

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

CASE NO: CCT 25/09

In the matter between:

STEFAANS CONRAD BRUMMER

Applicant

and

THE MINISTER OF SOCIAL DEVELOPMENT

First Respondent

**THE DIRECTOR-GENERAL OF THE
DEPARTMENT OF SOCIAL DEVELOPMENT**

Second Respondent

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Third Respondent

THE SOUTH AFRICAN HISTORY ARCHIVES TRUST

Amicus Curiae

AFFIDAVIT

I, the undersigned,

MICHELLE DESAI

do hereby make oath and state that:

1. I am an adult female attorney of the High Court of South Africa practicing as such with the Open Democracy Advice Centre situate at 6 Spin Street, Idasa Building, Cape Town acting for the Applicant above.
2. On 25 May 2009, the day before the hearing in the above matter, I telephoned Mr B Aaron an attorney in Johannesburg who confirmed that he is acting for the I T Lynx Consortium in the matter of I T Lynx

Consortium v State Information Technology Agency (Pty) Ltd & 2 Others in the Transvaal Provincial Division under case number 21290/05.

3. Mr Aaron advised me that the said matter was previously set down for hearing but that that the matter had been removed from the roll as the Defendants had objected to its enrollment during 2008.
4. He further advised me that there have been no efforts by either the Plaintiff or the Defendants in that case to have the matter re-enrolled and that since the removal from the roll, no dates had been allocated for the matter.
5. In the respondents answering affidavit to the application of the HRC, filed on 11 June 2009, it was stated in paragraph 34 that the respondents counsel had become aware, the day after the hearing in this Court, namely 27 May 2009, that the IT Lynx matter had been re-enrolled by the registrar for hearing on 25 August 2009.
6. As this completely contradicted what I had been told by Mr Aaron the day before the hearing, I once again contacted Mr Aaron on Wednesday 17 June 2009 to see if he had any knowledge of this re-enrolment. He informed me that he had no knowledge of any re-enrolment, and that he had not received any notification thereof by the registrar, which is the usual practice in the North Gauteng High Court. (confirmatory affidavit of Aaron)
7. I have instructed my correspondent attorneys in Johannesburg Pienaar & Moller Attorneys to do a file search of the court file. This was unfortunately not possible as although they attempted to access the

court file and went to the registrar's office in the North Gauteng High Court for that very purpose on 17 June 2009, the registrar was unable to assist due to time constraints as by then it was already after two o'clock in the afternoon. I am advised that the practice by the Registrar in the North Gauteng High Court is not to assist attorneys or clerks after two o'clock in the afternoon.

8. I am advised by my correspondent attorneys that in Pretoria that it is highly unlikely that any of the parties involved in a matter would be unaware of a set down date as the registrar of the court delivers to each parties' legal representative a written allocation date and further that the Plaintiff in the matter then proceeds to file a Notice of Set Down reflecting the allocated date.
9. This notice of set down was not annexed to the respondents affidavit filed on 11 June 2009.
10. Given that Mr Aaron acts for the Plaintiff in the IT Lynx matter and would be best positioned to know whether or not the matter had been set down for hearing or allocated a date, my conversation with him confirms that to the best of my knowledge the IT Lynx matter was not enrolled for hearing in August 2009 or any other date.

MICHELLE DESAI

I certify that:

1. The deponent acknowledged to me that:
 - 1.1 he knows and understands the contents of this declaration;
 - 1.2 he has no objection to taking the prescribed oath;
 - 1.3 he considers the prescribed oath to be binding on his conscience.

2. The deponent thereafter uttered the words: I swear that the contents of this declaration are true, so help me God.

3. The deponent signed this declaration in my presence at the address set out hereunder on this the **day of 2009.**

COMMISSIONER OF OATHS