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THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION

5 HISLOP J

FOURTH DAY: FRIDAY 21 NOVEMBER 2008

10 **20369/01 - OLIVER MARKISIC & ANOR v COMMONWEALTH OF  
AUSTRALIA**

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15 HIS HONOUR: Mr Markisic, I have received some written submissions, which  
were filed apparently on 19 November 2008 and consist of some eleven  
pages.

FIRST PLAINTIFF: As per your directions.

20 HIS HONOUR: Yes. This is the written reply to the submissions made by  
Mr Robinson.25 FIRST PLAINTIFF: That would be an outline more to be taken as  
submissions. I would like to add some more to those written submissions.

HIS HONOUR: Yes. Very well. What more do you want to say?

30 FIRST PLAINTIFF: Firstly, with your permission, I would like the Court to take  
into account, since my learned friend, Mr Robinson, has handed out to your  
Honour a judgment of Bryson J of the Court of Appeal, a judgment of Bryson J  
given prior to the judgment already handed out by Mr Robinson.

HIS HONOUR: Have you seen this judgment?

35 ROBINSON: I do not think so. I should think there would be no problem with  
your Honour receiving it, for whatever significance it has.

HIS HONOUR: Very well. What is the date of that judgment?

40 FIRST PLAINTIFF: It is made on Monday, 29 January 2007 by Bryson J, a  
judge of the Court of Appeal, of the Supreme Court.

HIS HONOUR: Should we mark that as an exhibit?

45 ROBINSON: I think your Honour can just take notice of it--

HIS HONOUR: --as a judgment of the Court. Very well.

50 FIRST PLAINTIFF: I would like, if I may, your Honour to take this judgment  
into consideration, together with the judgment handed out by Mr Robinson to

the Court.

In this judgment, I would like to draw attention to your Honour the highlighted lines, especially on page 7, where it says--

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HIS HONOUR: This is the material you have highlighted on page 7 of what you have handed to me.

FIRST PLAINTIFF: Yes. It says there:

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“It is I think quite manifest to Mr Markisic”

- I stop here and point out that Mr Markisic is my brother, because the application was initiated by my brother, Dragan Markisic. Bryson J is referring to him. I continue -

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“as much as to anyone else that the paragraph referred to, and indeed the whole judgment, did not finally dispose of the rights of any party on any subject, except for the procedural matter relating to the defamation claim in respect of which an appeal was allowed and directions were made. Except in relation to the defamation claim, the judgment did not, and could not, dispose of any rights. It did no more than refuse leave to appeal, except in relation to, I repeat, the defamation claim.”

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25

There was an application by my brother Dragan Markisic to the Court of Appeal to set aside the judgment of the Court of Appeal but on grounds which are not even remotely similar to the action I am before the Court on now in relation to the judgment of Brereton J, which is interrelated to the judgment of the Court of Appeal, but the grounds for both of the actions are dissimilar. The facts presented before the Court of Appeal at the time and the facts presented to the Court in this action are completely different.

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Just one example in this judgment of Bryson J, his Honour talks about the Australian Federal Police involvement, where the plaintiffs in this case are claiming that the Australian Federal Police did not come, but came people in unofficial capacity, could be mercenaries or whatever, but they were not Australian Federal Police.

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Bryson J also refers to orders of the Family Court where, as the Court is aware, we are saying that the orders were never made whatsoever, or any for that matter.

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Furthermore, I would like to hand out to the Court, and to file in Court, two affidavits. One affidavit is of myself, Oliver Markisic, and one of Dragan Markisic. They were signed yesterday, which is 20/11/08. Signed and sworn (handed up).

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HIS HONOUR: Have you seen these?

ROBINSON: I do not think I have.

HIS HONOUR: Have you been handed a copy now?

5 ROBINSON: Yes.

FIRST PLAINTIFF: I forget to hand out before we entered the courtroom.

10 HIS HONOUR: Just let Mr Robinson have a look at them.

ROBINSON: I object to the filing of the affidavits.

HIS HONOUR: I suppose I should read them.

15 ROBINSON: Yes.

HIS HONOUR: Yes, Mr Robinson.

20 ROBINSON: If this material was to be brought forward, it should have been brought forward at the beginning. It is an attempt to relitigate a matter on which your Honour has not even written a judgment.

25 I am concerned that the matter have some finality. Apart from appearing to contradict the transcript attached to the affidavit of Miss Wikramanayake, it brings before your Honour no further material that would be relevant to your Honour's determination; that is to say, whether 20 or more subpoenas should be issued out of this Court to support an application to determine that the judgment of Patten J was given in bad faith.

30 That is all I want to say. There has to be a conclusion.

HIS HONOUR: You say you would have to get an adjournment to meet the matters that are raised in these documents.

35 ROBINSON: No, I would not want an adjournment. I do not require an adjournment. I would want to tender one judgment of the Family Court in reply.

40 HIS HONOUR: I suppose that I should permit them to be filed in Court. But you would say they should not be read.

ROBINSON: Yes. Either way. They are not filed in accordance with the previous directions.

45 HIS HONOUR: I think perhaps the simplest thing to do, having regard to the nature of this matter, is to provisionally admit the affidavits and the document you wish to put in response. Then I can decide, when I look at the whole matter, if they have any relevance at all to what is before me. Is that a suitable course?

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ROBINSON: Yes. Is it convenient if I give your Honour a copy of the judgment I want to now tender?

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HIS HONOUR: Yes. Show it to Mr Markisic (shown).

ROBINSON: May I just remind your Honour of where this will fit into the picture?

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FIRST PLAINTIFF: Excuse me. May I make some objection to this, before Mr Robinson continues?

HIS HONOUR: Yes. What is the document you are talking about?

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FIRST PLAINTIFF: This hand out of a judgment, or a document which looks like a judgment, of the Full Court of the Family Court.

HIS HONOUR: What is the date of it?

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FIRST PLAINTIFF: The date is 29 September 1998. I beg your pardon. I told the Court wrongly. I retract that. Supposedly this document is made on 8 October. It says that this judgment was certified by Danny Sandor.

Is this Hungarian? Sandor? I suppose, if it's Hungarian, it's Sandor.

