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 Supreme Court Shield

Industrial Relations Commission of New South Wales in Court Session

CITATION : Masri v Nenny Santoso and anor [2004] NSWIRComm 108
PARTIES : APPLICANT
Masri

DEFENDANTS
Nenny Santoso and anor

FILE NUMBER: IRC 3802 of 2001
CORAM: Haylen J
CATCHWORDS : Unfair contract - s 106 of the Industrial Relations Act - whether contract of employment or arrangement - discussion between parties in Djakarta - initial agreement not a finalised contract of employment but an arrangement under s 105 - later discussions led to formation of contract of employment - jurisdiction of Commission established on either view of agreement - performance of work by applicant in respondents' home - applicant to perform numerous domestic duties including care of young child - promise by respondent to pay for services rendered by applicant - payments made to applicant other than those offered - inadequacy of payment for nature of work performed seven days per week as live-in domestic - arrangement unfair - contract declared void - no award directly applies to work performed by applicant - use of particular award as a guide to worth of work rejected - no evidence as to actual operation of award or market rates for same type of work - order for payment of money by respondents- money order made in exercise of Commission's wide discretion and in consideration of what was just in the circumstances of this case

CASES CITED : Baker v National Distribution Services Ltd (1993) 50 IR 254
Barclays Australia Investment Services Ltd v Nordby (1995) 99 IR 258
Custom Credit Corp Ltd v Goldsmith and ors (1976) AR 98
Davies and anor v General Transport Development Pty Ltd (1967) AR 371
Westfield Holdings v Adams (2001) 114 IR 241

HEARING DATES: 13/04/2004; 14/04/2004; 15/04/2004
DATE OF JUDGMENT: 28/04/2004

LEGAL REPRESENTATIVES: APPLICANT
Mr Reitano of counsel
SOLICITORS
Gilbert and Tobin

RESPONDENTS
In person

JUDGMENT:

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**INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES
IN COURT SESSION**

CORAM: HAYLEN J

28 April 2004

**Matter No. IRC 3802 of 2001
Masri v Nenny Santoso and anor.
Application under s 106 of the Industrial Relations Act 1996**

JUDGMENT 108

[2004] NSWIRComm

1 In these proceedings, brought under s 106 of the Industrial Relations Act 1996, the applicant is a 27 year old woman who was born in Indonesia and who came to Australia to live with the respondents in circumstances which give rise to this application. When the applicant arrived in Australia in 1995 at the age of 18, she had been working as a maid-servant in Djakarta for three and a half years being paid approximately 100,000 rupiah a month. At that time her English language skills were almost non-existent. For the next four years, until 1999, she lived with the respondents at their house at Yowie Bay. At the heart of the application is what precisely were the arrangements under which the applicant came to be living with the respondents at their house and performing domestic duties. The applicant claimed that she had been brought by the first respondent to Australia for paid employment as a housemaid to perform all domestic duties at the respondents' Yowie Bay home. The respondents assert that the applicant was merely brought to Australia as a favour to the driver of an Indonesian relative: it was never to be paid employment and any work performed she had volunteered. Assisting the applicant to come to Australia was to do no more than give her an opportunity to learn English, establish herself here and possibly marry an Australian man.

THE CLAIM

2 The summons for relief alleges that in May 1995 an acquaintance of the applicant enquired whether the applicant was interested in being employed by the first respondent at their Yowie Bay house in New South Wales. As a result, a meeting took place with the applicant and the first respondent and they discussed the prospect of working for the first respondent in New South Wales. At this meeting, the first respondent is alleged to have offered the applicant work as a baby sitter and house cleaner for the first and second respondents. It was agreed at this meeting that the applicant would move to Australia and work for the respondents as a nanny and house servant and would do so for a period of two or more years.

3 There was no discussion between the applicant and the first respondent about

remuneration but the applicant understood, because of what she had been told by others, that she would be paid approximately 500,000 rupiah (approximately \$A250 per month) for this work. In May or June 1995, it was alleged that the first respondent arranged for the applicant to move to Australia when the first respondent returned to Yowie Bay. It was further alleged that the first respondent made arrangements involving falsifying identification documents for the applicant in order to obtain a passport, arranging a false passport for the applicant, arranging a visa for the applicant, arranging an Australian sponsor by the name of Martin for the applicant and obtaining travellers cheques allegedly for the purpose of the applicant's arrival in Australia. The falsified passport stated that the applicant was 22 years of age when she was only 18 and falsely stated her address by using the address of the first respondent's brother, which had never been the applicant's address in Indonesia. The passport also contained a false name for the applicant.

4 From her arrival in Australia on 11 June 1995, the applicant was unaware that she was an illegal immigrant. The applicant arrived in Australia escorted by the first respondent who, soon after arriving, took possession of the applicant's passport, travellers cheques and identification documents. From 13 June 1995 the applicant commenced working in the house of the first and second respondent as their nanny and/or house servant. Between 13 June 1995 and 2 August 1999 the applicant lived at the respondent's residence in Yowie Bay.

5 It was alleged that on 13 July 1995 the first respondent told the applicant that she would be paid 125,000 rupiah (\$A62.50) per month. In fact, over the four year period during which the applicant lived with the respondents, she was paid approximately \$2,200 and a payment of approximately \$2,000 was made to the applicant's family in Indonesia. At no time, however, was the applicant ever paid a regular wage.

6 During the four year period of staying with the respondents, the applicant worked each and every day performing general domestic tasks including the following:

- (a) caring for the respondents' baby who was three months old when the applicant commenced working for them;
- (b) supervising and caring for the respondents' two other children who were 10 and 7 years of age when the applicant commenced with the respondents;
- (c) cooking, cleaning, washing, tidying, laundering, gardening and attending to other personal errands for the respondents, their children and their guests;
- (d) performing other tasks relating to the cleaning and tidying of the respondents' office located at Hurstville, usually performed one day a week;
- (e) performing other tasks as requested by the respondents from time to time.

It was alleged that during the four year period the applicant worked from about 6.00 am until at least 11.00 pm seven days per week with only an occasional break of one or two hours in the middle of the day. It was alleged that the applicant was not permitted to leave the house other than for the purposes of shopping or cleaning the respondents' office at Hurstville. During this time the applicant taught herself English.

7 After leaving the respondents' home, the applicant reported her immigration status to the Department of Immigration and Multicultural Affairs in early September 1999. The applicant had been granted a bridging visa to enable her to remain in Australia until her immigration status was properly investigated and resolved.

8 The contract or arrangement was alleged to be unfair and contrary to the public interest in that the applicant was at all times in a unequal bargaining position in her relationship with the respondents and that the arrangement failed to provide fair, adequate and reasonable remuneration for the work performed by the applicant for the respondents. There was no provision of the usual employment benefits such as annual leave, sick leave and the like and it was asserted that the work was properly regulated by the provisions of the Miscellaneous Workers - Home Care Industry (State) Consolidated Award; it was also alleged that the arrangement permitted the respondents to use the applicant's illegal immigrant status such that the applicant was forced to rely upon the goodwill of others and, further, the arrangement rendered the applicant "a slave or prisoner" in the house of the respondents with no independent means to leave that situation. It was further alleged that the arrangement permitted the respondents to take advantage of the fact that the applicant was living in relative poverty in Indonesia and allowed the respondents to exploit the applicant. Overall, the arrangement provided a total remuneration that was less than a person performing the work would receive as an employee performing the work.

RESPONDENTS' REPLY

9 The terms of the respondents' reply, sworn and filed in accordance with the Rules of the Commission, is of some significance in the case. In the reply, the respondents stated their understanding that the applicant had approached the first respondent's aunt's chauffeur in Indonesia and had expressed her interest in travelling overseas and learning the English language. The chauffeur was asked whether he knew of any people who could help her establish herself overseas. The chauffeur approached the first respondent and a meeting was arranged.

10 The first respondent denied that at the meeting with the applicant there was any discussion about the applicant working for her. The first respondent told the applicant she could stay at her home in Sydney "until she learnt English and found a job in Australia". The applicant had said that she was keen to find an Australian husband and expressed gratitude for the offer, stating that she would not let the first respondent down and would even help her with her household chores. All discussions between the applicant and the respondents were based on the premise that the respondents would let the applicant stay with them at their house until she learnt to speak English and found a job.

11 The first respondent admitted that she introduced the person called "Martin" to the applicant for the purpose of being her sponsor in travelling to Australia. The first respondent denied involvement in arranging the falsified passport and visa: she also denied taking these documents from the applicant after they arrived in Sydney.

12 While denying that the applicant was employed by the respondents, the respondents stated that the applicant lived with them in a "six bedroom mansion with water views". The applicant had her own room approximately 4 metres by 6 metres which had direct access to an outside courtyard, ensuite and water views. The first respondent also denied offering the applicant payment of 125,000 rupiah per month in July 1995.

13 The applicant was never obliged to care for the respondents' three month old child who was taken care of by the first respondent's parents and occasionally by a neighbour, a qualified midwife. The respondents' two other children were cared for by the children's grandparents although there was interaction between the respondents' children and the applicant, with the applicant expressing an interest in learning how to care for young children.

14 The respondents admitted that the applicant engaged in various domestic duties which were shared amongst all family members and guests staying in the house, but denied that

she was ever under any obligation to do so. The applicant expressed an interest in learning how to perform these duties because it would be good experience for the future. All the family participated in washing the dishes and the clothes and there were professional gardeners used as well as family members doing occasional gardening work.

15 The applicant was not required to clean the respondents' Hurstville offices. The applicant would come to that office while returning from shopping in Hurstville and used the internet and would acquaint herself with general office practices. The respondents' children would also attend the office after school to complete their homework and the respondents with their children and the applicant would often have dinner at Hurstville.

16 The respondents asserted that the applicant was free to use her time as she wished and that she had spent a large portion of her time watching television programmes such as "Days of our Lives", "The Young and Restless" and "The Bold and the Beautiful". These programmes were discussed by the applicant at dinner time with the respondents. She used the internet extensively and often read the children's school books to learn English. The applicant "often" went shopping and to the movies with the respondents' eldest daughter and had been taken by the family on a number of family holidays. The respondents denied placing any restrictions on the applicant and pointed out that they worked "as a minimum, from the hours of 9.00 am to 5.00 pm and were not at home" during these times to impose any restrictions upon the applicant's movements.

17 It was admitted that the applicant was not paid any wages but the respondents denied that the applicant was employed by them to perform these domestic duties. From time to time he respondents had given the applicant pocket money as they had done with their own children on various occasions to go shopping and to attend the movies.

18 The reply asserted that there was no jurisdiction to deal with the application as there was not a contract whereby work was performed in an industry. Further, it was denied that there was a contract and a contract that was in any way unfair.

THE EVIDENCE

19 Prior to the hearing of the application, the respondents were represented by solicitors and counsel with the affidavit evidence and reply being filed by solicitors then acting for the respondents. Shortly before the hearing, the respondents' solicitors filed a notice to the effect that they were no longer representing the respondents in the proceedings. When the hearing commenced, the respondents represented themselves, gave sworn evidence and cross-examined the applicant and one other witness called in the applicant's case. Prior to the hearing and as required by directions given by *Marks J*, solicitors acting for the applicant filed a document entitled "List of Issues and other matters" which, inter alia, listed various paragraphs of the affidavit evidence relied upon by the applicant to which objection was taken and outlining the nature of the objection. Although the respondents were not legally represented, each of those objections was considered by the Court: a number of those objections were upheld, or the applicant's affidavits were modified by deletion to meet the thrust of the objections and the respondents were informed what material in the affidavits relied on by the applicant had been deleted.

20 In her affidavit evidence, the applicant stated that when she came to Australia she did not speak or understand any English and that, prior to that time since the age of 14, she had worked as a maid-servant in Djakarta for three and a half years. In that position she had been paid approximately 100,000 rupiah per month.

21 Towards the end of May 1995 she met the first respondent at a house in Djakarta having been told by a friend who worked as a maid servant in that house that the first

respondent was staying there. The first respondent was said to be the niece of a person called Linda in whose home she was staying. The applicant said she had not met the first respondent prior to that night in Djakarta. The first respondent asked the applicant if she really wanted to work for her in Australia, describing the job as cleaning and tidying the house and looking after her baby while she was at the office. The first respondent said she would have to stay for at least two years before going back home and she had to be sure she wanted the position. The applicant agreed to work for the first respondent in Australia and to stay for at least two years. The first respondent is then alleged to have said that she would arrange a passport for the applicant the next day.

