

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

(HELD AT BRAAMFONTEIN)

Constitutional Court Case no: 114/18
Case no: 11440/17

In the matter between:

ROBINAH SARAH NANDUTU First Applicant

JAMES FERRIOR TOMLINSON Second Applicant

ILIAS DEMERLIS Third Applicant

CHRISTAKIS FOKAS TTOFALLI Fourth Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

**THE DIRECTOR-GENERAL:
DEPARTMENT OF HOME AFFAIRS** Second Respondent

**VFS VISA PROCESSING (SA) (PTY) LTD
t/a VFS GLOBAL** Third Respondent

**CONDONATION APPLICATION:
FIRST AND SECOND RESPONDENTS' FOUNDING AFFIDAVIT**

I, the undersigned,

RONNEY MARHULE

make oath and say that:

1. I am the Acting Chief Director: Permits of the Department of Home Affairs ("the Department"), based at corner 270 Maggs and Petroleum Streets, Walthloo, Pretoria.

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2. I am duly authorised to depose to this affidavit and to oppose the applicants' application.
3. The facts set out in this affidavit are within my personal knowledge or derived from documentation held by the Department, unless stated otherwise or the contrary appears from the context, and are true and correct. Where I rely on information given to me by others, I verily believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the respondents' legal representatives, which I believe is correct.
4. The purpose of this affidavit is to seek condonation for the first and second respondents' non-compliance with Rule 19(4) of this Court. In terms of Rule 19(4), the first and second respondents were to file their response to the applicants' application for direct leave to appeal to this Court. The applicants' application was delivered on 8 May 2018, and accordingly the first and second respondents' response was due on 22 May 2018. However, the respondents' response will be delivered on 23 May 2018, one day later than the Rules permit.
5. On 22 May 2018, the date on which the final affidavit was to be deposed, I was attending a day-long meeting away from my office, and did not have access to my computer or my emails for purposes of accessing the affidavit, or to a commissioner of oaths for deposing to the affidavit. I only gained access to a computer at lunchtime, after travelling to a colleague's office for assistance, and I managed to sign the affidavit and scan it to the legal representatives. I hoped that, in the circumstances that would assist to advance the matter. However, I was subsequently informed by the legal representatives of the Department that it was necessary to depose to the affidavit before

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a commissioner of oaths before the affidavit could be filed in Court. Unfortunately, when I was informed of this I was already driving from Johannesburg to Pretoria. I only arrived in Pretoria at approximately 15h30. By that time, it was too late to file the affidavit.

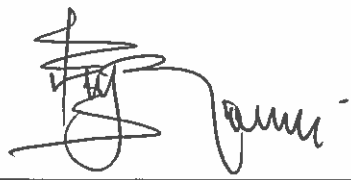
6. I have been informed by the Department's legal representatives that the unsigned draft was sent to the opposing side, pending delivery of the deposed affidavit. To the extent that any prejudice might have been caused by the late filing of the respondents' answering affidavit, it will have been remedied by the timeous service of the signed affidavit.
7. I respectfully submit that the respondents have provided a reasonable explanation for their non-compliance with the Rules of this Court, and that the explanation does not show any wilfulness on the part of the Department or of me.
8. Furthermore, I aver that the Department has good prospects of success in opposing the applicants' application. The applicants' application seeks leave to appeal directly to this Court in a matter involving the interpretation and constitutional implications of the Immigration Act and its regulations. I respectfully aver that it is important for this Court to consider the attitude of the first and second respondents to that application. The first and second respondents oppose that application on the basis that it is not in the interests of justice for the applicants' application to be granted. In the late answering affidavit the Department has made out a strong case refuting the applicants' application, and showing that it is not in the interests of justice for it to be granted. I respectfully refer to paragraphs 4 to 11 of that affidavit for the grounds on which the application is opposed.

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9. For all the above reasons, it is respectfully contend that the Department has reasonable prospects of successfully opposing the applicants' application.

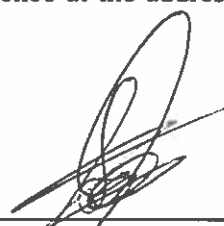
10. In all the above circumstances, the respondents request an order in terms of the notice of motion herein.



RONNEY MARHULE

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 23 day of MAY 2018.



COMMISSIONER OF OATHS

Designation and Area
Full Names
Address

REGT JOHANNES STONE
ADMIN CLERK
28 CHURCH SQUARE
PRETORIA
0002

DIRECTOR OF PUBLIC PROSECUTIONS
PRIVATE BAG X300
23 MAY 2018
APPEAL SECTION
PRETORIA 0001
NORTH GAUTENG: PRETORIA