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HIS HONOUR: Do not worry about that. What do you say about it?

FIRST PLAINTIFF: I was corrected by Mr Robinson.

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HIS HONOUR: Do not worry about that. Just tell me what your objection is to this document.

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FIRST PLAINTIFF: As your Honour can see, I suppose, this is not a judgment per se on the face of it. At the end of page 2, it says "Recorded" - in paragraph 8 it says "Recorded. Not transcribed." So, this could be some transcript made by this person Danny Sandor, which I don't believe he works for any transcript services at all, as it says "Senior Legal Associate to the Chief Justice".

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It is probably true that this person was Senior Legal Associate to the Chief Justice, which is not proved fact, but it could be true. I don't know. I would like this fact to be established at the trial; whether actually this person is - and, additionally, if the Court cares to look at the Evidence Act of the Commonwealth, section 157, then the Court, in my respectful submission, should reject - not accept - this document as judgment, or public document, relating to Court process, because it is not adduced properly.

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HIS HONOUR: I will stop you there. What I am prepared to do is: I will grant leave for you to file in Court the affidavit of yourself and the affidavit of your brother, Dragan Markisic, each affidavit sworn on 20 November 2008. So, they are filed in Court.

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AFFIDAVITS OF OLIVER MARKISIC AND DRAGAN MARKISIC, EACH  
SWORN 20 NOVEMBER 2008, FILED IN COURT WITH HIS HONOUR'S  
LEAVE

5 HIS HONOUR: What I will do is: I will determine whether they can be relied upon and whether that judgment can be relied upon when I give consideration to the whole matter. All right?

FIRST PLAINTIFF: Just briefly to say, this is not a judgment at all.

10 HIS HONOUR: I think you have made that point. I will take it aboard when I consider it and consider the affidavits; whether they can be relied upon.

FIRST PLAINTIFF: Yes.

15 (The judgment of the Full Court of the Family Court was handed up to his Honour by Mr Robinson.)

ROBINSON: Can I just tell you where it fits in?

20 FIRST PLAINTIFF: Your Honour--

HIS HONOUR: Just a minute, Mr Markisic. Mr Robinson wants to say something about the judgment.

25 ROBINSON: You will recall that I read from the transcript of the judgment of the Full Court on the application for a warrant to take possession of the child. That is the last document which is in the exhibit to Roshana Wikramanayake's affidavit of 14 June 2001. You will recall that, according to the document, the Chief Justice pronounced an order in Court, and that the order would take effect forthwith. If you track through the materials, you will see that that is in fact the order for the warrant.

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35 Immediately after that order was pronounced in Court, there was an application for a stay of that warrant. That is the judgment which I have handed up to your Honour. It records, on its face, the fact of the preliminary matters, as to what had occurred that morning.

40 FIRST PLAINTIFF: Your Honour, how can we establish that what Mr Robinson said is true? As I recall, I have not seen Mr Robinson on 29th of the 9th '98 in the courtroom. I was there. Maybe I haven't seen everything. Probably I haven't seen everything, but I haven't seen Mr Robinson there, and he, from the Bar table, puts before the Court facts, which is not allowed to be given just like that from the Bar table.

45  
50 If Mr Robinson wants to put facts before the Court, I would like to invite Mr Robinson, or ask the Court to order Mr Robinson, to enter the witness box and repeat what he said right now in the witness box. Otherwise, he shouldn't put facts before the Court, because we are here because Mr Robinson gives false facts to the Court.

HIS HONOUR: What Mr Robinson says from the Bar table is in the way of submissions; it is not evidence.

5 FIRST PLAINTIFF: With respect, we heard on previous occasion, and it is on a couple of occasions established, that Mr Robinson is not going to rely on the content of the affidavit of Roshana as facts to be taken as true by the Court. Now it appears, since that affidavit of Roshana is into evidence, on the limited ground though, it is open to Mr Robinson to openly discuss the content of the affidavit as if he can rely upon those facts in the affidavit. If that is so--

10 HIS HONOUR: You object to him doing that.

FIRST PLAINTIFF: Yes, of course.

15 HIS HONOUR: What is the next point?

FIRST PLAINTIFF: We are here because that affidavit was with false content.

20 HIS HONOUR: I understand that. That is the whole part of your case that you have presented here on previous days.

FIRST PLAINTIFF: Yes.

25 I have given, as your Honour is aware, affidavit to that effect, and my brother has given affidavit to that effect. Miss Roshana does not support her affidavit any more. Only through submissions by Mr Robinson. He misuses the Court process to put the content of the affidavit, as if proven.

30 HIS HONOUR: Yes.

ROBINSON: May I say something?

HIS HONOUR: Yes.

35 ROBINSON: To justify the statement I made to your Honour, I am reading from the first two lines of the judgment that I gave to your Honour. I do not wish to go outside of that. The submission I made is founded on the proposition that the words appear:

40 "In this matter the father has sought a stay of the order that the Court has just made that a warrant issue."

45 FIRST PLAINTIFF: Allegedly this document was made by Danny Sandor. That person was pronounced, by the Court, as deceased person. So far we have not seen any witness statement of anyone, or any affidavit, to that effect; that this person was deceased.

50 I can accept that this person is deceased, or the identity of this person is extinguished. I can understand why. Because this person has dared to

fabricate and counterfeit Court documents, and he was punished for that, or, alternatively, if not punished by - I cannot say exactly whom - his identity is extinguished so we cannot orally examine this person.

5 This person appears on many fabricated documents and this document is - maybe not all the facts given in this document are untrue. I am not saying that some of the facts presented - I point out some of the facts are not true. I am saying that this document is false. Not all the facts. Maybe there are certain facts which are true, but, as this person says:

10 "I certify that this page and the previous one page are a true copy of the reasons for judgment of this honourable Full Court."

15 Now, we have not seen the reasons; the reasons of the judgment of the honourable Full Court. This Court, the Supreme Court, has not seen any reasons. What your Honour can see, as if true copy of the reasons, but that can be made up by this Danny Sandor. On 8 October he can put whatever he wants.