22 The applicant had friends and relatives who had worked overseas and had made much more money than they could in Indonesia and that is why she was interested in coming to Australia. The applicant agreed that she did not at this time ask the first respondent how much she would be paid but because of a conversation with the driver who worked for the first respondent's aunt, she expected a lot more than she had been paid as a maid servant in Djakarta for working in Australia.

23 A few days later the applicant again met the first respondent at the aunt's house, and the first respondent's brother Olin drove them to a house in a Djakarta suburb which was unknown to the applicant. The first respondent introduced the applicant to a man whom she said would arrange a passport for her and said that this person had also made a passport for the "first girl who worked for me".

24 The first respondent told the applicant that her identification card was from East Java and that the person making the passport would make her a Djakarta ID so she could obtain a passport in Djakarta. She was told to use the name Sriyanti rather than Masri, because it sounded better. The applicant agreed to do so. Arrangements were made to meet at the first respondent's aunt's house the following day.

25 The following day, the applicant was taken from the aunt's house to an immigration office by the man who was preparing the ID. With this person's assistance, the applicant signed certain documents as instructed by the man. The man returned her to the aunt's house and told the first respondent that the passport would be ready the next day.

26 A few days later, the applicant met the first respondent again at the aunt's house where she was told by the first respondent that her passport was ready and that on the following day they would go to the Australian Embassy. The first respondent instructed the applicant that if she was asked how much money she was taking to Australia she was to say that she had \$8,000 and that, even though she did not have that money, to pretend she did. A few days later, the applicant again attended the aunt's house where the first respondent introduced her to a person called "Martin". She did not know Martin's surname but the first respondent told her that Martin would be her sponsor and would help arrange her visa and that they were going to the Australian Embassy with him that day. The applicant stated that she did not know what the first respondent meant by "visa" or "sponsor" as she had only been educated to primary school level. She did not understand anything about breaking the law or immigration and she believed that what the first respondent and others were doing was what was required to be done and what was legal. She had no reason to believe otherwise and she relied on others in relation to these matters. The first respondent then took the applicant and Martin to her brother's house in a suburb called Sunter Agung in Djakarta. The first respondent picked up her brother and the four then went to a bank in Djakarta where the brother bought a number of travellers cheques. The first respondent told the applicant that the cheques were worth \$A8,000 and instructed the applicant to sign the cheques. The applicant noted that the cheques had the name Sriyanti on them but she signed them in her name Masri. The four then proceeded

to the Australian Embassy in Djakarta and waited there until Martin returned and the first respondent told the applicant that Martin had obtained her visa. The applicant had signed no forms while at the Embassy and did not speak to any Embassy officials.

27 The first respondent then made arrangements with the applicant for her to be at the aunt's house by 7 June 1995 and to leave by plane for Australia on 11 June 1995. The applicant stayed at the aunt's house for those days and on 11 June 1995 she departed from Djakarta for Australia on the same flight as the first respondent. The applicant understood that the first respondent had paid for her airline ticket: she had seen the first respondent carrying them at the airport. The first respondent and the applicant sat together on the flight during the course of which the first respondent instructed the applicant how to deal with immigration officials on landing in Australia. The first respondent instructed her to tell officials that she was staying with her father's best friend Martin at Bankstown. On arrival at Sydney airport, the first respondent completed the applicant's passenger card as the applicant was unable to speak, read or write English. She believed she may have signed the passenger card but could not remember.

28 At the Immigration desk in the terminal, the first respondent spoke to immigration officials because the applicant did not speak English. The first respondent gave the officers the applicant's passport and airline ticket. They were picked up by the second respondent and driven to the respondents' home in Yowie Bay.

29 After arriving at Yowie Bay, the first respondent asked for the applicant's passport and was given the passport, the Djakarta ID, a birth certificate which she had never seen before and all her travellers cheques. The first respondent said she would look after all the documents for her and the applicant agreed. All the documents were in the name of Siryanti. The applicant did not see the documents for approximately two years. The applicant said that at the time she was not aware of her illegal immigrant status and only became aware of that fact years later.

The applicant appears first to have become aware of her illegal status sometime in 1996 when the first respondent told her that if anyone knew she was working for the respondents they would know that the applicant was illegally in the country and that she would be put in gaol by immigration authorities. When told this the applicant became frightened and then considered that she had no other choice but to stay with the respondents. She did not know anyone else in Australia, had no money to buy an airline ticket to return home and the only other people she knew were the respondents' family. The applicant was also told by the first respondent not to tell anybody that she worked for the first respondent or how much she was paid. She was to hide when her friends came to the house: the first respondent told her that her friends might get jealous and try to take the applicant from her and that the applicant could only work for her because the first respondent had brought her to Australia and she must work for the first respondent so long as she stayed in Australia.

30 In July 1997, the respondents built a Tao temple in their garage and up until that time the applicant said that she made sure she was out of sight when anyone came to the house. However, after the temple was built she was told to serve guests when they attended but there were still some times when the first respondent told her to hide from certain guests. Her passport and identification documents were kept by the first respondent in a desk drawer at the respondents' Hurstville office. The applicant recalled an occasion in 1998 or 1999 when the first respondent wanted the applicant to accompany her to a casino which required the presentation of ID. They went to the office and the first respondent took the

passport from her desk drawer and used it to obtain access for the applicant to the casino but at all times kept the passport in her possession.

31 A number of people lived at the Yowie Bay home of the respondents. Apart from the respondents there was a son Alvin, a daughter Crystal and a baby named Cathleen who was about three months old when the applicant arrived at the house. At that time Alvin was about 10 or 11 years old and Crystal was 7 or 8 years old. The first respondent's mother and father, who were called Grandma and Grandpa, also lived in the house. Their names were Effendy and Lastika Iskandar. From about August 1998, the first respondent's niece Valentine Iskandar came to live at Yowie Bay.

32 The applicant said that from the time she arrived at the house she commenced working and was told by the first respondent that she would be cleaning the house upstairs and downstairs, washing and ironing but not to attend to the baby until she recovered from a cough which she had developed. The cough disappeared after a few weeks and the applicant then began looking after the baby doing everything for her, including giving her milk and changing her nappy. The first respondent did not look after the baby and the applicant did everything for the baby except bathe her: this task was performed by a neighbour, Lina Tan. Lina Tan stopped bathing the baby after about six months and that task was then performed by the applicant although there were times when Grandma would help.

33 From July 1995, the applicant was told by the first respondent to attend the respondents' computer business in Kingsgrove where she cleaned the office. From that time, she cleaned the offices of the respondents' computer company at least once a week unless she was unable to attend because of her other duties at the respondents' home.

34 Also in July 1995 the first respondent said to the applicant, after she had been working for a month, that she would be paid "125 for your work". The first respondent asked whether the applicant would like her to hold the money for her or did she want to keep it for herself - the applicant told her she did not know. It was not specified whether the "125" was dollars or rupiah. The applicant noted that the custom in Indonesia for servants was that food and accommodation were free. The applicant said that she was shocked by how little had been offered to her and she went to her bed and cried. Her bed was in the corner of the rumpus room which was used by the children and also from time to time by Grandma and Grandpa. A few days later, the first respondent told the applicant that she was paying her 125,000 rupiah per month and that was a lot of money. When the applicant asked if that was Indonesian money, the first respondent replied to the effect that what else could the applicant expect as the first respondent had already paid for her passport and airline ticket. The applicant did not reply to this comment.

35 In September 1995, the first respondent told the applicant she would be given 150,000 rupiah each month from September 1995 to December 1995. In January 1996, the first respondent told the applicant that she would be given 200,000 rupiah each month from January 1996 until December 1997. In January 1998, the first respondent told the applicant she would be given 300,000 rupiah each month from January 1998 to July 1998. The first respondent told her that she would hold the money for the applicant but the first respondent did not give any of the money to the applicant.

36 The applicant stated that throughout the time she worked for the respondents, she would ask for her wages "at least once a month, sometimes more". She said that when she asked for the wages the first respondent would ask her how much did she want and then ask her what she was going to do with it. The applicant would usually tell the first respondent what she wanted to buy and how much she thought it would cost and the first

respondent would give her just enough money to buy what was required. The applicant said she usually only wanted to buy personal things for herself such as toothpaste, hair spray, shampoo or clothes or to send money to her relatives in Indonesia: occasionally, she wanted to buy some music for herself but not often. The first respondent did give the applicant her used clothes or Grandma's used clothes but they were the only things given to her.

37 The applicant kept a list of the money the first respondent said she was holding for her. She said she only received money when she asked the first respondent if she would give her some when she needed to buy things or if she wanted to send money to the family. When these payments were made to her, the applicant kept a list of each amount. That list was produced in evidence and showed a series of payments, mostly in Australian dollars but with some payments in rupiah and one payment in US dollars. There were 25 such payments, the majority either being \$A100 or \$A200 payments. The list showed a total payment of \$A5,190.00. It became clear in the evidence that approximately half this money was sent by the applicant to her relatives in Indonesia.

38 During her four years stay with the respondents, the applicant performed a variety of duties:

- (a) when a textile company associated with the respondents closed, the applicant moved about ten bolts of dress material that had been stored at Kingsgrove to the respondents' garage in Yowie Bay. These weighed between 25 and 30 kilos and had to be taken by the applicant around the house to the lower level and into a store room;
- (b) a few months after arriving in Australia, the first respondent told the applicant that she would be taught how to cook and then would do the cooking for the family. She said that when her cooking started to get better she cooked meals for the whole family and then she started cooking all the meals. This included breakfast, preparing lunches and cooking the evening meal for the whole family every day;
- (c) from August 1995 to September 1995, the first respondent taught her how to cut the grass using a mower and shortly after also showed her how to wash the family's three cars. The cars and working in the garden became another part of her regular work;
- (d) she would look after the baby from early in the morning and prepare her clothes as well as the children's school clothes. She changed the baby's nappies and bathed the baby and generally looked after her;
- (e) after helping the children off to school she would prepare lunches for the respondents to take to their office and tidy up the kitchen;
- (f) during the day, she was to tidy up all the bedrooms and bathrooms and kitchen as well as wash all the clothes. The clothes had to be washed in three separate lots and the first respondent's underwear had to be separately washed by hand. She made all the beds, cleaned all the floors while continuing to look after the baby;
- (g) she had to make time during the day to prepare her own lunch and sometimes would be able to take a break of about an hour in the afternoon while the baby was asleep and if nobody else was at home. She usually worked from 5.30 am to 11.00 pm and sometimes until 3.00 am in the morning seven days a week. The applicant did not suggest that she worked for every minute during that time, but she was expected to be around to work during those times. There were breaks every now and then but she said she was generally busy doing something around the house;
- (h) during the evening she would plan what to cook for dinner, prepare the food and cook it. Dinner was cooked between 5.00 pm and 7.00 pm each evening. Sometimes Grandma helped by looking after the baby while the applicant did the

cooking but this did not happen all the time. She had to set the dining table and serve each family member as they arrived for dinner. Members of the family would often want their dinner at separate times, such as the two respondents who wanted their dinner later at approximately 8.00 pm or 9.00 pm after they had arrived home from work;

(i) sometimes the respondents did not finish dinner until as late as 10.30 pm and the applicant had to clean up afterwards as well as continuing to look after the baby, feeding her and putting her to bed. She would also do the ironing about three times a week and usually went to bed about midnight but sometimes as late as 2.00 am if there was a lot of ironing to do. Sometimes she would read a book or write a letter before she went to sleep;

(j) at all times of the day, she had to find and fetch things that family members needed or wanted. This had to be done straight away, even if she was busy doing other things. The first respondent, in particular, was very demanding and wanted everything fetched for her whenever she needed them such as a drink, her bag from the car, take the telephone into her room, get her clothes ready every morning and give her a massage almost every night during the first two years;

(k) there were other weekly tasks such as taking out the rubbish bin which was a distance from the house and often involved moving three bins. She had to vacuum the house once every three days, wash and clean the bathrooms once a week and clean the windows once a week. The grass was cut once a week in summer and about once every month in winter and the cars were washed and vacuumed at least twice a month;

(l) from January 1999, she helped the respondents in their Hurstville office, tidying and cleaning the office twice a week on Monday and Wednesday and helped deliver computers to customers whenever her help was needed. She also answered telephones in the office whenever the respondents were on holidays. On the days she went to the office, she returned home about 6.00 pm or 7.00 pm in the evening and still had to do all the cooking and her other household chores as normal;

(m) after the baby turned two the applicant had to teach the baby counting, alphabet, words and manners and these lessons were to be given both in Indonesian and English.

