

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**Case no: CCT146/2017**  
(ex SCA: 118/2016 aka 564/2016)  
(ex ECM CA&R60/2014)

In the matter between

**B N H**

**APPLICANT**

and

**S P H**

**RESPONDENT**

*In re:*

**Joinder of Minister of Justice and Correctional Services as Second Respondent**

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**AFFIDAVIT IN SUPPORT OF JOINDER APPLICATION**

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I, the undersigned

**Siyabonga Christopher Keka**

do hereby make oath and state:

1. I am an admitted attorney and employed as an impact legal practitioner at Legal Aid South Africa, Braamfontein. Legal Aid South Africa is representing the Applicant herein.
2. This is an application for joinder of the Minister of Justice and Correctional Services as Second Respondent in this matter which is set down for hearing before the Constitutional Court on 6 March 2018.
3. The Applicant is *inter alia* seeking an order that the section 7(3) of the Divorce Act 70 of 1979 be declared unconstitutional in so far as it does not allow the Applicant and similarly situated women who were married out of community of property, without an antenuptial contract, in terms of the now repealed Transkei Marriage Act to seek an order for redistribution of assets on divorce.
4. No Court may hear such a constitutional challenge without the relevant executive being joined as a party to the proceedings. The relevant executive is the proposed Second Respondent.

5. For this reason, the Applicant sought joinder of the Second Respondent already at the time of lodging the original Application before the CC. However, because of an unfortunate oversight the application was not served on the State Attorney.
6. The record filed on 15 December 2017 in terms of the Chief Justice's direction has been served on the State Attorney together with this Application. Similarly, the Applicant's written argument which must be filed on 15 January 2018 has also been served on the State Attorney.
7. As this is a legal requirement to join the executive, it is unlikely that the Minister can oppose his joining in this matter.
8. The joinder of the said Minister is urgent in order to allow sufficient time to the Minister and all parties to prepare for the hearing of 6 March 2018.
9. In so far as the original application was not served on the said Minister and the application for joinder is brought on an urgent basis, the Applicant seek condonation. It was an oversight which now came to our attention.

**WHEREFORE**, the Applicant prays for an order as set out in the attached Notice.

**DATED AT JOHANNESBURG THIS 11<sup>TH</sup> DAY OF JANUARY 2018.**

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**SIYABONGA KEKA**

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which deposed to in accordance with the regulation governing the administration of an oath as more fully set out in government notice R1258 after 21<sup>st</sup> July 1972, as amended by government notice 1648 dated the 19<sup>th</sup> August 1977.

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**COMMISSIONER OF OATHS**