20 On 29/9/98 this document was not presented to my brother as a party. It was not in existence on 29/9/98. So, this document was sent, or a similar document was sent, to my brother by post, a copy of this document.

25 Now, if that is the case, my brother has put on an affidavit in relation to this document. How he received it. By post from Danny Sandor. What I would like to know, your Honour, and the Court would probably like to know in order to make a proper decision, informed decision - to ask - I am talking now about the issue of subpoenas; that is why we are before your Honour - I would like to ask Miss Roshana Wikramanayake and Mr David Robinson, in the witness box, how did they obtain this copy. In what way.

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35 It is in the possession of the Commonwealth. It is a fact established in this Court before Hidden J on my application for contempt by Mr Robinson and Roshana Wikramanayake and the Australian Government Solicitor that the Commonwealth was not party in the Family Court proceedings. If that is so, how did the Commonwealth obtain this document, not being a party? Where did they find this document?

40 I have learned, during this time in this Court, that, if I want a judgment of the Supreme Court, a copy of the judgment, I have to make an application in the Registry and I have to pay proper fee for the copy of a judgment. So, if I want to prove that I have the proper copy, I could have provided in an affidavit to the Court my docket, or certificate, that I have paid proper fee, and that copy of a certain judgment of the Supreme Court would have been properly stamped, with proper stamp and proper signature of an authorised person, to prove that that is the true copy of the judgment of the Supreme Court.

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50 None of this we have seen in this case. So, it remains a mystery how Mr Robinson got possession of this document. Who gave him this document? Whether this document was given to Mr Robinson by Roshana

Wikramanayake, who has got this document from the Family Court or from the very same persons who fabricate this document, and who those persons would be would be the same, the very same persons who fabricated this document and the rest of the judgments and orders of the Family Court, in order to kidnap my niece, which is the reason why I'm here in this Court.

So, I am pleading to your Honour to at least grant me leave to orally examine Miss Roshana Wikramanayake and Mr Robinson, for the Court to see the source where this document came from, because the same source where this document came from we will point out to be abductors.

For so many years we didn't find who abducted the child. It was covert operation. Many lies were presented to this Court in cover-up. Mr Robinson continues to do that. He should honestly say where from he received this document, or to ask his instructing solicitor where these documents are coming from.

Mr Robinson, let's point out again, is with a prefix to his name, "SC", meaning Senior Counsel. Of course, the Commonwealth, in such important case, would employ Senior Counsel, but the Senior Counsel, being of such stature, would certainly know, when it comes before the Court and presenting facts in his submissions, to establish beforehand whether those facts are provable before the Court.

I will give you an example.

HIS HONOUR: Let us not worry about that. I am not going to grant leave for you to cross-examine Mr Robinson or his instructing solicitor on this aspect.

FIRST PLAINTIFF: I was asking your Honour because I have application for subpoenas. In that application I was asking also for Miss Roshana and Mr David Robinson. We are in this action before the Court, apart from other witnesses, Miss Roshana as well, because she was the deponent of the affidavit we say is with false contents.

HIS HONOUR: All right. You say that she and Mr Robinson are people that you want to have leave to subpoena; is that right?

FIRST PLAINTIFF: Yes.

HIS HONOUR: That may be. I will have to consider that.

FIRST PLAINTIFF: Yes. Although, if they are in the courtroom, then I might ask the Court to orally examine them right now. Why waste--

HIS HONOUR: I refuse that application, if that is an application.

FIRST PLAINTIFF: Yes.

HIS HONOUR: Please confine yourself to replying to the arguments which

were put by Mr Robinson. That is what this is supposed to be; not an opportunity to retrace all other matters that are not relevant to the issues. Just reply to his submissions.

5 You have already given us written submissions in reply. You can expand on those, if you wish. Please confine yourself to the issues that are before the Court today.

10 FIRST PLAINTIFF: Yes. I am trying to do that, although I was sidetracked, so to speak, by Mr Robinson, because this was not initially given to your Honour at the beginning of the hearing before your Honour. So, in a way, what Mr Robinson is doing is Mr Robinson is trying, through the small back door, to introduce a view to the Court, because, if this document is a judgment of the Full Court of the Family Court, then the rest of the judgments filed in the  
15 affidavit of Miss Roshana Wikramanayake is true. So, that is clever, but not good enough, because Mr Robinson cannot prove that this document is judgment.

20 HIS HONOUR: I think you have made that point a number of times. Could you move on to the next point you wish to make, and not be sidetracked? Get on to the real issue you want to ventilate in reply.

FIRST PLAINTIFF: Yes.

25 Is there any need just to refer again to section 157? From what I have said, this document cannot be taken as a Court document because it is contrary to the law, which is Evidence--

30 HIS HONOUR: You say it is contrary to section 157 of the Evidence Act.

FIRST PLAINTIFF: Yes.

35 I believe the Evidence Acts of New South Wales and the Commonwealth are pretty similar, or sometimes the same, in some sections. This section is the same in the State of New South Wales.

40 Just to point out, the document has to be adduced. It was not adduced properly. It is not examined copy. It is not sealed with the seal of the Court. There is no seal of the Court. It is not signed by a judge, magistrate, registrar or other proper officer of that Court. Whether Danny Sandor is proper officer of the Court, we don't know.

45 Mr Robinson should have at least provided some basis, evidence, or legal ground, for Danny Sandor to be taken as proper officer in accordance with the law. I don't think - not even in accordance with the regulations under the Family Law Associate to the Chief Justice can sign judgments. This person is not even, I believe, justice of the peace. So, that's what I can think of.

50 The opposition hasn't given to your Honour any grounds, or evidence, on which your Honour can take this document as a judgment of the Court, apart

from - my requirement would be - to orally examine for the source where this document came from, since we can take that this document did not come directly from the Family Court. It didn't come from the Family Court. There is a heading that it appears as if it came from the Family Court, but did not really, because they did not apply to the Family Court for the issue of a copy of this.

HIS HONOUR: You are just repeating yourself. Could you move on to your next point please.

FIRST PLAINTIFF: Yes.