39 After the temple was installed in the respondents' house in July 1997, a number of extra tasks were given to the applicant, including painting the temple, cleaning the lamps about once a month, cooking food for up to 10 visitors at the temple at least once or twice a week and sometimes, if there was a larger party at the house, up to 30 or 60 people. The applicant cooked and served the food and these parties were held approximately five or six times a year for special occasions. From about the same time, the grandparents became vegetarians and the applicant was required to cook many different types of food each day, at least four to five dishes for every meal.

40 There was a variety of other jobs that were performed by the applicant. She cleaned two large verandas once a month, sprayed the garden with chemical weed killer in summer, did gardening in the back yard, cleaned marks, fingerprints and scuff marks off walls throughout the entire house, picked up after children, tidied and cleaned the laundry and storeroom approximately once a year, cleaned a large garage at least once a week, painted the wooden fence in the front garden in the middle of 1998, changed the clothes in the wardrobes as the seasons changed and cleaned the leather sofas and chairs every three months.

41 The applicant told how her letters were read by members of the family, including the grandparents, and how she had been asked questions by Grandma when sending money

home to relatives in Indonesia. She was queried about where she got the money and how she was able to obtain the money in Indonesian currency. The first respondent asked her how and where she exchanged the money.

42 In July 1999, the respondents decided to sell their house in Yowie Bay and move into a town house. The applicant was told there was not enough room for her in the new town house and she would have to sleep in the office at Hurstville. She was very upset at this prospect but the first respondent told her that she was stupid and she was still better off sleeping in the office than going back to Indonesia.

43 The applicant said she was not allowed to go to the shops by herself and always had to take either the baby or the other children with her. She was only allowed out for short periods of an hour or so and the first respondent would always give her a time that she was to be back at the office or at home. Although she did not know any English when she arrived in Australia, she taught herself by buying magazines and books so she could read them and learn. She also bought an Indonesian/English dictionary which she read before going to sleep. She would also read while she was looking after the baby while she slept, and on occasions Grandma would ask her why she was reading all the time and not doing her proper job. Grandma would tell her there was no point in learning from a dictionary because she would not use it anyway.

44 The first respondent gave the applicant permission to discipline the baby after she turned about two years old which was required as the child became naughty. She still had to take the child to the toilet even when she was three and four years old and able to go by herself. The child was very messy and the applicant taught her how tidy up her cupboard in her room. The first respondent told the child not to do it any more because that was the applicant's job. The applicant said that she did not have very many friends in Australia during this time.

45 During the four years she stayed with the respondents, the applicant found the demands upon her unreasonable and stressful and regarded herself as being often insulted by the children, but stated that she was never physically hurt. She gave a number of examples of the types of demands and pressures placed upon her and the ill-tempered dealings with which she had to deal from time to time. There was an occasion when she was watching television when there were still some items to be washed up and Grandma told her she had to finish her other jobs and she had to do so before she could watch television.

46 When the respondents' house was put up for sale, the applicant tidied up the whole house and moved the furniture around to make it look good for buyers. She said this took her about a week to do and she did it on her own. When the house was sold, she had to pack everything in boxes and stack them by herself without help. She was told that when the family moved out she would have to clean everything, cut the grass for the new owners and unpack the boxes at the new house.

47 The applicant estimated that she spent approximately \$A2,160 and \$US235 on her own needs during the four years she was with the respondents. She also sent the equivalent of about \$A2,760 to her parents in Indonesia, meaning that there was a total of approximately \$A5,230 given to her by the first respondent or sent on her behalf.

48 When the applicant went to a Tao temple in Bexley every Sunday since 1997, the first respondent would tell her not to answer questions about her wages and to tell people she was not working for the first respondent but just helping out and that she lived with her uncle in Bankstown.

49 While at Yowie Bay, the applicant met and became friendly with neighbours Mr and Mrs Muir. In August 1999, the applicant thought that the second respondent had been very angry with her that morning and had upset her by demands he had made upon her. The applicant telephoned the Muirs and spoke to Mrs Muir telling her about the incident and that she could not take it any more. She was invited by Mrs Muir to come to their house which she did. She told Mrs Muir that she might run away and discussed that prospect with the Muirs who offered to let her stay at their house. She was unable to do so because she was being picked up by Grandpa and taken to the office at Hurstville where she had to do some work. While at the office she saw her passport in a drawer and took a photocopy of it. She also found what appeared to be a list of payments to her by the first respondent and it was recorded in rupiah. The applicant then telephoned Mrs Muir, told her she had found her passport and made an arrangement to see her that night after she finished work, some time between 11.30 or midnight. At about 11.30 or midnight after she had finished work, the applicant put her clothes in a plastic bag and went to the Muir's house. The next morning with the Muirs she looked at the copy of the passport that she had taken and Mr Muir noticed that the visa had expired around September 1995. Mr Muir told her that she was an illegal immigrant and would have to get legal advice and contact the Department of Immigration. Those steps were later taken by the applicant with the assistance of the Muirs.

50 In oral evidence, the applicant said that since leaving the respondents' house she had converted from the Islamic faith to the Christian faith and had become a member of the Congregational Church. She was currently performing voluntary work for that Church. She explained that her religious conversion was why she had sworn her affidavits and taken an oath in giving her oral evidence in Court.

51 In relation to the name Sriyanti on her passport, the applicant said that had never been her name. The photocopy she had of her birth certificate was not in fact her birth certificate and it carried the name Sriyanti. She understood the birth certificate had been used to obtain her passport. The identification documents from Indonesia were not real identification documents but she understood they had been used to obtain her passport. The passport and the documents had been kept by the first respondent after she arrived in Sydney. The applicant next saw the documents a few years later in the second respondent's closet in his bedroom while she was tidying up clothes.

52 The applicant confirmed that prior to 1995 she did not have a passport and did not have a passport prior to meeting the first respondent. The only passport she ever had was the one obtained in June 1995. She last saw that passport in the top drawer of the first respondent's desk at the Hurstville office. The applicant photocopied the documents the day she decided to leave the respondents.

53 The applicant said that prior to June 1995 she did not know how to obtain a passport in Indonesia and she had not asked anyone on her behalf to obtain a passport.

54 When working in Indonesia as a maid/servant, she had worked in three households cleaning the floor and dusting from 5.30 am until 10.00 am or 11.00 am and then working in the late afternoon from 5.00 pm to 6.00 pm. In Indonesia there were a number of servants employed in the same house, usually three or four other girls doing cooking, laundry and ironing and one looking after little children. Her work in this capacity in Indonesia was paid the approximate equivalent of \$A40 to \$A50 per month.

55 In her oral evidence, the applicant confirmed again the nature of the house work she performed for the respondents over a period of four years from mid 1995, including

gardening work, cleaning of cars and minding the children including the baby. The applicant also cooked on weekends and looked after the baby on weekends but she said she did not have to do any of the shopping for groceries. When she wanted personal things, she would ask for her wages. She did obtain some help from the first or second respondents with the baby from time to time but not all the time. Grandpa used to help putting out the rubbish in the first few months she stayed at the house but not thereafter. Grandpa also helped wash the small car which he used to drive and helped clean it but no other assistance was given in cleaning the cars.

56 When the applicant was cooking meals for the family and when larger numbers of people attended the house, she did not speak to those people while serving the meals nor did she take part in the celebrations.

57 The applicant said that while her passport was being arranged, she was told that the man who arranged her passport was the one who had arranged the passport for a person called Patima, who was a female who had worked for the respondents before the applicant. The first respondent told her that Patima had worked for them and she had been told by the Muirs that Patima worked at the house for about nine months before the applicant arrived.

58 The cross-examination of the applicant was undertaken by the second respondent Mr Santoso on behalf of both respondents. The applicant was shown photographs of her with the respondents' family and at the temple at Bexley, which she accepted showed her at those places. She agreed that she had never been physically hurt by the respondents during her four years with them but had been scared because the respondents were her boss and she had been told to obey her boss as was the case in Indonesia - she had been told not to discuss her circumstances at home with anybody. While she did meet people at the temple on Sundays and was friendly with them they were not friends that attended each others house or got together apart from meeting at the temple.

59 The applicant agreed that, although she worked long hours, she still had time to read magazines and learn English and, despite the workload she was never sick although working every day of the week, sometimes with as little as two and half to three hours' sleep and up to approximately five hours' sleep per day.

60 The second respondent asked the applicant why she had run away after four years when she could have spoken to them or could have left "two years earlier". The applicant replied that was not the relationship, the respondents were her boss and nobody listened to her.

61 There was no real sharing of the work load as suggested by the second respondent although very rarely the family did some cooking, although it was true that the first respondent did the cooking in the first few months after the applicant arrived in Australia.

62 The second respondent put to the applicant that "we give you freedom of where you can actually go to Hurstville shopping centre", having freedom of what was described as "domestic travel". The applicant said that she did not go to the shopping centre alone and was always with the children or with other relations of the respondents. She thought she was there with the children as an accompanying adult. The applicant also rejected the suggestion that she had never been treated as a servant.

63 In the applicant's case, affidavit and oral evidence were called from Mr and Mrs Muir who were the respondents' neighbours and had come to know the applicant. Mr Muir was a retired engineer. He recalled the respondents moving to Yowie Bay about Christmas

1994 and that there was an Indonesian girl with them: he later became aware that she was called Pat and worked at the respondents' house. The respondents, their two children and later third child and the first respondents' parents lived at the house.

64 Having retired in approximately 1992, Mr Muir was asked from time to time by the respondents to do small jobs for them around the house such as fixing tap washers, drilling holes and handyman type jobs. He first met the applicant in September 1995 when she was walking past his house, although he had seen her at the respondents' house before that. He did not know that the applicant lived with the respondents at first but as he began to visit the respondents' house more frequently it became apparent to him that the applicant was living in the house with the respondents. From time to time, the applicant would be sent to ask him to do certain odd jobs at the house.

65 When he attended the house to do handyman jobs, he saw the applicant working, doing jobs such as cooking and preparing food, washing the dishes, cleaning up after meals, cleaning the house, vacuuming and generally picking up after the respondents' family and their guests and also washing and ironing. He often saw the applicant washing cars and doing gardening when he was visiting another neighbouring property. Mr Muir was usually at the respondents' house about once every two months doing odd jobs and after about the middle of 1997, he attended the house for social functions approximately every three months. These were usually visits to attend a religious celebration followed by a meal. On these occasions when he visited the respondents' house, he often saw that there were three or four visitors staying in addition to the regular family members and during these times the applicant would be cooking, cleaning and generally attending to the needs of the family and "at the beck and call of the people in the house".

66 In mid 1999, the second respondent told Mr Muir the respondents were selling the house because of a very good offer that had been made which he could not refuse. The respondents had decided to move either to the northern suburbs or the eastern suburbs because that was closer to their customer base. A little after this, the applicant had a conversation with Mr Muir about what she should do and how she should look after herself.

67 On 2 August 1999, he had been told by Mrs Muir that the applicant had spoken to her and was very upset. Mr Muir went to the house during the morning and noticed that the applicant was upset. She told him that she wanted to run away and asked if she could stay at their house. She said she needed help and had nowhere else to go. An arrangement was made to speak to Mrs Muir and the following day Mr Muir became aware that the applicant had stayed at their house that night.

68 In discussing what she could do, the applicant showed Mr Muir her passport. He noticed that she had only a three month visa which had been issued in June 1995. He then contacted his solicitor and made arrangements for the applicant to see a Legal Aid solicitor. He helped the applicant complete forms and attend at the Department of Immigration about a week later. He had continued to assist the applicant in her dealings with the Department of Immigration and also in the current proceedings. He understood that the applicant had a bridging visa entitling her to stay in Australia until such time as the Immigration Review Tribunal dealt with her application.

