that is run by his brother. His evidence was improbable in the following important respects. First, he testified that Zane, for whom he would have bought the cell phone, was not a friend of his. For most of his evidence the impression was created that Zane was a mere lodger in the house. He was certainly not a relative or a friend. Towards the end of his cross-examination he stated that Zane had asked him to buy the cell phone because his brother, Andile, who employed Zane in the shebeen, was not present to buy it for him. I find it improbable that Lucas, with such a tenuous and minor connection to Zane, would entertain the thought of buying him a cell phone for no apparent reason.

Secondly, he testified that not only did he suspect that the cell phone was stolen, but he told the accused this and that he intended to keep it so that the owner could somehow find out he had it and claim it back. He refused to hand it back or pay for it. Despite this he said the accused did not get angry with him. Instead of taking steps to recover the cell phone, they left, returned to ask to be paid knowing they would not be, and compounded their problems by offering to sell a second cell phone. To put it bluntly this version makes no sense and is improbable.

Lucas was a single witness in respect of the alleged acquisition of the cell phone from accused no. 1. In the light of the weaknesses in his evidence

that I have highlighted I cannot conclude that his evidence was satisfactory in all material respects. It comes with no guarantee of reliability that can be said to satisfy the cautionary rule.

This is compounded by one final factor that places the matter beyond question. Lucas was confronted by members of the anti-crime committee who had accused no. 1 in their custody. Although there was no direct evidence to this effect, accused no. 1 may well have been displaying signs of having been assaulted. In these circumstances the glib acceptance of the identification of accused no. 1 as the person from whom Lucas acquired the cell phone carries with it great risk. His evidence in that respect must be accorded very little weight.

I conclude that the evidence of Lucas, when properly evaluated, does not measure up to the standard required for its acceptability, and as a result I conclude that the State has failed to prove that accused no. 1 was in recent possession of the cell phone of the complainant in count
1. That being so, the State has failed to prove that he was one of the three men present when the complainants were robbed and raped.

Finally, before I pronounce my verdict, it is necessary to say more about the violation of accused no. 1's fundamental rights. In this case it may not have made a difference to the result because of my conclusions on the acceptability of the evidence of Lucas. In other cases such con-duct as that of the anti-crime committee in this matter could lead to people who are clearly guilty of crimes having to go unpunished. That is a consequence that is as unattractive as permitting the type of abuses that came to light in this matter to continue. Both scenarios have grave consequences for our constitutional democracy. For this reason, and because of the fact that what

appears to be an unlawful policy or practice has resulted in the violation of human rights, I intend to order that copies of this judgment be forwarded to the Provincial Commissioner of the South African Police Service in the Eastern Cape Province and the Chairperson of the Human Rights Commission. The conduct attributed to Somya and the members of the anti-crime committee constitutes criminal conduct. I cannot ignore that fact. I shall also order that a copy of this judgment be forwarded to the Director of Public Prosecutions for the South Eastern Cape Local Division for her to take such action as she deems appropriate.

In conclusion, I make the following orders:

1. The Registrar is directed to forward copies of this judgment as soon as possible to the Provincial Commissioner of the South African Police Service for the Eastern Cape Province, the Chair-person of the Human Rights Commission and the Director of Public Prosecutions for the South Eastern Cape Local Division, for them to take whatever action they deem appropriate.
2. Accused no. 1 is found not guilty and is acquitted in respect of all of the charges brought against him.
3. Accused no. 2 is found guilty and is convicted as charged in respect of counts 1, 2 and 3.

C PLASKET

JUDGE OF THE HIGH COURT