What I wanted to point out to your Honour in relation to the affidavit of Roshana Wikramanayake, two affidavits actually, as pointed out on the last occasion, the similar objection applies. We do not know, and the Court should probably be willing to know, the source where from Miss Roshana Wikramanayake obtained these documents, looking as if judgment, or orders, of the Family Court.

For example, Miss Roshana says - I would like to ask your Honour, if your Honour pleases, to look at paragraph 7 of the first affidavit of Miss Roshana. On page 2, paragraph 7, it says:

"Exhibited to me at the time of swearing my affidavit and marked 'exhibit RW1' is a true copy of each of the four exhibits to the affidavit of Miss Muirhead referred to as 'exhibit DM1, exhibit DM2, exhibit DM3 and exhibit DM4 respectively'."

If your Honour note, at the beginning of paragraph 7, it says "Exhibited to me". It does not say who exhibited to her these documents. Where it happened. When it happened. How it happened. So, it is mysterious surrounding how this happened. It just says, I am definite, "Exhibited to me".

That's put in this way to hide the origin of where from these exhibits came. I would like to ask Miss Roshana Wikramanayake in witness box to tell the Court who exhibited to her these documents. Why I am required to ask the Court for this is because I don't have legal representation, and I don't have legal representation because I'm impecunious person, mainly. So, this works in my disadvantage.

I have to come before the Court and ask for this leave to issue subpoenas. I can understand why the law puts this condition in the law. Probably some unrepresented litigants might not fully appreciate necessity to call a witness, and probably the law wants to protect people from unnecessary calling them to the Court to testify. I can understand that. But, if I had legal representation, I would have straightaway called Miss Roshana Wikramanayake to tell the Court the source of these documents. Where these documents came from.

These documents are judgments. They look like documents coming from the Family Court, but actually they don't. If your Honour cares to go to the affidavit of, allegedly, Doreen Edith Muirhead, at page 3 of Roshana's affidavit - I'm

saying allegedly because I don't believe that Doreen Edith Muirhead issued this affidavit - when we wanted to examine this person, Doreen Edith Muirhead, the State of New South Wales pronounced her dead as well.

5 So, I also wanted, before McClellan J, to orally examine this person, and that action is stood over. So, before McClellan J I wanted to prove that this affidavit wasn't written by Miss Muirhead.

10 On previous occasion in my brother's proceedings, the State of New South Wales, before Grove J, was claiming that Miss Muirhead is deceased. I might add conveniently, because I'm not convinced, personally, that she is actually deceased. She might be. Her identity might be terminated, but maybe she lives somewhere under different name, just not to be able - we not to be able to orally examine her; to ask her whether she signed this affidavit.

15 But, nevertheless, on page 5 on the same affidavit, at paragraph 9, it says:

20 "Marked exhibit DM2, which has been exhibited to me at the time of affirming this, my affidavit, is a copy of the judgment dated 17 August 1998 of Judicial Registrar Johnston of the Family Court of Australia."

FIRST PLAINTIFF: Paragraph 10 is of similar effect, only referring to allegedly judgment of Rowlands J. Paragraph 11 refers allegedly to the judgment dated 29 September 98 of the Full Court of the Family Court.

5 If your Honour pleases to note on all of these three paragraphs the wording,  
"Which has been exhibited to me at the time of affirming this my affidavit". If  
we go back to paragraph 7 on page 2 of Ms Roshanh's affidavit it says,  
"Exhibited to me at the time of swearing this my affidavit". Exact wording. So  
10 it could be the case that these two affidavits came from the same source and  
Ms Wikramanayake just signed this affidavit of hers. We didn't prove that.  
Maybe that would be another reason why the court should grant the subpoena,  
so that we can ask Ms Roshanh whether she signed this affidavit.  
Nevertheless, these two affidavits were probably wrote by the same person, or  
served the same purpose actually, to present to the court as if the Family Court  
15 has given certain judgments and orders when, in fact, the Family Court has not  
issued them.

Just by common sense, your Honour, I would like to ask your Honour to  
perform a quick test of reasonableness. If really these orders and judgments  
20 came from the Family Court Ms Roshanh Wikramanayake would have put  
them in her affidavit. For example, on a certain date she applied to the Family  
Court for a copy of the orders this, this and that, and the registry in 15 days,  
let's say, issued properly those judgment orders and she attaches them to the  
affidavit. The same would apply to the so called Doreen Muirhead's affidavit.  
25 We can't see that. It is put in mysterious way, "exhibited to me", without saying  
who, when, how.

I would like to point out that the Commonwealth was again was not a party in  
the proceedings. On numerous occasions Mr Robinson has pointed out to this  
30 court that the Commonwealth has nothing to do with the plaintiffs' case in this  
case because they were not parties in the proceedings in the Family Court.  
But it appears they got all the judgments. They obtained them without any  
problems. They don't say they have any problems to obtain them. Where  
from they obtained them they don't say. It is in a mysterious fog hidden how  
35 they obtained them. It is clear they didn't obtain them from the Family Court  
because they would have said so. Both of these affidavits are from the same  
source.

Your Honour, if your Honour cares to read the affidavit of my brother we have  
40 handed out this morning your Honour will see that my brother strictly  
addresses in his affidavit a particular allegedly order or judgment he received,  
the source where from he received.

Also I would like to point out to your Honour that on last occasion I handed out  
45 to your Honour in relation to the application for setting aside the judgment of  
his Honour Justice Patten; namely, the submissions of the State of New South  
Wales in new opened Family Court proceedings, from paragraph 17 where  
roughly it says that Dragan Markisic is a party to the original 98 Family Court  
proceedings, was not present at issuing of any of those so called judgments or  
50 orders. So all of them were given ex parte in relation to my brother. The fact  
is found by this court the Commonwealth was not a party. So either  
Commonwealth was present somehow at all of this issuing of these judgments  
or orders and is lying to the court that they have nothing to do with the Family  
Court proceedings, or the Commonwealth or some group of people in the  
55 Commonwealth which organised the kidnapping of the child are the source of  
these counterfeit documents. The Commonwealth has obligation to finally tell  
the court these facts or to tell the court the source of these documents in

Roshanh's affidavit.