69 In oral evidence Mr Muir said that whenever he attended the respondents' house he noticed that the applicant was there cooking and serving the food and seemed to be always "doing something". He recalled on one occasion there was "heaps of ironing in baskets", and while he was working there she was doing the ironing. When he was there for celebrations, he saw the applicant cooking the food, bringing it out and serving the

food but the applicant never participated in the celebrations but would be out of the way or standing in the kitchen.

70 In cross-examination, Mr Muir was challenged on how he could make all these observations of the applicant when he was only working in the bathroom or at one place in the house. Mr Muir said that the jobs regularly took him half an hour to an hour or more and that he had made these observations on many occasions. He had seen the applicant working on the cars.

71 Mrs Muir in a sworn affidavit described how she had lived in Indonesia in the mid-70's for about two years and had learned to speak a little basic Indonesian. After the respondents had moved to Yowie Bay she became friendly with them and enjoyed being able to practice her Indonesian with them.

72 From 1995, Mrs Muir and her husband had been invited to attend functions held by the respondents both at their home and at the temple at Bexley. In April 1997, after a temple was built in the respondents' garage, the Muirs regularly attended religious ceremonies held there which were followed by a traditional Indonesian banquet.

73 In September or October 1995, Mrs Muir saw the applicant who appeared to be living with the respondents in their house. For the first six to twelve months she said little more than hello to the applicant but often saw the applicant from her driveway when she was collecting mail or taking out the garbage bins. Mrs Muir had been told later in 1995 by a neighbour that there was someone in the respondents' home doing the housework. From early 1996, Mrs Muir spoke more frequently with the applicant as her English began to improve. In May 1997, Mrs Muir attended a ceremony at the respondents' house where she saw the applicant very busy working during the whole of the time they were there, from about 10.00 am until late in the afternoon. On that occasion, the applicant was cooking and serving the food and clearing away the plates. At the same time, she was looking after the respondents' baby who was then about two years old. Mrs Muir was aware that from time to time at about 10.00 pm or 11.00 pm, the applicant was taking the respondents' garbage bin out to the street and she would see the applicant the following morning taking the garbage bin back into the house.

74 On one occasion in March 1999 or April 1999, the applicant stopped Mrs Muir while she was driving past and asked to be taken to a petrol station because the lawn mower had run out of petrol and she could not finish cutting the lawn. She had been asked by the second respondent to cut the grass because he was too busy in the office and she had to get the petrol herself. She had walked one and a half or two kilometres to Miranda for petrol but there was no petrol station at Miranda.

75 Mrs Muir recalled that on 2 August 1999 the applicant telephoned her and was crying saying she had a big problem and asked if they could talk. Mrs Muir then went to see the applicant who was crying and appeared to be very distressed. The applicant told her that she could not stand the amount of work and the way she was expected to do everything in the house. They had gone into the respondents' house where Mrs Muir observed that the kitchen was "an absolute mess" - the applicant told her she had prepared breakfast for eleven people which included guests. She said she wanted to run away but asked what she could do. She could not stand it any more. She had been in a lot of trouble from the second respondent about putting boxes in the Tarago van and not being able to find his clothing and he had yelled at her. She told Mrs Muir that she had to get out of the house and asked if she could come to the Muir's house.

76 A few hours later the applicant telephoned Mrs Muir telling her she was at the

respondents' office and had found her passport and was copying it but would put it back. She asked if she could come to see them that night at about 11.30 pm or midnight. At about midnight the applicant came to the Muir's house with a green plastic garbage bag containing her possessions.

77 The following morning, the Muirs discussed her situation with the applicant during which the applicant said she wished to return to Indonesia but she only had \$5 and was frightened because the first respondent had told her she would be put in gaol if she ran away or went to the authorities. Mrs Muir noted that her husband looked at the applicant's papers and told her she was in Australia illegally and she would need legal advice. Her husband then contacted the family solicitor who advised that they contact the Immigration Advice Line of the Department of Immigration and Multicultural Affairs. From about 3 August 1999, the applicant lived with Mr and Mrs Muir in their house at Yowie Bay and the Muirs helped her obtain legal advice, including dealings with the Department of Immigration. Mrs Muir was called to give oral evidence but was not cross-examined by the respondents.

78 Evidence was given by Mr Thomson, a solicitor employed by the solicitors acting for the applicant. He gave evidence about obtaining the Miscellaneous Workers - Home Care Industry (State) Consolidated Award and its splinter award, the Miscellaneous Workers - Home Care Industry (State) Wages Adjustment and Allowances Consolidated Award, from the Industrial Registry and discussions he had undertaken with senior solicitors as to the appropriateness of the Award having regard to the duties performed by the applicant whilst living with the respondents. The money claim in the summons for relief had been calculated by reference to a classification of Grade 2, Live In Worker, under the Award as representing the most appropriate award classification. Mr Thomson was unaware if consideration had been given as to whether or not any other award was relevant to the applicant's work and was unaware if there was any discussion of that matter with the Industrial Registrar.

THE RESPONDENTS' CASE

79 In summary, the respondents' case was that the applicant had come to Australia to learn English and establish herself in the country possibly with a view to marrying an Australian, and that the respondents would give her food and accommodation. There was no requirement by the respondents that the applicant would work as a domestic maid and there was certainly no contract of employment and promise of wages for working as a domestic maid. The applicant was free to come and go as she pleased, was not required to do any domestic chores, although her assistance would be appreciated and was offered from time to time. The applicant had not been mistreated physically or otherwise and the respondents felt betrayed by the applicant commencing these proceedings especially in light of their generosity and care of her. Generally, the respondents contested the claims and statements made by the applicant.

80 The second respondent Adi Santoso filed an affidavit and was cross-examined upon its contents. He had no knowledge of the applicant's background, the work she had previously performed and the arrangements made with the first respondent as to how the applicant was to come to Australia and live at the respondents' house. He had no knowledge of her passport or identification documents. He said he was unaware that the applicant had come to Australia illegally and he did not discuss the legal status of her residency while she stayed at his house.

81 The second respondent had no knowledge of the applicant being told to hide or keep out of the way when visitors attended his home and stated that throughout her stay the applicant had met many of the respondents' relatives, friends and neighbours including Mr

and Mrs Muir. He said he was not present during any conversation between his wife and the applicant when they arrived in Australia from Indonesia in which there was a discussion as to the duties or tasks the applicant was to perform. In relation to the scope of tasks the applicant she said she performed at the respondents' house, the second respondent said that nobody washed dishes in the house because there was a dishwasher and everybody used to stack their own dirty dishes. He denied that the applicant played any major role in raising the respondents' children and said that a neighbour Lina Tan, a qualified midwife, came to the house almost every day to assist with the baby. There was no requirement for the applicant to do anything in relation to the baby because of the assistance of Lina Tan and his mother-in-law Mrs Iskandar. The applicant did no more than assist Mrs Iskandar. Further the applicant was never required to clean the Kingsgrove office of the respondents' business.

82 The second respondent was never present during any conversation where the applicant asked for payment of wages or any money directly related to the performance of work. He was present on various occasions when his wife gave the applicant "pocket money" to go shopping or to buy personal things such as clothes. Necessities such as toothpaste, hair spray and shampoo were all provided in the house and were available for everyone, including the applicant. The first respondent would often give her own clothes to the applicant if she wanted them before sending them off to a charity or to be thrown out.

83 In relation to cooking, it was observed that the applicant was keen to learn how to cook and she did occasionally cook dinner with the first respondent. Evening dinner was predominantly cooked however by Mrs Iskandar assisted by the first respondent and the applicant, while breakfast was simply fruit, milk and cereal occasionally with boiled eggs or toast. Mr Iskandar prepared most of the lunches and the applicant would occasionally help by putting cheese or ham on the sandwiches. The applicant did not cook or prepare breakfast, lunch and dinner for the family on her own every day.

84 The second respondent did teach the applicant how to use the mower but he did not instruct her to mow the lawn or tend the garden. She had told him that she liked to garden and gave assistance just as she did washing the cars but she was under no compulsion to do so. In relation to various domestic duties, the applicant was not obliged to perform them but all members of the family helped with these duties and the applicant did no more than any other family member. Each family member was responsible for keeping their bedroom tidy and family members took turns to clean the bathrooms once a week. Adult members of the family would take turns to load the washing machine: Mrs Iskandar looked after the baby on a full time basis with only occasional assistance from the applicant. The applicant could do as she pleased at any time and was treated like a member of the family.

85 It was Mr Iskandar who undertook many of the household tasks according to the second respondent, and he had been doing this since he arrived in Australia because he was not employed. The applicant was not required to clean the Hurstville office as each staff member was responsible for their own desks and there was no cleaner employed. Every fortnight, either the second respondent or Mr Iskandar would vacuum the carpet and the applicant would come to the office before going shopping at Hurstville.

86 The temple that was built at home required only certain people to perform the maintenance and cleaning and the cleaning was part of religious duties. The food that was served there, according to custom, was brought by people attending but if there were more than 30 people, food would be brought in from outside.

87 The applicant had been taken on holidays with the family from time to time but was

not taken on a holiday to New Zealand during Christmas 1998 when the respondents and their children were accompanied by and Mr and Mrs Iskandar. The second respondent said there was no obligation to take the applicant with them and that the first respondent's niece was visiting from Indonesia and was able to stay at the house. He denied that the failure to take the applicant to New Zealand was because of her immigration status which was unknown to him.

88 In cross-examination, the second respondent accepted that the applicant did some ironing, washing, cooking, washing of cars, mowing and looking after children but only by giving assistance to the respondents or to Mr or Mrs Iskandar. Members of the family worked together doing these things. Members of the family took turns doing these tasks and were sometimes assisted by the applicant. When there were ceremonies at the temple in the garage he denied that the applicant did not eat with the guests.

89 While the applicant was not required to do any work she did assist from time to time with tasks around the house and the second respondent accepted that she was required to look after the baby twice a week at no specific time but ranging between two to three hours when required. She was not required to take the children to the movies or to look after them during outings but she would go along with them because she wanted to. It was not necessary for her to accompany the children because of the age of the children as Mr Iskandar performed this role.

90 The second respondent accepted that the applicant was not a relative, was unknown to him and was somebody he had never met before she arrived with his wife from Indonesia in 1995. In his family, his wife had responsibility for the house and he had responsibility for the business: his wife was trusted to make the decisions in relation to the house. The applicant had come to live with them for no apparent reason known to the second respondent and had stayed for approximately four years. He could not give any reason for the applicant staying in his house for four years. The applicant had come home with his wife and he trusted his wife to bring anyone - friend or visitor - into the house and he did not have any reason to question her. He trusted whatever she did as being correct. All he knew was that the applicant had met his wife through a person called Oman in Djakarta. That was as much as he knew about the applicant and he did not know about her history or anything else about her. He denied however that the only sensible explanation was that the applicant had been employed to work as a maid in his house.

91 The second respondent accepted that he worked fairly long hours in his business ranging from 9.00 am to sometimes 7.00 pm to 10.00 pm. His wife however was not full time at the office but she would work between three to five hours every day but it was flexible whether she started at 9.00 am, 10.00 am or 11.00 am and also when she left.

92 He was asked about the person called Patima and said he did not know her. He denied there was someone else staying in the house before the applicant came to stay in the house. He had read Mr Muir's affidavit and had read it for the purposes of preparing a reply but had missed the reference to a person called Patima working in the house. He was unable to say why he had not dealt with that matter because it was wrong but thought he had just flipped through Mr Muir's evidence and it might have slipped past him. He understood that responding to the affidavit was important and he understood it was important to correct anything in the affidavits which was not accurate. However, he did not know who Mr Muir was talking about when he referred to the girl Pat or Patima.

93 Although the second respondent knew that his wife had given the applicant money, he did not know how much and kept no record of it but believed it was just pocket money. It was merely the same as giving pocket money to his children. It was not his role in the

family to give pocket money to anyone - that was his wife's duty, and he did not know how much the children had been given as pocket money and he could not say how regularly it was given. He did not ask his wife whether she gave the applicant more or less pocket money than the children. All he knew was that they treated the applicant in the same way they treated their children and she was given pocket money the same way as the children were given pocket money. The second respondent conceded that he did know whether his wife gave the applicant money as pocket money or as wages. He believed what she had said to him but he left it to his wife because really it was nothing to do with him. He had no idea what arrangement had been made between his wife and the applicant but his wife did discuss the matter with him and since the applicant was not being employed and there were no wages to be paid of any nature. Nevertheless, he did not know whether or not his wife agreed to pay the applicant money for working around the house. He did not know "one hundred per cent" what his wife required the applicant to do around the house but discussed certain things with him. He thought that the applicant did the ironing voluntarily but he did not know whether his wife asked her to do the ironing. Although there were discussions with his wife about what was going on at the house he left these decisions to his wife.