5 Just quickly to add, I don't believe that this document, looking as a judgment of the Family Court, handed out today by Mr Robinson is part of Roshanh's affidavit. I'm not aware that this document is part, is it? I have to ask Mr Robinson. Is not part of any affidavit, so why they didn't put it in affidavit since they have put previously judgments in affidavit in case of the State of New South Wales, although not party in these proceedings, in affidavit or in Ms Roshanh Wikramanayake's affidavit. It is not part of any affidavit.

10 HIS HONOUR: Is there anything else you wish to put in reply?

FIRST PLAINTIFF: Yes, your Honour.

15 HIS HONOUR: Would you please do so.

20 FIRST PLAINTIFF: If your Honour recalls, I have also asked for issue of subpoena in relation to Mr David Wells. Mr David Wells is mentioned in the affidavit of Ms Roshanh Wikramanayake because Ms Roshanh Wikramanayake says at paragraph 4 of her affidavit, "I believe the...to be true". If we go to affidavit of Ms Muirhead we'll see that on page 3 of Roshanh's affidavit, which includes this Doreen Muirhead's affidavit, that she exhibits a document on page 68 of Roshanh's affidavit marked C which is application and affidavit sworn by David Wells on 16 July 98. So Ms Wikramanayake believes that what Ms Muirhead says in her affidavit is true, including all the attachments to Ms Muirhead's affidavit. So Ms Roshanh believes whatever Mr David Wells says in his affidavit containing the original application in Family Court proceedings in 98. Ms Roshanh Wikramanayake believes those facts to be true.

30 If your Honour pleases to go the affidavit of my brother, of Dragan Markisic's affidavit handed out this morning Dragan Markisic deposes, "I met David...living in Macedonia". So Mr David Wells in his application before the Family Court gives a number of facts about my brother, about his child, his then wife, but David Wells has never seen ever probably before July 98 my brother and he has never seen my niece and he has never seen in his life the now ex-wife of my brother. All of these facts are not only hearsay but wild imagination of David Wells. We would like to ask him how did he arrive at all these facts to establish his credibility. After that his credibility is going to be zero or way below zero. Maybe the court - I'm not going to go into consequences of his account.

40 As pointed out before, my brother is available for any oral examination at any time. He's currently present in the court.

45 Anyway, at paragraph 36 of page 7 of his affidavit he says, "Furthermore in relation...this never happened". But Ms Roshanh Wikramanayake is claiming in her affidavit that she believes in whatever Ms Doreen Muirhead had to say.

50 On page 9 of Roshanh affidavit, in effect an exhibit to the affidavit of Doreen Muirhead which is application to the Family Court, initial application, it says, "A decision of...the letter E". Your Honour, welfare centre never issued any document, any such document as Roshanh Wikramanayake states in her affidavit.

55 Initially in the Family Court proceedings my brother issued subpoena for David Wells to be orally examined on his affidavit, but, if I recall properly, later the

5 court declined David Wells to enter the witness box on the ground that it is not  
appropriate in the Hague Convention proceedings for witnesses to be orally  
examined - deponents of affidavit to be orally examined. That may be so in  
Hague Convention proceedings because of the special provisions of the  
Hague Convention regulations, or exactly family law child abduction  
regulations, but we are now in the Supreme Court and it is open to the plaintiffs  
in order to establish certain facts to ask for the court orally to examine a  
deponent of some affidavit or to establish some facts. That's one of the  
reasons we are asking David Wells to be called as a witness, together with  
10 Roshanh because Roshanh says that whatever David Wells is saying is true.

15 Just, your Honour, based on common sense argument: how did Roshanh  
establish that whatever David Wells is saying is true? She's just carte blanche  
accepting whatever someone is saying in affidavit. Maybe she doesn't even  
know that person. She was not at all, in my understanding, as far as I know,  
involved in Family Court proceedings in 98. She doesn't know anything about  
that. She just comes before the court and say these things without any  
grounds. This may go beyond anything she might have as a duty to her client  
to defend the client. She is carrying the matter. She has duty to the client to  
20 defend it, but not to lie for the client or not to think reasonably what she can  
say to the court whether that is true or not. That's beyond unreasonable, your  
Honour, and borders on criminality at least because she has duty to check.  
The law says, the Civil Procedure Act I believe or similar - Legal Profession Act  
applies a duty on the legal practitioner to check facts, whether they were  
25 probable in the court. She just accepts.

30 What could be the reason for accepting these facts without checking or double  
checking them? She just wants to prevent plaintiffs not to get deserved  
damages or to cover up the wrongdoing of certain Commonwealth officers in  
98. That's only reason. No other reason could be there.

35 Also, they were playing the card of ignorance of the plaintiffs. For a long time  
we also thought those orders were orders or judgments of the Family Court.  
Since I have read very carefully the judgment of the Court of Appeal in the  
related proceedings of Dragan Markisic given by his Honour Justice Giles and  
supported by their Honours Justice Gibbs and Santow. I found one small  
paragraph saying that the - I'm roughly interpreting, it is not known the  
circumstances how the possession orders - I call them possession orders -  
40 appeared, how they were issued. So from there we went and found out that all  
of the orders - and this already admitted by the State in the related Family  
Court proceedings, that all those judgments are issued without my brother's  
presence. That's a step forward.

45 So we will prove to the court that all these documents are fabricated with one  
intention: to abduct the child. For that improper purpose Roshanh  
Wikramanayake puts this affidavit and presents to the court false evidence so  
the court to be misled, to form misleading opinion - misled by the defendant  
and its legal representatives, so this court to give judgment based on such  
misled premises. That's why we are here ultimately: for the judgment of his  
50 Honour Justice Patten to be set aside because it was issued on such premises  
misled by Ms Roshanh.

55 HIS HONOUR: Mr Markisic, it is about the time the court normally adjourns for  
the morning tea adjournment. How much longer do you have?

FIRST PLAINTIFF: I would like to address all of these documents separately.

HIS HONOUR: There is no purpose in doing that. I mean, you've made fairly clear what your position is in relation to the documentation.

5 FIRST PLAINTIFF: I would like, nevertheless, very briefly if that's the case. Just half an hour to 1 hour, your Honour.

10 HIS HONOUR: I'll give you half an hour to 1 hour when we resume, but no more. If you're in mid sentence I'm going to cut you off. Do you understand that?

FIRST PLAINTIFF: Yes.

HIS HONOUR: So concentrate on the points you want to make in reply.

15 FIRST PLAINTIFF: Yes, your Honour.

SHORT ADJOURNMENT

20 HIS HONOUR: Mr Markisic, as I said, you can have half an hour to an hour to complete your submissions in reply. If it gets to ten to one then I will sit you down.

FIRST PLAINTIFF: Yes.

25 HIS HONOUR: You'll have no more than that.

FIRST PLAINTIFF: Yes, your Honour.

30 HIS HONOUR: Please continue.

35 FIRST PLAINTIFF: Yes, thank you. I understand that in reply to submissions of Mr Robinson where Mr Robinson put before your Honour that your Honour would have to perform test of likelihood that the affidavit of Roshanh Wikramanayake is false. So in that regard I am addressing the issue of Roshanh's affidavit. If your Honour is required to perform that test I believe that there is a chance that it would be required for your Honour to take that test. I do not oppose such submissions by Mr Robinson. The test would probably serve the purpose of if your Honour established the fact of likelihood that Roshanh's - for short - affidavit is false then your Honour would proceed to  
40 deliberating on the issue of the lift of the issue of the subpoenas.

45 If that would be the case then I would further like to point out to your Honour where the affidavit of Roshanh's is false. Mainly, Roshanh's affidavit is concerned with the affidavit of Doreen Muirhead and exhibits to that affidavit and, in addition to that, a document marked B, as pointed out at paragraph 8 of Roshanh's affidavit. In addition to what I have already said in relation to Muirhead's affidavit - for short - in this affidavit Ms Muirhead presents some facts from allegedly her job as solicitor of the DOCS of New South Wales and presents how she was doing that job, but in relation to that she presents a lot  
50 of arguable points.

55 Let's accept for the argument, if she was alive and if this document was for the first time presented to the court I would ask the court to strike out many paragraphs or 80 per cent of this affidavit for making arguable statements; namely, legal arguments or submissions. For example, paragraph 3 where she explains in her affidavit how the regulations work. Some of this is to be found in paragraph 2 as well. Paragraph 4 also gives legal arguments in

relation to the regulations. Paragraph 5, apart from giving false facts, presents also legal arguments. For example, paragraph 5 says, "Legal officers employed...under the regulations" and so on. Whether this is true or not we would like to ask Ms Muirhead, if she was alive.

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Alternatively, we would like to ask Ms Carmen Nyland, which was in 98, we are concerned with that period when my niece was abducted, to tell us whether this is true. So far all the available evidence points out that Carmen Nyland was not involved with the proceedings in the Family Court or surrounding circumstances at all. I have given your Honour, just to refresh, if I may, your Honour's memory, submissions in relation to this Carmen Nyland, why I would like to call her as a witness.

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Paragraph 6 is also legal argument. Paragraph 7 is also legal argument. For example, it says in the second line of paragraph 7, "A court must...than 1 year" and so on. It is a legal conclusion. Whether the court must make an order depends on many things. For example, there is a provision that if the child's life would be put in danger by returning the child to the country of the parent's residence, as they call it, then the court will not order the return. There are many other instances. So whether this is true depends on many things. It is clearly not something to be put in an affidavit.

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That's submissions which can be argued against like I am arguing at this very moment. So it's not a fake to be put in affidavit.

5 Then paragraph 8 refers to ex parte orders made by judicial Registrar Gibbs on July 20 '98 which is false fact because as my brother states in his affidavit this never happened, this ex parte proceedings. So the Registrar Gibbs never issued these orders as I said, pointed out at paragraph 19 in my brother's affidavits handed out this morning where my brother addresses the fact of  
10 watch list orders, as we called them, and we claim that Family Court never issued those watch list orders. If they were issued probably Australian Federal Police would have stopped the child to go out of Australia. That's speculation of course but there is probability.

15 At paragraph 9 of Miss Muirhead's affidavit we say this document is also fake. At paragraph 10 is also fake which relates to a judgment allegedly issued.

20 As Miss Roshana says at paragraph 4 in her affidavit that she believes that what Miss Muirhead says in her affidavit to be true, then that's why we have to address the issue what Miss Muirhead says it's false. So in paragraph 9, 10 and 11 we found allegedly Family Court judgments, mainly in paragraph 9 judicial Registrar Johnson, paragraph 10 his Honour Justice Rhodes, and in paragraph 11 deals with judgments of the Full Court of the Family Court.

25 At paragraph 11 I believe it's not referring to the document handed out this morning but some other document in Exhibit DL4 which is not the document handed out by Mr Robinson this morning. So I believe what Mr Robinson handed down this morning is not to be found in any of this affidavits.

30 I have explained why we believe and why it is important to examine the witnesses to establish the fact of fabricating of these documents and I have explained why these documents are fake or counterfeit.

35 At paragraph 12 of Miss Muirhead's affidavit it says on 13 October 1998 the plaintiff's application for a stay was dismissed by the High Court.

40 I wasn't at the High Court with my brother. I was too affected. My brother went along with my other brother for emotional support to the High Court and from the transcript I have seen her Honour Justice Gordon did not make a stay of Family Court order.

45 At the time the High Court did not know that the judgment and the orders of, of looking like orders and judgment of his Honour Justice Rhodes were fake, and of course my brother did not suspect at that time that they were fake and the High Court was misled to believe that Justice Rollins have issued any orders in relation to the child.

50 And also one witness I would like to call, namely Miss Gina Maria Vizza presented an affidavit according to the transcript at the High Court where presented false evidence like my brother's former wife arrived in Australia and

is preparing to go overseas, like tomorrow, and of course the High Court was misled to believe that that's true, which in fact was not. My brother's former wife never arrive ever any time arrived in Australia and at that moment when there was a hearing before a High Court judge her Honour Justice Gordon, the child was already out of Australia.