94 The second respondent said that he would "not very often" come home before 7.30 pm but thought that would occur about once a week. He accepted that when he came home he would not know who would have cooked the dinner but he accepted what he had been told by his wife and by his mother-in-law. He was around the house on the weekends and he knew what happened during that time. He had seen the applicant doing washing once or twice a week and he had seen her doing ironing maybe three times or so a week. He did not know whose clothes she was washing.

95 The second respondent said that in 1999 the house was sold because their business was declining. They were cutting costs because things were getting tough but he denied that he was cutting the cleaning costs and using the applicant to clean the office.

96 When it was drawn to the second respondent's attention that in his affidavit he had denied that the applicant looked after the baby or the children yet in his oral evidence had accepted that she was required twice a week for two or three hours to look after the baby, he said he could have forgotten that when he made his affidavit and it may have slipped his attention.

97 When the applicant arrived in Australia, he understood that that was as a result of his wife doing a favour for her aunt's driver, a person by the name of Oman. Oman had wanted the applicant to come to Australia basically to learn English and to settle in here. He agreed that the family was going to assist her to learn English and settle in Australia. When asked what steps had been taken to help the applicant learn English, the second respondent said that she basically learned English from their children and reading magazines. There were no official courses. He agreed that the bargain was that the respondents would help her settle in and learn English and that she would help them around the house. That was the arrangement made by his wife as he understood it and that arrangement was made in Indonesia. When the applicant arrived in Australia he did not speak to his wife about what financial arrangements were going to be made for her and he did not know whether she had any money and did not question her about it. He did not ask questions because his wife had the responsibility for the home and that type of work. The reason his wife gave her pocket money from time to time was to allow her to move around the local community, but that was all left up to his wife.

98 The first respondent, Nenny Santoso, gave evidence by way of affidavit and was cross-examined on its contents. When she first met the applicant in Indonesia, she was told that

she had an understanding of simple English but wished to come to Australia to improve her English. She did not know what the applicant was being paid in Indonesia or what her work history was or what suggestions were made to her by others about coming to Australia. She denied that when she first met the applicant she asked her if she really wanted to come to work for her in Australia or told her that the job would be cleaning the house and looking after the baby while she was at the office or that she could not go straight home and would have to stay at least two years. She denied saying that she would arrange a passport for the applicant.

99 The first respondent said that in May 1995 she was on holidays in Indonesia staying at her aunt's house when she was approached by Omang who was her aunt's chauffeur. Omang approached the first respondent and told her that he had a friend called Masri who was interested in coming to Australia to learn English and who would like to stay in Australia permanently. Masri had asked him for assistance in achieving this aim on a number of occasions and the driver asked the first respondent whether she was in a position to help. The first respondent said that she told the driver that he had been loyal to her family over the years and she was prepared to do it as a favour to him as the girl was his friend, but she would need to meet her. Later that day Omang introduced Masri to the first respondent. Masri told her that she was keen to marry an Australian and would like to live in Australia. The first respondent told her that the driver had asked whether she would be prepared to let Masri stay with her family in Australia and that because he had been good to her aunt, she would take Masri to Australia. Masri thanked her and said she was grateful for the opportunity being provided and was prepared to help the first respondent in the running of her house as a way of showing her appreciation. The issue of employing the applicant as a servant was never mentioned in the conversation. The first respondent said she was simply helping the applicant as a favour to the chauffeur. Her involvement with the applicant was simply to look after her until she settled into Australia. She did not arrange for or say to Masri that she would arrange her passport. The first respondent denied that she had driven with her brother and the applicant to a house in a suburb of Djakarta and had arranged a passport for the applicant. She denied any conversation about the same person having made a passport for the first girl who had worked for her or obtaining a Djakarta identification card, rather than using Masri's East Java identification. She also denied suggesting that the applicant change her name to Sriyanti and denied all of the applicant's evidence as to obtaining the passport, attending the Department of Immigration and the proposal to tell the Australian Embassy that she was bringing \$8,000 to Australia.

100 The first respondent did introduce the applicant to a person called "Martin" who she said was a business associate of her husband and was visiting her aunt at the time. She denied telling the applicant that Martin would be her sponsor and would help arrange a visa. She denied going with her brother and Martin to a bank in Djakarta and getting travellers cheques and having the applicant sign them in her name. She denied attending the Australian Embassy in Djakarta when Martin came back and gave the applicant her visa.

101 On or about 7 June 1995, the first respondent said she met the applicant at her aunt's house and asked her if she wanted to fly to Australia on the same flight or fly later. The applicant told her that she would like to travel to Australia with the first respondent and said she had all the necessary documents and could arrange an airline ticket. If there were any problems the applicant would let her know. She denied telling the applicant that they were booked on a plane to Australia on 11 June 1995. She denied buying the applicant her airline ticket although she did arrange to sit next to the applicant during the flight to Australia. She also denied telling the applicant to inform Australian Immigration that she was going to stay with her father's best friend Martin at Bankstown.

102 The first respondent admitted helping the applicant complete her passenger card but she did not deny or confirm that she completed the applicant's card. At the airport, the first respondent denied speaking to Immigration officers on behalf of the applicant because she did not have any English or giving the officers the applicant's passport and airline ticket. She also denied asking for the applicant's passport documents to look after them for her. The first respondent denied arranging for the applicant to come to Australia and stated that throughout her stay she was unaware of the applicant's immigration status and did not discuss it with her. She denied instructing the applicant to hide from visitors and directing her not to tell anyone for whom she was working or that she could be put in jail by Immigration.

103 While the first respondent gave money to the applicant, she denied paying her and denied telling the applicant on the first day she arrived in Australia that she would be cleaning the house upstairs and downstairs, washing and ironing and to stay away from the baby until her cough had passed.

104 In relation to domestic chores, the first respondent pointed out that there was a dishwasher and people stacked it themselves and there was no need to wash any dishes. The applicant did this from time to time but so did each member of the family and occasionally the applicant assisted. The applicant was not given the care of the baby because she was a young girl and had no real experience of caring for infants outside her family experience. The only person trusted by the first respondent to care for the baby while she was at work was her mother and her neighbour Lina Tan, who was an experienced midwife. She did not instruct the applicant to clean the business office nor did she offer to pay her 125,000 rupiah per month for her work. She denied being asked for the payment of her wages by the applicant. The money she did give the applicant was given on a similar basis as that given to her children when they went shopping or to the movies. This was no more than pocket money.

105 The applicant did not know how to cook but was eager to learn. She observed the first respondent and her mother cooking and began to assist in the kitchen and later at times cooked meals for them but was never required to cook. Any cooking she undertook was as part of the family.

106 In relation to all the domestic duties that the applicant claimed she performed, the first respondent said that these were all shared amongst each of the family members including the applicant and it was in this way that the applicant was expected to assist. She was not asked to do or expected to do more than her fair share and she would from time to time perform tasks on a daily basis to the exclusion of other family members.

107 In relation to the temple in the garage the first respondent did not observe the applicant doing any cleaning of the Temple which was mainly done by Mr and Mrs Iskandar. When there was a gathering of guests, they would bring their own food and the applicant did not have to cook for them at all. In relation to the family meals, the first respondent said that she and her mother were mainly responsible for those meals but the applicant would help by way of assistance only.

108 When they were to move house, the first respondent explained to the applicant that she could not have her own room in the new place as she did at Yowie Bay. She was not told to sleep in the office and if she wished to she could have returned to Indonesia. The first respondent denied that on two occasions the applicant asked if she could go home and had been ignored by her. The applicant could go to the shops by herself if she wanted to and was never given a time by which she had to be home: she was free to come and go as she pleased.

109 The first respondent denied keeping the applicant's passport in her office desk or keeping a record of the amounts of money that she gave her whilst at the house.

110 In cross-examination, the first respondent said that it was untrue to say that she worked as a minimum from Monday to Friday from 9.00 am to 5.00 pm with her husband. She was not at home during those times although she was not at the office for all of the time because sometimes she would go shopping and other times to gatherings with her friends from the community. It was then drawn to the first respondent's attention that in the sworn reply to the summons for Relief the respondents had asserted that they worked minimum hours of 9.00 am to 5.00 pm and were not at home during this time to impose the restrictions claimed by the applicant. The first respondent accepted that she was not usually at home at 2.00 pm or 3.00 pm in the afternoon and that the reply was not correct.

111 In relation to the arrangement for the applicant to come to Australia, the first respondent said that her aunt's driver had asked her to help the applicant have an opportunity to live in Australia and, in return for providing accommodation and board, the applicant would help the respondents around the house. She agreed to this as a favour to her relative. The first respondent was going to help the applicant by providing accommodation because the respondents had a big house and she could be provided with food and accommodation while the applicant established herself in Australia. This arrangement was to last until she established herself and the applicant kept saying she would like to learn English and marry an Australian. There was no discussion about how long this assistance would be provided to the applicant. The arrangement was to give her food and accommodation and that was all, but the first respondent did sometimes give her money "as a recognition". When they first spoke about coming to Australia the first respondent did not tell her that she would be given money. This was a complete stranger who was going to be provided with free accommodation and free food for an unspecified time but, in return, the applicant said she would help the respondents around the house - "that's what she promised to me". The first respondent would help her because she was "my relative". The first respondent did not think about it in terms of whether it was a good deal or not because she already had her parents with her in Australia. She never asked the applicant whether she proposed to get a job in Australia nor did she ask what money she was bringing to Australia.

112 She did not speak to her husband about bringing the applicant to Australia because her husband did not mind what she did in the house and accepted that she must have some reason for doing it.

113 It was not until they were on the plane coming to Australia that the applicant told her that she was 21 years old and that her real name was Sriyanti. That had not been put in the first respondent's affidavit: she said she could not remember everything to put in the affidavit. There was no discussion with the applicant about whether she would be assisted to get a job when she came to Australia nor was there any discussion about her contributing money to the household expenses or how she could go about finding a job in Australia. The first respondent's attention was then drawn to two paragraphs in the sworn reply where the arrangement with the applicant was spelt out - that she would stay in the respondent's house until she learned English "and found a job". The first respondent admitted that those parts of the sworn reply were untrue.

114 When the applicant arrived in Australia she had never told the first respondent that she had money and the first respondent knew that she did not have a job because she was "with me in the house". The first respondent denied, however, that the applicant was her

maid employed in the house and that the reason she was brought to Australia was to work as a maid in the house.

115 In Indonesia, it was the applicant who approached the first respondent and asked to be allowed to come with her to Australia to learn English and potentially find a husband, in return for which she would help doing jobs around the house. The first respondent accepted that, when the applicant came to Australia, she did jobs around the house in fulfilment of that part of the agreement. Nevertheless, the first respondent said that, although the applicant helped around the house, she did not expect her to do anything - it was up to her.

116 In relation to what the applicant did while she was living at the house the first respondent accepted that the older children were not old enough to go to the movies unaccompanied by an adult and, although the applicant went with the children, it was Mr Iskandar who was the accompanying adult. The applicant did ironing for herself but she did not iron for everyone from time to time, although she may have done so sometimes. The first respondent would iron her own clothes. Mrs Iskandar ironed the children's clothes.

117 It was accepted by the first respondent that she did not teach the applicant English: she taught herself. The applicant was free to return to Indonesia. Omang sometimes called her and asked whether the applicant had found a partner and, when told that she had not, he asked if the first respondent would send her home to Indonesia if she wanted to go. The first respondent replied that any time she wanted to go home and if she was going to Indonesia she would take her home. She said the applicant always said that she did not want to go home. At that time, the first respondent said that she was travelling quite often to Djakarta. The first respondent knew that the applicant had no income, had no employment and if she wanted to return to Indonesia then "I would have done something for her". She knew that the applicant had no money to buy an airline ticket to return to Djakarta.

118 The applicant was paid money from time to time, on occasions \$100 and on other occasions \$200. There were other amounts of \$20 and \$50 as well. The money was given to her when she went shopping with the children. It was put to the first respondent that the applicant did nothing that required her to give the applicant any money. She replied that "she did help "us around the house" and that was the reason the money was given to the applicant. It was not pay because she worked - it was just like pocket money that was given to the children. Even though she did not do anything around the house, she was still given money. The money she gave to the applicant was the same amount she had given to the children, even \$100 and \$200 if they wanted to buy something.

119 The first respondent denied that the applicant had been required to look after the baby twice a week for two to three hours even though she had heard her husband give that evidence. She said that she had not required that to be done but she agreed that from time to time the applicant did care for the baby. She denied, however, that the applicant was asked to look after the baby when her mother, Mrs Iskandar, went to the doctor: the applicant was only ever asked to help and if she did not want to do so then she need not do it. Her attention was then drawn to the sworn reply where the respondents denied that the applicant cared for the baby. The first respondent said she was confused about her English and the difference between "required" and "helped". She did not trust anybody to look after her children when they were still young and relied on her mother and father to do that. The first respondent accepted that, in fact Masri and everyone cared for the baby. Nevertheless, she did look after the baby when the applicant was with her mother when the first respondent was at work. She denied that the applicant was the one who was

responsible for changing the baby's nappies because that was done by her mother and also by the first respondent. The applicant did change the baby's nappies and had volunteered to do so, but she did not bathe the baby. She could not remember the applicant putting the baby down to sleep. The first respondent accepted that nowhere in her affidavit did she say that the applicant had cared for the baby after she was 12 months old although that was now her evidence. She thought that was "a mistake, that's all". It was a problem with her English.

120 When they were in Indonesia, it was the applicant who told the first respondent that she would arrange the necessary documents to come to Australia. The applicant did ask the first respondent to be her sponsor and that is when she introduced the applicant to Martin to be the sponsor because she did not know what was involved in being a sponsor. She had seen the applicant's passport at the airport but did not ask her whether she had a visa to come to Australia. She did not ask whether Martin had agreed to become her sponsor either.

121 The first respondent was unable to say what her brother's address was in Djakarta although she knew the area. She could not remember whether she had seen her brother at the time of the visit. She did not know Martin's surname, only his nickname. She could not remember if she ever found out whether Martin did sponsor the applicant: at that time, to be honest, she was not serious about the applicant coming to Australia. If she could not come, it would not bother her.

122 When they were at the airport, although the first respondent looked at the applicant's passport, she did not notice the name on the passport or that she had signed it "Masri" and not "Sriyanti". In Indonesia, one could use your real name and then something like a nickname. The first respondent had not looked at the applicant's passport to see on what basis she was allowed to come into Australia because the applicant said she would arrange everything.

123 The first respondent said that she did not know a person Pat or Patima and that no such person had lived with them at Yowie Bay. There was no visitor by that name or anybody staying with them who had that name. She was shown Mr Muir's affidavit and agreed that it had been shown to her by her solicitors. She may have made a mistake and should have mentioned in her affidavit that Pat was not known to her or working for her but what was in Mr Muir's affidavit about Pat was wrong.

124 In relation to the applicant filling out her passenger card when arriving in Australia, the first respondent said she was sleeping on the plane when she had been asked about the passenger card by the applicant but told her to fill it out the same way as the first respondent's card had been filled out. The applicant then wrote out the passenger card and she did not see what was put on it. The card did not have the applicant's surname and that is when the first respondent asked the applicant what her surname was. The first respondent then noticed that the applicant's surname was not on her passport. The first respondent did not know what the applicant put on her card in relation to her visa.

125 The first respondent's mother and father, Mr and Mrs Iskandar, gave evidence by way of affidavit and were cross-examined on that evidence. Mr Iskandar was born in 1930 and was therefore nearly 65 when the applicant came to the Yowie Bay house. He had migrated with his wife to Australia in 1987 and said that neither of them spoke English and that they had been living with their daughter and her husband during their entire period in Australia. Before migrating to Australia they had visited regularly.

126 When the applicant came to Australia, she was welcomed as if she was a member of

the family. He understood that the applicant had wanted to come to Australia to learn English and was hopeful of staying on a permanent basis. Mr Iskandar denied that the applicant was required to undertake all of the tasks she referred to in her affidavit. In a household of eight people, everyone was required to provide assistance and to co-operate in order to keep the household running smoothly. As he was not in paid employment, he had a lot of spare time and therefore did as much as he could to assist his daughter and son-in-law around the house and their office as they led a very busy lifestyle. He listed some of the household activities he would routinely undertake as being:

- (a) transporting the children to and from school;
- (b) preparing lunches for the children to take to school;
- (c) putting dirty clothes into the washing machine;
- (d) hanging washing on the clothesline or placing clothes into the dryer;
- (e) sorting and ironing clothes for the family;
- (f) washing cars;
- (g) gardening;
- (h) looking after the children;
- (i) putting out the garbage.

127 The applicant was at home with Mr and Mrs Iskandar every day and as she did not work she often assisted Mr Iskandar with some of the household chores. He noticed that she observed his wife when she was cooking and asked various questions about how to cook certain food. The applicant learned how to cook as a result, and particularly enjoyed baking cakes. He often drove the applicant and the children to Westfield at Hurstville when they wanted to go shopping or see a movie. The applicant had also accompanied the family on holidays to four different locations within Australia and had been treated like a member of their family at all times as she was a guest in their house. She had never complained about being homesick nor did she mention she wanted to return to Indonesia.

128 In cross-examination, Mr Iskandar said that the applicant slept at the end of a large rumpus room on a lower level of the house and he agreed that sometimes the children played there although there were other places upstairs for them to play and watch television as well. Because his bedroom was close by, he sometimes watched television in that area.

129 Mr Iskandar answered questions about how he came to make his affidavit and he said it was read to him in the Indonesian language and he had signed it. He had received the affidavit as a typed document.

130 He understood that the applicant wanted to come to Australia to learn English because she had told him so: she wanted to study here. He understood that she wanted to stay here permanently and he understood the Indonesian word for "permanent", although he did not fully understand the English word.

131 He said he did most of the jobs in the house but when the applicant saw him working she would give some assistance. She was not instructed to do so but did "a lot of study". She studied from what she watched on the television and she also used a dictionary. When his wife was ironing and she wanted to iron her clothes, she would borrow the iron but she did not iron for all the members of the household. Mr Iskandar said he did the washing and put it on the line or put it in the dryer when it was raining. The applicant did not do the washing. The applicant only ever washed her own clothes and Mr Iskandar said he normally did washing every morning. It was not true that the applicant did all of the

washing nor did she do the ironing: Mr Iskandar often did the ironing himself. The applicant did not do the cooking, Mrs Iskandar did. The applicant might have cooked for herself for her own taste or her own favourite dishes and he saw that the applicant sometimes helped his wife when she was cooking. The applicant did not cook for the family and he did not ever see her bake cakes on her own. They did not bake cakes very often but the applicant learned by watching his wife bake cakes. He said he would not know whether the applicant particularly enjoyed baking cakes because he never asked her. Mr Iskandar's attention was drawn to his affidavit in which he said the applicant particularly enjoyed baking cakes but, after considering that passage for some time, said he would not know whether she enjoyed baking cakes or not. When asked if that part of his affidavit was wrong he said he would not know because of the different language.

132 It was Mr Iskandar who accompanied the children to the shopping centre and the movies, not the applicant, although sometimes she wanted to come along. They seldom went shopping but if the children wanted to go out then he accompanied them. Sometimes she would come along, sometimes she would not. When she came along, she did her own shopping and "we did our own shopping".

133 In the mornings, Mr Iskandar said he prepared the lunches and took the children to school and collected them from school. He denied that the applicant was responsible for washing the cars as he would not allow her to do that because he was the one who reversed the cars out of the garage and one had to use certain soap to wash the cars. The applicant only helped to dry the car after it was washed and she did that of her "own will" - she was not instructed to do that.

134 He and his son-in-law, and occasionally Masri, mowed the lawns but that did not happen very often, only once in three months or once in six months. When the applicant wanted to help she did mow the lawn. The applicant, however, did not look after the children and that task was performed by Mrs Iskandar. Only when his wife was perhaps too busy, the applicant might have helped her: because the children were too small, they were not left to the applicant.

135 In his oral evidence, from time to time, Mr Iskandar said that the applicant did things of her "own volition". He was asked what he understood was meant by those words and he said that is what the applicant told him - that is what she said. The applicant said, "I want to help and so we did things together". The applicant had said, "I want to do this on my own volition".

136 Mrs Iskandar was nearly 62 when the applicant came to live at Yowie Bay. When they moved into the house at Yowie Bay, they became friendly with Mr and Mrs Muir and two of their children. They were very kind and friendly and had made them welcome and she often shared her cooking with them.

137 Even since arriving in Australia, Mrs Iskandar said she had been helping her daughter and son-in-law with their children and the running of their household. She was not employed. She had helped her daughter raise her three children while she was working "on a full time basis". When they were infants, she took part in feeding and bathing them, changing their nappies, preparing baby food, making baby clothes and putting them down to sleep. As they grew up, she took part in preparing their school uniforms, making clothes for them which was her hobby. She generally cooked for the whole family and assisted her husband with other general household duties such as ironing, cleaning the house and doing laundry.

138 In 1995, her daughter brought a girl to the house by the name of Masri. Her daughter

explained that Masri had expressed a desire to come to Australia to learn English with a view to staying here permanently and that she was a friend of aunt Linda's chauffeur. Mrs Iskandar did not think this was unusual as it was not uncommon for her daughter to help others. Masri was welcomed into the family and treated as "one of our own".

139 The applicant had expressed a keen desire to learn how to do various things such as cooking and looking after the children. She was an extremely fast learner and acquired various skills in a matter of months. The applicant often told Mrs Iskandar that she would like to marry an Australian man and live in Australia permanently.

140 Throughout the day she and her husband would be at home with the applicant while her daughter and son-in-law were at work and the children were at school. They would often watch television together. If Mrs Iskandar was busy with housework or looking after the baby and could not watch her regular television shows, the applicant would tell her what was happening in those shows.

141 Mrs Iskandar denied that the applicant was required to undertake all the tasks that she identified in her affidavit. She referred to the fact that, being a household of eight people, they often required the assistance and co-operation of each member in order to keep the household running efficiently. The applicant performed "all her duties as part of our household". Nevertheless, the applicant was free to "come and go as she pleased". When Mrs Iskandar cooked Indonesian food, the applicant would often ask if she could take some to Mr and Mrs Muir. She never objected to this because she was pleased that the applicant "was interacting" with the neighbours. In cross-examination, Mrs Iskandar said that, although she had stated that her daughter was working "full time", that was not quite correct because sometimes she came home at 2.00 pm. She did work from Monday to Friday and sometimes finishing time was a bit early and sometimes later, but it was five days a week. Sometimes she left at 9.00 am sometimes 10.00 am or 11.00 am and sometimes she left with her husband. Sometimes she came home at 2.00 pm, sometimes 3.00 pm, sometimes 5.00 pm. She agreed that her daughter spent most of her time during the day at work.

142 She was not aware that the applicant was coming to live at the house at Yowie Bay until she had arrived. Mrs Iskandar did not speak to anyone about what the applicant would be doing while she stayed at the house nor did she speak to her daughter about what the applicant would be doing while she was staying. She did not speak to the applicant about what she would be doing while she was staying nor did she ask the applicant how she was going to earn a living. She did not speak to her daughter about whether the applicant was going to try to obtain a job while in Australia nor did she speak to the applicant about how long she was going to stay in the house. She had spoken to no one about whether the applicant would like to stay in Australia permanently: no one had ever told her that. Mrs Iskandar's attention was then drawn to her affidavit. Mrs Iskandar said she did not understand the word "permanent" but that the contents of the affidavit had been read to her in Indonesian. That was not her word.

143 Mrs Iskandar's daughter did not tell her that the applicant would be helping in the running of the house while she was staying. In fact, she only helped when Mrs Iskandar was doing something, otherwise she would not do anything. The only time she looked after the baby was when Mrs Iskandar went to see her doctor but that would be for only two or three hours and not very often, only sometimes. The applicant did not look after the baby many times - that was done by Mrs Iskandar.