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At paragraph 13 of Doreen Muirhead's affidavit which says on 14 October 98 the plaintiff's child and her mother left Australia pursuant to the orders made by the Family Court of Australia. In this affidavit this statement firstly is on the face of it is hearsay your Honour. This person Miss Muirhead does not say that she has seen the child or the mother, whether she has, whether she saw them leaving Australia, whether she saw them preparing to leave Australia, whether she saw them out of Australia. She could have heard from someone that something like this happened. But she, a paragraph like this is open for strike-out I believe your Honour or is open for a challenge, and she to purport this in the witness box to support how did she arrive at such a conclusion. She can't state anything like this unless she provides some particulars on what basis she forms such view. Anyone can say anything your Honour but there should be a reasonable ground for such statement.

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The correct fact as I understand your Honour is that the child was taken out of Australia before as I said, before the hearing at the High Court on 13 October because my brother decided on 9 October 1998 to anyhow ask for leave to appeal at the High Court. He decidedly made, he was, he decide strongly to go for, to ask for leave to appeal because he was told that if he doesn't go for appeal the condition of his child would be changed, and the conditions were there and the child's life was in danger at the moment, and my brother didn't know whether to go for appeal or not, whether if he goes for appeal he will endanger further his child's life, but nevertheless he opted to go for appeal.

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And when the persons who kept the child in captivity learned that he went for appeal he knew, they knew that there is a chance the child to go back to the family where the family has already asked the authorities, the child to be examined by a doctor, that the family would require the child to be examined and if the child was examined the family would found that the child was abused, and what we now realise the child was, may be or possibly or likely sexually abused, and to avoid such outcome they opted to deport the child immediately to take it out of the country so to avoid possibility of specialist doctor or maybe the family doctor to examine the child. So they were not motivated by any humanitarian impulses but just to cover up what they had done to the child.

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And later during these years in the Supreme Court in various proceedings related to this unfortunate event to our family, came out that the mother never came. So it's, and the Court of Appeal in the related, my brother's case, I believe in the judgment state that it was pointed out to them, strongly pointed out that the mother never came. It was not opposed or proved by the opposition and the opposition was the State of New South Wales, Qantas Airways, and the Catholic Church of Archdiocese for Sydney, Catholic Church of Australia, and all of them at one stage claimed that the mother of the child

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came to Australia and they had ample time to prove and to prove that fact, and in particular my brother issued subpoena to Qantas to show the tickets for the mother and the child, and Qantas was not able to do that but was claiming from Bar table on many occasions that the mother did arrive.

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So that's just one of the things which proves that in this case all of the defendants lied to the court at one or other stage. That's something we have to live with so far, but now the time has come the record to be put straight and to examine some witnesses and the court finally to establish some facts for itself and not as presented from Bar table or falsely given in affidavits.

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Just to point out your Honour, because this issue was already before the court so I am not going to spend much time, just to say Immigration Department admitted that the child went out of Australia without the mother alone, actually not knowing exactly with whom it left the country.

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And also in these proceedings I have provided an affidavit before Justice Hulme where it was given to his, where his Honour had the opportunity to find in that affidavit an attachment where in the criminal proceedings initiated by my brother in Macedonia, in court in Veles, my brother's former wife was the accused, and the accused admitted that the child was brought to her in Macedonia when cross-examined in witness box, so that transcript as made by the Macedonian court was given in the attachment of the affidavit, actually the translation.

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If your Honour pleases to look at the page 7 and the document might be of Roshana's affidavit or page 5 Miss Muirhead's affidavit, you will find documents which purports to be made by Miss Carmel Newland, former Director General of the DOCS. This document in my opinion and I will prove if I obtain this leave to issue subpoena to Miss Newland, that this document is fabricated.

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My brother went before the Family Court on I believe 20 July 1998, I retract that, 31 July was the first hearing where he attended and at that hearing the State came with document on page 29 marked D, or twenty-first in Roshana's affidavit. So the legal representatives of the DOCS they said, they told the Registrar Johnson that they have to rectify some tactical deficiency, namely the old delegation was not valid any more because was given Helen Bower which no longer was Director General. So they like had to go back to the Department and get new instrument of delegation. But that was 31 July and your Honour might note that the date on this document on page 7 marked B is 14 July 1998, and number 14 is written by hand, is not typed on a computer like or whatever machine was used so this is ante-dated or predated, I don't know what is the correct English expression. So this document was not signed by Carmel Newland and also was predated afterwards so to appear that they had instrument of delegation way before 31 July.

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So this is one of the documents among the first faked or fabricated for the purpose. I am saying this apart from the legal argument that this document of delegation does not help them at all because under the regulations they

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cannot, the Director General cannot delegate its powers under the regulations. And I think this issue was resolved at the Court of Appeal when the Court of Appeal asked the State of New South Wales in related Dragan Markisic appeal, advised Miss Carshta(?) to explain to the court whether they have powers to delegate, to make delegation and I can recall that Miss Carshta(?) was not able to do, pointed out to some power to delegate functions under taxation law or something like that, but was not able to explain whether Director General has any powers to delegate functions under the regulations.

I believe that the Court of Appeal on page 14 in their judgment in related case explained this situation where the Court of Appeal says that the Director General can use only intermediaries under Article 7 but does not, but the Court of Appeal doesn't say that they can delegate. But apart from that legal ground this is fabricated document, Miss Carmel Newland did not sign this document, and there is no evidence at all apart from this false affidavit that she took any part whatsoever in my brother's Family Court proceedings.

I would go to document C on page 8 where is the application of David Wells. It is not an application given by the State's central authority as required by law, so this application is illegal without Carmel Newland's authority and her undersigning and her initiative these proceedings to be brought and so on. David Wells should have not brought them at all. If she was not going to intermediary he should not have taken any steps in relation to the child. What he did was he took those steps without the knowledge of the Director General to have certain officials to take control of the child for their personal purpose, unlawful purpose, whatever that may be, I am not going back into detail as I explained before.