144 When Mr Iskandar and her son-in-law mowed the lawn, sometimes the applicant helped by picking up the cut grass but normally it was Mr Iskandar who used the lawn

mower. The applicant never washed the car at all. Mr Iskandar did the washing and Mrs Iskandar did the ironing but sometimes the applicant would approach her and was kind enough to do some ironing as well as ironing her own clothes. The applicant never ironed everyone's clothes and never washed everyone's clothes. Mrs Iskandar was the one who did the cooking and the applicant helped her. Occasionally, the applicant cooked her own meals. Mr Iskandar prepared breakfast and Mrs Iskandar vacuumed the floors but the applicant occasionally helped. While Mrs Iskandar ironed clothes, her husband ironed his own clothes and sometimes her son-in-law ironed his own clothes. She did all the children's clothes: her daughter did her own ironing because she had "beautiful clothes". The applicant ironed her own clothes because she wanted to do that herself and she did the washing of her clothes separately. Sometimes the applicant cooked a meal for herself but normally at parties the guests brought one meal each and Mrs Iskandar would cook one or two meals and was sometimes assisted by the applicant. During the four years the applicant was in the house, she was not required to do anything and if she wanted to go out she was free to do that: "... whenever she wanted to go we did not object".

145 Mrs Iskandar said she would not know whether the applicant had a job and was working in employment, although she was aware that she was regularly in the house and only went out occasionally.

THE SUBMISSIONS

146 Counsel for the applicant noted that in the respondents' reply it was alleged that there was no contract between the parties and therefore the Commission lacked jurisdiction to grant the relief sought by the applicant. While it might be accepted that there were arguments as to whether there was a contract of employment and, when that contract of employment was formed, there was definitely an arrangement between the applicant and the respondents, and at the very least an arrangement which fell within the jurisdiction of the Commission. In the applicant's submission, at least the agreement was that Mrs Santoso would bring the applicant to Australia and she could stay in her house in consideration for which the applicant would help her with some tasks around the house. This was sufficient to constitute a binding contract. Even though it was not necessary to go so far in any event there was an arrangement whereby the applicant was to come to Australia, live with the respondents, learn English and possibly find a husband (a matter which was disputed by the applicant) and in return the applicant was to help around the house and that was the work that she was to perform.

147 On the applicant's evidence, there were three occasions when the first respondent told the applicant that she would be paid for the work she was performing. The first was in mid-July 1995, when the first respondent told the applicant that she would be paid 125,000 rupiah per month (approximately AU\$62.50). The second occasion was in January 1996, when the first respondent told the applicant that she would receive 200,000 rupiah per month from January 1996 to December 1997 and the third occasion was in January 1998, when the first respondent told the applicant she would receive 300,000 rupiah per month from January 1998 to July 1998. Further, the applicant's evidence was that she would ask for her wages at least once a month and sometimes more.

148 In relation to these representations made by the first respondent (as alleged by the applicant but denied by the first respondent), there was no strict compliance but, in a very rough way, some of the money amounts paid to the applicant equated to what had been represented by the first respondent. It was submitted that the \$A100 payments roughly equated to 125,000 rupiah and the \$A200 roughly equated to the 300,000 rupiah, but the representations were not acted upon in any more precise way.

149 As to whether the applicant performed work, on the evidence there was no real dispute that she did perform tasks but the issues seemed to be the frequency of performing

those tasks. For the purposes of considering the relevance of the Award, the range of work performed by the applicant embraced all kinds of domestic duties including the day to day care of the baby. The applicant did not suggest that all the duties were performed each and every day: some of them were regularly performed but were not required to be performed on a daily basis. Similarly, it may be accepted that the grandparents performed some tasks around the house but that the vast majority of the tasks fell to the applicant. It was significant that, in the first respondent's affidavit she stated that all the duties claimed to be performed by the applicant were in fact shared between all members of the family including the applicant and that was the way in which the applicant was expected to assist. The first respondent stated that the applicant had never spoken to her concerning the extent of these duties and that, in any event, she was expected to do no more than her fair share. The affidavit also conceded that the applicant, from time to time, performed the tasks mentioned on a daily basis to the exclusion of other family members.

150 Quite apart from this concession, the applicant's evidence generally was to be preferred and had the support of the evidence given by the Muirs. That evidence was consistent with the applicant performing a wide range of household duties for the respondents. It was quite irrelevant that the applicant may have said to the grandparents, from time to time, words to the effect "Let me help you", with any particular task they were doing because it was clear from the first respondent's own evidence that performing these tasks around the house was part of the deal whereby the applicant came to Australia. Importantly, there was no evidence that anyone told the applicant not to give assistance around the house or told her to relax because she was a guest.

151 Whatever may be said about the position of volunteers, it was submitted that the circumstances of this case demonstrated that the applicant had no other choice than to perform work for the respondents around the house. The arrangement whereby that work was performed subverted the objects of the Industrial Relations Act and the award system. On the evidence, the applicant clearly had no money, had no friends or other relatives in Australia and was effectively trapped in the relationship with the respondents. The relevant circumstances in this case were: the applicant came to Australia from a third world country and from a background of poverty, where she worked as a maid or servant; she was relatively young and uneducated; and she was clearly brought illegally into Australia by the respondents, principally the first respondent. Once in Australia, she was told by the first respondent, the one person she trusted, not to speak to anyone about the work she was doing for the respondents and had promises held out to her for the payment of money in return for doing work in the house. While it could be understood how the applicant felt trapped in this arrangement and why she felt she could do little about it for four years, she ultimately did leave the home of the respondents. Even at that point, she was young, uneducated, in a strange country, knowing few people and she was in no real position to complain to anybody about her circumstances prior to leaving the respondents' home.

152 It was submitted that the evidence of the applicant should be accepted where it conflicted with that of the respondents and their witnesses. In important aspects, the nature of the work that the applicant claimed to have performed was supported by the evidence of the Muirs. In contrast, the evidence of the first respondent was unsatisfactory in many respects and the Commission could not be satisfied as to its truth. There were two clear examples which demonstrated the unreliability of the first respondent's evidence. The first concerned the applicant's involvement with the care of the baby and the attempts taken to diminish the work that the applicant did in this respect. In the first respondent's affidavit evidence, it was clearly stated that the applicant was not to look after the baby at all and that only two people were trusted with that task beside the first respondent, namely, the grandmother and the neighbour who was a qualified midwife.

The applicant said that she was required day in day out to care for the baby, bathing her, changing her nappies, feeding her and putting her down to sleep. The second respondent Mr Santoso conceded that the applicant was required to look after the baby twice a week between two to three hours on each occasion. This was in direct conflict with the evidence given by both the first respondent and her mother Mrs Iskandar. Finally, the first respondent conceded that there was at least some care of the baby by the applicant and that it was not required but had been volunteered. There was no reason to doubt the applicant's evidence about the extent of her caring for the respondents' baby.

153 The second example also arose from the respondents' desire to diminish the amount of work performed by the applicant. In the sworn reply to the Summons for Relief, they asserted that they were working full time for minimum hours of 9.00 am to 5.00 pm. The evidence of the second respondent was that the first respondent did not work the hours 9.00 am to 5.00 pm, but something less: Mr and Mrs Iskandar said much the same. The first respondent in her evidence said that she did not work 9.00 am to 5.00 pm in the office but that she would do other things such as shopping and meeting her friends from the community and she finally accepted that she would be away from the house during these hours. The oral evidence seemed to attempt to concentrate on the ability of the first respondent to be back in the house especially to care for the baby with the assistance of her mother. Even this evidence was in conflict with the evidence of Mrs Iskandar, that she cared for the baby because of the busy working life of the respondents. The Commission should be wary of accepting this contradictory evidence of the respondents in preference to the evidence of the applicant.

154 It was submitted that, looking at the whole of the circumstances of the case this arrangement provided a total remuneration less than an employee doing that work would have received. Objectively speaking, the arrangement did not provide for fair, adequate or reasonable remuneration for the work being done. The grounds of unfairness had been specified in the Summons for Relief and focused upon the unequal and inferior bargaining power of the applicant and the failure to provide reasonable remuneration for the work or any benefit, such as annual leave. The arrangement permitted the respondents to exploit the applicant by bringing her to their home in Australia without the payment of any proper or fair remuneration.

155 In relation to the terms of the Miscellaneous Workers - Home Care Industry (State) Consolidated Award, it was frankly accepted by counsel for the applicant that the provisions, in particular of the Incidence clause, meant that the award could not apply to the work performed by the applicant. It was submitted that there was apparently no award that would cover a person engaged as a domestic maid or servant engaged by individuals rather than organisations or bodies receiving Government funding as provided for by the award. The award was selected because the work it covered mirrored the work performed by the applicant. On an analysis of the grading structure, the work that the applicant performed appeared to come within Grade 2, being work more responsible than Grade 1 work but different to the work of Grade 3. While strictly the terms of the award did not apply to the work performed by the applicant, they nevertheless provided a reliable guide as to the worth of such work. It was also accepted that an assessment would have to be made in exercising the discretion under s 106 of the Act and that, in the exercise of that discretion, the Commission would not be bound to simply order the payment of the amount calculated by reference to the award.

156 For the respondents, Mr Santoso read a prepared statement as appropriately setting out their position. The applicant had been well looked after at the Yowie Bay house, had been provided with a large room with water views which could be closed to ensure her privacy. There were bathroom facilities, a television and her room had access to the

garden. The applicant had been provided with a key to the house and knew the alarm system and was free to come and go: she was given free board and lodging and in return "she assisted in the upkeep of the family home". The relationship between them was not contractual but a "consensual arrangement", whereby the respondents agreed to provide board and lodging and the applicant in return agreed to assist in the household. The relationship was voluntary and was entered into solely to enable the applicant the opportunity to live in Australia. At all times the applicant was free to leave the respondents' home but she stayed until the respondents were moving to a townhouse. The respondents believe that she had been treated properly and fairly in their Yowie Bay house and that she had enjoyed a very comfortable lifestyle for four years - she could have left earlier if the circumstances were otherwise. The applicant's opportunities to learn English and computer skills were enhanced by being in Australia and these were opportunities she would not have been given if she had stayed in Indonesia. The respondents believed that what they had done for the applicant contributed to her skills and quality of life at least equally or more than the level of contribution given by the applicant to the respondents' family.

DELIBERATION

157 It is appropriate to consider firstly what was the legal nature, if any, of the relationship between the applicant and the respondents. It is clear from the evidence that, when the applicant and the first respondent initially had discussions in Djakarta, there was no mention of what money would be paid for the domestic duties that would be performed by the applicant. The applicant had an expectation, partly because of her own experience in paid employment, and partly because of what others had told her, that she would earn a lot more by performing these domestic duties in Australia. The parties however at this stage did not discuss any money as being offered or capable of acceptance by the applicant. While it appears that the applicant understood that she was undertaking paid employment in Australia, there was no contract of employment entered, at least not at that time. In her evidence, the first respondent accepted that there was an agreement for her to bring the applicant to Australia, that she would learn English and establish herself in this country and that, in return, she would help the respondents with domestic chores in the house. Counsel for the applicant asserts that, at the very least, this agreement amounted to a contract even if not a contract of employment. The proper legal categorisation of the arrangement at this stage might depend on whether there was a gift or a promise linked to consideration: there might be issues of contractual intention. Considering the contested evidence of the parties, there are many murky areas of the law which would have to be traversed before it could be confidently proclaimed that the Djakarta discussions constituted a contract which could be enforced at law.

158 Undoubtedly having these issues in mind, counsel for the applicant was content to characterise the parties' agreement in Djakarta as an "arrangement" within the meaning of the term "contract" in s 105 of the Act. In *Davies and anor v General Transport Development Pty Ltd* (1967) AR 371 in what may be now regarded as a famous passage, *Sheldon J* spoke of the width of s 88F (the original statutory provision under the 1940 Act) stating at p 373:

Nor does it tolerate argument on such nice questions as whether the contractual relationship has been perfected. It is sufficient that there be an 'arrangement' and for good measure, 'conditions and collateral arrangements' are also included.

As long ago as the Full Commission's decision in *Custom Credit Corp Ltd v Goldsmith and ors* (1976) AR 98, it has been held that the word "arrangement" included transactions which did not give rise to contracts or obligations enforceable

at law.

159 Applying that approach, I am satisfied that the discussions conducted between the applicant and the first respondent in Djakarta in 1995 prior to the applicant coming to Australia amounted to an arrangement. The terms of that arrangement were loose and simply involved the applicant being able to come to and settle in Australia, being fed and accommodated by the respondents, in return for which the applicant would perform domestic duties around the respondents' house. While the finding that there is an arrangement may resolve the issue as to the Commission's jurisdiction to entertain the claim, it is not conclusive in determining the claim. In *Bradley v Bradley* (1978) AR 94, *Macken J* dealt with an application which involved a father, mother and son working together in a family owned hotel in circumstances where the son made a claim for wages over a period of some nine years: of this situation, his Honour stated at p 97:

I do not consider that the 'family understanding' (to borrow the term used to describe it by Mr Bradley senior) was a 'contract or arrangement ... whereby a person performs work in any industry' within the meaning of those words in s 88F of the Industrial Arbitration Act. It lacked an essential pre-condition to the formation of any such contract or arrangement being a mutual intention by the applicant and the respondents to enter into a relationship which was intended to have legal consequences.

It is not every relationship pursuant to which work is performed in an industry which will attract the jurisdiction vested in the Commission by s 88F. Work may be performed by one person for another for reasons which are fundamentally social, political, religious or out of filial duty or compassion. I do not consider that work performed pursuant to such considerations is cognisable pursuant to s 88F.

160 It is necessary therefore to consider the surrounding circumstances including the conduct of the parties in determining the true nature of their arrangement. In preceding paragraphs, the evidence of the parties has been summarised. That evidence demonstrates a preoccupation on the part of the respondents and their witnesses with the duration and frequency of the domestic duties performed by the applicant during her four year stay at the respondents' home. If the evidence called on behalf of the respondents was accepted in full, then it would establish that the applicant, as a complete stranger, came and lived in the respondents' home for four years being provided with both food and lodging, watched television and improved her English, went shopping and to the movies with the children, but otherwise did very little in the way of domestic chores except from time to time assisting mainly Mr or Mrs Iskandar. The first respondent having accepted that the arrangement entered into in Djakarta was one whereby the applicant would come to Sydney, establish herself and improve her English and, in return for board and lodgings, would perform domestic duties around the house, yet surprisingly the respondents directed their evidence at demonstrating that the applicant did not perform this work and thus did not perform her part of the arrangement. On a consideration of all of the evidence I am unable to reach that conclusion.

161 In my view, the evidence called on behalf of the respondents on occasions reached a level of such unlikelihood as to defy common sense: at worst, the evidence called by the respondents heaped improbability upon improbability. Mr Iskandar understood that a certain task was performed by the applicant with her using the words "I want to do this on

my own volition".

162 In reaching this conclusion concerning the exaggeration of the evidence called by the respondents, I have taken into account the varying degrees of difficulty each of the respondents' witnesses has with the English language. The respondents, however, had conducted a business and demonstrated themselves in oral evidence as competent in the English language but understandably were unaware of the procedure and processes of the Court. Mr and Mrs Iskandar had lived in Australia since 1987, having frequently visited the country since 1984. Mr Iskandar apparently had sufficient language skills to obtain a licence to drive in this country. In his evidence, he spoke of the applicant having improved her language skills to the level where her English was better than his. Mrs Iskandar had sufficient English, on her evidence, to watch television with the applicant and discuss the content of programmes with her. Answers given in the witness box during cross-examination by Mr and Mrs Iskandar indicated an understanding of what was said sometimes before the question was translated, although there were a number of occasions when they seemed uncertain about aspects of a question which had been asked. Viewed on the totality of the evidence, I am unable to conclude that any of this evidence was clouded by any doubt arising from a misunderstanding of what questions had been asked and what matters they were dealing with in answering those questions. There were occasions in the cross-examination of the respondents and their witnesses where their previous statements were drawn to their attention to demonstrate the inconsistency of their oral evidence: on a number of those occasions there were significant pauses sometimes requiring the Court to direct that an answer be given: I am unable to attribute such pauses to language difficulties.

163 These conclusions as to the evidence called on behalf of the respondents has not been arrived at solely on an assessment of the demeanour of the witnesses and the often important inconsistencies between their written statements and oral evidence. In this case, the Court had the additional advantage of the evidence of two witnesses who were independent of the parties and whose credit was not called into question during the period when affidavit evidence was filed for each party and while the respondents were legally represented. The evidence of Mrs Muir was never questioned. Her first recollection of observing the width and scope of the duties performed by the applicant dated from May 1997, when she and her husband had attended a ceremony at the respondents' house. The applicant was busy working the whole of the time that Mr and Mrs Muir were present which was from approximately 10.00 am until late in the afternoon. She cooked, served the guests food, cleared away plates and she was also looking after the first respondent's baby who was about two years old at the time. These observations are quite contrary to the evidence called on behalf of the respondents. Mrs Muir from time to time also observed the applicant putting out the garbage bin or retrieving the empty bin the following day. The applicant and Mrs Muir would on some of these occasions stop to talk. This is quite contrary to the evidence given by Mr Iskandar that he always put out the garbage bin and not the applicant.

164 In March or April 1999, Mrs Muir was driving from her home when she was waved down by the applicant who asked to be taken to a petrol station because the second respondent had asked her to cut the grass in circumstances where there was no petrol for the mower. She had walked one and a half to two kilometres to Miranda and back looking for a petrol station without success. It is important to appreciate that this conversation took place long before there was any issue about whether or not the types of duties performed by the applicant at the respondents' home extended to tasks like mowing the lawn rather than being restricted to assisting or picking up the grass, as the respondents' evidence asserted. In August 1999, when the applicant finally decided to leave the respondents' home, she told Mrs Muir that she could not stand the amount of work, the

way she was expected to do everything in the house and that she wanted to run away. Again, this is important evidence about the extent of the work that she performed, and spoken to an independent witness well before these matters were an issue in litigation.

165 On the day that the applicant left the respondents' house, she telephoned Mrs Muir to tell her that she had found her passport, had copied it and had put it back where she had found it in the office. The respondents, and in particular the first respondent, denied that they ever had possession or kept possession of the applicant's passport and identification documents. This evidence demonstrates that, well before this matter became an issue, the applicant did not have possession of her passport and identification documents and was not prepared to take them into her own possession, being satisfied to merely photocopy them and replace them in the respondents' office. That evidence is strongly supportive of the applicant's account that her passport and identification documents were largely in the possession and control of the respondents, and in particular the first respondent, and were not in her control. It would attribute an extraordinary degree of sophistication and prescience on the part of the applicant to conclude that she had made these statements in 1999 about her circumstances in order to support litigation of this nature which might be taken in the future.

166 Of like significance is the applicant's conversation with Mr and Mrs Muir after leaving the respondents' home in which she stated that she wanted to return to Indonesia but only had \$5 to her name and was frightened because the first respondent said she would be put in gaol if she ran away or went to the authorities.

From time to time, Mr Muir was present in the respondents' house and observed at first hand the applicant preparing food, cooking, washing dishes, cleaning up after meals, cleaning the house, vacuuming and generally picking up after the family and their guests as well as doing the washing and ironing for the Santoso family. He saw her washing cars and doing gardening when he visited a neighbouring property. Mr Muir was cross-examined by the second respondent as to how he was able to see all of these things when he was only in the house for a short period of time or in one part of the house. Mr Muir said that he would often stay doing handyman's work for between half an hour and an hour or more on the occasions that he was in the house and that was how he came to see the type and nature of work performed by the applicant. Mr Muir's observations directly contradict the evidence called on behalf of the respondents. He was also regularly present with his wife at the various parties and ceremonies held over the four years that the applicant lived with the respondents. He was well placed to make the observations he did about the nature and scope of the work performed by the applicant for the respondents.

167 There were inconsistencies in the evidence of the respondents as to their hours of work, their attendance at the house and who actually cared for the baby. Those matters have been summarised in the submissions for the applicant and I accept that analysis of the evidence. The evidence of the working hours of the second respondent make it clear that he was the worst placed of the respondents' witnesses to make an assessment of what duties were performed by the applicant throughout the day. The first respondent's evidence indicated that she may have been around the home during the day for longer periods than her husband, nevertheless, between working in the office, shopping and visiting her friends in the community, she was still spending a significant period of the day outside the home, and therefore unable to speak authoritatively about the work performed by the applicant during these times.

168 I accept that Mr and Mrs Iskandar, being retired, were clearly available to undertake a number of the household chores. It is likely that Mr Iskandar did drive the children to school and picked them up and did drive to the shops and the movies but this was work never claimed to have been performed by the applicant. It would not be surprising for Mr and Mrs Iskandar to be revered in their position as mother and father and grandmother and grandfather within the family. It would not be surprising that they performed tasks from time to time around the house. What would be surprising is that, in their retirement years, Mr and Mrs Iskandar would be deeply involved in the extensive day to day drudgery of housekeeping for eight people while the applicant, as a mere stranger not paying for food or accommodation, simply sat around watching television, reading her magazines and occasionally offering assistance without herself being deeply involved in the performance of these usual household chores.

169 There are a number of other matters which call into question the version of events proffered by the respondents:

- (a) the applicant said that in her conversations in Indonesia with the first respondent, amongst other things, she was told that if she came to Australia she would have to stay for a minimum of two years. In cross-examination the second respondent asked the applicant why she had run away after four years when she could have spoken to them or could have left "two years earlier". The clear inference is that the arrangement with the applicant was that she would stay for a minimum of two years. That fact, and many other aspects of the Djakarta conversation were denied by the first respondent;
- (b) on the applicant's version, the first respondent's brother was involved in some of the arrangements regarding the procuring of a passport and visa for the applicant. The applicant spoke of travelling to the brother's house and named an area in Djakarta which was inserted in her passport as her address which she denied. Curiously, in her evidence the first respondent could not remember where in Djakarta her brother lived or even whether or not she had contact with him during this visit. It was important to the respondents' case and would have undermined the applicant's version of events if the first respondent's brother in fact lived elsewhere in Djakarta and if he had given evidence rejecting any involvement in the arrangements to obtain a passport for the applicant or even meeting his sister during her visit in mid 1995: he was not called to give evidence;
- (c) the applicant described how she came to be called "Sriyanti", denied it was her name or a name she used. The respondent denies suggesting that the applicant use the name or having any involvement in arranging the passport and visa. The first respondent stated that the applicant said that she would arrange her travel documents herself. If the applicant had chosen to obtain a passport and visa using an assumed name and as part of a subterfuge it is curious, to say the least, that she signed the passport using her known name, "Masri". The applicant said that she also signed the travellers cheques in the name "Masri" even though they were made out in the name "Sriyanti". The whole passport saga seems to make sense only if it was a stratagem to overcome the three month terms of the visa and make the applicant difficult to find in Australia. The signing of these documents by the applicant using her known name rather than the false name appearing on the documents tends against a conclusion that she was knowingly involved in falsifying these documents;
- (d) in their Reply the respondents said that the arrangement included the applicant coming to Australia, learning English and finding a job. There was no suggestion in the evidence that the respondents helped the applicant learn English or did anything to assist her in finding a job. Her time was so consumed with performing domestic

duties for the respondents that there was no time for other employment: this is a further factor which supports a finding that the applicant's job in Australia was as a maid or housekeeper for the respondents;

(e) when the issue of payment was first raised, about a month after the applicant arrived at the respondents' Yowie Bay home, the applicant states that the first respondent offered her a sum of only 125,000 rupiah per month for the work, which upset her. When the applicant questioned whether the "125,000" was only rupiah and not Australian dollars she recalls the first respondent stating that she had already paid for her passport and airline ticket. The first respondent denies this conversation but in her evidence refers to receiving calls from her aunt's driver (the applicant's friend in Djakarta) and agreeing to bring the applicant back home if things did not work out. On the applicant's evidence she had little money and by August 1999 only had \$5 to her name. This evidence tends to support a conclusion that the applicant did not have the financial resources to purchase an airline ticket to come to Australia in 1995 and that in fact the ticket was paid for by the first respondent;

(f) the second respondent did not know why the applicant was in his house or what was the purpose of her coming to Australia but he just trusted his wife. He did not know if his wife gave the applicant money as pocket money or wages because he left those matters to her and they were not matters that he was involved in. He had no idea of the arrangements made by his wife with the applicant or even if she had agreed to employ the applicant and pay her wages. The second respondent therefore