So with this application to the Family Court as I said before many false facts were presented, imaginary and malicious and with intention to, the Family Court to form certain view of my brother and if this, with this affidavit of Roshana the Supreme Court also formed a view of my brother which would go against my brother, and furthermore to go against me and my mother because on this affidavit and such false facts his Honour Justice Paton formed a certain view of myself because of my brother, and that's reflected, I cannot present it at the moment the exact transcript, but if necessary I can provide that to the court, where I objected to his Honour Justice Paton forming pre-judicial view of my brother as if my brother kidnapped his daughter, his own child. In a case where the Family Court did not, especially I might say especially in a case where the Family Court did not give an opinion at all.

If all these documents are false and if all these documents are fabricated from one source where damage could be involved we might try to establish that if necessary. Then we may say that the Family Court did not form any opinion at all and based on this affidavit of Roshana Wikramanayake his Honour Justice Paton was completely misled to believe that the Family Court not even has given a judgment which would go against my brother, but form a view of my brother as kidnapper. That's impossible in the regulation proceedings to where it's not, the jurisdiction is not about finding someone has kidnapped, but whether the child should go to the country where it came from or to stay in

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Australia. That's the only issue. Or in other words which jurisdiction is more proper to deal with the issue of the custody. That's all.

5 But this affidavit of Roshana is pointed out to mislead the court not only to present false facts which would legally go against our family, but to defame our family before the Supreme Court, so the Supreme Court think less of Markisic family, so in other words the court to be, to ask itself whether to give a chance to Markisic family even to appear before the court, if presented to the court in such light, such bad light as the affidavit of Roshana Wikramanayake tends to do.

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15 So I am not going to go through all of this in detail where David Wells is given and Roshana Wikramanayake for that matter has given false facts, that I believe that if the court pleases to give me leave to call witnesses I will investigate that with the witnesses, they to tell the court how they formed or established a certain view and established certain facts.

20 My brother has given an affidavit in contrary to these false statements and he is prepared to, at any time to enter witness box. I am prepared for whatever I know to enter the witness box and we will see what the truth is finally.

25 I am saying that also document under page 16 in Roshana affidavit is false. The heading is Minister of Labour and Social Policy. This document allegedly came from Macedonia and is allegedly signed by Minister Nasser Ziberi(?). That probably, this person was probably Minister for Labour and Social Policy in Macedonia, but I am not denying that he has given this document to anyone. For various reasons, for example I have lived in former Yugoslavia and I have seen some, I am not legal person but I have chance to see decisions of, administrative decisions in that country. My brother was working as one of these administrative decision makers and he has extensive education in that field, but nevertheless a Minister in Macedonia would not issue such letter.

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35 One example, every decision by authorities in Macedonia would say in accordance with law such and such I am making such and such decision or request. Nothing like this appears so it's fabricated, and many many other reasons. I don't have time to elaborate further.

40 Also on page 18 to the end of, to the twenty-ninth, the page with the pictures, so that's fake, fabricated with intention to make my brother miserable and to our family to appear as if it was given by the Ministry of Labour, but is fabricated by the very same person who wanted to take a child into their possession for unlawful purpose.

45 Also the document at page 32 is fake, counterfeit document. Welfare centre in Veles never issued this document. If court allows me I would elaborate why this is fake.

HIS HONOUR: You have only a few minutes left to make your submissions.

50 FIRST PLAINTIFF: So the next document, decision under F, under page 34, is  
.21/11/08 75 (FIRST PLAINTIFF)

also fake. The court in Veles never issued any decision. Just to say it's English text, I have never seen any Macedonian version or ground for this translation. Commonwealth has not provided any so just strictly to say your Honour this document is not document of Macedonian court for the reason that  
5 Macedonian court does not issue in English any documents, one of the grounds it cannot be Macedonian decision.

10 And from in Australia we can found in what form a decision can be or court order or judgment can be made and it talks about the foreign judgments and in Australian law it doesn't say that foreign judgments can be only in English text, especially not in English speaking country. We don't know who made this document your Honour. It's not even document. It's just a text, a piece of paper, doesn't even look like Macedonian decision.

15 On page 36 a statement allegedly issued by former wife of my brother. Whether that happened I don't know. I'm not sure whether it's fabricated or not. My brother is, let me tell you your Honour, this particular document is not given by Caterina Markisic because there is no signature of Caterina. Who knows who gave this document. We don't know about any other document but  
20 this particular document is not made by Caterina. Who made it, it's a different question.

25 Then we have a document on page 37 which looks like were some judgment orders of the Family Court. We call this document watch list orders, allegedly made without presence of my brother but we say is never made. And my brother put that in affidavit on paragraph 19 of his affidavit.

30 Document 40, generally the same thing. We call this document possession orders. In paragraph 30 from my brother's affidavit is addressing this document, and also I am addressing this document in my affidavit at paragraph 4 or in other paragraphs is referred. And I am stating this document was not, is fabricated and the Family Court did not issue this document.

35 How this document appears would be, would require Miss Roshana Wikramanayake to explain how did she receive this document? So the same persons which gave Roshana this document have left the copy of this document when the child was taken your Honour.

40 HIS HONOUR: Mr Markisic, you've got one minute. Is there anything you want to say before you sit down?

45 FIRST PLAINTIFF: One document more. And document 43, at page 43 it looks like a document made by Chris Noble. There is no signature of Chris Noble. We don't know whether Chris Noble exists at all. When I ask the Commonwealth to produce any item which would refer to existence of Chris Noble the Commonwealth was not able. I ask for production of any badge or any certificate or employment or any certificate that this person is a member of the AFP. Commonwealth did not produce anything. So I can with clear  
50 conscious say that this person does not exist and this document is fabricated. This document I did not find in a file of the Family Court. Probably was

inserted illegally in the file if it's to be found now, I don't know.

5 And it says that allegedly this person Chris Noble is writing to the Registrar of  
the Family Court. Doesn't say which Registrar. Why is that secret to say  
Registrar such and such? Apart from that, a Federal agent does not report to  
the Registrar for taking any child, so this is just to mislead the court that  
something like this happen legally. This document is fabricated to mislead the  
court because there's no requirement for Australian Federal Police to report to  
10 the Family Court. Since when is the Registrar superior of agent of the  
Australian Federal Police?

HIS HONOUR: Thank you Mr Markisic. Your time has expired. The court will  
reserve it's judgment.

15 JUDGMENT RESERVED

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